

**The Funding of Infrastructure from Value Capture  
Mechanisms: the institutionalisation of an economic  
growth discourse in English spatial planning**

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## Abstract

The capture of value from property development processes is a challenge for many planning systems. In the UK there is a long history of using value capture mechanisms; most recently in the name of ‘supporting growth’ and to secure funding for infrastructure. This research examines the latest English policy on value capture, the Community Infrastructure Levy (CIL), a type of “impact fee”, to study policy-making in this area.

The planning system, and the CIL policy, are conceptualised here as a series of arenas where different knowledges engage with each other. Three main arenas are identified: assessments of the value generated by the development process; the distribution of the value between the actors involved in the development process, including the capture of a share by the state to fund infrastructure provision; and, the decision on how funding is spent.

Using an interpretive policy analysis approach influenced greatly by Hajer across two case studies, the research reveals that the underpinning economic viability assessment process is problematic, with specialist knowledge claims having a distinctive performative impact on the outcome of the policy making process. The viability assessment then provides a frame within which other policy debates are enacted and this influences planning practice in new and particular ways. This analysis demonstrates the extent of the institutionalisation of an economic growth discourse within the English planning system. This finding contrasts with previous periods in which value capture had underpinning social rationales. Finally, the implications of this Institutionalisation are that the transparency of the decision making process is obscured by the use of technical and specialist knowledge by key actors, especially in relation to the viability assessment. This governance effect of the viability assessment frames the policy priorities and the tactical activities of local authorities in policy making in this area.

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## Chapter 1 Introduction

### 1.1 Background

Population growth and economic growth require new development and infrastructure to support that new development. Infrastructure provision is crucial to support future property development and economic growth, yet the availability of public funding to support this remains very limited. The need to secure additional private sector (or national tax payer) funding, for strategic infrastructure, represents a shift from the traditional model of public sector funding and provision of infrastructure. The capture of value within the planning system is a challenging objective, it is also one which has remained elusive since the introduction of the planning system in the UK in 1947.

The Community Infrastructure Levy (CIL) is the latest policy initiative to address the value capture challenge in England, it is an area based levy on new development payable on the commencement of development, reflecting concerns in three areas. Firstly, the dissatisfaction and criticisms of the existing value capture mechanism, the delays in negotiation, the uncertainty and unpredictable nature of the charge, the lack of transparency, and this all leads to extra risk and transaction costs for the private sector. Secondly, the continued wider criticism of the planning system as stopping and slowing down development and increasing costs, similarly in the value capture area of planning policy. Finally, the need to collect more funding and more efficiently, such as to collect more from small infill schemes where the current negotiation is inefficient and yet cumulatively small schemes generate demand for extra infrastructure.

The issue of using value capture to fund the provision of infrastructure is also at the heart of the relationship between the state/planning system and the private sector/developers and about the role of planning. It is reflective of not just the shift towards increased private sector funding, but also of the planning system in the UK increasingly being focused on supporting growth and delivery by the private sector. As a result there has been a shift from the capture of value explicitly to tax betterment, towards the capture of value for strategic infrastructure provision (CIL), additional to the capture of value to mitigate negative impacts and externalities (Planning Obligations).

The introduction of the CIL in 2010, presents an opportunity to study this area in a new way as this policy moves the debate from the development management area of planning into the policy making area, from a one to one site specific negotiation into a public consultation on an area wide economic viability assessment.

The new policy also presents a new challenge in the governance of a new process, involving a range of actors and the need to engage with these actors in the viability assessment, the setting of the rate and the decision over what the funding will be spent on. This requires planners to become involved in areas of knowledge and expertise which are new to them and challenging, in turn requiring new skills and relationships. The process is no longer a direct negotiation as in Planning Obligations but a more complex process involving a range of actors, taking place in a series of arenas and within a wider policy discourse.

## **1.2 Research aims, objectives, research questions**

The main aim of the research is to better understand the viability assessment process as involved in value capture policies and how they operate in practice. The CIL being a relatively new policy offers an opportunity to study this process, as it places the viability assessment at the heart of the policy and explicitly requires an open collaboration between various parties involved in the development process, something new to value capture policies in England.

In studying the viability assessment process within the CIL policy process the research identified the key features of value capture mechanisms and perhaps this could be used to inform a better designed policy in the future. Furthermore, by considering the policy making process in a local context this allows national policy making assumptions about viability assessments as rational-technical activities to be studied as they play out on the ground and whether they are in fact more socially constructed in nature.

The research uses the implementation of CIL policy to investigate how planners use knowledge sources in their decision making, and how they interact with other actors involved in the process. The two research questions are therefore:-

**1) How is knowledge generated and validated to support planning decisions in relation to the delivery of infrastructure as funded by value capture mechanisms?**

**2) Can policy making be improved by planners having a greater knowledge of the decision making of developers and the operation of land and property markets?**

These two research questions require an analysis of how the policy is implemented in a specific local context, in order to understand the knowledge generation and validation processes, the key events and the key arenas in which this takes place, and how they have impacted on the policy process. The use of a specific local context, allows the policy process to be considered within the local land and property market context. To attempt to uncover some of the decision making of the various actors involved, in particular the local authority planners involved in the CIL policy and in turn the implications for skills and relationships with other actors.

### **1.3 Research Context**

The choice of CIL as the policy to be studied is due to the importance placed on the economic viability assessment as part of its process and the collaboration of parties involved. Alternative growth based policies such as New Homes Bonus could have been used but they don't explicitly place viability assessment at the heart of their policy making processes. There are other policies which employ viability assessments in their policy making processes such as Strategic Housing Market Assessments (SHMAs) and Strategic Land Availability Assessments (SHLAAs) as part of the Local Plan process, but these don't specifically deal with the capture of value from the development process. The CIL as a policy brings together value capture and viability assessment and unlike the one to one negotiation of s106 agreements does this in a more open process of wider engagement and collaboration.

The research has been undertaken using two case studies in the North East of England, whilst these are not typical cases of where the CIL policy has been introduced in the UK, they do however offer an opportunity to investigate its introduction in an area of the UK where the policy has not been particularly well embraced. It must be acknowledged that the introduction of CIL is not mandatory,

with local authorities having the option not to introduce the levy. Only two CIL have been progressed in the north east of England a much lower rate than anywhere else in the UK. The low take up of the policy reflects the poor market and economic conditions in the region including in the local authority areas selected. The challenging market conditions are likely to heighten the contested nature of the process, especially as these locations have a limited history of value capture under previous mechanisms such as Planning Obligations.

The requirements from the CIL policy involve generation of knowledge, the testing of this knowledge and is more complex than a site specific negotiation of Planning Obligations. The need to construct an area wide assessment of viability, to establish boundaries of value and the need to take into account land values across the area are examples of this. In addition, as a wider range of actors is involved, there is also a more complex governance of the process required, the requirement to consult and engage with other actors is explicitly required hence relationships are vital.

At a more general level the funding and provision of infrastructure in the north east has historically been very much dominated by public sector funding. This reflects a series of Government policies, at national, regional and local level, over many years. From the Assisted area status in the 1960s, the various regional and local policies relating to economic development and regeneration of the areas of the north east have attempted to address the decline of traditional industries and to regenerate the economy of the area. There has also been a significant involvement from a series of National and Regional Government Agencies which have invested in the north east working with local authorities and often investing in strategic infrastructure.

The challenging property market in the north east is also reflected by, historically much development only being able to proceed with public sector assistance. Only retail development, some commercial office development in central Newcastle and private housing development are commercially viable.

Value capture in the north east is challenging against this background, the local authority culture is dependent upon public sector funding for strategic infrastructure and in addition the private sector also has a history of needing public sector subsidy in many areas and sectors of development in the north east. The national policy shift to secure more funding from the private sector for strategic infrastructure reflecting



the neoliberal market policies, is more difficult in the north east than in some other parts of the country.

Value capture is also at the heart of the role of planning and the relationship between state and private sector, the rise of market mechanisms supported by neoliberalism places viability at the centre of this relationship. Viability starts to force policy choices and decisions over what to fund from the viability determined level of income. Value capture whether presented as an explicit tax on betterment or as a mechanism to fund the mitigation of negative impacts of development or the funding of strategic infrastructure still implicitly taxes the development value. The role of value capture in planning is different to value capture by other taxation mechanisms as it is explicitly related to planning policy and planning decisions. In some ways this can be seen as at odds with the neoliberal rationale that the market mechanism should have as little state interference as possible and yet CIL has been introduced as a new additional source of funding from the private sector.

Finally, the new policy mechanism has implications for the role and skills of planners, the need to understand viability as a process as well as an assessment, the contested nature of that process, the evidence involved and its interpretation, the use of consultants to support the process. This requires planners to engage with new types of knowledge and to form and manage new relationships with a range of actors through the policy making process, in turn requiring planners to learn and develop new skills at a time of reduced institutional capacity and powers.

#### **1.4 Structure of Thesis**

Chapter 2, considers the history and policy context as background to the CIL as the latest policy mechanism for value capture in the UK. The different types of value capture mechanism, the shift from explicit taxation of betterment, to value capture to mitigate the impact of development, to the latest policy mechanism to capture value to fund strategic infrastructure to support growth, are also considered. The history of policy in this area in the UK is considered including the details of the latest mechanism the CIL, including a consideration of the policy guidance in particular around the viability assessment as a central part of the CIL policy.

In chapter 3, the research and literature is reviewed in relation to value capture within the role of planning, as a subset of wider planning policy. This chapter sets out the

alternative economic theories for determining the economic rent as part of the value capture process leading on to, the different approaches to the analysis of policy in this area as related to the actors in the development process. This is followed by a consideration of the governance arrangements and the relationships between those actors in the process. CIL as a value capture mechanism is then considered in how it impacts as a planning policy tool, the viability assessment process and the governance of that process. Finally the types of knowledge used in decision-making by planners are considered.

In chapter 4, the methodology used in the research is set out, an interpretivist approach has been selected, to uncover the meanings involved in CIL policy making, and to assist in the investigation of the governance of the process. The ten step methodology of Argumentative Discourse Analysis (Hajer, 2006, p. 101) is set out as the framework for the data collection and data analysis. The methods of the data collection and analysis as carried out are then discussed, with the discursive mechanisms involved in the discourse analysis also considered. Finally, the ethics and reflexivity of the researcher are considered in how they could potentially impact on the research.

Chapter 5, as a further development of the policy background to the case studies, an analysis of the national policy from the Barker Report in 2003 up until 2015 is set out to show how the CIL emerged as a policy and the major events that influenced that process. The discursive struggle and how it influenced national policy making is set out, prior to considering the national policy impact on practices at a local level in the cases studies.

Chapters 6 and 7 set out details of the two Case Studies Durham and Newcastle/Gateshead based on the empirical data collected from policy documents, minutes of meetings and semi-structured interviews with a range of actors involved in CIL policy making in the two case study areas. The key events and sites of argumentation are identified for the case studies, then using the Hajer (2006) methodology, the discursive struggle is set out within the three main sites of argumentation with a consideration of their impact on policy practices in those local areas.

Chapter 8 discusses the findings from the two case studies, it seeks to compare and contrast the findings from the two case studies, and make a comparison with the national policy viewpoint, within the framework of the two research questions. The main focus of the discussion is about the impact of the discursive struggle on policy practices and on the use of knowledge by planners in the decision making process.

Finally chapter 9 considers the conclusions that can be taken from the research including key contributions, the effectiveness of CIL as a policy, reflections on the research process and finally areas of future research.

## Chapter 2 History and Policy Context

### 2.1 Introduction

The capture of value within the planning system in the UK has a problematic history, the Community Infrastructure Levy (CIL) is the latest policy to attempt to address the problem. The concept of value capture in itself is problematic, with several alternative definitions of and viewpoints on “value”, but for the purposes of this research it is that based on value created by the property development process permitted and facilitated by the planning system. In addition the method of assessment and capture of this value is also problematic, with several attempts having been tried in the UK since the planning system was introduced in 1947. It is hoped that by reviewing the history of this policy in the UK, some lessons may be identified that could help inform future solutions and in turn lead to proposals for improved policy in this area.

This chapter reviews what is meant by value capture leading into the important distinction between explicit and implicit taxation. The history of value capture policy in the UK is then considered, reviewing national betterment taxes and the history of planning obligations. These mechanisms are considered in how they have approached the calculation of the value, how this has been captured or shared between actors, how the policy mechanisms have dealt with the issue of spending, the perception of the mechanisms and their wider policy fit. Alternative mechanisms are then briefly discussed including impact fees of which CIL is an example. Finally, CIL policy guidance is then set out especially in relation to the viability assessment due to its importance to the process, before CIL as a policy is also considered against the earlier categories.

### 2.2 Definitions and Types of Value Capture

#### 2.2.1 Definitions of Value Capture

Value capture is used to describe the extraction of betterment and has been defined as

*“value capture refers to the process by which a portion of or all land value increments attributed to “community effort” are recouped by the public sector*

*either through their conversion into public revenues through taxes, fees, extractions and other fiscal means, or more directly in on-site improvements for the benefit of the community” (Smolka and Amborski, 2001, p. 1).*

This is a definition from American literature (Oxley, 2004b) and illustrates the importance of both land value increase and of public or community effort (or costs) to create that value, the costs on the community could be also in the form of negative impacts of the development on the land in realising its increased value.

There is an important distinction to be made between capturing value being driven by the objective of taxing betterment with a view to redistribution of this value from landowners to the community and the capture of value to fund the provision of infrastructure or to mitigate the impact of the development. In many respects these seek to capture the same value as generated by the development of land, but the justification, the process of calculation of the value and its distribution to the different parties involved will vary. The value created is as a result of new development and this value can accrue to different parties involved in the process, the developer, the landowner, and the developed property owner as well as the state/community.

The starting point for defining value capture is the notion of land being a factor of production, which under classical economics generates two rewards, transfer earnings and economic rent (Prest, 1981). The “economic rent” is a payment above the “transfer earnings” that being the level which is the value to keep the land in productive use. This is discussed more fully in the next chapter on economic theory, it is nevertheless a critical element to consider when considering taxing land values and capturing value from the development process. The transfer earnings are current or existing use value and economic rent is an increase in land value above this.

The view is that landowner’s benefit from increases in the value of their land, resulting from no effort by themselves, (termed economic rent) this is considered either unearned or even undeserved, depending on the circumstances. This dates back to Henry George (George, 1879) in the nineteenth century and Ricardian Principles of economic rent (Evans, 2004b). The assumption is that the supply of land is fixed, therefore if demand for land rises, the price rises, accordingly therefore the landowner has gained without doing anything to deserve this (Evans, 2004a).

This concept of landowners receiving unearned income, or even undeserved income for having done nothing to earn it, is at the heart of this debate on value capture. This value increase is termed “betterment” and is defined as “an increase in the value of land and property through the possibility of a more profitable use ....not through work by the landowner” (Allinson and Askew, 1996, p. 79).

The betterment is generated as a consequence of actions by the state, via the planning system intervening in the land and property market, with intended and unintended outcomes. This betterment can be triggered in three ways, a grant of planning permission, an expression of interest by a purchaser and by the construction of infrastructure or housing nearby (Allinson and Askew, 1996). The provision of infrastructure and the granting of planning permission are state actions, the demand by a purchaser is likely to be a private sector action the generation of value therefore requires market demand.

### ***2.2.2 Types of Value Capture Policy***

The categorisation of value capture and betterment is also problematic; a detailed breakdown is set out by Alterman (2011) with three categories of value capture. Firstly macro value capture which results from land ownership policies which are not market regimes, therefore are not relevant to this research. Secondly, direct value capture of an unearned increment, this land value increase can be from either general economic growth over time or from a public sector action, such as a grant of planning permission or public sector provision of infrastructure. Finally, indirect value capture which is not driven by the notion of capturing unearned income, but rather to generate revenue for funding public services, but because it targets the same value stream can often be confused with the capture of betterment (Alterman, 2011). The important point is the different conceptualisation of value, in the second category the capture of land value or betterment is driven by redistribution from land owners to the state or community, in the third category it is the capture of value is to cover costs, this is an important distinction.

Bailey (2011) in his detailed categorisation, has also made the distinction between the capture of land value resulting from the grant of planning permission which he defines as a betterment tax and a charge recovered for the costs of infrastructure provided in connection with development which he terms as an infrastructure charge.

This again introduces the distinction of capture of value as against the recovery of costs, and relates back to how the funding is to be spent mentioned earlier.

A further conceptualisation of value capture is also introduced, the capture of value to mitigate the negative impacts or externalities of the proposed new development.

This is also captured from the same value stream and has similar objectives to the redistribution of land value from betterment taxes, whilst also has similarities in the funding of infrastructure from the value capture as a cost recovery exercise.

These differing conceptualisations of value capture are important in the reactions of various actors involved in the development process, the justification for the value capture policy and how it is presented, it is critical to its acceptance and its influence on the behaviours of actors and in turn on the achievement of wider policy objectives.

### **2.3 Implicit and Explicit Land Taxation**

Before considering the history of policy in the UK in this area, it is worthwhile developing the important distinction between the value or cost driven approaches, which can translate into value driven explicit taxation and cost driven implicit taxation, as in any event the value captured is generated by development. Oxley (2004a, 2008) has considered some of the main issues in relation to implicit and explicit taxation to fund affordable housing, but many of the points made equally relate to the capture of value generally.

In evaluating the effectiveness of value capture mechanisms five sets of issues highlighted by Oxley (2004a) in relation to Planning Obligations can be considered more generally in relation to value capture mechanisms. Firstly, the principle of hypothecation, this essentially relates to what the collected funding is to be spent on, within this are three further considerations. Firstly, how well defined are the elements upon which the funding will be spent, secondly, how much certainty is there about the spend and its timing, these are sometimes termed as the “rational nexus” issue, (Purdue *et al.*, 1992) finally there is the potential mismatch between where the money is collected and where the money is spent the hypothecation issue.

Secondly, the redistributive process relates essentially to how the generated value from the development process is distributed between the parties, who benefits and who loses. This can be a struggle between various actors, but varies with the type of

value capture mechanism involved, with some mechanisms having a significant element of negotiation and consultation and others less so. There are also implications for actors not involved in the policy process.

Thirdly, the ad hoc nature of the implicit taxation of Planning Obligations is due to the negotiation of the mechanism on a site by site basis, it is unavoidably inconsistent and unpredictable as each individual case is different and the negotiating process also different (Oxley 2004b). The nature of the value capture mechanism, whether it is explicitly a tax or more implicit in nature, how it is perceived and accepted is important. The issues of predictability, certainty, speed and timing of collection, transparency, simplicity, flexibility and efficiency are all important elements of the assessment of the nature of any value capture mechanism.

Fourthly, the challenge of how to calculate the economic rent or value available to be captured, this is present in all types of value capture mechanisms, it is also key in terms of the impact on the behaviour of actors as the calculation of this value then leads into the struggle between the different actors highlighted above about how it is divided. As Oxley (2004a) states the site by site basis of the Planning Obligations presents a much better chance of achieving an accurate level of economic rent assessment, compared to a national taxation of betterment. But in evaluating value capture mechanisms more generally, a specific challenge is the calculation of the economic rent, as the less specific the information the less accurate will be the calculation.

Finally, any value capture mechanism is likely to have wider policy objectives beyond merely attempting to capture value to fund something, its wider objectives or the relationship of the value capture mechanism with other policies is therefore a key part of the evaluation of the mechanism. As part of this consideration, the anticipated behaviour of various actors to the policy, in particular landowners and developers, and whether those expectations are correct are also important to the evaluation.

Having set out a broad framework within which to consider and evaluate value capture policy, it is now worthwhile considering the history of value capture in the UK context.



## **2.4 History of Value Capture in the UK**

There have been three broad types of value capture mechanism introduced in the UK since 1947, firstly, National Betterment Taxes from 1947 to 1985, secondly locally negotiated Planning Obligations from 1983 onwards and finally the Community Infrastructure Levy from 2010-onwards the first two of these are now considered.

### **2.4.1 History of National Betterment Taxes in the UK**

Historically Britain has led the way in discussions about betterment and value capture, with even as far back as the Housing, Town planning, etc. Act 1909 the notion of a national betterment capture levy introduced (Healey *et al.*, 1995).

However the real start of the discussion of value capture within the Planning System was in the Uthwatt Committee Report 1942, which defined betterment as

*“any increase in the value of land (including buildings thereon) arising from central or local government action, whether positive e.g., by the execution of public works or improvement, or negative, e.g., by the imposition of restrictions on other land (Uthwatt Committee, 1942, para 260)” (Healey et al., 1995, p. 23).*

The Uthwatt Committee was perhaps the most detailed discussion concerning betterment in the history of UK Planning and it introduced the two important concepts of “shifting value” and “floating value” (Alterman, 2011). “Shifting value” assumes that demand for any given land use is finite within a geographical area. Therefore land value will move up or down depending upon where restrictions or permissions are granted, and will be shifted or redistributed based on that allocation, this is termed the Shifting Value Theory (Healey *et al.*, 1995). In this way Planning by its very nature of allocating land uses is a factor in determining land values (Campbell *et al.*, 2000), therefore the study of value capture is implicitly also a consideration of the wider role of planning.

“Floating value” refers to the speculative nature of potential land values, where the allocations of permission to develop are distributed. Value will float over allocated land, but only some of the total land allocated will actually benefit from this value (Alterman, 2011) by being actually developed. This relates back to the earlier idea of realised and unrealised betterment and the fact that there needs to be market

demand to realise the value. In addition, some land owners would lose their existing rights to develop through the new planning system, (termed worsement) and could claim compensation in this respect for loss of value, whilst those gaining rights and value should pay a betterment levy (Healey et al., 1995).

The essential distinction between the two concepts, is that shifting value is influenced by the state allocation of land uses within the planning system, whereas the “floating value” concept concerns more the fluctuations in market demand for sites and which sites actually benefit from development and realise the value, this is influenced by the actions of private sector actors.

There have been four occasions when a betterment tax has been introduced in the UK. The first was as part of the planning system established by the Town and Country Planning Act 1947 when the “Development Charge” was introduced alongside the nationalisation of development rights that the Act also introduced, by the need to secure planning permission to develop land. The charge was at a rate of 100% on “the difference between the existing value of land and any increase in value created by the grant of planning permission” (Healey *et al.*, 1995, p. 28).

This reflected the view at the time that any increase in land value resulting from the grant of planning permission should accrue to the state, based on the recommendations of the Uthwatt Committee. This scheme assumed that land sales would take place at existing use value, between private landowners and private developers, for two reasons, firstly the public sector played a major role in new housing development and could acquire the land compulsorily at existing use value anyway. Secondly, the private sector developer would acquire at existing use value and then be able to pay the charge for the right to develop the land. Liability to pay the charge was triggered by the application for planning application (Healey *et al.*, 1995).

In fact many landowners held out for higher land values above existing use value or didn't sell, the result was that much land was held back from development. As there was no political consensus on this matter the prospect of a repeal of the charge was anticipated and it was repealed in 1951. The 100% tax rate was also criticised by the Central Land Board as having been too high and that it lacked flexibility. The objectives were clearly to capture the full economic rent, created by the granting of

the planning consent, it was not linked to any commitment as to where the income would be spent or on what. The charge reflected the view at the time that the increase in land value should accrue to the state, it was also considered that the behaviour of developers and landowners would accept this proposition, although this was in fact not the case (Healey *et al.*, 1995).

The calculation of the charge was timed at the application for planning permission rather than the actual development of the site, it was envisaged that the landowner would reflect the charge in accepting the lower existing use value. The existing use value and development value were based on valuations of land and not actual transactions.

The Land Commission Act 1967 was another attempt to introduce a Betterment Levy, initially at a rate of 40% to leave a reasonable incentive for the landowner and developer, but with the prospect of higher rates of 45% and 50% in later years, but in fact this never happened. Like the Development Charge, it was directly related to extracting development value of land and with the objective of keeping down land prices, which had recently boomed in the mid-1960s. The Land Commission was established to collect the levy in a similar way to the Central Land Board established in 1947 for the Development Charge (Cullingworth, 1976).

There were however some differences to the earlier charge, as well as taking a lower tax rate, it was linked to a realisation of the land value either through a sale or granting of lease, although there was a provision to collect the levy if the owner developed the land himself with no monies involved (Cullingworth, 1976). It was anticipated that the levy would be paid for by the seller of the land rather than the developer as purchaser of the land. It was criticised as being too bureaucratic and was rather short lived and was abolished with a change of government after 1970 (Bailey, 2011).

In 1973 the Development Gains Tax was introduced at a rate of 30% in a period of rising property values by the then Conservative government but was replaced in 1976 by the Development Land Tax Act (DLT) introduced by the then Labour government. This was again a tax on land value increases, set initially at 80% it was intended to rise up to 100%, as part of the Community Land Scheme (Healey *et al.*, 1995). It was part of a wider scheme to support large scale public sector led

schemes and to use public land ownership to support positive planning (Healey *et al.*, 1995). There was concern at the time that in a period of rising land prices that land hoarding was taking place and landowners with planning consents could sit on the land without developing it as the value continued to rise (Healey *et al.*, 1995).

The calculation of the tax was based on the difference between market value which reflected the full potential of the land for development, less the current use value which produces the development value. This is again reflective of the economic rent theory set out earlier and discussed more fully in the next chapter. The DLT was payable on the Realised Disposal Value, which was calculated by deducting the current use value and any costs spent on improvements from the actual net proceed from the sale. The tax became payable at the point of which the contract becomes legally binding and which could be conditional on the securing of planning permission. If no land disposal took place, then a deemed disposal was deemed to have taken place at the start of a project of material development, with the market value of the land calculated as “the consideration at which the interest in the land might reasonably be expected to fetch on a sale in the open market” (Rees W H, 1980, p. 149).

This calculation of the tax was quite complex and involved and again needed the calculation of actual transactions and valuations of land. The rate of the tax was initially set at 80% but again with a change of administration the rate was reduced to 60% and then it was finally abolished in 1985 when it was collecting relatively small amounts of revenue compared to the costs involved in its administration (Healey *et al.*, 1995). It was also criticised for distorting the operation of the market and restricted the supply of development land coming on to the market (Crook, 2016a)

In considering the National Betterment Taxes against the framework outlined above, it is clear that the policies were strongly driven by the notion that land value uplift or economic rent should be explicitly taxed, and that this should also have the advantage of keeping land prices low. The conceptualisation was very much around capturing value as opposed to funding infrastructure, in fact the spending of the income was not really considered an issue at all. The hypothecation issue however was a concern, that the money will not be spent in the local areas where it has been generated from, or even on infrastructure provision (Ratcliffe *et al.*, 2009) the fact that

they were collected by large bureaucratic and centralised bodies only emphasised the concerns in this respect.

These policies reflect the times in which they were introduced they were based on a clear objective of redistribution of value, from the landowner to the state. The assumption was that landowners would accept current use value with little or no uplift and still sell land for development, when instead they just didn't sell (Evans, 1996). Even by reducing the tax rate below 100% in later taxes the assumption was landowners would still sell land. But landowners by not making land available, caused development to be slowed down or stopped, this issue was exasperated by the lack of political consensus, and meaning landowners in particular had an expectation that the tax would be repealed sometime in the near future (Crook, 2016a).

The nature of value capture mechanisms were such that they were relatively, certain and predictable, although valuations were sometimes an area of dispute. The process was transparent, but not always clear or simple, in fact the complexity of some of the later taxes led to their demise. They were not flexible and able to respond to different market conditions either spatially or temporally and with variable market impact. They were also not very efficient as with DLT one of the main reasons it was withdrawn was the amount it was collecting compared to its cost of administration (Healey *et al.*, 1995).

The complexity of the calculation of the economic rent is also an issue, the principle is the collection of the difference in land value (the economic rent) as demonstrated by an actual transaction or a valuation, but sometimes not yet actually realised (Allinson and Askew 1996). Which introduces the issue of the timing of the collection, if at the application for or the granting of planning permission, this is well in advance of any value being released from the development process.

The use of actual transactions or valuations as the basis of assessment is also a factor to be considered, which can lead to extra costs in preparing valuations, may be delays in reaching an agreement with the collecting body and in the general uncertainties involved in the taxes (Ratcliffe *et al.*, 2009). The calculation of the economic rent is complex and the ability to separate out general economic effects

from those generated by the state by provision of infrastructure, or by the grant of planning consent, is difficult, relying on a range of assumptions on costs and values.

Finally, the relationship between the betterment taxes and wider policy objectives, again reflects the still significant role of public sector direct development in housing and town centre development, the importance of public land ownership to support delivery that prevailed although declined over most of the period. The capture of value to be redistributed was generally accepted but assumptions about landowner's behaviour was generally incorrect, as landowners held back land from the market. The timing of the taxes also often reflected a booming property market, with concerns about the excess profits being made by developers and landowners, but by the time the legislation was introduced the boom was over and the taxes often contributed to the slowing down of the property development.

In the 1980s this approach was abandoned, although the Planning Gain Supplement (PGS) proposals which emerged after the Barker Review in 2004 can be considered to be a failed fifth attempt at such a tax, as will be considered in Chapter 5.

#### **2.4.2 History of Planning Obligations in UK**

In the 1980s an alternative approach to securing value capture emerged with the 1983 Circular 22/83 "Planning gain (DOE). In fact the powers to enter into agreements with developers had been in place since as far back as 1909 and 1932, it is estimated that only approximately 500 agreements had been entered into over that period until 1967 (Ratcliffe *et al.*, 2009).

Under section 52 of the 1971 Town and Country Planning Act there was provision to capture planning gain, this was a very loose system and in 1983, circular 22/83 "Planning Gain" issued by the Department of Environment introduced some tests to be applied to any planning agreements. There were three tests which have remained substantially unchanged, these are that the obligations must be necessary to make the development acceptable in planning terms, be directly related to the development and fairly and reasonably related in scale and kind to the development (DOE, 2003 p47 Cullingworth *et al.*, 2015, p. 162).

The term planning gain was also considered a potentially misleading term and in 1991 some amendments were made in circular 7/91 "Planning Obligations" which

changed the name of the agreements. The Town and Country Planning Act 1990 section 106 had also replaced the earlier statutory basis for the agreements and tied these agreements more specifically into the grant of planning permission (Cullingworth *et al.*, 2015). The Circular in 1991 also widened the remit of planning obligations to include the funding and provision of affordable housing. The widening of the scope was also based on the findings of *Tesco v Secretary of State* (1995) which also stated that a local authority could demand obligations beyond those implied in the circular (Cullingworth *et al.*, 2015).

There was increasing disquiet about planning agreements and during the property boom in the early 1990s, concern that planning permissions were in effect being bought and sold as part of these agreements. The Nolan Committee looked into this as part of its investigation into public life and whilst not finding evidence of buying and selling of planning consents did have its findings reflected in the next amendment of the guidance in this area in circular 1/97 "Planning Obligations". It recognised that local authorities were under financial pressure, and that this was a factor in this issue. In the Green Paper 2001 "Planning: Delivering a fundamental change" the negotiation of planning agreements was acknowledged as a difficult and complex process, often leading to delays and uncertainty for developers, although evidence of this varied across the country (Cullingworth *et al.*, 2015).

The emerging issues of simplicity, clarity and speed were identified (Cullingworth *et al.*, 2015) and have continued to be areas of discussion in this policy area and as will be discussed later a key driver of the emergence of CIL as a policy. At this time considerations of alternatives to negotiated planning obligations were set out and consulted upon, in the 2001 Green Paper. A tariff proposal was proposed, but this was considered to be too "sketchy" and also raised issues of what the money collected would be spent on with no specific site issues identified. There was concern over the potential complexity involved in the setting of the tariff and an element of inequity in the fact that high value areas would benefit more than low value areas (Cullingworth *et al.*, 2015) all issues that similarly emerge in the implementation of CIL.

Another consultation in 2003 "A new approach to Planning Obligations" (ODPM, 2003) and then the Governments response to this consultation in January 2004

“Contributing to Sustainable Communities: A new approach to Planning Obligations” again considered some form of “standard planning charge” to move away from the negotiation of planning obligations still considered problematic alongside the granting of planning permission (Crook, 2016b). In parallel the Barker review into housing supply was also reporting back, this proposed a new tax on betterment in the form of the Planning Gain Supplement, which as the name suggests was to be additional to a retained but scaled down Planning Obligations. Whilst PGS can be considered to be a fifth attempt at introducing a national betterment tax, it is also important in that it proposes to separate the betterment tax from the mitigation of externalities, as will be considered later. This separation of the two elements, of impact mitigation and betterment was proposed in Healey *et al.* (1995) to avoid confusion.

In July 2005 Circular 5/05 (ODPM, 2005a) was issued and whilst retaining many of the original tests clearly reflected the reduced role of planning obligations responding to the recommendations of the Barker Review. The issue of economic viability testing of planning obligations also begins to emerge, as set out in the “Planning Obligations: Practice Guide” issued by DCLG in July 2006,

*“Technical skills: for certain circumstances and areas of the planning obligations process there is a need for more technical and specialised skills. For example, when addressing developer viability issues in policy formulation and where relevant on applications there is a need for a thorough understanding of the role of viability in the economics of a development”*  
(DCLG, 2006, p. 29)

This guidance also raises the issue of skills of planners in relation to viability which again will be discussed later. A related matter is whether if the Planning Obligations policy as set out in the Local Plan would then be a “material consideration” in deciding a planning application (Campbell *et al.*, 2000). This had been an issue in negotiating planning obligations since 1997, and was part of a gradual shift in the UK Planning system, towards a greater financialisation and marketisation of the process (Campbell *et al.*, 2000).

The Barker review proposed a new PGS but even with a scaled back role for planning obligations, they were also to be more market oriented, and to take account



of the costs of mitigating the impact of the proposed development in the decision making process (Campbell and Henneberry 2005).

*“In some instances ... it may not be feasible for the proposed development to meet all the requirements set out in ... planning policies and still be economically viable. ... where the development is needed to meet the aims of the development plan, it is for the local authority and other public sector agencies to decide what is to be the balance of contributions made by developers and by the public sector infrastructure providers in its area supported, for example, by local or central taxation”. (ODPM, 2004, p25-6 Cited in Campbell and Henneberry, 2005, p. 243).*

Accordingly, although there was the proposal to split the two types of value capture, with mitigation of externalities to planning obligations and the capture of betterment to the PGS, both value capture proposals were framed by a shift towards greater consideration of economic viability in the decision making and of market considerations.

There have also been various reports into this area, in 1999, the Urban Taskforce identified Planning Obligations as a key mechanism for achieving an improvement in the quality and management of the urban environment (Campbell *et al.*, 2000), yet also made criticisms as follows, Section 106 agreements took too long to agree, agreements were not produced in a standard form across the country and they revealed little commercial grasp by planners (DETR, 1999).

The Planning Obligations system has been in place for some time as mentioned earlier, but has been the subject of significant criticism, leading to the recent policy changes. Whilst initially linked to the costs of mitigation measures to deal with externalities of a development, it has frequently been widened into an informal tax or tariff (ODPM, 2005a). They have however been successful in generating substantial funding for infrastructure especially in the boom years of the mid 2000s, (Crook *et al.*, 2008; Burgess *et al.*, 2011). But more recently since the decline in the property market since 2008, many agreements have been and are currently being, renegotiated and many developments have been stopped or delayed due to these requirements, (Monk and Burgess, 2012). This has also been partly facilitated by the provisions of “Section 106 affordable housing requirements - Review and appeal”

(DCLG, 2013c) released in April 2013. Sometimes worsened by the fact that some developers haven't honoured agreements and some local authorities have not been good at monitoring compliance (Bailey, 2011; Burgess and Monk, 2016).

In addition, Planning Obligations have not been uniformly implemented across the country producing unacceptably wide variations in agreed payments, which is difficult to justify (Bailey, 2011). There has been an especially limited recovery of funding in areas of the country with poorer property markets (Crook *et al.*, 2008). They have mainly been applied to larger scale developments (Crook *et al.*, 2008), with only 6.9% of developers pay anything (Bailey, 2011). The result is that many smaller schemes have not made any contribution to infrastructure, only 60% of residential schemes of more than 10 houses had such agreements in 2003/4 (Crook *et al.*, 2008).

There has also been criticism for the negotiations causing delays to development coming forward, as they are negotiated on a site by site basis; they also cause uncertainty to developers as to the time and cost until finally agreed (Barker, 2004). They are also not transparent with little or no accountability and have often not been applied fairly either in a local context or across the country as a whole.

There continue to be further amendments proposed to Planning Obligations but they are retained, including their role in providing funding for affordable housing provision, which remains controversial (Oxley, 2004b). The interaction between what are now two value capture mechanisms is an important part of the area researched as whilst the two assessment processes of the two mechanisms impact on each other, even more critical is the impact of the two policies on the struggle over the distribution of the share of the value released from the development process.

The assessment of the planning obligation level is primarily a cost based exercise of calculating what the money will be spent on, as mitigation for the impact of the proposed development or in the provision of affordable housing. As mentioned earlier this has become more complex with the introduction of defined planning obligation requirements in Local Plans, meaning that as a "material consideration" these costs in financial terms need to be calculated in relation to their impact on the viability of development to pay these costs. The assessment and negotiation of the planning obligations are therefore now framed within a site/project based assessment

of costs, values and potential to make a contribution to planning obligation (policy) requirements. The assessment process and the distribution of the value are inextricably linked and this is part of the problem as the assessment of planning contributions is clearly related to the bargaining and negotiating strength of the parties involved (Crook, 2016b).

There has been research into the micro politics of the negotiation of Planning Obligations, (Healey *et al.*, 1995; Claydon and Smith, 1997; Campbell and Henneberry, 2005) the changing nature of planners role from a techno-rational role to one of negotiation is also clearly reflected in this change with the impacts that has for governance and planners, skills, knowledge and culture (Campbell and Henneberry, 2005) and discussed more fully in chapter 3. The dissemination and take up of best practice by local authorities has varied across the country especially in relation to development viability (Crosby *et al.*, 2013; McAllister *et al.*, 2013). The effectiveness of local authorities in delivering Planning Obligations is also a reflection of the local institutional context (Dunning *et al.*, 2016), something which is anticipated to be also relevant to the study of CIL.

There has also been much research into planning obligations and the funding and delivery of affordable housing (Crook and Whitehead, 2002; Jones and Watkins, 2009), this is something not considered in detail in relation to this research, as much of the research deals with the conflicts between value capture from housing development and its implications for house prices and the use of this value capture to fund affordable housing (Oxley, 2008). It is acknowledged however that with two mechanisms (Planning Obligations and CIL) both seeking to capture value from one pot, there are issues, which has been researched in its early stages by (Monk and Burgess, 2012).

As referred to earlier Oxley (2004b) has considered Planning Obligations as an implicit tax to fund affordable housing, against the five point framework set out earlier. To briefly consider this within the wider history and policy context, the hypothecation issue is less of a problem on planning obligations as it is clear what the funding collected will be spent on and when the elements will be delivered, in addition as the items are directly related to the site and the impact of the development the issue of mismatch is also irrelevant.

The dividing up of the economic rent, is not explicitly referred to, the capture of value is implicit and related to specific costed items, the sharing of the economic rent is avoided, yet as discussed in (Healey *et al.*, 1995; Campbell and Henneberry, 2005) the negotiation of Planning Obligations funded from the development value released by the development process on a specific site, is very dependent on the negotiation skills of the actors involved. There is however little clarity about the amount of value created and how this is actually divided up and who loses and who benefits from the mechanism.

The ad hoc nature of Planning Obligations as an implicit tax, is due to the negotiation of the mechanism on a site by site basis, it is unavoidably inconsistent and unpredictable as each individual case is different and the negotiating process also different. A criticism of Planning Obligations is the unpredictability, the delays and costs involved and the lack of transparency. However, the mechanism does have flexibility to reflect market and site conditions, as such it is considered by some as fair. The timing of the value capture mechanism is also towards the end of the development process, this has advantages in terms of cash flow for developers and also for the certainty of site specific information and therefore the accuracy of the assumptions made for the calculation of the contributions.

The calculation of the economic rent could be accurately assessed as part of this process, due to the accurate information available, but the negotiated nature of the mechanism may often distort or obscure the appraisal process rather than make it transparent. The affordability of the contribution sought will be the basis for any discussion or negotiation, with the value generated from the development process for that specific site and its ability to fund the sought contribution the basis of the negotiation.

Finally, the value capture mechanism within the wider policy context is that Planning Obligations have a dual function, of mitigating the impact of the new development as well fund the provision of affordable housing. Within a constrained level of viability choices between the two objectives will need to be made as part of the negotiation process. With the inclusion of an additional value capture mechanism such as CIL this has changed this negotiation dynamic, further as both mechanisms will have to be funded out of the same value generated from the development of the site.

The criticisms of Planning Obligations as a value capture mechanisms and the need to generate additional funding from the capture of value increasingly led to the Government considering new value capture mechanisms from the late 1990s. These alternative mechanisms are now discussed.

## **2.5 Alternative Mechanisms**

### ***2.5.1 Tariffs and Optional Planning Charge***

As discussed earlier the concern about the negotiation of planning obligations was important after the Nolan Committee report in 1997 (Committee on Standards in Public Life (Chair Lord Nolan), 1997) the lack of transparency, the delays and costs involved in negotiating planning obligations and the lack of predictability and certainty to developers all became issues and which prompted consideration of alternative mechanisms. Tariff based systems were initially considered, with the “roof tax” idea based on the Milton Keynes model, this was an average charge per dwelling to pay for infrastructure set up under the planning powers of the Milton Keynes partnership (Crook, 2016b).

Proposals were published for s106 contributions alongside the Development Plan frameworks (DTLGR, 2001) which would set out what was expected, this would provide more predictability and certainty to developers and also save time and the cost on negotiation. However, there was much criticism of the proposals, with four main points highlighted (Crook, 2016b), firstly, the affordability and averaging issue, a standard charge would impact differently on individual sites, secondly, the cost or value basis, it was felt that these proposals were seeking to introduce a betterment levy with a tariff linked to values rather than costs. The lack of a hypothecation test as required in s106 agreements (the match of charge to costs from the actual proposals), meant that this dislocation of payment level from the costs imposed by the development, also felt more like a charge on development value. Thirdly, the separation of the final payment from the direct impact and provision of the affordable housing element of the tariff again suggested that it was more a tax. Finally there was even doubt about the legal enforceability of the contracts (Crook, 2016b). Essentially, it was felt that the benefits of a standard charge, such as predictability, certainty and transparency would not be realised, as in many cases negotiation would still be required and that the tariff system merely replaced one type of

complexity with another form. The idea was abandoned following the House Commons committee in 2002 and it was proposed to streamline the existing Planning Obligations system.

The issue of Planning Obligations and the need for more speed, certainty and transparency remained and was considered again in 2003, this time the Optional Planning Charge (OPC) was proposed (ODPM, 2003). This was similar to the earlier tariff proposals, and was to be an alternative to the negotiation of Planning Obligations under the existing system. The certainty of a standard charge provided an alternative to the negotiation of planning obligations to a developer, so offering a choice (Crook, 2016b). However, again the proposals came in for much criticism, again the simplicity and flexibility issue emerged, the affordability/averaging issue, also the “rational nexus” issue about the collection of the charge and the guarantee of the use of this funding on the infrastructure identified (Crook, 2016b).

In any event, the Barker Review recommendations overtook these proposals with its proposed PGS. The overall issue as highlighted in the Barker report, was the separation of the mitigation of impact, the funding of affordable housing provision and the taxation of betterment. Which mechanisms should deal with which of these three elements was an important point, in 2005 (ODPM, 2005a) the government supported the use of standard pooled charges for S106 agreements which would be published in the LPAs Supplementary planning guidance. Whilst similar to the earlier OPC proposals they were expressly not to be used to as a “betterment levy” (para b7) and were envisaged to be a relatively temporary measure whilst more long term measures were introduced, at the time the PGS which had emerged from the Barker review and is now briefly considered.

### ***2.5.2 Planning Gain Supplement (PGS)***

The Planning Gain Supplement was a proposal for a betterment tax from the Barker review, it can be considered to be a fifth attempt at introducing a national betterment tax following the earlier attempts. The PGS as a betterment tax to be levied in addition to a scaled back Planning Obligations system, was criticised on a similar basis to previous tax proposals, the detailed implementation proved a challenge, the assessment of the “economic rent” or the increase in land value, the complexity of administration the need for valuations. Again the impact on the viability of

development in low value and poor market areas, even if the rate of the charge was low at 20 to 25% (although no level was explicitly set out), the lack of clarity about how much of the funding collected would be returned to the area where it was collected and the certainty it would be spent on infrastructure, were all familiar concerns. The PGS after much discussion and consideration was abandoned in October 2007 and replaced by the CIL. This is considered in more detail in Chapter 5 as the policy in value capture evolved over a 10 year period from 2004 to 2014. The final type of alternative mechanism for capturing value are Impact Fees, which have been widely used in the USA but are a new mechanism to the UK, some research has been undertaken in both the USA and the UK into the mechanism and this is considered in the next section.

### **2.5.3 Impact fees**

The impact of the Barker Review on the value capture policy mechanisms in the UK was significant, with the separation of the two types of value capture into two mechanisms. The introduction of the PGS and its evolution into the CIL is considered in more depth in chapter 5, alongside the retention of Planning Obligations on a scaled back basis. These changes were a reaction to the problems of the Planning Obligations mechanism, there was also a view that a new more efficient and effective mechanism in economic terms could be developed, something discussed in the context of economic theories in chapter 3. Whereas the Barker Review proposed a fifth attempt at a national betterment tax via the PGS, when this was ultimately unsuccessful, from this did emerge the CIL as a form of “impact fee” as a new and better value capture mechanism.

Impact fees are defined by Nelson as “charges known as “impact fees”, are one-time assessments by local governments on new development, or the owners of new development, to help pay for the existing, new, or expanded infrastructure needed to serve that development” (Nelson and Moody, 2003, p. 1). This mechanism is therefore presented as about funding infrastructure not collecting value uplift, yet it is not saying it’s about mitigation of impact as such. Nelson goes on to say, “in practice, impact fees bridge the gap between the cost of new municipal infrastructure and available funds” (Nelson and Moody, 2003, p. 1).

The different types of Impact Fee have been considered by Healey et al (1995), with two broad categories identified, a Flat-fee nationally applied, and whilst this is open, predictable and practical to implement, it is nevertheless not very flexible and perceived as unfair. In contrast a local authority implemented charge negotiated on a case by case basis, could better reflect the diversity of conditions between local areas, would be seen as fairer and be more flexible to reflect real impacts of development at a local level (Healey *et al.*, 1995). The same issues of who calculates the charge and its flexibility are again key factors, Healey et al set out the challenge as balancing flexibility and predictability.

Healey et al (1995) propose a new system which is similar to Planning Obligations, but with much greater clarity and accountability, with a systematic approach to negotiation, to improve the level of predictability compared to the current s106 system and also to link the charge to local impacts. It is considered that the issue of flexibility is vital as has been the case with Impact Fee systems in the USA and France (Healey *et al.*, 1995).

Reviewing some research by Nelson and Moody (2003) of impact fees in the USA, a key argument for impact fees as a mechanism is that they are economically efficient in the provision of infrastructure, but as Nelson points out they are often under-priced as they assess as an average price rather than at the marginal price (Nelson 2003). Impact fees increase the certainty and supply of development land by the provision of infrastructure (Nelson and Moody, 2003), but this must be partially offset by the fact that impact fee income will rarely cover the full infrastructure costs.

The other key point to consider is who pays for the impact fees, and what impact do they have on land prices and on end use development prices or house prices. This has been an area for considerable research in the USA (Evans-Cowley and Lawhon, 2003; Nelson and Moody, 2003; Evans-Cowley *et al.*, 2005), and there was potential effects on lowering land values and on raising house prices and in some cases even both together (Nelson and Moody, 2003). Much depended on the supply of alternative housing sites and the demand for housing and so local land and property markets were critical to the impact. What is important to note is that the costs of the infrastructure provision tended to be passed back to the landowner in lower land values, whereas the higher prices of houses reflected the higher value of the



infrastructure provision (Nelson and Moody, 2003). This also highlights the importance of the separation of the impacts of cost and value, this is something which is fundamental to value capture mechanisms and how they are implemented generally and will be considered further later.

In more recent research this was refined somewhat with a view now taken that impact fees don't just increase development costs and potentially stifle development, but do have benefits for communities in the provision of infrastructure and affordable housing (Burge *et al.*, 2007). Much of the earlier research often having used a partial-equilibrium approach in their analyses, had assumed that impact fees were added to the development process whilst everything else remained unchanged, whereas in practice this wasn't the case (Burge *et al.*, 2007). It is important to consider what the other alternative methods available to fund infrastructure are and to consider alternatives more widely. In this respect, growth impact fees can be beneficial as a "growth management tool that reduces risk and uncertainty in the development process" (Burge *et al.*, 2007, p. 706). They can in growth areas provide a higher quality of life with less negative effects of growth (Burge *et al.*, 2007), but this does suggest that as policy they are more appropriate in areas of growth.

Some research into the impact of impact fees in the UK was undertaken in the 1990s before the prospect of their introduction in the UK, they considered the impact of these fees on the viability of development in a series of case studies (Goodchild *et al.*, 1996; Henneberry and Goodchild, 1996). Again the differentiation between costs and values emerged, the costs were physically driven, whereas the values were market and economically driven (Goodchild *et al.*, 1996; Henneberry and Goodchild, 1996). In the absence of other measures impact fees would impose the greatest financial burden on proposals at the margins of profitability and probably not reflect the strengths and weaknesses in the market (Goodchild *et al.*, 1996).

The justification for the policy in the UK was considered to be in providing private finance for infrastructure, and in shifting the financial burden from the whole community (via national taxation) to the users of the new infrastructure, but there was a concern about the impact on increasing house prices (Goodchild *et al.*, 1996). There would be impacts on the operation of the planning system, something which

has in fact been apparent anyway with the increasing use of planning obligations as discussed earlier.

The idea behind impact fees were to allocate the shortfall in the infrastructure costs proportionally across the new development schemes that would benefit from that infrastructure provision. The impact fee is the last step in the planning process in that it is the strategic infrastructure needed to deliver the Local Plan, in that way it Plan-led (Nelson 1999 cited in Ratcliffe *et al.*, 2009). They are considered to be more transparent, predictable, more equitable and more efficient in collecting income (Grant 1993 cited in Ratcliffe *et al.*, 2009) This all goes to support the shift in policy towards CIL rather than other alternatives being considered, such as Tariffs and planning charges.

This is further highlighted by Lord (2009) in relation to CIL, who suggests that whilst CIL can be considered a further step in the evolution of Spatial Planning, it presents planning with cultural and capacity issues in its implementation, especially in the area of setting the charge rate, and with little guidance to support planners in the process (Lord, 2009). The implementation of CIL would present challenges to planners in terms of the asymmetry of information between parties and the differing negotiation skills of the actors involved in the process (Lord, 2009) similar to the challenges in negotiating s106 agreements.

Finally, the Government did briefly consider the introduction of Impact Fees in 2001 but abandoned it because of the difficulties of setting the level of fees (Crook, 2016b). The above consideration of Impact Fees as a type of value capture mechanism highlights both advantages and disadvantages of the mechanism and of the challenges in its implementation. Nevertheless this third type of value capture mechanism is the Community Infrastructure Levy introduced from 2010 as a type of Impact Fee. An analysis of the national policy changes over the period from the Barker review in 2003 to 2010 is set out in chapter 5, as the PGS evolved into CIL, the chapter then considers how CIL itself has changed from 2010 to 2014. The details of the policy mechanism are set out in the next section as the latest example of policy in this area in the UK, including the guidance on viability testing which is at the heart of the policy.

## **2.6 Community Infrastructure Levy Policy**

The CIL as a policy is briefly described, this is followed by consideration of some of the issues it raises in relation to the calculation of the land value or economic rent available to be captured and in how that is distributed between a range of actors in that process.

The first reference to CIL is in section 206 of the Planning Act 2008, which provides the power for LPAs to charge a CIL, it is an optional charge and local authorities are not compelled to do so. It came into force on 6th April 2010 under the Community Infrastructure Levy Regulations 2010 (DCLG, 2010b); the policy was justified as follows:

- 1) Planning obligations were often slow, unpredictable and based on ad hoc negotiations and not transparent.
- 2) The burden of funding was unfair on major developments that usually had to agree s106 agreements, whilst smaller developments didn't usually pay yet the cumulative impact of these smaller developments required infrastructure.
- 3) Government intervention is necessary to create this fairer, simpler and more transparent system of standard charges.
- 4) Capable of unlocking extra funding to provide infrastructure for local communities.
- 5) To better resource local authorities to fund infrastructure provision which in turn can open up sites for future growth.
- 6) Greater efficiency in collecting income from small sites which cumulatively require additional infrastructure but haven't contributed in the past.

Essentially the policy was driven by the expectation of greater funding income from smaller developments, providing greater certainty and transparency to developers and a simpler system. It is worthwhile reflecting on these objectives and justifications of CIL and how it is working out in practice.

Over the four year period from April 2010 to February 2014 the CIL legislation was amended on several occasions, by Community Infrastructure Levy (Amendment) Regulations 2011(DCLG, 2010b; DCLG, 2011), The Localism Act 2011, the Community Infrastructure Levy (Amendment) Regulations 2012 (DCLG, 2012), the CIL rate setting guidance (December 2012) (DCLG, 2012a), the National Planning

Policy Framework 2012 (DCLG, 2012b), the Community Infrastructure Levy Amendment Regulations 2013, CIL rate setting guidance 2013 (DCLG, 2013a), and most recently the CIL Regulations and CIL Guidance 2014 (DCLG, 2014a). This has provided a significant background level of uncertainty to the policy and complexity to its implementation with changes roughly every six months, the nature of the CIL has also changed over the period as now considered, in light of the original objectives set out above.

The CIL was defined by DCLG as

*“The Community Infrastructure Levy is a new levy that local authorities in England and Wales can choose to charge on new developments in their area. The money can be used to support development by funding infrastructure that the council, local community and neighbourhoods want – for example, new or safer road schemes, park improvements or a new health centre” (DCLG, 2011).*

The charge “applies to most new buildings and charges are based on the size and type of the new development” and is charged at a rate per sqm (DCLG, 2011).

The provisions have been retained in the Localism Act 2011, but this requires that a significant proportion of the revenue be directed to projects in neighbourhoods and that revenue can be spent on on-going costs of infrastructure as well as initial costs. Also under the Localism Act 2011 restrictions were placed on the use of Planning Obligations, to ensure that the contributions secured only relate to the specific planning proposals and that pooling of these receipts is restricted to a maximum of five planning applications, from 1<sup>st</sup> April 2014. This has now been extended to 1<sup>st</sup> April 2015 (DCLG, 2013a). Affordable housing which is still funded via s106 agreements are not subject to this restriction (*Localism Act, 2011*).

The Coalition governments reasons for retention with amendments of the CIL were that it provided a fairer system to fund new infrastructure as more developments would be contributing, be a more certain and predictable system for house builders and be more transparent as the draft charging schedule will be open to consultation. S106 agreements were often agreed behind closed doors and involved lengthy legal negotiations, CIL would cut the costs and time involved. The new government also

wished to transfer some of the revenue raised to direct control of local communities. Since the original launch of the CIL legislation and guidance in 2010 (DCLG, 2010c), a series of updates have also been brought forward, whilst much of this relates to legal and administrative detail as applied to implementation, there are however, some important changes to highlight. In areas where Neighbourhood Development Plans are in place, charging authorities must pass on 25% of CIL receipts related to the proportion of the development that is in that part of the area (DCLG, 2013).

The final consultation on further amendments was issued in April 2013, (DCLG, 2013a) “informed by practice experience to date from the development industry and local government” (DCLG, 2013b). The Government’s response to the consultation was issued in October 2013 and these are incorporated into the latest amendments issued in February 2014 (DCLG, 2014a, DCLG, 2014b). The main changes are as follows:

- 1) The charging authority is now required to demonstrate that it has struck an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy on economic viability of development across its area, putting a greater responsibility on the LPA than in the earlier 2010 test, in terms of providing evidence. This has implications for planning practice as will be discussed later in consideration of viability issues.
- 2) The provisions for setting differential rates have been amended, to allow differential rates by reference to both intended use and scale of development.
- 3) The deadline date for changes to pooled s106 contributions, referred to above was to put back to April 2015 from April 2014.
- 4) Charging authorities are now allowed to accept payment in kind through the provision of infrastructure and allowing greater flexibility around phased payments relating to complex development proposals (DCLG, 2014a).

These issues all have implications for planning practice, in relation to the implementation of CIL as a policy and both the role of planning and of local authority planners which is a key part of this research.

The number and regularity of amendments to the CIL policy and associated guidance issued over the four year period is an issue in itself, and has contributed to the continued uncertainty and confusion about the relationship between S106

agreements and CIL. In addition the continued issue of affordable housing being funded by s106 agreements and not CIL remains a key factor in the implementation of the policy (Town and Country Planning Association, 2013).

The funding of affordable housing while being provided for in the original Planning Act 2008, was not included in the 2010 regulations. DCLG consulted on this at the end of 2011 as affordable housing provision has been a significant beneficiary of s106 agreements in the past (DCLG, 2011b). The total value of planning obligations secured in 2007/8 was worth £4.9bn, of which approximately half was for new affordable housing (Crook *et al.*, 2008). On 7th May 2012 a DCLG select committee raised concerns about affordable housing funding and the changes to s106, recommending to Government to “clarify the relationship between the CIL and section 106 agreements, and how together they can be used to maximise affordable housing delivery”. This also reveals the confusion and concerns about the relationship between CIL and the reduced s106 system (Monk and Burgess, 2012).

Having set out a description of the CIL policy as it has developed it is important to consider how the Government guidance to its implementation has evolved and in turn how this has impacted on policy making and implementation.

## **2.7 Community Infrastructure Levy Guidance**

Alongside and sometimes included in the various amendments to the CIL policy that have been issued over the period 2010 to 2014 there has also been specific guidance on how to implement the CIL policy, in particular the setting of the charging rate, with several versions of the guidance as discussed in more detail in chapter 5.

The CIL process consists of five stages, but the main feature of the CIL policy implementation is the process of setting, consulting upon and approving the proposed charging rates for the LPA area and this is the key focus of this research.

The CIL process consists of five stages as follows:

- 1) Public Consultation on the preliminary draft charging schedule
- 2) Public Consultation on the draft charging schedule (for a minimum of 4 weeks)
- 3) Charging Schedule examination

- 4) Examiners report published (which is no longer binding on the LPA)
- 5) Approval of charging schedule by a resolution of the Council and introduction of the CIL (DCLG, 2010b).

In 2010 guidance was issued to assist Local Planning Authorities (LPAs) in the preparation of the draft charging schedules, the most important aspect of which is the setting of the appropriate rate of levy. The charging authority in setting the CIL rate

*“must aim to strike what appears to the charging authority to be an appropriate balance between the desirability of funding infrastructure from CIL and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area” (DCLG, 2010b, p. 4).*

The charging authority is also required to “use appropriate available evidence to inform the draft charging schedule”, this is not to focus on the implications for individual development sites but rather for the area as a whole, recognising perhaps that some potential development sites may be put at risk. There is no specific model or methodology required to be used in assessing the economic viability but evidence will need to be provided to the independent examiner as part of the approval process (DCLG, 2010b).

The guidance also provides for a differential rate to be applied for different uses and in different locations across the LPAs area but the more complex the charging schedule the more difficult it could be in complying with “state aid” conditions of EU legislation. The differential rates need to be fully justified and supported with available evidence, although it is also recognised that available data will not be comprehensive (DCLG, 2010b). In addition to the “economic viability assessment”, there is also a requirement that the LPA has an up to date Development Plan, there is provision for joint examination of a draft charging schedule alongside the proposed core strategy if one has not already been approved (DCLG, 2010b). CIL has been described as a plan-led policy (Jones and Paul, 2009). In addition there is a requirement to draw up an infrastructure plan which underpins the Development Plan and sets out the infrastructure that is to be funded by CIL and which cannot overlap with infrastructure to be funded from s106 agreements (DCLG, 2010b).

The key points relate to the preparation of the three main documents, the infrastructure delivery plan, the economic viability report (or viability assessment) and the (preliminary) draft charging schedule. The assumptions made in these documents, the assessment of the balance, the risks that attach to the decisions made based on these documents and how these are communicated to stakeholders are all important elements within the CIL process and will be investigated as part of this study.

The link to the Development Plan was also strengthened by the National Planning Policy Framework (NPPF) released in 2012 para 175 which stated:

*“Where practical, Community Infrastructure Levy charges should be worked up and tested alongside the Local Plan. The Community Infrastructure Levy should support and incentivise new development, particularly by placing control over a meaningful proportion of the funds raised with the neighbourhoods where development takes place” (DCLG, 2012b para 175)*

Also the issue of the viability of the Development Plan is to be tested under para 173 as set out below:

*“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable” (DCLG, 2012b para 173).*

Together these two paragraphs emphasise the importance of viability in planning in current policy and guidance and how the CIL is becoming part of that new approach.



This is further reflected in the stricter test in the 2014 guidance (DCLG, 2014a) which states

*“They will need to draw on the infrastructure planning evidence that underpins the development strategy for their area. Charging authorities should use that evidence to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential impact upon the economic viability of development across their area” (DCLG, 2014a, p. 12).*

The removal of the words “what appears to the charging authority to be” also removes the discretion of the LPA in determining the balance appropriate to its area and policy objectives. The guidance goes on to state

*“What is meant by an appropriate balance?”*

*The levy is expected to have a positive economic effect on development across a local plan area. When deciding the levy rates, an appropriate balance must be struck between additional investment to support development and the potential effect on the viability of developments.*

*This balance is at the centre of the charge-setting process. In meeting the regulatory requirements (see Regulation 14(1)), charging authorities should be able to show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant plan and support development across their area. .*

*As set out in the National Planning Policy Framework in England (paragraphs 173– 177), the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.” (DCLG, 2014a, p. 12)*

The emphasis in the 2014 guidance is more towards deliverability and supporting development and not threatening viability of development by the scale of “policy burdens” in line with the 2012 National Planning Policy Framework and further supplemented by the 2014 National Planning Policy Guidance (DCLG, 2012b) which are on-line. The changes from 2010 to 2014 reflect a growing importance being placed upon delivery of development in a period of difficult market and economic

conditions, linked with this emphasis on delivery is the importance placed on viability assessments to support the delivery of the Development Plan, but also in setting the rates for CIL. The Viability Assessment is at the heart of the CIL process in its influence on the establishing the balance and the settings of the CIL rates. The guidance available to LPAs in carrying out the Viability Assessment is now considered.

## **2.8 What is the Viability Assessment?**

There is a limited range of guidance available specifically to assist with the viability assessment, as there is no specific methodology or approach advocated by Government to undertake this work. They also set out differing approaches that may be taken, as will be discussed below. This is a challenge to local authority planners, seeking to improve their knowledge in this area, yet at the same time need to make the appropriate decision. Before the different types of guidance are discussed and compared, it is worthwhile briefly setting out the general nature of the viability assessment that needs to be carried out both for the CIL rate setting but which also relates to the Viability Testing of Development Plans.

The Viability Assessment undertakes an area wide appraisal of the economic viability of development across a whole local authority area and across various land uses it includes two elements the area-wide assessment and the assessment of threshold land value.

### ***2.8.1 Area-wide Appraisal***

The area wide appraisal employs the residual valuation approach, commonly used on a site specific basis to appraise specific development projects by developers to decide what land value they can afford to pay for the land purchase. The residual land value is calculated by deciding the Gross Development Value of a completed development, this end use value usually being based on comparable evidence of values established for a particular type of property in a specific location. From this valuation of the completed development is taken the costs of carrying out the proposed development, which includes the building costs, the finance costs, professional fees and marketing costs and an amount for developers profit for

carrying out the project and the risk involved. The residual figure, is the amount left for the developer to be able to buy the land from the landowner.

In some respects land values are derived from the value of completed development, based on the assumption that the demand for land is derived from demand for property. However, the delay in supply coming forward due to the timescale of the development process means this is also not that efficient. In addition, the price of land is not always that transparent depending on the nature of the transaction agreed between the parties and the competition between developers for the land.

The residual valuation of a specific site for a specific proposed development is relatively straightforward, however when applied on an area wide basis this is more problematic. Firstly, a decision has to be made as to the geographical variation in values across the area for completed developments. Then assuming the same development costs for all the developments, a derived pattern of land values can be produced. Secondly, this has to be varied again by differing uses, so that a geographical spread of residual land values can be produced for various different uses across the area. This is usually done by selecting a range of typical hypothetical sites with hypothetical schemes to attempt to model the area in valuation terms. Which leads on to the third and final problem, that the costs of development of sites vary with their location, they are not all the same for a variety of reasons, not just ground conditions or physical issues but perhaps other issues, this may mean that by taking an average some sites will make more profit than the hypothetical appraisals show and others will appraise at less and will not proceed to be developed.

### ***2.8.2 Assessment of Threshold Land Value***

The second part of the viability assessment involves the assessment of the threshold land value (TLV), which is defined as “the value at which a typically willing landowner is likely to release land for development” (Local Housing Delivery Group, 2012). This assessment of the TLV is particularly challenging and several approaches to this have been advocated in the different guidance as discussed more fully below, if market evidence is available this is helpful, but it is vital to be aware of the full details, of the transactions in the evidence.

Frequently evidence of land transactions is not available and then evidence of non-development land values have to be used, with some form of uplift assumed as an incentive to the land owner to sell at above the current or existing use value. Much of the assessment of TLV also reflects the land ownership patterns of an area, the differing expectations of different land owners and the relationships between actors in locations all of which impact on land values in the area

### 2.8.3 Calculation of Headroom

The overall viability assessment then involves making a comparison between the area wide residual land values and the threshold land value, see figure 2.1.

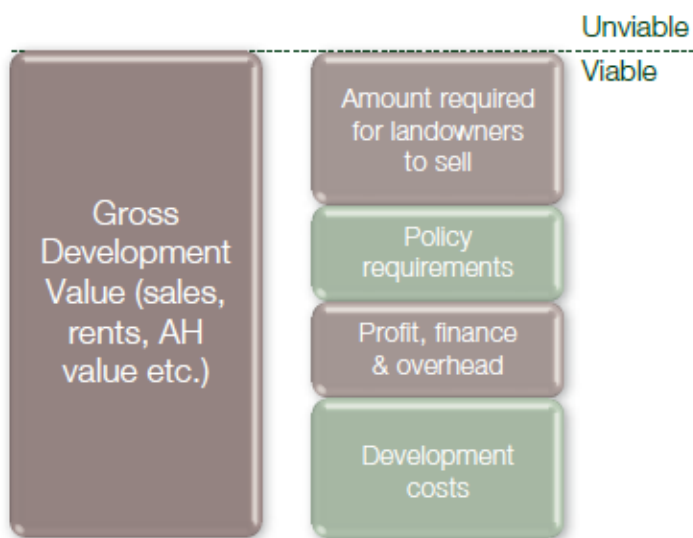


Figure 2.1 Viability assessment diagram from Harman Report (Local Housing Delivery Group, 2012 p25)

Essentially the task is to calculate the economic rent on the land and how it could be divided up between the parties. The uplift in land value over the current or existing land use value which is created by the right to develop granted by planning permission is the starting point. This has to be divided between the landowner, developer and the community or public sector. The two calculations one of the derived residual land value from end use property values shows the land value taking into account the developers return as profit as this is included in the residual valuation. The threshold land value is an assessment of what uplift above current or existing use land value a landowner needs to be persuaded to sell their land. If there is a gap between the two land values, this is the headroom available for the

community or public sector to take as it is the economic rent in total. How this economic rent is shared is the result of the CIL decision making process and the subject of this research.

A key challenge here is that not only are there a lot of variables involved all of which can be contested, there is also the question of using market evidence which is by its nature historical, to inform assessments about the judgements and behaviours of actors who are looking forward into the future. It has also been suggested the use of the appraisal to make an assessment as to the level of the policy burden (i.e. levels of affordable housing, s106 and CIL) that can be supported by development projects and land values in which judgements are being made about these levels introduces the issue of circular arguments which is not adequately addressed by the current guidance (Crosby *et al.*, 2013).

## **2.9 Viability Assessment Guidance**

The Government CIL guidance has not set out any specific guidance on the methodology to use for the viability assessment, except to say there are valuation models and methodologies available and whilst there is no requirement to use these it may be helpful in defending the proposed rates to use one of them (DCLG, 2013a). There have been several influential guides, the Homes and Communities Agency area-wide viability model (HCA, 2011), the RICS “Financial Viability in Planning” (RICS, 2012) and the “Viability Testing for Local Plans – Advice for planning practitioners” by Local Housing Delivery Group (Local Housing Delivery Group, 2012).

The HCA area-wide appraisal model is still used as a viability appraisal model to assess viability of sites and uses a residual valuation approach. Some consultants have developed their own bespoke appraisal models to calculate residual land values or if an assumed land value is put into the model then it can be used to calculate a range of profit levels. Either approach can calculate the available headroom above a standard developers profit level of say 20% of Gross Development Value for a residential development.

The problem is that even using standard software packages, each bespoke model each different package will operate in a slightly different way and produce slightly

different results even with the same input assumptions. The actual appraisal models used by developers or house builders whilst confidential also will differ both in the assumptions used, the objectives required from the models and also in the actual basis of the operation of the model. What this effectively means is that no definitive agreement on exact figures can be reached easily unless one model is used by all the parties to the discussion, and this may not in fact reflect their own internal business model for confidential reasons.

One of the most influential guidance on CIL was issued by the Local Housing Delivery Group in June 2012, “Viability Testing Local Plans – Advice for planning practitioners” (Local Housing Delivery Group, 2012), this is often known as the Harman Report after the chairman of the group Sir John Harman. This guidance is strongly supported by the house building industry and places a lot of emphasis on delivery, reflecting the Local Plan focus. Much of the concern is about ensuring an adequate supply of viable sites to deliver the housing supply set out in the Local Plan proposals and it equates viability with deliverability. It also sets out that area wide assessment of viability is challenging as it only provides a high level of assurance and cannot guarantee that all individual sites are viable in an area, but that a sufficient number are viable to ensure the supply of housing as set out in the Plan. It stresses the need to collaborate with local partners with local market knowledge and knowledge of development economics and in day to day delivery. The guidance also places emphasis on the “cumulative policy burden” and the need to choose between different policies priorities as will be returned to later.

The “Financial Viability in Planning” issued by the RICS in August 2012 (RICS, 2012) is also based on the residual method of valuation. The RICS guidance can be used for individual site specific residual valuations, with “benchmark site value” defined as

*“Site value should equate to the market value subject to the following assumption: that the value has regard to development plan policies and all other material planning considerations and disregards that which is contrary to the development plan” (RICS, 2012, p. 4).*

This is considered to be similar to the “competitive return to the landowner” as set out in the NPPF and similar to the TLV concept referred to above. In undertaking an

area wide assessment a further adjustment may need to be made to take account of emerging policy not least the proposed CIL proposals.

## **2.10 Conflicts between guidance**

One of the main areas of conflict between the two main sources of guidance, the Harman report and the RICS guidance is in relation to the concept of a “threshold land value”, which is the value at which land will come forward to the market, i.e. providing the land owner with enough incentive to sell the land.

In the Harman Report the preferred approach to assessing the TLV is by using a premium over current use values and that the premium should be determined locally by using an evidence based approach. As Wyatt and McAllister (2013) point out there are several problems with this, firstly there is no empirical basis for the uplift calculation, it will vary over time, place and sector and has no relationship with the final end value of the development. Secondly, landowners expectations will be anchored to previous high deals in an area and this will stop supply coming forward if land values fall, thirdly, using a static model to incentivise landowners will mean that in good times landowners will be over rewarded in up turns and not in downturns, with conversely policy costs too low in good times and too high in bad times. They go on to say there are in fact two elements of this uplift or premium, firstly, the growth premium which reflects the present value of the future growth in land value after it is developed and secondly, a compensation for giving up the option to develop some time in the future and these cannot be properly reflected in a percentage figure (Wyatt and McAllister, 2013).

This was discussed in Barker (2004) in setting out the PGS details of how to calculate the difference between the Planning Value and the current use value. The question was asked, how a valuer would find evidence of current use value without the hope of future development, the circularity of the argument was not resolved. The RICS approach is to look at market value and so is based on comparable evidence provided the evidence used has the correct assumptions about planning policy (RICS 2012).

Which highlights the main area of conflict between the two main sources of guidance, the use of comparable evidence. The Harman Report (2012) stresses the need to

look at local evidence, the RICS allows a wider use of market evidence, the Harman report talks about trying to assess the level of incentive landowners will expect based on local knowledge and the makeup of landowners in the area. This assessment is based on testing a range of calculations on several bases, using comparisons or market value, current use value with an additional premium, a percentage uplift from current use value and a proportion of the estimated value of the completed development (Local Housing Delivery Group, 2012). The value should also take account of the rural/urban nature of the site, and the viability of sites coming forward and of landowner's likelihood to sell (ibid 2012). This is interesting, as it places the expectations of landowners above market based evidence.

Another point of difference is that of assumptions about planning policy requirements, with Harman (2012) this is about including policy or planning requirements only if they are able to be delivered in the viability of a site, hence the need to consider the cumulative policy burden and to in some cases force a choice between differing policy objectives. The RICS (2012) guidance talks about using comparable evidence much more significantly and that the comparable evidence needs to be adjusted to ensure that it has the appropriate planning assumptions that are in accordance with the Local Plan and even emerging planning policy proposals. The difference is that the Harman guidance places viability of development as a cap on policy requirements that can be funded, whereas the RICS guidance tries to reflect the planning policy proposals in the market value.

Both approaches are about trying to calculate a market related incentive for landowners to sell their land and whilst in many practical senses they will produce similar figures, what is interesting is the differing approaches of the two main sources of guidance and how they have influenced the implementation of the CIL policy, which is now briefly considered.

### **2.11 Implementation of CIL Policy**

The Planning Advisory Service (PAS) website has a frontrunners programme of 21 local authorities implementing CIL, seven out of the eight original frontrunners have now published draft charging schedules, although these are again mainly southern England Councils. Redcar and Cleveland Borough Council were in the second phase of Frontrunner Authorities, but decided following advice from consultants not



to proceed with implementing CIL. This reflects the much greater progress in implementation in the south of England compared to other areas, there is now some progress across the country yet the North East region of England has been the least active with only Durham and Newcastle/Gateshead progress CIL in any official way.

The PAS has identified several lessons that can be learnt from the Frontrunners, the need for political support as well as evidence, CIL shouldn't be considered in isolation it is part of a wider policy context, it was important to engage with stakeholders especially landowners and developers, it was about delivery, there was still many misunderstandings about the policy. That it was a Corporate project of the local authority and not just a planning project, and that other parts of the Council needed to be involved such as education, social services etc.

In January 2014 Savills supported by the HBF, produced "CIL – Getting it Right" (Savills and Federation, 2014) which looked at issues around the implementation of CIL, they reflected much of the guidance of the Harman Report and again argued that the viability equated to delivery and that level of the TLV was also critical in this respect as shown in figure 2.2.

### Land value benchmarks and risks to delivery

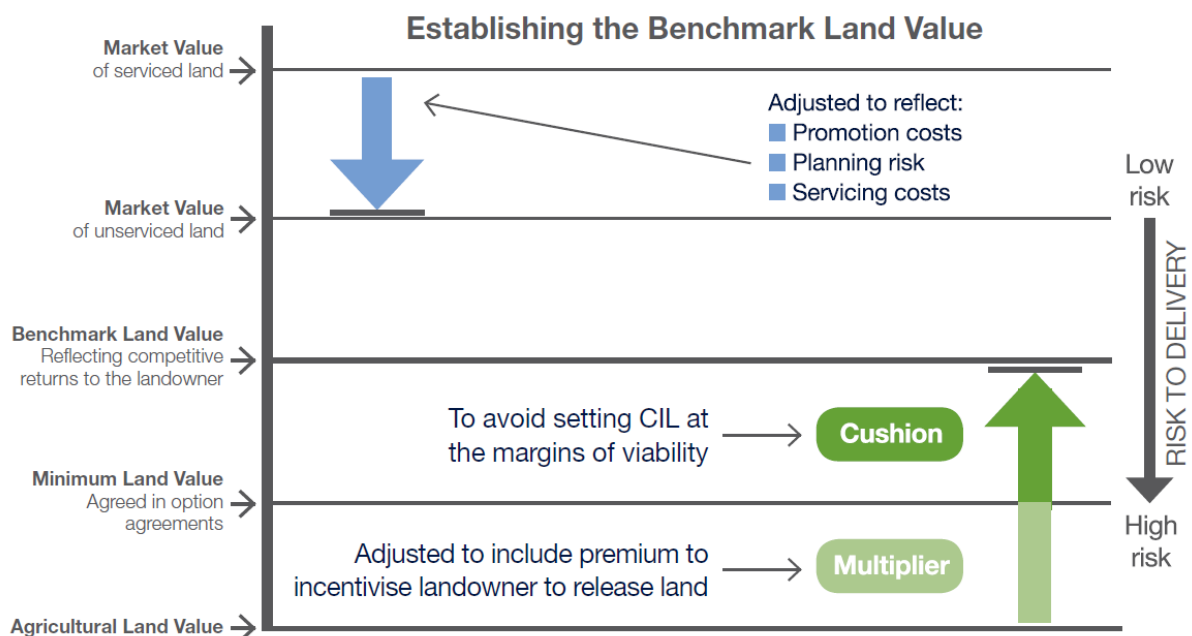


Figure 2.2 Diagram from CIL Getting it right (Savills and Federation, 2014)

The report suggested that within an overall level of viability sometimes policy choices may have to be made by local authorities, similar to the point about cumulative policy burden. An important element of this could be between strategic infrastructure provision funded from CIL and affordable housing provision funded from s106 planning obligations. Savills went on to say there was a three way trade-off between CIL, s106 and affordable housing, the report also stressed the need for a viability buffer to ensure a future supply of land coming forward to reflect the risks and costs involved in promoting land through the planning system. The setting of the Benchmark or threshold land value whilst difficult was crucially important. The report also set out that local context was also crucial and the priorities between policy choices.

Other issues that have become apparent from the implementation of the CIL policy is the concern about the mismatch in timing between infrastructure provision and the development activity, the lack of certainty in this respect was also an issue, this reflects the rational nexus issue referred to above. The duty to cooperate between local authorities was also considered important in terms of deliverability of Local Plans and in the provision of infrastructure with again the boundaries being an issue and the hypothecation issue of mismatch between collection and spend.

The NPPG from March 2014 set out four principles of Viability in Planning, evidence based judgement by sharing evidence and using a transparent process, understand past performance, based on a realistic operation of the market and past delivery of policy obligations, collaboration with stakeholders and a consistent approach based on a comprehensive understanding of viability issues. This in summary sets out the challenge to local authority planners for the implementation of CIL, with viability at the heart of its implementation.

These comments reveal that the policy is linked to growth and requires a degree of judgement to be applied, rather than a specific formula applied, as much uncertainty is involved. This also further supports the view that the use of multiple knowledge sources to support decision making is at the heart of the implementation of this policy, especially in making decisions about the assessment of viability and of setting CIL rates.

## 2.12 Conclusion

There are a range of broad issues that emerge from this consideration of the history and policy context of value capture as a policy in the UK Planning System. Returning to the five point framework developed from (Oxley 2004b) used earlier to consider the other mechanisms of betterment taxes and planning obligations, this is now used to consider the latest policy CIL.

Firstly, the hypothecation issue, is potentially a challenge with CIL as a policy, as the collection of CIL funding and the need for the spending are not necessarily particularly well matched spatially. The match between collecting the funding and the certainty of spend when needed is another concern, the rational nexus issue, or the potential mismatch temporally. Even the issue of double counting is part of this concern, in fact the question of where the funding is to be spent and when are a key area of discussion in the policy and key to governance of the Policy.

Secondly, the sharing of the value, the setting of the rate so that various actors will be able to support the CIL, this is also a key arena for discussion between the actors, terms such as striking the balance and cumulative policy burden reflect this area of dispute. But it is also about which actors benefit and which lose from the policy which isn't as simple as the sharing of any economic rent or development value released, but has wider policy implications.

Thirdly, the perception of the CIL as the latest mechanism, after the criticisms of other policy mechanisms, does CIL have predictability, certainty, speed, transparency, simplicity, flexibility, efficiency and fairness. This is an area to be considered in the research as well, it was promoted as having benefits in these areas but it is unclear whether that is really the case. In any event the retention of Planning Obligations has not assisted the overall position in this respect. The changing basis of justification, from capture of value explicitly as a national betterment tax to a more implicit capture of value to fund infrastructure for specific items to support growth is also an important change in perception.

Fourthly, the calculation of the development value or economic rent, a challenging problem even on a site by site basis, when this is averaged out spatially it becomes more problematic. The difficulty of establishing boundaries, the averaging having

variable impact on development viability across individual sites, the whole issue of future policy assumptions and the differing guidance on this. The assumptions within the area based appraisals and the evidence used to support those assumptions, the methodology and appraisal software used, these are all areas of potential dispute within the governance of the CIL policy, in calculating of the development value available to be captured.

Finally, the CIL as a policy within the wider policy context, the position in relations to the other value capture mechanism such as Planning Obligations is key, but also in relation to other policy proposals. CIL interacts with other policies in its implementation especially those about funding and delivery of infrastructure. The CIL is presented as a policy to support growth and to remove barriers to growth, to impact on behaviours of actors and their decision making in this respect. The research into CIL has had to consider its governance, this includes the skills and role of local authority planners, the use of consultants, the consultation and engagement process and the relationships between the actors involved in the CIL policy making process.

Having considered the history and policy context in the area of value capture as background of how we have got where we are today, it is now appropriate to consider some of the wider theoretical background to value capture and its role within planning and how this also frames the current policy position.

## **Chapter 3 Value Capture within the Role of Planning**

### **3.1 Introduction**

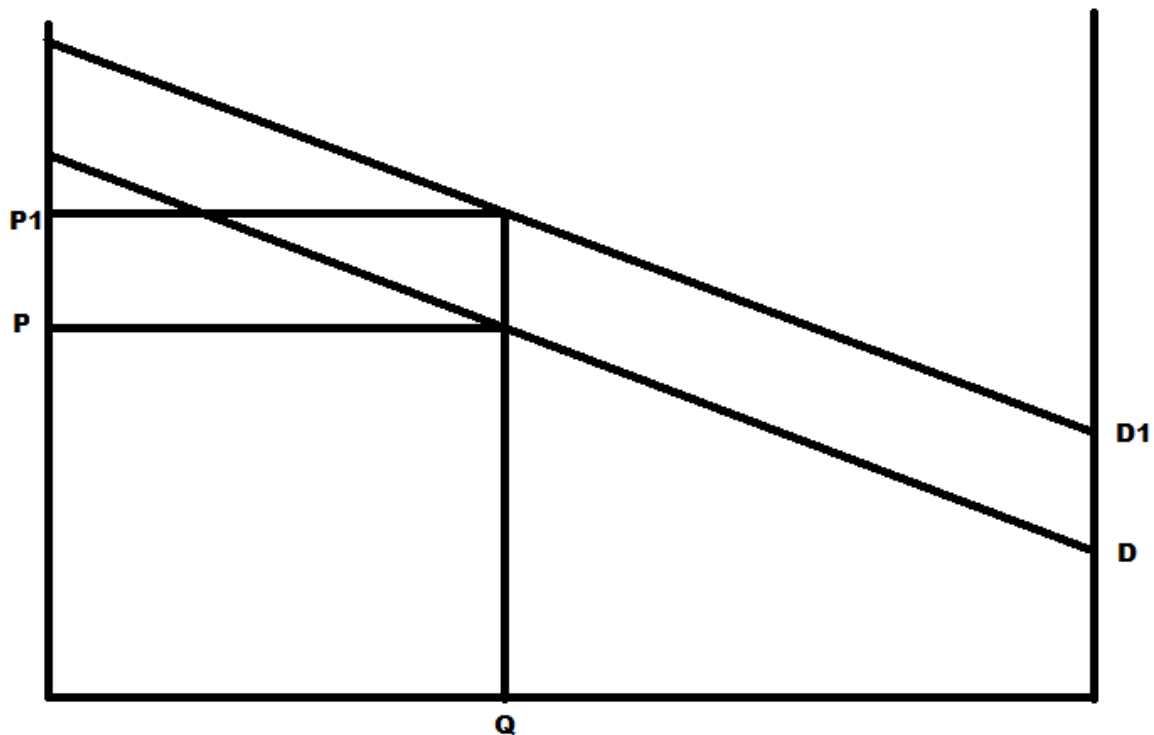
Having considered the history of value capture mechanisms in the UK several points arise, the first issue is how to determine the value that can be collected, which requires a consideration of the economics upon which this is based. Following on from establishing the value that is available for capture, there is the process by which this value is divided between the actors involved, including how much is captured by the public sector. This introduces the consideration of decision making of actors such as developers and landowners in the development process and the governance arrangements of how they interact within the development process.

Planning policy tools such as value capture mechanisms influence the governance arrangements and the behaviour of actors, the nature of and research into the influence of these value capture mechanisms, and of viability appraisals as a part of that process is considered. These policy mechanisms are implemented by local authority planners as actors in the governance process, therefore theories and research into the decision making process of planners is considered including their use of knowledge to make those decisions, relating back to the research questions set out earlier.

### **3.2 Economic Theories for determining the Economic Rent**

#### ***3.2.1 Neo-classical economics***

As discussed in chapter 2, the definition of value is that released by development of land as a factor of production and termed as “economic rent” (Oxley, 2004b). This is based on the David Ricardo model (Ricardo, 1951) (figure 3.1), which shows land as fixed in supply ( $Q$ ), as demand increases due to economic growth and population growth, the demand for land increases from  $D$  to  $D1$  and so in turn does the value of land  $P$  to  $P1$ . The landowner has benefited in higher land values for having done nothing and therefore was undeserving of this.



*Figure 3.1 Ricardian Model of land supply (Evans 2008)*

Based on the above Ricardian Model is the view that a tax on the economic rent or increased land value should not distort the economy and therefore a tax on land seemed to be uniquely justified (Evans, 2008). This was also promoted by Henry George (George, 1879) and the single tax movement, which suggested that even if a tax rate of 100% were applied to the land value increases or economic rent, it wouldn't impact on either the supply or demand of land coming forward for development (Evans, 2008). This is based on a classical economics model which assumes that price is determined by the interaction of supply and demand and reaches an equilibrium position based on the basis of all the actors in the market acting and making decisions rationally (Evans, 2008).

### **3.2.2 Welfare Economics**

As a subset of the above perspective, as it is still based on rational decision making assumptions and is interested in the efficient use of resources, is "The Economics of Welfare" (Pigou, 1920). The establishment of the planning system to regulate land

use and property development is justified on this basis. As the planning system controls the use and development of land, when permission to develop is granted, it causes an increase in the value of that site. The effect is similar to that shown in figure 1 earlier, as the increase in value is still based on higher demand, but this can only be realised by the granting of planning permission, this value increase or economic rent is termed “betterment”. Betterment is released by the state giving permission to develop and therefore again is not due to any efforts by the landowner. Therefore as set out earlier the taxation of betterment is also considered both justified and economically efficient (Oxley, 2004b).

Adam and Tiesdell (2013) set out three main areas of market failure planning policy seeks to address, firstly, negative impacts from a development termed “externalities”, where a development has detrimental effects on other people and they need to be mitigated by action or compensated for. As discussed in the last chapter this is a key role for Planning Obligations in the UK planning system. Secondly the provision of “public goods”, these are goods which have no market value and are provided by the public sector and then can be benefited from by a developer free of charge. An example of this would be publicly funded and provided infrastructure opening up a development site. Finally, lost opportunities where efficient use of resources is frustrated, by the multiple ownership of land, stopping a new development perhaps. The use of Compulsory Purchase powers to acquire land would be a state intervention for this purpose (Adams and Tiesdell, 2013).

The first two market failures set out above can also justify a betterment tax on the increase in value of land, which has either been generated by the public funding of infrastructure as a public good, or to pay for the negative impact of the development, which is linked to the cost of the mitigation measures. As will be considered later these have to be funded out of the economic rent or land value increase from the development.

The determination of the economic rent, based on these two classical economic models, is assumed to be unproblematic. That the land value in current use and the increase after planning permission is granted can both be calculated based on full market knowledge. The calculation of these land values is however not that straight forward in practice due to lack of full market information. In addition valuations are

not objective exercises, but subjective judgements of value, and therefore are problematic in determining accurately the level of economic rent, they are also a snapshot in time (McAllister *et al.*, 2013).

Land itself is different, it is not a homogenous product, although costs are involved in changing uses, they can nevertheless be changed, therefore supply is not fixed for specific uses (Whitehead, 2016). Furthermore the planning system itself introduces some problems, such as administrative failures, political pressures, it influences the supply of land for certain uses in specific locations, it can also influence demand and transaction costs (Whitehead, 2016).

The assumption that all actors will act rationally and make rational and fully informed decisions, is therefore problematic, in reality not all actors have access to full information and don't always act rationally. Actors are also very varied and heterogeneous, having very differing aims, objectives, business models and attitudes to risk (Adams and Tiesdell 2013) which all influence their decision making.

To overcome the shortcomings of the rationally based economic models an "Institutional" approach is helpful in trying to take account of the differing aims, objectives, business models and attitudes to risk which influence decision making. The Institutional Approach also allows account to be taken of the effect of the local context on the decision making process of various actors.

### **3.2.3 Old Institutional Economics (OIE)**

The use of "Institutional Approaches" initially sought to take account of the influence of the context in influencing decision making, by examining the details of the institutional factors such as the rules, norms and social factors on the behaviour and decision making of actors. The approach originally from (Veblen, 1899 as cited in Needham *et al.*, 2011) has been criticised as not being able to generate any theories from the detailed empirical data generated (Coase, 1988) and has led to alternative Institutional Approaches such as New Institutional Economics discussed below. Nevertheless as Needham *et al.* (2011) state in their consideration of Institutional Theories in relation to land markets, one important conclusion from OIE, is that "institutions can greatly influence land markets" (Needham *et al.*, 2011, p. 167). That in itself justifies a shift away from the analysis of decision making in land and



property markets based only on the rational assumptions of the neo-classical models. Institutions become internalised into practices, an example Needham *et al.* (2011) quote is the institutional discretionary nature of the UK planning system, which tends to encourage the practice of pre-application discussions by developers with planners, to reduce uncertainty in the development process.

### **3.2.4 New Institutional Economics (NIE)**

In response to some of the criticisms of Institutional approaches, a relatively new addition to economics emerged, New Institutional Economics (NIE) which places the assumption of rational decision making within an institutional setting. It is important to clarify at this point that “institution” is not equivalent to an organisation, but rather defined as “rules, norms and regulations by which society function.....they also change and develop over time as circumstances and experience dictate.” (Keogh and D'Arcy, 1999, p. 2407).

NIE developed from “The nature of the firm” (Coase, 1937) and later work in (Coase, 1988). The premise is that there is a cost to using the price mechanism, such as the cost of discovering the price and the costs in negotiating and concluding the contract (Buitelaar, 2007). These were later defined as Transaction Costs by (Williamson, 1975) and the theory is that institutions act to reduce and minimise transaction costs. In the area of social costs or negative externalities the Coase Theorem suggests that the parties who gain and lose should negotiate and reach an agreement. This avoids the costs of internalisation of the externalities problem, as a result of the government stepping in and introducing more costs into the overall process (Buitelaar, 2007).

It is argued that planning or the state, should seek to reduce uncertainty and risk to the private sector and so reduce transaction costs. The relationship between NIE and planning is however problematic (Moulaert, 2005) as will be considered later in this chapter.

Keogh and D'Arcy (1999) have applied NIE in relation to land and property markets as shown below. They have set out three levels to their model, with the Property Market itself as an “institution” at the middle level, which is influenced by and in turn influences decision making of individual actors at the lower level. What Keogh and D'Arcy argue is that the market is not a neutral allocator of resources as the rational

models above would suggest, but that this allocation of resources is not independent of its form. The Market itself is an institution “it is a network of rules, conventions and relationships” (Keogh and D’Arcy, 1999, p. 2408)

They conclude that whilst institutions are designed to reduce uncertainty and transaction costs, this may only benefit powerful lobby groups, who can effectively lobby policy makers and influence policy but that this is not necessarily the most efficient outcome for the market as a whole, see figure 3.2 (Keogh and D’Arcy, 1999).

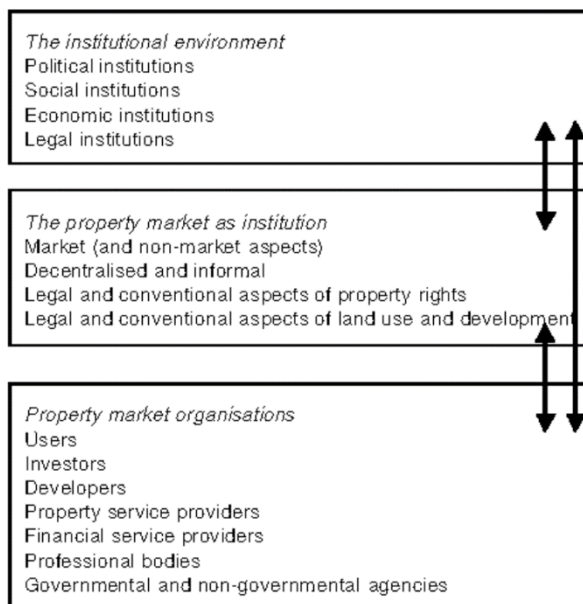


Figure 3.2 Institutional Hierarchy of Property Markets (Keogh and D’Arcy 1999)

In a follow up to their original paper in D’Arcy and Keogh (2002) go on to state that any analysis needs to consider the role of institutional change in its effect on Market form and in turn on the allocation of resources. What becomes apparent from this analysis is that notions of power relationships and social aspects cannot be separated from economic decision making and hence this needed to be incorporated into any analysis of policies that impact on the property market function.

The main differences between OIE and NIE are that OIE emphasises institutional design which includes informal relationships and can be said to be Plan-led, whereas NIE emphasises market determinism similar to neo-classical models and can be said to be market led and prioritises economic factors (Kauko, 2012).

The determination of economic rent derived from this economic model would suggest that the impacts of institutions at a higher level and the actions of actors at a lower level both help determine market values. In addition, within the market itself as an institution with its rules, regulations and norms; together both will impact on an equilibrium value as determined by the neo-classical economic model. Whilst it reflects the subjectivity of valuer's judgements as they are influenced by other factors within a market context, it still assumes that actors behave rationally within those rules, regulations and norms.

### **3.2.5 Behavioural Economics**

Behavioural Economics is another relatively new perspective on economics and has emerged from psychology. Since the world is uncertain, people tend to use rules of thumb, habits of practice and even emotions to make decisions, with resulting bias in decision making, this is termed as "bounded rationality" it also reflects the reality of less than full information availability assumed in the earlier models (Adams and Tiesdell, 2013).

Three examples of deviations from standard decision making are, firstly, people's actual preferences may not be just self-interest, secondly, people often act on beliefs that turn out to be incorrect and finally, people's decision making is not reflected in neo-classical economic theory (DellaVigna, 2009).

The presentation of information also influences behaviour, which leads on to the view that markets are in fact socially constructed and not given by some equilibrium price mechanism. Whilst still a relatively new concept and contested by some, the general view of rational decision making is that it has become somewhat discredited without some consideration of other institutional or behavioural context. Accordingly, it is inappropriate to place the market and planning into a dichotomous relationship (Adams and Tiesdell, 2010), but rather to consider how they interact especially when considering policies such as CIL which specifically effect the operation of land and property markets.

The determination of the economic rent based on this economic model requires the behaviours of the various actors to be considered as they impact on the market. The

impact of “bounded rationality” and bias on judgements that are made by actors and by valuers in making their judgements.

In property development the analysis of risk has been categorised under two factors, firstly, risk attitude which is largely driven by perception and greatly influenced by the context and secondly by human judgement which is based on the notion of heuristics (Hillson and Murray-Webster, 2007). Within risk attitude, four basic attitudes to risk have been identified, on a continuum from, risk averse, risk tolerant, risk neutral to risk seeking with these modified due to the situated environment (Hillson and Murray-Webster, 2007). In relation to human judgement, the notion of heuristics, is that there is intuitive judgement in development decision making, using rough and ready answers, short cuts and rules of thumb, often including significant bias (Johnson-Laird, 2006).

Four common types of heuristic have been identified in property development, firstly, availability, which subconscious search for data to compare to the current situation, this tends to favour recent transactions and events disproportionately. Secondly, representativeness, this heuristics tries to pigeon whole situations into a range of stereotypical situations, whilst this may be a useful starting point it may prevent a more detailed analysis of the true detailed picture. Thirdly, anchoring, this term is where a choice of starting value, based on experience, or from a suggestion, then becomes an anchor, around which adjustments are made, but with a reluctance to move too far from the initial figure. Finally, the confirmation trap, which is an approach that involves assuming an answer, and then seeking the evidence to support that figure, this means the full evidence may not be fully considered (Robson, 2009).

Having considered the nature of the general economic models, it is clear that these need to be considered in more detail, specifically within a land and property development context, reflecting the complexity and unique features of land and property markets and of the development process.

### **3.3 Models of Development Process**

#### **3.3.1 History of Real Estate Analysis**

The research and analysis in property and real estate has largely been based on classical economic theory, especially that as applied to the theory of the firm. This has been firmly based on rational assumptions about behaviour and is still the basis of most research and analysis today. In turn this means that most analysis is quantitative analysis and model building, but always with the assumption of well informed, profit maximising rational decision making.

However, the property market rather than being an efficient and well informed market of the classical model, is in reality more complex, with the assumptions of that model undermined. Information is not efficiently available to all in the market, due to the unique locational dimension of property it makes it a heterogeneous product, emphasised further by the complexity of multiple legal property interests and sectors. Accordingly as Leishman (2003) sets out the real estate or property market differs from the classical perfect competition theory in several ways. Property markets consist of a number of distinct but interlinked sectors; properties themselves are heterogeneous due to location; the market is split into use, investment and development sectors; it is not independent of other markets; there is a low and irregular volume of transactions; poor information flows and not necessarily rational consumers and producers (Leishman, 2003).

Accordingly, some attempts have been made to relax the traditional assumptions of the classical model and three paradigms can be identified in this respect, the institutional economics paradigm, the structure and agency paradigm and the behavioural paradigm, as set out below (Leishman, 2003). These approaches whilst still not widely employed are growing in importance, as they can often be used in combination with the traditional quantitative analysis from Neo-classical Economics to help explain unexpected results from that analysis.

#### **3.3.2 Equilibrium or Neo-classical Economics Approaches**

There have been many attempts to model the relationship between the state and market in relation to land and property, reflecting the unique nature of land and property as compared to other commodities and therefore reflected in different

markets. The initial point is that land and property is actually a bundle of legal rights held over a piece of land that can be traded in a market. These rights are socially constructed within a society as they frame the relationships between people and to be enforceable require a legal system (Adams and Tiesdell, 2013). These legal rights are bought and sold, or traded in a market, which is regulated by a legal system and are embedded in a process of governance and law (of which planning is part) (Adams and Tiesdell, 2013).

The modelling of how these property markets operate has been the subject of much research over many years with several reviews having been undertaken. One of the most comprehensive reviews of land development models was undertaken by Gore and Nicholson (1991), which presented various conceptual models of the land and development process, which they suggested fell into four broad categories. Firstly, Sequence Descriptions of the process, secondly, Behavioural Models, thirdly, Production based analyses and lastly, Structures of provision approaches.

Interestingly in spite of their comprehensive review, they conclude that the modelling of the development process was to some extent futile, as the development industry was too varied and heterogeneous. Whilst all models offered some insight, they were best treated as a point of access into an analysis, pointing out the limitations of the model in that analysis (Gore and Nicholson, 1991).

Healey (1991) set out four main types of model, all of which involved different ways of thinking about the development process. These were equilibrium models which reflect the neo-classical economic approach of balancing supply and demand. Secondly, event-sequence models, which seek to set out the various stages in detail of a development project and in what sequence these take place. Thirdly, agency models, which follow on from the last model, by focusing on actors in the development process, their roles and their strategies. Finally, structure models, which derive from urban political economy and seek to try and identify the driving forces behind the development processes, such as the Marxist theory of capital movements in the economy, (Healey, 1991).

The equilibrium model, sometimes termed the mainstream or neoclassical economics approach, in particular has been criticised as being inadequate to describe the complex process of property development. In 1991 Healey made the following

criticisms, economic models typically fail to consider, different forms of demand, such as occupier and investment demand, development agents being motivated by factors other than profit, the difficulty of assessing the financial viability of schemes, including distortions produced by appraisal methods and the complexity of the development process itself (Healey, 1991).

The event sequence models, can be useful as a basis with which to link events to the drivers of development, such as economic, political, social and demographic, technological factors, cultural and environmental factors (Adams and Tiesdell, 2013). This model presents a detailed description of a development process, linking in various activities such as the securing of ownership of the land, the securing of various statutory consents, analysis of market demand and financial appraisal, into a process in which through three stages the developer's room for manoeuvre is gradually reduced. Whilst explaining events and processes well, it is weak in the importance of organisations and individuals in the development process, where the relations between people can be of critical importance. Another important distinction is between actors and their roles, as actors may have more than one role. Actors act as individuals within organisations as well as on behalf of organisations (Adams and Tiesdell, 2013).

Agency or Actor-based models attempt to address this weakness, but many such relationships are inherently both time and place specific and also are dynamic and change over time. This makes it difficult to capture the complexity of the relationships which can be considerable; they are also weak in terms of taking account of the economic context in which the processes take place.

### ***3.3.3 Institutional Approaches***

As a reaction to the dissatisfaction with some of the above approaches an Institutional model was set out by Healey (1992a). This model sought to combine elements of the above types of model, the challenge being to link agency and structure. The model used three dimensions of material resources, rules and ideas, which could overlap or be integrated, to be analysed in a four stage process. Firstly, a mapping exercise to describe the development process in operation, focussing on the events in the production process and identifying the agencies involved. Secondly, an analysis of the agencies to identify roles, power relations and the most

critical events in the process. Thirdly, an assessment of the strategies and interests of actors, this being related to the resources, rules and ideas governing the development process for the specific scheme being studied. Lastly, by relating the resources, rules and ideas from the specific scheme, to the wider society within which the development project sits. (Healey, 1992a).

This model which was innovative in its introduction of social relations into the framework with which to analyse the role and activities of actors has nevertheless been the subject of some criticisms itself. The emphasis on the Institutions involved in the process and on the production of the development, has led to criticisms that the model has problems dealing with changes in what is a dynamic environment and that the very separation of agency and structure is a major challenge in practice (Ball, 1998). Others have even suggested that the model's initial application on a scheme in a regeneration area with significant market failure, means that the application of the model in an area of a buoyant market is problematic and has undermined the strength of the model for analysis and that essentially that the Institutional Approach emphasises the social over the economic (Guy and Henneberry, 2000).

Ball (1998) suggests that the dichotomy between the market and institutions is a false one and it is more a continuum between opposites. Ball also states that mainstream economics does in fact have tools to study institutions such as transaction cost minimising, game theory and information theory (Ball, 1998). He went on to criticise the Institutional theories as inadequate for the analysis of the market as they played down the economic context in favour of emphasis on the behaviour of actors (Ball, 1998). In his Structures of Building provision (SOP) model he tries to resolve the agency/structure issue and tries to reconnect organisations and markets in a dynamic context, but acknowledges himself the difficulties with its implementation and its contextual specific basis.

Guy and Henneberry (2000) criticise Ball however, claiming that if the main dynamics of the production of property are driven by the market and this is read by property analysts using quantitative economic models, these may work well at higher strategic levels, but the deeper you go into an area the less reliable these models become. Hence the need to look at the economic as well as the social, as markets are not just technically determined but a process of negotiation and learning (Guy and



Henneberry, 2000). Guy and Henneberry seek to integrate economic and social aspects in their wider relational approach, which is based upon behavioural economics (Guy and Henneberry, 2000). The activities of actors is context driven, but their actions also influence the contextual structures, this explains why some decisions that appear irrational within the mainstream economic models, when the wider social context is considered become more rational.

### **3.3.4 Network Approaches**

As mentioned earlier there has been limited research into land and property markets or the development process other than from a neo-classical economic perspective. Whilst this has begun to change with institutional approaches being used to reflect the context of an area and the local social influences on the decision making, there has also been a shift away from institutions to networks as the prevailing mode of governance. Accordingly there has been new research and models produced reflecting this, Adams *et al.* (2012a) have carried out research into house builder networks, which as they state, whilst there is widespread evidence that the residential land market does not operate as the neo-classical model would suggest little empirical research has been carried out to find out how it does operate.

Adams *et al.* (2012a) highlight the reliance house builders have on networks, to source land often in preference to market mechanisms, they also went on to investigate the strength of various relationships house builders have in their networks. The conclusion reached was that planners were the most distant actors in the network and that this was largely due to an inability to articulate any shared interests on both sides (Adams *et al.*, 2012a).

In networks trust and reputation are crucial in binding together networks, even more so in land and property markets which due to their complexities and imperfections rely on trust and relationships to provide alternatives to contracts and insurances to reduce risk (Adams *et al.* 2012) and reduce transaction costs (Gossling, 2004 cited in Adams *et al.*, 2012b).

However, Tait (2012) in his research into a particular development dispute between house builders and planners, identified that trust can also be of institutions and systems. But what can be problematic when trust breaks down is the perceptions of

what the actor's represent, not just based on direct experience (Tait, 2012). As with trust, reputation is also socially embedded into the network of relations, it provides some indication of future behaviour as actors seek to maintain a good reputation (Hardin, 2006 cited in Adams *et al.*, 2012b).

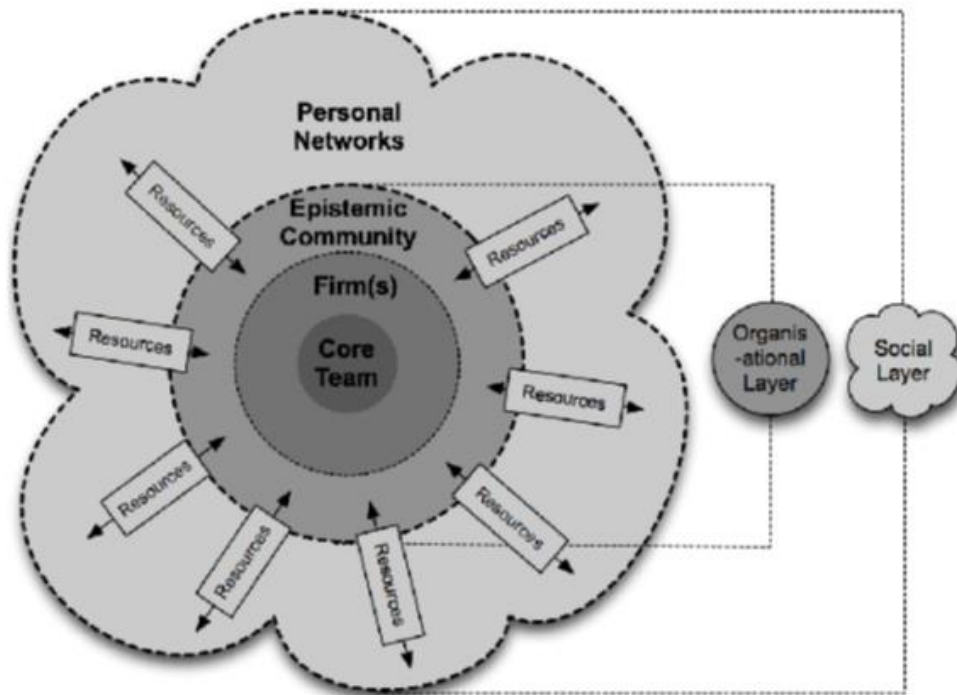


Figure 3.3 Project ecologies (Henneberry and Parris 2013)

Another example of research into network approaches in relation to land and property markets was by Henneberry and Parris (2013) who suggest using “Project Ecologies” as an approach to analyse networks. They argue there has been too much emphasis on structures rather than behaviour of developers, also that they have been treated as a homogeneous group when in reality this is not the case (Henneberry and Parris, 2013). It is argued that project ecologies offer an analytical framework to empirically examine relationships, at different layers by recognising that property development projects are contextually embedded in systems open in time and space as shown in figure 3.3 (Henneberry and Parris, 2013).

Having considered the economic theories and models and how they have attempted to represent the development process and the land and property market from a range of perspectives, that the complexity of the subject requires something wider than the neo-classical assumptions and hence the need to consider Institutional and Network

approaches. What is apparent is that to implement institutional and/or network approaches of analysis, which by their very nature seek to take account of the context influencing the behaviour and decision making of actors within a setting, the governance arrangements within that setting also need to be considered.

### **3.4 Shift in Governance Arrangements**

#### ***3.4.1 Hierarchies and shift from Government to Governance***

As the economic theories require an institutional framework to assist the analysis of the operation of property markets, the governance structure in an area emerges as important. Governance has also been an evolving process as with economic theory, from the formal government structures to the “hollowing out” of the state (Rhodes, 1994) of today. Planning itself as part of local governance of an area has also changed from the rational planning of the 1940s to 1960s, with its emphasis on a welfare role and land use planning to the spatial planning of today which is more about coordinating delivery, enabling the market and a collective attempt to improve places (Healey, 2010).

Hierarchies are governance usually by Government, with the assumption that the rules and decisions made at a high level will be followed by those at a lower level, hence the hierarchy description. It is a form of command and control type of delivery, an example of which is the state driving development, such as in the New Town programme in the UK in the 1940s to 1960s (Adams and Tiesdell, 2013). This style of governance has declined in the UK since the 1980s and has been reflected in the changing nature of planning as well. There remains however some central control by Government through the issuing of policy guidance which is expected to be delivered at the local level. CIL is perhaps an example of that, although even here there has been some local discretion given to local authorities as to whether to implement CIL or not and the ability to tailor it to reflect local conditions.

#### ***3.4.2 Governance and the emphasis of Networks***

The concept of network governance (Rhodes, 1997) and the move from Government to governance has necessitated new ways of working and new approaches to analysing decision making by developers. As a result of the neo-liberal changes and the emergence of the market as the dominant mode of governance, there have also

emerged networks as an alternative mode of governance, representing communities of interest, and partly due to the reduced ability of a much reduced state to deliver. Network governance also reflected a move away from the dichotomous relationship between hierarchy (state) and markets, although that boundary between state and market is often fuzzy and blurred (Buitelaar, 2007). Networks are sometimes referred to as relational structures and whilst they can emerge around an issue or common cause, they also have sometimes been encouraged by governments via the planning system such as in Collaborative Planning approaches (Healey, 2006a). Collective attempts to co-ordinate social life to a common end became known as “Network Governance” (Rhodes, 1997). These deliberative approaches rely on voluntary commitment, trust and reputation to be successful and above all social relationships (Adams and Tiesdell, 2013).

These approaches seek to reach a consensus and to give all stakeholders a voice in the process of decision making and have been particularly prevalent in planning since the 1990s. Yet they have in some quarters been criticised as reflecting the dominance of market governance and in some way accepting this. Furthermore, the issue of power relations is a significant factor in any form of network governance and in planning can be particularly relevant due to the political nature of the decisions (Hillier, 2000). “It is the preliminary, backstage power play.....which is the real politics of planning” (Flyvbjerg, 1998, p. 83). Network governance also requires new ways of working and this involves an understanding of identities of actors within a strategic context, both individually and collectively (Hillier, 2000).

Whilst these three broad modes of governance, hierarchies, markets and networks are often presented in chronological order as they emerged, it would be inappropriate to consider one as a replacement for another; rather they can all exist together. Accordingly, it would be wrong to consider the state in the form of hierarchy as no longer powerful or that the market as an institution or mode of governance as unable to be influenced by networks such as communities of interest (Buitelaar, 2007).

What these alternative modes of governance do is to highlight for the research, that the operation of markets and the behaviour of developers which the CIL policy will influence, take place within a social as well as an economic context.

### ***3.4.3 Markets have emerged as the prevailing mechanism***

The governance by markets reflects the neo-liberal trend in governance that has taken place especially since the 1980s and the so termed “hollowing out of the state” (Rhodes, 1994). There has been a conscious effort of some governments to reduce the size of government and to roll back the state. Examples in the UK would be the establishment of Enterprise Zones and Urban Development Corporations in the 1980s, covering areas with reduced planning and state regulation (Adams and Tiesdell, 2013). There has also been a scaling back of the planning system since the 1980s with increasing emphasis on delivery as discussed in the last chapter, and sometimes portraying the planning system as stopping development (Rydin 2014). The role of the state (and of the planning system) became more one of an enabler to the private sector to deliver, especially as virtually all development is now carried out by the private sector, the CIL policy is part of that shift. The state as it has been reduced has also been fragmented, and this institutional fragmentation has led to the entrepreneurial city (Harvey, 1989).

As part of this neoliberal approach two theories have been prominent and based on NIE introduced above, namely transaction cost theory which contends that all organisations will seek to minimise the costs of transactions and this will promote market efficiency, the involvement of the state increases costs and therefore reduces efficiency (Webster and Lai, 2003). There is also the property rights theory which is closely related, which states that all disputes between private parties will be resolved by negotiation between those parties and that only a legal and financial framework protecting the private rights is required (Alexander, 2001).

It has been argued by theories such as transaction cost theory and property rights theory that externalities would be negotiated between private parties (Alexander, 2001). However, due to market boundaries and administrative boundaries often not being the same, problems emerge. Infrastructure has not always been provided satisfactorily, coordination between separate private developments has not always been satisfactory, accordingly the issue of externalities emerge as a problem (Adams and Tiesdell, 2013). What also emerges in this mode of governance is the concepts of place competition and social exclusion as the rights of some people are excluded, introducing the notion of power.

Others argue that price signalling should be given greater importance in the planning system as the systems exclusion of price signals has led to problems of a constrained supply of development land and high prices (Cheshire and Sheppard, 2005). They go on to propose a system of price signalling that if combined with Impact fees could depoliticise the supply of housing and make the system more transparent (Cheshire and Sheppard, 2005). In a similar respect Lord (2009) has argued that Information Economics could be an appropriate way to make the calculation of the CIL more transparent, treating the CIL as a transaction cost and reducing the asymmetry of information between parties in the process of calculation of the CIL charge (Lord, 2009). A further development of this approach is the use of Game Theory, it is argued this could be a useful basis with which to analyse the negotiation process of setting a CIL or indeed other planning decisions (Lord, 2009).

These theories all reflect a neoliberal view that the market should operate with as little intervention by the state is possible, and that this is the most appropriate governance arrangement. The nature and tools of state intervention in the land property markets however still remain relevant and influential and these are now considered.

### **3.5 Planning Tools to influence the market**

#### ***3.5.1 Types of Planning Tools***

Having established that spatial planning is about local governance and that the operational performance of markets are influenced by that governance, it is important to consider what tools and mechanisms are available for spatial planning to influence markets. It is important firstly to distinguish between land and property markets and the property development process.

The property development process is about the production of the built environment through a process, which some of the above models have sought to illustrate. The whole land and property market can be sub divided according to the users, into sub markets for developers, investors and users (Keogh, 1994). Whilst the planning system has an indirect influence on the markets for users and investors, it has a direct influence on the market for developers (Adams and Tiesdell, 2010). This is important to remember as the planning tools seek to influence the development

market and the behaviour of developers in that submarket and hence the implicit requirement to understand the behaviour of developers.

There has been a significant amount of research undertaken on the range of planning instruments that are available; three conceptual categories can be set out as follows:

- 1) Market Shaping Instruments – which relate to Local Development Plans and similar policy documents, which present a local political position and context. This is important context to developer's decisions on transactions and development activity; they can provide certainty and reduce risk to developers.
- 2) Market Regulation Instruments – which relate broadly to the development management function, this is primarily restrictive and sets the parameters within which market actors make decisions. The inclusion of planning gain, such as s106 and CIL, within this function has only enhanced the role of planners as market actors, which is particularly important to this research.
- 3) Market Stimulation Instruments – these include development subsidies and compulsory acquisition of property to assemble development sites, which assist in market actions and in transactions (Tiesdell and Allmendinger, 2008).

These instruments are broadly plan-making, development control and development grants, which clearly influence development decisions which is now considered.

### ***3.5.2 Economic Impacts of Planning Tools***

There are three levels of how planning impacts on markets, as follows:

- 1) Macroeconomic impact – this is the impact on the wider economy and on such matters as house prices and the number of houses built. This is very much linked to the economic development and promotion of growth role of planning.
- 2) Urban Land Economic impact – this is the potential impact of planning instruments on the local property development activity, who builds what where. The notions of floating and shifting value as mentioned earlier are relevant here and the redistributive effect of planning policy and allocation of development to certain geographic areas.

- 3) Microeconomic impact – this is the potential impact of planning policy at the level of the firm, the impact on development appraisals and on the decision making of the developer (Adams and Tiesdell, 2010).

These three themes whilst distinct are also interrelated, the introduction of a new policy such as CIL impacts at all three levels, indeed the objectives of the policy are to support growth at a national level, but the policy will also impact on the other two levels.

### **3.5.3 Institutional Contexts and Value Capture Mechanisms**

As referred to earlier value capture mechanisms as a type of planning tool are influenced by their institutional context, therefore before considering the role of key actors in the operation of value capture mechanisms it is worthwhile briefly considering the operation of a range of value capture mechanisms within differing institutional contexts. Considering the international experience is useful in this respect as the operation of planning systems themselves, and in turn of value capture mechanisms, are rooted in the political and administrative culture of a country and its legal framework as it affects property rights (Norton and Bieri, 2014).

A number of authors (Ingram and Hong, 2012; Crook *et al.*, 2016; Monk and Crook, 2016) have identified several key elements as being particularly relevant to value capture mechanisms, these are property ownership rights, property development rights, the funding of local infrastructure provision linked to the delivery of development and the conceptualisation of value capture linked to the wider philosophy of the planning system in that country. The operation of a value capture mechanism is dependent upon the private ownership of land and property and countries which don't have a market in private property ownership transfer are effectively capturing value by the state ownership of land. In China which has state ownership of land, the state still grants leasehold interests to the private sector to facilitate development, but without an open market trading of legal interests in land the system experiences challenges in establishing market values with which to assess value capture (Anderson, 2012). In the UK context the nationalisation of land ownership was considered in the 1940s but not implemented, what was introduced was the nationalisation of property development rights via the introduction of the



planning system requiring planning permissions to develop land as considered in chapter 2.

The second key element therefore is the ownership of the right to develop land, if this is owned by the state, then the granting of planning permission to develop provides an opportunity to secure value capture. This however also depends on the amount of certainty and discretion involved in the operation of the planning system and in the nature of the value capture mechanism, as a fixed or negotiated charge and on its timing within the development process. Monk and Crook (2016) in their consideration of planning gain in the UK as compared to Germany, Netherlands, USA and Australia point out that the degree of discretion in the UK planning system even if plan-led, provides the opportunity to negotiate planning gain, due to the uncertainty of securing planning permission and the need to take into account other “material considerations” in determining a planning applications being key to this. Under the greater certainty provided by the zoning based planning systems of Germany and the Netherlands the requirements in terms of value capture are more defined and fixed, which may be reflected in lower land values as the costs are passed back to the landowner, but don’t provide the opportunity to negotiate extra value as via the planning obligations in the UK. Gielen and Tasan-Kok (2010) argue that the greater uncertainty and discretion, the more value capture that can be generated.

Conversely, in the USA and Australia the ownership of the development rights remain with the landowner never having been nationalised as in the UK. Whilst zoning plans provide some control over land use and development, value capture mechanisms such as impact fees, considered earlier in chapter 2, are more driven by the need to fund local infrastructure to support new development. In the USA the rational nexus principle is a legal requirement to equate charges with spend, yet there is also a move towards a more negotiated approach (Monk and Crook, 2016). The Australian system has a little more discretion but again has to apply proportionality and the rational nexus principle.

The need to fund infrastructure and to the delivery of development are a key driver for value capture mechanism across many countries, and are illustrated by two different approaches. The value capture mechanisms which levy a charge on new

development are the main subject of this research but a major alternative is the process of land readjustment. This is where the state seeks to acquire land ownership to facilitate development, then by providing and funding infrastructure on the state owned land it increases its value, in turn selling the land on to the private sector to develop and capturing the costs by the higher price achieved on the sale. This is a process that has been very prevalent in France, Germany, and Netherlands but also in India via its Town Planning Schemes (TPS) (Sanyal and Deuskar, 2012). The land readjustment approach reflects the need to deliver development as well as capture value and is influenced by the legal framework of property ownership. In France, the property inheritance system has often led to much fragmentation of property ownership in urban areas and this needing to be overcome to bring forward development (Booth, 2012).

The land adjustment approach has the advantage of ensuring the supply of land, but requires significant public investment to be committed up front, even if over time the land value increases capture the cost and return this to the public sector.

Accordingly this approach is often supported by important public sector social and economic objectives to justify the upfront resources as has often been the case in Germany and the Netherlands (Monk and Crook, 2016). The land readjustment approach has been much less used in the more market oriented UK context or in the USA and Australia although all have CPO powers with the state to assembly sites. Recently in France, Germany and the Netherlands there has been a move away from the land readjustment approach, to using CPO powers as part of public private partnerships more in line with the UK and USA approaches. In some contexts even CPO powers are not needed, a private sector led land readjustment process has been delivered in Hong Kong and Tokyo in Japan linked to the capture of value from new rapid transit systems and development around new stations (Murakami, 2012).

This leads on to the final key element the conceptualisation of value capture within the wider context of the philosophy of the countries planning system. In the case of the USA, Australia and the UK the planning system is currently oriented to supporting growth and the market and less so towards the securing of state determined economic and social objectives more characteristics of the planning systems in Germany, Netherlands and France. But this is also changing as the latter three countries also seem to be moving more towards market based mechanisms such as

the TLE local infrastructure tax in France to fund infrastructure (Booth, 2012). Historically France has never been influenced by the notion of the undeserving landowner benefiting from the uplift in land value as in the UK in the past, but today both see value capture as driven by a need to fund infrastructure to support growth with parallels between the CIL and the TLE and the IDP (UK) and the PAE development program in France (Booth, 2012).

Today, few countries pursue value capture as an explicit tax on land or development value, rather it is presented as the recovery of costs of infrastructure provision or the costs to mitigate the impact of the new development. In less developed economies there is also much interest in value capture mechanisms, especially as many of these countries have rapidly growing populations and economies requiring infrastructure to support that growth. In his recent review of value capture in Latin America, Smolka (2013) explains that the notion of the unearned income accruing to undeserving landowners is still relevant in developing economies in contrast to the more developed economies of Western Europe, USA and Australia. The importance of social justice issues are also relevant, in relation to the provision and funding of public services and in relation to the occupation and ownership of land. This is beyond the scope of this research but it is important to remember, that as various countries such as Brazil and Columbia implement value capture mechanisms and other countries such as Argentina consider legislation in this respect (Smolka, 2013) in the face of powerful influences, that the whole policy is socially constructed.

What is apparent is that the implementation of various types of value capture mechanisms are very much influenced by the intuitional context as set out above and that this changes over time and by location. This shows how these policies are socially constructed and that there are not right answers that emerge from a technical analysis. The socially constructed nature of the policy also requires research approaches able to uncover those policy processes, something which will be discussed in chapter 4. It also demonstrates that the role of key actors and how value capture mechanisms share value are important and this is now considered further.

### **3.5.4 Landowner's behaviour**

Whilst important actors in the property development process, relatively little research has been undertaken into the behaviours of Landowners, with economics traditionally assuming that supply is a function of demand. In addition the difficulty of securing information on patterns of ownership, has meant that the main actors studied in the development process have been planners and developers rather than landowners (Goodchild and Munton, 1985). The main reasons for landowners ownership is either for use or investment purposes, rarely for control. Three separate behaviours were identified, the timing of the owner's decision to sell land for development is related to the owners financial strategy, the nature of the owners contribution to the development process is reflected in the owners operational strategy and the owners management decisions as they effect development (Goodchild and Munton, 1985). In addition a distinction was made between the non-professional landowner who believes the policy context is against him due to his imperfect knowledge, the more experienced landowner tend to think of the policy context as more flexible. (Goodchild and Munton, 1985).

Lack of knowledge and understanding can also influence the landowner's willingness to sell, firstly, the pattern of land values, the effect of planning on that pattern and the uncertainty over planning permissions. Secondly, the rise in land values over time due to economic growth and urban expansion, but expectations are not always realistic in the short term and finally landowners have a price below they will not sell. (Goodchild and Munton, 1985).

A major impact of the planning system on the behaviour of landowners is the time taken to prepare Statutory Plans with the uncertainty this creates. The number of unanticipated developments that proceed not identified in the Development Plan, or often the Plans contain unrealistic or vague policies and these also increases the scope for negotiations (Goodchild and Munton, 1985).

In specifically considering the impact of tax on landowners the conclusion was that it was significant in the short term and often led to a wait and see outcome. This is supported by the response to landowners to national betterment taxation discussed in the last chapter. In relation to Planning Obligations and CIL the research predates these policies. The assumption from economic theory is that the contribution or

charge should reduce land values, but it depends on the timing of the land purchase agreement. In relation to Planning Obligations they are often negotiated much later than the land purchase price, so this assumption is not always correct. As with CIL as well the assumption about a reduction in land values only occurs if the cost of the contribution or charge is known in advance of the land price negotiation and that there is certainty of its continuation into the future, generally an uncertain assumption.

Whilst useful background it is important to consider this research in terms of the policy context at the time and whilst some of the conclusions probably still hold true some matters may not. In any event an appreciation of the motivations and decision making of landowners is important within the CIL policy making process for the assessment of the threshold land value, i.e. the price a landlord will be willing to sell land.

### ***3.5.5 Who gains and who loses from value capture mechanisms***

The issue of who gains and who loses from the impact of various planning tools in this case value capture mechanisms, was considered in the last chapter under the section on Impact fees. The dividing up of the value generated by development of a site between the various actors to the process, in particular the landowner, the developer and the local authority is the main focus of the negotiation between the actors and of the value capture mechanism in attempting to capture a share for the public sector to fund infrastructure provision. However, in considering the wider policy picture, there needs to be consideration of other less obvious stakeholders, such as purchasers of property and the impact of value capture mechanisms on the completed development property prices.

This depends on the market conditions for the end use development, if supply and demand are such that end use development values can rise then more economic rent can be generated, this can in turn provide other actors such as developers or landowners with higher income, as higher profit levels or higher land values, alternatively the value capture mechanism can capture more funding for infrastructure provision, paid for by the occupiers of new development, but benefiting them as well as the wider community. If the infrastructure could not have been funded by the increased amount collected from the value capture mechanism then

the public sector would have needed to fund the infrastructure to enable the development to go ahead and this would have come out of wider taxation from the wider community to the benefit of the occupiers of the new development.

The interaction between the land market and property market is also relevant, as if there is a shortage of supply of land then the price will go up, this will impact on the amount of development value that can be shared between the developers profit and the value capture mechanism. The supply of land is determined not just by landowners and their expectations, but also by the allocation of land uses by the planning system (Whitehead, 2016).

If the developer as another actor doesn't get enough profit to compensate for the risk, the development will not go ahead; this in turn will impact on the supply and price of property and impact on demand and values of property. Wider policy proposals to generate supply of property may override the need to capture value for infrastructure provision.

Accordingly, the impact of value capture mechanisms cannot be seen in isolation from other policy objectives and tools and who may benefit and lose. It also suggests the importance of planners having knowledge of market mechanisms and how value capture mechanisms and indeed other planning tools impact upon their operation.

### **3.5.6 Market Skills of Planners**

Planning Policy will influence the market as indicated above, but in order to employ policy in a more effective way, spatial planning needs to embrace the notion that planners are market actors and seek to develop and build their skills and capacity in this area, to improve their effectiveness. This includes a view that planners need to have an improved awareness of economic analysis and the impact of policy tools on local markets and funding infrastructure, both specifically relevant to this research (Amborski, 2011). In their article Adams and Tiesdell (2010) suggest there are three crucial areas in this respect:

- 1) Market Rich Information – needs to be secured and this needs to be supported by a better understanding of the motives and behaviours of private sectors actors

- 2) Market Related Skills – whilst planners often believe they are in a negotiating role with developers, especially in the area of planning gain, where it can become a dividing up of the spoils. Instead planning intervention could be seen as strategic market management involving a collaborative negotiation, in which planning action helps transform market potential (Adams and Tiesdell, 2010).
- 3) Market Rooted Networks – as implementation and development relies on private sector actors to deliver, the challenge is for planners to build networks and breakdown the hostility between public and private sectors and build trust and relationships in which there can be collective learning (Adams and Tiesdell, 2010).

This will not only require planners to acquire and develop new skills, but possibly will also require a cultural shift as referred to earlier, something which has been explored in this research into the behaviours of planners and other actors in the case studies.

The effectiveness of spatial planning and its interaction with the market has moved from a market and planning dichotomy to a dialectic, which is encapsulated in the concept of governance, but this requires government to reach out to other stakeholders and involve them in the process. This is a change from market intervention, to participation, which is more inclusive (Oxley, 2004b). But this, as discussed earlier relies on relationships, and to assist in building these relationships, Adams et al (2008) in summarising a series of research papers suggests four areas where state actors could learn about the market:

- 1) There is no such thing as a single market in land and property. – Policies need to be targeted to reflect the particular characteristics of the submarket they are intended to influence.
- 2) The importance of market dynamism. – The property market is not static even though some analysis may make this assumption for convenience; emphasis cannot be on reaching equilibrium but rather how to achieve a desirable change of state.
- 3) There is a desire among market actors for greater policy stability and predictability. – Policy has unforeseen impacts as well as predicted impacts,

closer working on policy formulation would be desirable and closer state market relations are crucial to this.

- 4) Evident side effects of planning and associated public policies. – It is important for policy makers to understand market structures and disaggregation, yet there are also opportunities from side effects (Adams *et al.*, 2008).

In addition they suggest there are three main areas where market actors could learn about the state:

- 1) The need to understand both the theoretical and practical insights into political and institutional realities which some market actors tend to ignore. – The fragmentation of the state and the need to understand the realities under which state actors have to work.
- 2) Outcomes of policy objectives. – The market actors need to understand the policy objectives that the state is seeking to achieve and that these may not be clear or easily measurable. The notion of power influences on this process also needs to be understood.
- 3) There is a broad array of tools or instruments available to the state in seeking to change market outcomes. – These have been highlighted above, but also the restrictions and limitations of what is possible and available as well (Adams *et al.*, 2008).

These areas reflect some the earlier research and have assisted in framing the areas of investigation in the research. Having discussed the tools and instruments planners have at their disposal it is now appropriate to consider the nature of the decision making process itself, starting with consideration of the process itself and then moving on to consider wider issues such as the types of knowledge involved and the use of judgement and discretion by planners.

### **3.6 Viability in planning to assess and share the Economic Rent**

As set out above as the market mechanism has emerged as the prevailing governance mechanism, the policy tools have also shifted responding to this change this has placed viability and deliverability at the centre of planning policy and planning tools such as CIL. There are several implications that emerge from this, the



nature of the assessment of the viability, the allocation amongst the actors involved and the governance of that process, these are now considered.

### **3.6.1 The preparation of Viability Assessments**

There was significant discussion in the last chapter about the detail of the viability assessment process and the guidance that is available to support that process. As both the CIL policy and the Viability Testing of Local Plans are relatively recent policies requiring area wide viability assessments relatively little research has been undertaken in relation to this process. It is important to make the distinction between area wide viability assessments and viability assessments for Planning Obligations on a specific site which have been researched (Claydon and Smith, 1997; Campbell and Henneberry, 2005; Burgess and Monk, 2016; Dunning *et al.*, 2016) and which reflect the increasing shift towards a negotiation role for planners within an increasing need to consider viability and deliverability of development proposals. However, whilst the negotiation of Planning Obligations can often be relatively obscure and influenced by the knowledge and skills of the actors involved, the opening up of the area wide viability assessment required in the CIL policy may have significant impact on both the decision making process and the governance arrangements.

There are some key points however that can be learned from the implementation of Planning Obligations and which are likely to be influential on the implementation of CIL. Important areas of practice and skills were in relation to planners having knowledge of viability issues and understanding of development economics, which have been identified several times over the years and have become even more critical since the financial crisis in 2008 (Dunning *et al.*, 2016). It is also apparent that the evidence of delivery of Planning Obligations across the country has been very varied. Whilst these variations did partially reflect the strength of economic and market conditions, this didn't fully explain the variations, and raised the importance of dissemination of best practice, improving skills and even changing cultures as critical (Dunning *et al.*, 2016). To assist this process Dunning *et al.* (2016) have set out a model to illustrate this see figure 3.4. This shows the position of an organisation in terms of its performance, with ideally seeking to move local authorities into box (b) from the other boxes.

The increasingly important role of development viability appraisals (DVA) in supporting planning policy proposals has been investigated by McAllister et al (2015) both in how they support CIL rates and as evidence to support the deliverability of Local Plan proposals. They consider the DVA as a “calculative practice”, and suggest that the DVA itself presents a position of objectivity and precision, which in reality is not possible and which obscures the fact that the models inputs and outputs are socially constructed (McAllister *et al.*, 2015).

	<b>Policy</b>		
		<b>Weak</b>	<b>Strong</b>
<b>Practice</b>	<b>Strong</b>	(a) Tactically Strong; Strategically Weak	(b) Tactically Strong; Strategically Strong
	<b>Weak</b>	(c) Tactically Weak; Strategically Weak	(d) Tactically Weak; Strategically Strong

Figure 3.4 Transitions in policy and practice (Dunning *et al.*, 2016)

McAllister *et al.* (2015) also suggest that this use of DVA and their numeric nature perhaps offer a common ground for trust and negotiation based on (Porter, 1995), but that more likely drawing from (Christophers, 2014) that the DVA is performative in nature. Christophers (2014) in his consideration of the Three Dragons appraisal model suggests that the nature of the model is such that it shifts from being an analytical tool to becoming one of determining and influence the performance of the decision making process, with human actors simply feeding in data into the model. These standard models it is argued also help embed certain standard assumptions such as the profit level of 20% of GDV for developers.

Denis *et al.* (2006) make the point that numbers and quantification can in itself exert power and McAllister et al (2015) point out that the “Black boxing” of the detailed calculations in the DVA can also exclude actors from the process who don’t have the skills to interpret the figures. They go on to say that the DVA is a vehicle to make the

complex process more governable (McAllister *et al.*, 2015), which will now be considered further.

### **3.6.2 Development Appraisals Spatial and Temporal Issues**

It is important to acknowledge that the developer's decision to develop has two parts, the market assessment, is there demand for the end product and secondly the financial appraisal, can the scheme be delivered and make a profit to compensate for the risk involved, a development appraisal includes data from both parts (Henneberry, 2016).

As discussed above the Viability Assessment element of the CIL, comprises a series of hypothetical development viability appraisals (DVA) on a range of sites, each based on the residual method of valuation which doesn't deal with time particularly well, for three reasons. Firstly, residual valuations use current values and costs to calculate the current residual land value, no attempt is made to forecast into the future. Secondly, the assumptions on costs don't always adequately reflect their true cost over time. Finally, value is usually back loaded to the end of the development process (Wyatt 2007). Cash flow models can address this, but the simplistic residual valuations used in CIL hypothetical DVAs as part of the Viability Assessment process tend not to.

In a critique of appraisals in practice it is argued that the assessment of project performance should be separated from the financial decision (Henneberry, 2016). The developers return as a lump sum profit is not very realistic, the assumption of the financing and funding all being debt is also unrealistic in practice, yet these are the basis for the residual valuations in the DVAs.

The complexity of the appraisal valuations are such that the impact of some variables is much greater than others on the overall outcome. The impact of land value if fixed at the beginning in the model will be very high, in fact the whole issue of front and back loading of various elements in the appraisal is influential, which is also effected by the discount rate assumption (Henneberry, 2016). In addition to the above temporal issues connected to the mechanics of the valuation and appraisal there is also the effect of the property market changes and delays on the construction process.

Moving on to spatial effects, costs and values vary geographically and this is one of the major challenges faced by CIL is how to map these differences. The CIL viability assessment by using a simplified appraisal system, to deal with the averaging across a range of hypothetical sites, cannot reflect the heterogeneity of development conditions across different specific sites. Accordingly CIL rates will therefore tend to be set conservatively, to ensure viability of sites with higher development costs, this in turn will mean that CIL will impact less on high value schemes.

Finally, related to the above, the big issue is the separation of cost and value, the use of a cost based charge, to raise revenue, as constrained by a viability test (Henneberry, 2016). This separation of cost and value in the assessment process is at the heart of the problem with the CIL viability assessment process, reflecting once again some of the problems from earlier value capture mechanisms.

### **3.6.3 The Governance of the Viability Assessment Process**

The governance of the DVA process was also considered by McAllister et al (2015) and three main points emerged, firstly, the relative lack of oversight of or regulation of the DVA process, with little codified guidance, which as discussed in the last chapter is often contradictory. The rules of the process are not codified and much of this is controlled by specialist consultants. Which leads on to the second point that there is the governance of the client and consultant relationship to be considered.

Finally, the importance of consultation and collaboration within the appraisal process to ensure robustness. This comprised two elements, the contribution of local knowledge, which can be considered to be the comparable evidence to support the appraisal and secondly

*“the inclusion of a range of stakeholders, often with conflicting interests, highlighted the intrinsic uncertainties associated with the assumptions of the modelling process. This served a legitimisation function, neutralising opposition and increasing stakeholder buy-in to the process. However, the consultation process was essentially limited to experts and lay participation was absent”. (McAllister et al., 2015, p. 15)*

The emerging issues from this research are, the limited guidance provided by national government on how to undertake the viability assessment process has

meant due to a lack of capacity, skills or confidence, to local authority planners relying on the appointment of consultants. In addition, the relative absence of any governance by national government to define best practice has meant this has been provided by other institutions and by specialist consultants. This accordingly raises the importance of the local authority planners as client's relationships with specialist consultants. Finally, the consultation and collaboration with local stakeholders again is a key influence on the viability assessment process. Not just because of the increasing emphasis placed on this is national guidance from 2012, up to the NPPG in 2014, but also because of the need to secure evidence and to secure agreement within an uncertain process from key stakeholders and partners. However, this is a rather limited group of actors with many stakeholders excluded due to not having the specialist knowledge to engage. These are all key elements that were considered within the research.

### **3.7 Types of Knowledge in Planning**

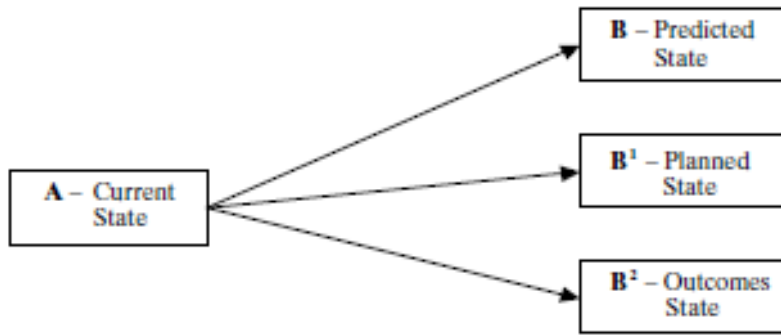
There has been research into the types of knowledge planners use within their decision making, over several years, in 1991 Healey and Thomas identified three knowledge areas, the capacity to deal with information, the ability to understand organisations, networks and power relations and the ability to assess, expose and deliberate consequences (Healey and Thomas, 1991). In 1992 Healey set out five areas of skills which planners used in decision making, firstly, Procedures: knowing and working the institutional apparatus of the planning system, secondly, Design: assessing design from different points of view, thirdly, Politics and Institutions: what the reaction of local politicians will be to certain proposals and decisions, fourthly, People: showing empathy and relating to a variety of different people and finally, Norms: boundaries and expectations of behaviour (Healey, 1992b).

These skills are then synthesised into three knowledge types, rational-technical, aesthetic-expressive and moral-practical (Healey, 1992b). In more recent work in the area, Healey identified four knowledge types, Strategy-making (the capacity to know a place), Imaginative capacity to see opportunities, Synthetic thinking and the Capacity for judgement (Healey, 2009).

A further alternative model was set out by Rydin in 2007, which identified four types of knowledge claim, empirical, predictive, normative and process. In planning

however it is not just the types of knowledge, but how they are integrated (Rydin, 2007). The Rydin model in figure 3.5 shows the seven types of knowledge claims in four categories and how they relate together, this could be an appropriate model to use as a basis to analyse planners decision making in respect of the CIL policy. Especially as CIL like many other planning policies involves the handling of multiple knowledge sources within a decision making process.

The framework as well as providing an approach to categorise knowledge types, also considers the testing of different knowledge claims, and even conceptualises planning as the creation of a series of arenas to recognise and test different knowledge claims (Rydin, 2007). In these arenas by “opening-up” to give space to voices and claims and “closing-down” to recognise and test claims, the planning system performs its function, the framework is needed to help identify the different knowledge types and the appropriate institutional arrangements needed.



<i>Type of knowledge claim</i>	<i>Description</i>	<i>Category</i>	<i>Link to Figure 1 above</i>
Current state	Empirical account of current socio-economic and environmental situation	Experiential/ empirical	State A
Predicted state	Prediction of future scenario under trend conditions	Predictive	State B
Societal processes	Process understanding of social, economic and environmental processes affecting society	Process	Linking A and B
Planning processes	Process understanding of planning	Process	Linking A and B <sup>1</sup>
Outcomes state	Empirical account of outcomes of planning processes in specific societal context	Experiential/ empirical	State B <sup>2</sup>
Planning–societal interactions	Process understanding of how planning and societal processes interacted to create outcomes	Process	Linking A and B <sup>2</sup>
Normative knowledge	Understanding of desired goals for planning	Normative	State B <sup>1</sup>

*Figure 3.5 Knowledge(s) and the planning process (Rydin, 2007)*

The framework also sets out to assist with some of the Institutional Issues, such as how knowledge is generated, how is the testing to be handled and what is the role of planners and researchers in that process (Rydin, 2007). The idea of planners as co-producers of knowledge, in the commissioning and appointment of consultants, is relevant to the CIL policy making process and is also addressed in the framework. The categorisation of types of knowledge used within planning, whilst useful is perhaps less important than how the knowledge is used and how that knowledge is contested as part of this process.

In the literature there is however much agreement on the importance of the application of knowledge for action as being central to planning as a process, and of the integration of multiple knowledge's (Vigar, 2012). Planning activity operating at the interface of knowledge and action is also discussed by Campbell (2012), who believes that the definition of knowledge can be left broadly defined, but by using the term knowledge as opposed to data, implies an assumption of causality that knowledge can provide insight into outcomes (Campbell, 2012). Also that between knowledge and action is "synthesis" which is the combining of knowledge types together to make decisions (Campbell, 2012).

Planning as a practice of Knowing is an alternative conceptualisation of the use of knowledge in planning, which shifts the focus from knowledge as something planners have, to knowing as something planners do (Davoudi, 2015). The relationship between knowledge and action is central to planning and is now considered.

### **3.8 Decision making in Planning**

The use of knowledge in decision making in planning is determined by the institutional context as this determines the blend of knowledge's that need to be brought together. Professional knowledge is conditional and is based on the judgement of the particularities of a specific situation (Squires, 2005). Knowing this context is vital to making appropriate judgements and this in itself is a type of knowledge, "action as a form of knowledge" (Vigar, 2012, p. 6). Knowledge is embedded in planning work in two respects, it is generated by situated social practice and by engagement with material reality (Vigar, 2012). Professional Knowledge can include experience, or tacit knowledge, learned by doing and codified knowledge as set out by research and policy and learned through formal education (Vigar, 2012). The knowledge is generated in the context of action to achieve an outcome and is motivated as expertise (Vigar, 2012).

Campbell (2012) suggests that decision making in planning confronts four generic questions, what is going on here (Descriptive knowledge), why is it like that (Analytical or Explanatory knowledge), what to do (Prescriptive knowledge) and what ought to be done (Normative knowledge). Davoudi (2015) in a similar way sets out knowing what (cognitive theoretical knowledge), knowing how (skills and technical knowledge), Knowing to what end (moral choice) and Doing (action/practice). These



are brought together as practical judgement, which includes desire (what ought to be done) and the right judgement (what is done), which is more about experience of doing than evidence or codified guidance (Davoudi, 2015).

Similarly, Campbell divides questions into “is” questions and “ought” questions, with planning decision making about the linking of is and ought (Campbell, 2012). This is further developed into the concept of “is” being “analysis” which is explanatory and backward looking and the “ought” being “synthesis” which is a form of reasoning and is forward looking. Synthesis learns from the past but is normatively directed and as such is dependent on judgements and ethics as it is the reasoning behind the choice of the course of action and consequentially involves more risks than analysis (Campbell, 2012). This all has important implications for decision making in planning and in CIL, which is more than assessing evidence, it involves moral judgements and therefore values, it is also about experience or tacit knowledge as well as codified knowledge in guidance.

### **3.9 Judgement and Discretion in Planning**

Campbell (2006) suggests that planning is the art of situated ethical judgement, and makes five points about what needs to be done in decision-making in planning.

Davoudi (2015) states that planning as a practice of knowing is a dynamic process, “it is a socially constructed understanding that emerges from practical collaboration” (Davoudi, 2015, p. 323). As a result it is also therefore multi-dimensional, with four dimensions, it is situated and provisional, collective and distributed, purposive and pragmatic and mediated and contested (Davoudi, 2015).

The use of judgement introduces not just the use of knowledge but also values, by making judgements planners take moral positions, involving personal individual values (Vigar, 2012). The judgement often uses previous experience of similar situations applied to the evaluation of a variety of knowledge sources within the current context. However as all situations are effectively unique to some extent, it also requires practical judgement for each situation (Forester, 1991 cited in Vigar, 2012).

The combining of a range of knowledge sources also introduces the concept of power plays and the influence of parties on the planners judgement (Flyvbjerg,

1998). The use of different knowledge's by different actors in their different roles and how this relates to the testing and validating knowledge is also important (Alexander, 2008). Judgement can be altruistic in nature, seeking to give all stakeholders a voice (Hillier, 2000) but can also be more technically driven. In relation to the judgements around the setting of the CIL charge rate, the primarily technical nature of the evidence and calculation may mean, a consultation with mainly professionals and technical experts, excluding others without the specialist technical knowledge, but it does not exclude the concept of power plays and of the need to consider moral positions and values.

The introduction of values and the taking of a moral position, of course reflects the move away from planners taking a technic-rational neutral position, as it has become increasingly impossible (Healey, 2006a). Two issues emerge from this, the tension between the values of individual planners as professionals and the collective values of the organisations within which they work and secondly, that the historic neutrality of planning decision making has actually supported power plays (Campbell 2006). The freedom of planners to make decisions sometimes termed the "judgement space" (Vigar, 2012) or "discretionary space", is considered to be diminishing (Gunn and Vigar, 2012). Inch (2010) identifies an acceptance of a disparity between values that planners aspire to and identify with and those they seem to be prepared to accept in everyday practice.

This reduced space for judgement and discretion it is argued has emerged as a result of Local Government reform and the reduction of the state as referred to earlier. Greater involvement by politicians in decision making and the view that the professional autonomy of planners has been undermined by changes to the system (Gunn and Vigar, 2012) are also important background to this study of CIL. It has led to a reappraisal of the role of planning and its relationship with the development industry (Campbell and Marshall, 1998; Inch, 2010). The move to a more market orientated planning system of which CIL can be seen as one element, has also seen resistance in planning practice (Campbell and Henneberry, 2005).

The nature of the use of knowledge in planning decision making being socially constructed and dynamic, the use of judgement and discretion by local authority

planners under pinned by values but impacted by policy guidance are a key part of the background to the research and the impact on the role of planners.

### **3.10 Conclusion**

The Literature Review has sought to consider the literature at several levels in how it has related to the research aims, firstly a consideration of the economic theories setting out how the economic rent (or development value) at the centre of value capture mechanisms can be assessed and divided up. The move from the assumptions of rational behaviour by actors in their decision making at the micro economic level, to having to consider the institutional context on the decision making process and the alternative approaches available to assist this. The various models of decision making within the development process are then considered, with again the development of the analysis from classical rational approaches to institutional and network approaches.

This shift in governance arrangements, is then considered within a wider context of policy making as the shift from hierarchies to networks is examined, leading on to the consideration of the market which has prevailed as the dominant governance mechanism. This leads on to a consideration of the Planning tools that are available to influence decision making at various levels within the market, the impact on various actors, who benefits and who loses from value capture mechanisms and how this impacts on the skills of planners as actors in the process.

The calculation of the share of the economic rent is then considered as the different actors shares are assessed as part of the process. An examination of the limited research into viability assessments and the appraisal process is considered, it being a key part of the policy making in value capture mechanisms.

The review of the literature finally considers the planner's use of knowledge within the decision making process, the relationship between action and knowledge, the moral judgments and values that are involved in planning decisions and the limited amount of discretion planners have, with the impact this has on the role of planners. The dynamic and socially constructed process of planning decision making are considered further in the next chapter on the research methodology.

## **Chapter 4. Methodology (Argumentative Discourse Analysis of the micro politics of value capture)**

### **4.1 Introduction**

The purpose of this chapter is to set out the theoretical framework and methodology for the research. The ontological and epistemological assumptions underpinning the research are set out, followed by consideration of the choice of methodology for the research. The research design is then discussed with the methods of data collection and analysis also set out. A final section on the researcher's positionality and reflexivity in relation to the research together with any ethical issues that need to be considered are discussed.

### **4.2 Ontological and Epistemological Position**

The nature of the research as set out in the research questions earlier, concerns policy making, which is driven by changing social meanings, as highlighted by the history of policy making in this subject area. The research also seeks to consider the behaviours and decision making of actors within the policy making process.

Accordingly, the research has taken a constructivist view of the nature of reality: that reality is essentially socially constructed and there will be a range of interpretations from different actors, a series of multiple realities. This is manifested through people's actions, words and beliefs as social reality is produced and reproduced as practices with multiple meanings (Fischer, 2003).

In turn the epistemological position is one, where the nature of social knowledge being without structure or order is produced by people interpreting the world and trying to make sense of it (Wagenaar, 2011). This epistemological position seeks to understand but not explain behaviours (Fischer, 2003). In order to study the "making sense" of this complexity requires ordering devices to assist in the interpretation of meaning that different actors place on it, such as in discourses. "Social Constructions are produced and negotiated through the medium of discourse" (Fischer, 2003, p. 68).

### **4.3 Policy Analysis**

As mentioned earlier planning as public policy has an impact on land and property markets at three different levels, macro-economic, land economy and micro-economic. This research sought to investigate the latter two areas, the land economy or property market and the micro-economic or level of the firm or developer. Within a local context these two levels interrelate, the micro-economic level of the firm involving actors making decisions based upon financial models and appraisals, and the land economy level being the area at which the policy is implemented and involving a network of actors in its implementation. In studying these two different levels of interaction, two areas of research need to be considered, firstly that of policy analysis as it relates to local areas and networks and secondly the decision-making of actors at the micro-economic or level of the firm.

#### ***4.3.1 A History of Policy Analysis***

The study of policy implementation can be traced back to the 1950s (Lasswell, 1951) and the study of mechanisms of policy making. In the 1950s however the assumption was that a linear process of survey, analysis, plan, and implementation was how policy was delivered, perhaps with a further step of feedback to learn lessons for the future. This traditional approach also assumed that by establishing formal structures and procedures policy would be implemented as envisaged. This also reflected the welfare state and the dominant role of the public sector in the immediate post Second World War period.

In the 1960s and 70s the dominant role of the public sector, was beginning to be challenged, the assumption that formal structures and procedures ensured policy implementation was undermined by individual people pursuing their own agendas. These actors often in positions of authority, termed “elites”, used informal processes behind the formal structures and procedures. This introduced the concept of “power”, and how individual actors and groups of actors used power to influence decision-making, which in turn introduced the importance of relationships between actors and how they negotiated with each other. In the 1960s and 1970s the analysis of actors was prevalent in policy analysis with emphasis placed on the politics and power in decision making and how the state interacted with the private sector, the Action-centred approach of (Barrett and Fudge, 1981) and Advocacy

Coalition Frameworks (Sabatier and Jenkins-Smith, 1993) are examples of policy analysis at that time.

In the 1980s the state and private sector relationship shifted, with a reduction in the power of the state and government, sometimes referred to as a shift from Government to governance (Rhodes, 1994). In policy analysis it also reflected the fact that whilst the formal structures and procedures of the past had been embodied in the state and public sector, this was increasingly embodied in social relationships which “structured” the behaviour of actors, rather than formal structures and procedures of government policy.

By the 1990s the field of policy analysis recognised that governance was within networks of relationships and the “Argumentative Turn” (Fischer and Forester, 1996) was introduced, as an approach with which to analyse policy. This introduced a range of concepts with which to analyse policy networks, such as frames (Schön and Rein, 1995) and policy narratives, storylines or discourses (Hajer, 1995; Yanow, 1996). In this postmodern approach to research these concepts attempted to provide ordering devices with which to mediate between structure and agency (Hajer and Laws, 2006).

Towards the end of the 1990s the “Institutionalist Turn” (Healey, 1999) was presented as an alternative approach, which emphasised social relationships strongly situated in specific localities. This introduced the capacity of governance into the analysis framework of the networks, but again used ordering devices to study these relationships, such as policy communities, policy arenas and policy discourses with which to study policy making in specific localities (Vigar *et al.*, 2000; Healey, 2006b).

In the 21<sup>st</sup> century, the emergence of “Interpretive Policy Analysis” (Yanow, 2007), “Deliberative Policy Analysis” (Hajer and Wagenaar, 2003) and Phronetic Policy Analysis (Flyvbjerg, 2004) as examples of a new interpretive approach, have taken some of these matters further. All broadly agree that the rational and linear approach to policy implementation is no longer appropriate for studying contemporary policy implementation due to the challenges, uncertainty, conflict and complexity involved. Accordingly, an interpretive policy analysis approach was considered to be

appropriate, as it was based on discourse analysis with its ability to deal with multiple social meanings, this is considered further in the next section.

#### **4.4 Theoretical Perspectives**

The research questions set out earlier, sought to investigate the decision making processes of various actors within the network, the local authority planners, making the decision regarding the CIL charging level, the decision making of developers and landowners and potentially the decision making of other stakeholders. This involves making judgements as well as generating and testing different types of knowledge claim, accordingly it varies according to perceptions of risk and uncertainty, the availability of and interpretation of knowledge claims. Whilst notionally undertaking similar analysis of the knowledge claims; the differing interpretations, identities and objectives of different actors will influence their judgements in the process.

Accordingly, the research methodology was required to capture these differences and to understand the objectives, interpretations and meanings of the various actors and how they influenced the policy making process. The use of discourse analysis was therefore considered as an appropriate mechanism with which to undertake the research. Discourse is more than discussions or talking, it is the meaning of statements and is very dependent on the social context within which it is uttered and by whom, furthermore at the micro-political level of everyday interactions, they represent systems of power and the social practices that produce and reproduce them (Fischer, 2003).

Discourses are defined by Hajer “*discourse is a specific ensemble of ideas, concepts and categorizations that are produced, reproduced and transformed to give meaning to physical and social relations*” (Hajer, 1995, p. 44).

Discourse analysis attempts to show how these actions and objects come to be socially constructed and what they mean for social organisation and interaction, in this case within a specific policy area. Discourse analysis emerged from the work of Foucault, who used discursive practices as his basic unit of analysis (Fischer, 2003). Discourses also structure the policy debate, they determine the range of subjects that can be considered, they specify the views that are legitimised as acceptable

knowledge claims and even which actors that are the agents of that knowledge (Fischer, 2003).

There are several approaches to discourse analysis with two main categories, linguistically based approaches such as Critical Discourse Analysis (Fairclough, 1992) and more context based analysis such as the Interpretive Policy Analysis (Yanow, 2000). As Wagenaar (2011) sets out these can be termed discursive and dialogical approaches to using discourse analysis, the former draws from an individual's self-contained understanding of the world whereas the latter sees meaning emerging from the position of the individual and his perspective. This leads on to the inevitable requirement to consider the interaction between the relationship of the individual and other actors and with the wider context through which meaning emerges (Wagenaar, 2011). Practices are a reflection of a shared framework of understanding actions of the world, they represent a meaningful exchange between our actions and their impact on the world (Wagenaar, 2011).

The interpretivist approach, assumes that social reality emerges from the interaction between actors but is not willed, it is not a product of thinking but is tied to actions and patterns of activities and from interaction with the wider world and between actors (Wagenaar, 2011).

This latter category of interpretive discourse analysis, was considered to be appropriate to the research, as the research seeks to deal with multiple meanings and the micro-politics within a specific area. The contested nature of the micro-politics in this field of policy making however, also suggested a Foucauldian inspired approach, which when applied to policy analysis assumes that discourses are distributed across institutions and struggle and compete against each other for recognition and dominance (Fischer 2003).

Hewitt (2011) identifies four strengths of Foucauldian discourse analysis of public policy, firstly, it illuminates the mechanisms of institutions and governance; secondly, it helps uncover the diverse influences that define a policy problem; thirdly, the Foucauldian concept of power suggests that by studying the details of dialogue can help understand everyday practices within the policy making area and finally, discourse analysis recognises the contingent nature of policy making with the evidence and information used in the process being created within the confines of the



discursive struggle. This is particularly relevant to the current research in its investigation into the generating and testing on knowledge to support the decision making within this policy making.

Furthermore, these approaches seek to link discourses to practices, on the basis that discourses emerge from everyday practices taking place within the social structures or institutions within which they take place. It is important to point out that “Institutions” in this sense mean rules and social norms, rather than specific organisations. Conversely, the struggle between discourses is also reflected in changes in everyday practices, (Fischer, 2003). Accordingly, any policy analysis also faces the challenge that those meanings are constantly changing (Gottweis, 2003).

Hajer and Wagenaar (2003) set out five contemporary challenges facing policy implementation and governance in a network society. Firstly, the new space of politics termed as the “institutional void” where the rules, authority and accountability between parties is unclear. Secondly, there is constant uncertainty and insufficient time and knowledge with which to make decisions. Thirdly, the advent of increased cultural diversity means groups have different languages and values, requiring translations of meaning and a challenge to mutual understanding. Fourthly, an awareness of interdependence between groups requires a need for collaboration between groups and between policy makers and groups. Finally, there is a greater dynamic of trust and identity, between parties, the trust once held in policy makers can no longer be assumed as in the past and the collaboration between policy makers and groups generates identities which in turn influence the implementation of policy (Hajer and Wagenaar, 2003).

In addressing these challenges of policy implementation and analysis thereof Hajer and Wagenaar (2003) go on to advocate a deliberative policy analysis approach which is built on three elements, interpretation, practice and deliberation. A range of different alternative methodological frameworks are available to implement this approach and those considered in the research are now briefly discussed.

#### **4.5 Alternative methodological frameworks**

There were several Deliberative or Interpretive Policy approaches considered, firstly Interpretive Policy Analysis (Yanow, 2000), which sets out to uncover communities of

meaning and practices, this methodology is particularly appropriate to uncover local knowledge and works well with processes of collaboration. Whilst this methodology could have provided some benefits, the CIL policy involving a limited numbers of powerful actors, (most with specialist knowledge), in a contested discussion, it was considered that other methodologies may be more appropriate in this case.

An example of a Foucauldian inspired analysis considered was that of Flyvbjerg (1998), this approach based on a 15 year analysis of transportation planning in Aalborg, Denmark, seeks to uncover the conflict between rationality and power in public policy decision making. It therefore seemed to offer a useful approach to the research into CIL, with its seemingly rational approach to viability appraisals likely to conflict with the powerful interests of various actors. The approach termed “Phronetic Planning Research” places power at the core of the analysis and is problem driven rather than method driven (Flyvbjerg, 2004).

The decision not to choose that approach was due to two factors, firstly the lack of detail in the methodology which only provided very general guidance, but more importantly it was considered to be more applicable to a long term analysis. The constrained nature of the timescale for the research project meant that this approach probably would also not be appropriate.

Finally, consideration was given to a Foucauldian based analysis by Sharp and Richardson (2001), this methodology was again quite general in nature and whilst also seeking to analyse the discursive struggle and the impact of this on practices, it was considered it would be difficult to operationalise. However, as discussed in the next section a Foucauldian based methodological framework was selected as the basis of the research methodology.

#### **4.6 Research Methodology**

As the nature of the research involved seeking to uncover meanings, involving non-quantifiable data such as words from a variety of sources, including documents and interviews, a Qualitative Methodology was selected, as appropriate (Bryman, 2008). The research also sought to investigate the differences between people’s actual behaviours and what they say they are; this analysis of behaviours again required a qualitative methodology.

The research also sought to investigate the interaction and collaboration that can take place within a network of actors, as well as the conflict and use of power within networks as knowledge claims are contested (Rydin, 2007). The nature of contemporary network governance requires interpretative and qualitative methodologies to be able to examine the underlying mechanisms that are active in these complex governance and decision making environments (Hajer, 2003).

In contrast as mentioned earlier, research into property markets has been mainly quantitative in nature, often based on longitudinal analysis of data over time, reaching conclusions about trends in values with hedonic market analyses being an often used example (Bramley, 2013). However, there is an increasing interest in using qualitative methodologies in this area of research linking of property market and policy making analysis (Hincks *et al.*, 2013). Hincks *et al.* (2013) also suggest that adoption of differing perspectives and methodologies and greater diversity would be valuable; to use institutional and behavioural approaches to enrich the more traditionally used quantitative and econometric models. This research was seen as an opportunity to apply an institutional approach and qualitative methodology in property research which has been relatively rarely been undertaken (Leishman, 2003).

As mentioned earlier Foucauldian derived approaches were considered appropriate as they should be best able to deal with the analysis of the micro-political processes involved in contested policy making. Argumentative Discourse Analysis developed by Hajer (2006) was selected, as it offered a detailed methodology developed from the theoretical perspective of Foucault, with the assumption that the dominant discourses positioned actors and that the discourse was the instruments determining this.

This methodology and its discursive mechanisms have been employed in the analysis of several areas of public policy; in environmental policy looking at Acid rain (Hajer, 1995; Hajer, 1996) where much of the detailed discursive mechanisms of the methodology were initially identified. These were developed into the full ten stage methodology later (Hajer, 2006). The mechanisms have also been employed by Hajer to analyse the BSE policy in the UK (Hajer, 2010) and to look at the redevelopment of ground zero in New York (Hajer, 2010). In addition, others have

also used the methodology to look at other policy areas such as Kern (2009) to compare environmental policies between the Netherlands and the UK relating to sustainable electricity systems and Hewitt (2011) on the policy and practice of rural development in the UK..

The application of the methodology to an area of policy making with a more confined area of specialist knowledge, but likely to involve significant contestation was proposed by this research. It was considered that the methodology would assist in uncovering of meanings held by different actors, hidden beneath the more tangible negotiations of quantitative data and evidence which would clearly take place in the implementation of a policy such as CIL.

As mentioned above Hajer (2006) has set out his ten step methodology for “Argumentative Discourse Analysis” which is shown below.

- (1) **Desk research** – general survey of the documents and positions in a given field, all to make a first chronology and come up with a first reading of events.
- (2) **Helicopter interviewing** – interviews with three or four actors that are chosen because they have an overview of the field from different positions. They might comprise a well-informed journalist, a key advisor to the government, an expert-policy maker.
- (3) **Document Analysis** – analysing documents for structuring concepts, ideas and categorisations; employment of storylines, metaphors etc. This should result in a first attempt at defining structuring discourses in the discussion. At this stage one would get a basic notion of the process of events as well as the sites of discursive production.
- (4) **Interviews with key players** – on the basis of the preceding steps interviews can be conducted with central actors in the political process. The interviews can be used to generate more information on causal claims (which led to what) that will always be the assumed core of the meeting on the part of the interviewees. But interviews might also be used to get a better understanding of the meaning of particular events for the interviewees it then becomes a focused interview (Flick 1998).
  - a. How did they interpret the event?
  - b. By so doing one aims to reconstruct the discourse from which an actor approached the situation.
  - c. We can also analyse how a particular cognitive shift came about.

d. What led to the actual “reframing”?

e. Was it reading a report, was it a meeting, a confrontation with a question to which the actor did not have an answer.

It might also be possible to use an interview to find out what made a person recognise another perspective as valuable. What was the shift about, was it about learning to know the people that uttered a particular point of view? Did it have to do with the practice in which people engaged (Forester 1999).

(5) **Sites of argumentation** – searching for the data not simply to reconstruct the arguments used but to account for the argumentative exchange. Examples, parliamentary debates, minutes of inquiries, presentation and interpretation of evidence presented to a particular research commission, panel discussions at conferences.

(6) **Analysis for positioning effects** – actors can get “caught up” in interplay, they might force others to take up a particular role, but once others are aware of what is going on they might also try to refuse it (indicators are, that is not what I meant, that is not what it's about at all). This positioning not only occurs at the person level it can also be found at the institutional level.

(7) **Identification of key incidents** – this would lead to the identification of key incidents that are essential to understand the discursive dynamics in the chosen case. As much as possible these key incidents are then transcribed in more detail allowing for more insights in which determined their political effects.

(8) **Analysis of practices in particular cases of argumentation** – rather than assuming coherence on part of particular actors, at this stage one goes back to the data to see if the meaning of what is being said can be related to the practices in which it was said.

(9) **Interpretation** – on this basis one may find a discursive order that governed a particular domain in a particular time. Ideally one should come up with an account of the discursive structures within a given discussion, as well as interpretation of the practices, the sites of production that were of importance in explaining a particular course of events.

(10) **Second visit to key actors** – discourses are inferred from reality by the analyst. Yet when respondents are confronted with the findings they should at least recognise some of the hidden structures in language. Hence to revisit some key actors is a way of controlling if the analysis of the discourse space made sense.

*Figure 4.1 Hajer 10 step methodology (Hajer, 2006)*

The operationalisation of this methodology is considered later, in the sections on data collection and data analysis. Using an interpretive policy perspective to the research as referred to earlier, it was also appropriate to use an inductive or grounded theory approach to the research, which is briefly discussed below.

#### **4.7 Grounded Theory Approach**

Grounded theory emerged in the book by Glaser and Strauss, "The Discovery of Grounded Theory" in 1967 (Glaser and Strauss, 1967) it is an approach that starts with data and seeks to build theory from the data, on an inductive basis. This contrasts with the testing of a theory by using data on a deductive basis (Bryman, 2008). The benefits of using a grounded theory or inductive approach, is that it encourages a dialogue between empirical data and theory development (Wagenaar, 2011). This is in alignment with the main aims of interpretive policy analysis which also seeks to move from empirical material to generalisations and to model building (Wagenaar, 2011).

The general approach of using the coding of data to help build theory and develop generalisations has been employed in the data analysis, within the structure of the Hajer methodology which again aligns well with grounded theory. The approach of coding data as actions, using the words and actions of respondents to try and interpret matters from their viewpoint reflect a grounded approach (Charmaz, 2014). They also relate well with the requirements of the Hajer methodological framework, which tries to reconstruct the chain of events in the sites of argumentation, the interpretation of their meaning to the various actors involved and in turn the impact on their policy practices. All require a close consideration of the empirical data as required by the Hajer framework and advocated by Grounded Theory.

Theorising from data using grounded theory is also useful, as it focusses on relationships, it accommodates the dynamic quality of the explanatory chain of events and promotes that explanations are cast in terms of the behaviours of actors (Abbott, 2004). From the descriptions of actions identified in the data the intentions and meanings of actors are inferred (Wagenaar, 2011).

Finally, the grounded theory based approach also fits well with a case study design as it involves seeking a depth of knowledge in data collection and analysis and to the

collection and analysis of situated knowledge, this is also in line with the requirements of the context based nature of interpretive policy analysis.

#### **4.8 Research Design**

The research design selected was Case Study; this was considered particularly appropriate as the research was seeking to uncover situated knowledge within a specific setting.

*“A case study is an empirical inquiry that investigates a contemporary phenomenon in depth and within its real-life context especially when the boundaries between the phenomenon and context are not clearly evident” (Yin, 2009, p. 18).*

The research was also investigating a series of decisions taken by a LPA, and again this is appropriate for a case study approach.

*“The essence of a case study, the central tendency among all types of case study, is that it tries to illuminate a decision or set of decisions: why they were taken, how they were implemented and with what result” (Schramm, 1971 as cited in Yin, 2009, p. 17)*

The need to uncover in depth data and analysis also supported a case study design, *“distinctive need for case studies arise out of the desire to understand complex social phenomena” (Yin, 2009, p. 4).*

The choice of a case study design whilst particularly appropriate, also presented limitations, primarily that they can be more descriptive in nature, presenting an understanding of a social situation rather than explanations. In addition case studies struggle to provide any predictive conclusions which could be generalizable to other locations or circumstances (Yin, 2009).

The selection of case studies is another important consideration, Yin (2009) sets out five rationales for the selection of cases as follows, a critical case to support or challenge a proposition, an extreme or unique case, a representative or typical case where lessons can be learned, a revelatory case and a longitudinal case (Yin, 2009).

In this research, time constraints and resources generally excluded the possibility of the longitudinal case. The initial selections of cases were chosen to illustrate a representative or typical cases, in areas with a poor property market such as the north east of England. There was also the potential objective that a comparison could be made in the future between these two case studies and other case studies in differing geographical areas, with contrasting property market conditions.

Whilst a comparative study with cases in contrasting property areas was considered, this was discounted as it was considered that the depth of research that was carried out in the two north east case studies would not be able to be replicated in another location. Therefore the concentration on the two north east case studies was considered the best approach, within the available resources and timescale. The researcher's previous experience of working in the area was partially the reason why a significant number of interviewees could be secured in the cases studies; this also enabled the depth of research to be carried out as required for this research design.

The case studies can therefore be considered to be representative in nature, although within the context of poor market conditions in contrast to case studies in the south east which could be more representative of typical CIL implementation across the UK, as CIL has been more actively introduced into the South East. The research however was not merely intended to investigate the CIL policy, but to use CIL as a lens to investigate policy making in the area of value capture (including s106 agreements). The more challenging context of poorer market conditions was of interest as this was likely to influence the relationships between different actors in the process and may be make the micro-politics more observable.

#### **4.9 Data Collection**

Three main sources of data collection were used in the research, firstly the review of the policy and literature as discussed in the last two chapters, these have provided insights that have framed the data collection from the case studies, secondly policy documents analysis at both a national level and at a local case study level and lastly, a series of semi-structured interviews with a range of actors involved in the two case study areas. Considered together the use of three sources of data can assist with triangulation to support the validity of the data analysis as discussed later.



#### **4.9.1 Policy and Literature review**

The review of the history of policy mechanisms in value capture in the UK in chapter 2 provided some important issues which have framed the later research. In considering the success of previous mechanisms several general points can be derived which can inform research into new policy mechanisms such as CIL.

These include, the distinction between explicit and implicit taxation approaches and the perception of the mechanism, this in some ways can be considered to be the conceptualisation of the value capture. In addition the transparency, predictability and efficiency of the mechanism also all emerge as factors impacting on the success of the mechanism. The challenge with all of the previous value capture mechanisms of actually being able to calculate the development value generated, which in turn then leads to the next challenge, of how this value can be shared out between the various actors in the process, including any value that can be captured to fund infrastructure provision.

The spending of the captured funding also raises some issues, the hypothecation issue in the matching spatially of the value captured with spend, also the certainty of the spend, termed the rational nexus issue. The value capture policy cannot be considered in isolation from other policies, its interrelation with other policies needs to be considered, together with who benefits and who loses from the policy mechanism and finally the governance of the policy making and implementation itself which is an important element of the research.

These issues emerging from the policy review, were considered in relation to the literature review of research in the field of value capture. The shift from theoretical assumptions about rational decision making to the need to consider a more detailed context specific institutional approach. The need to consider models of the development process and the decision making of actors in the development process which planning tools such as value capture mechanisms seek to influence.

The governance arrangements for policy making, the shift in governance from government and hierarchies to market and networks has influenced the nature of the research and the selection of the methodology as set out above. Finally, the research sought to investigate the use of knowledge in decision making by local

authority planners, research literature in this area has also been influential in the data collection and analysis.

#### **4.9.2 Policy Documents**

In the Hajer (2006) 10 step methodology set out above, there are two stages involving data collection from policy documents, the first stage Desk Research, and the third stage Document Analysis, these are both now considered.

The desk research involved a review of the policy documentation for the two case studies, together with a national policy document review. This took place in early 2014 and was able to take account of the significant number of national policy changes that had taken place from 2010 up to 2014. In relation to the case studies the position was that in 2014 Durham had reached the point of having submitted their draft charging schedule to the Examiner and were waiting for the CIL Examination in public in September 2014, following the Local Plan Examination in Public which took place over the summer of 2014. In relation to Newcastle/Gateshead, again in the summer of 2014 the Local Plan Examination in public took place. The CIL process however, having had two short periods of activity in September 2012 and September 2013 when a draft preliminary charging schedule had been published, and some follow up work in 2013, had been put on hold by the local authorities until after the Local Plan process was completed. This desk research provided an outline of the main issues and timeline for the CIL process in each case study area.

The third step in the Hajer methodology is the document analysis, which was undertaken from summer 2014 until spring 2015, during which the two case studies were relatively inactive in progressing CIL whilst the Local Plans were progressing through that process. This was helpful as it allowed a period of analysis of a whole range of documentation, including formal committee reports, minutes of meetings, and formal documents from the CIL process such as Charging Schedules and Viability Assessment reports, more details about which are discussed in the case study chapters. The changes in these documents were studied over the period as different versions were issued with differing emphasis and content, this helped reveal underlying meanings which were being sought by the discourse analysis.

This process involved the analysing of the key documents for ideas, notions and categories and for structuring concepts, and the use of storylines and tropes which will be discussed further in the section on analysis later. The key documents were placed into a chronology with the main events in the process identified, some of these were formal consultations but others were less formal and more difficult to identify, this was something investigated further in the key interviews. The sites for the discursive production were also identified based on the production of three key documents which formed the core of the policy making process and all of which were contested to varying extent by various actors.

#### ***4.9.3 Semi-structured Interviews***

In the Hajer 10 step methodology there are two stages of data collection involving interviews, step two “helicopter interviews” and step 4 Interviews with Key Players, these are now considered.

There were 5 helicopter interviews carried out in April 2014 to supplement the background for the research and with interviewees not involved in the case studies themselves. These semi-structured interviews were with a national policy expert on CIL, two local agents working in the north east one with involvement in CIL policy and one not, a former senior officer of a public agency in the north east and a local authority planning officer dealing directly with CIL policy in the north east but not in the case study areas. These helicopter interviews assisted in identifying issues that had not been highlighted by the desk research, to frame the more detailed data collection from the document analysis discussed above and the semi structured interviews with key players as will now be considered.

The fourth step in the Hajer methodology is the interviews with key players, again they were undertaken by way of semi-structured interviews, as this presented the opportunity to probe in further detail concerning points that emerged in the interview itself. The selection of interviewees was based on a mixture of using existing contacts and snowball sampling, whereby an interviewee suggests another interviewee. It was important to ensure that the selection of interviewees reflected opposing viewpoints across the policy making area, with those inside and those outside the policy making process, also actors at different levels in the policy making process, those at the strategic level and those at the operational “hands on” level for

the CIL policy. In addition balance was also sought by involving different groups who were involved in the process, such as property agents, consultants, developers and different departments within local authorities.

The purpose of the main case study interviews were to generate more information on the CIL decision making process and the causal claims of what events led to what in the chronological process of the policy implementation (Hajer, 2006). If appropriate and possible in some of these interviews to ascertain the meaning of particular events for certain key players and whether this led to them “reframing” the policy or the decisions taken. By being able to ascertain this, it was hoped to be able to reconstruct the main discursive mechanisms in the policy implementation. These interviews were not just about the micro decision making processes of implementing the policy process by officers involved in the front line of implementation, but also about the strategic context in which the CIL policy is implemented and the wider factors that were being brought to bear upon the CIL policy making. In turn to perhaps understand how the policy can be employed in a range of different ways reflecting local circumstances and objectives of the local authority as a whole, rather than something independent from other planning policy or indeed even other policy objectives.

Between May 2014 and February 2015 a total of 23 interviews were carried out with a total of 28 interviewees, across the two case studies, some of which had an involvement in both case study areas, of these interviews 21 took place in person, (of which all except one were recorded), 2 were telephone interviews which were also not recorded. It was not possible to interview every party who made a representation as part of the formal consultation processes nor every local authority officer involved in the policy implementation. However, it is believed that a representative range of actors involved in the process were interviewed, based on their roles in the process and supplemented by a snowball sampling process to select later interviewees. There were a few potential interviewees who were not able to be interviewed such as a senior planning officer in Newcastle City Council, whilst this would have been useful, as the equivalent officers at both Durham and Gateshead were interviewed, it is considered that the impact of this on the overall data collection was very limited as the range of roles and levels within local authorities were satisfactorily covered.

Interview	Reference	Description
<b>Helicopter Interviews</b>		
1	CA:NE:H1	Property Agent in NE
2	LA:N/NE:H2	Senior LA representative
3	LA:NE:H3	Planning Officer in NE
4	CA:NE:H4	Property Agent in NE
5	CA:N:H5	National Property Agent
6	DV:N:H6	National Developer
<b>Case Study Interviews</b>		
7	CA:NG1	Property Agent in NE
8	CA:NG2	Property Agent in NE
9	DV:D/NG1	Developer
10	CA:D/NG1	Property Agent in NE
11	LA:NG1	Senior LA Officer in NE
12	LA:NG2	Senior LA Officer in NE
13	LA:NG3	LA Property Surveyors in NE
14	LA:D1	Planning Officer in NE
15	LA:NG4	LA Property Surveyors in NE
16	LA:D2	Planning Officer in NE
17	LA:D3	LA Property Surveyors in NE
18	LA:D4	Snr Planning Officer in NE
19	DV:D/NG2	National Planning Consultant
20	CA:D/NG2	National Property Agent
21	DV:D/NG3	National Developer in NE
22	LA:NG5	Planning Officer in NE
23	LA:NG6	Planning Officer in NE
24	LA:NG7	Planning Officer in NE
25	CA:D/NG3	Planning Consultants in NE
26	LA:NG8	Snr Planning Officer in NE
27	DV:D/NG4	NE Developer
28	DV:D/NG5	National Developer in NE

*Figure 4.2 Schedule of Interviewees*

#### *Interviewees Naming Conventions*

*CA – Consultant or Agent, DV – Developer, LA – Local Authority Officer*

*D – Durham, NG – Newcastle/Gateshead*

*N- National, NE – North East, H - Helicopter*

To ensure the range of interviewees did properly reflect different roles and levels within the local authorities and private sector parties who were involved in the CIL process the interview period was extended to longer than originally planned, due to the Local Plan Examinations in public, but this was accepted in order to secure the appropriate range of interviewees. There was also a conscious decision not to

interview Council members due to their very limited knowledge of the CIL process and of viability assessments.

All interviewees were informed about the nature of the research and agreed to be involved, this form sought the interviewees consent, and also offered to protect the confidentiality and anonymity of the interviewee and their contributions. In most cases this was readily accepted without discussion. Occasionally during the interviews some interviewees indicated that a particular comment was “confidential” but generally the interviews were very open and in some cases quite lengthy (from 60 to 90 minutes long) and were quite in-depth in nature.

As referred to above, key issues were identified from the desk research and helicopter interviews, in addition as the key player interviews proceeded in parallel with the document analysis there was also some interaction between these two data collection activities as well. Reflecting the fact that some actors were involved in the day to day detail of policy implementation whilst other actors had a much more strategic role, accordingly there was some differentiation in the questions asked to reflect the role of the interviewee. The key issues addressed in the interviews were, the role of the interviewee in the policy process, what were the key events in the process and their view of them, what were the key relationships with other actors, how did the CIL interrelate with other policies, what was the impact of policy guidance and what were the capacity and skills issues.

Access to “elites” as key decision makers and to private sector actors is often problematic, yet this was believed to be a key element in trying to understand the varying perspectives of the different actors involved in the CIL policy. The researchers personal experience and contacts meant that north east based case studies were most appropriate to exploit this opportunity. The potential implications of this on the research in terms of ethics and the reflexivity of the researcher are however acknowledged and are discussed at the end of this chapter.

#### **4.10 Policy Analysis and Discursive mechanisms**

As discussed above the research seeks to investigate not just what is said but where and how and by whom it is said, (what is said within its context). As part of this analysis Hajer (1995) identified several discursive mechanisms, which can assist in

trying to uncover the interpretations of meaning, within policy implementation. These mechanisms are now briefly considered.

#### **4.10.1 Storylines**

The concept of storylines is that they condense and summarise a complex narrative and are used by actors as a short hand in discussions. What they do reveal however is that actors don't necessarily refer to a problem with a fixed identity but rather that this can change (Hajer, 2006). Storylines enable different actors or groups of actors to talk and even agree, yet often they don't have the same interpretation or meaning and in fact are talking at cross purposes not fully understanding one another.

#### **4.10.2 Discourse Coalitions**

Discourse Coalitions refer to a group of actors that share the use of a particular set of storylines within a set of practices over a period of time. The storylines can sometimes be instrumental in the creation of a Discourse Coalition, but as the storyline changes then the coalition may also change, reflecting the dynamic nature of the process (Hajer, 2006).

#### **4.10.3 Tropes and Metaphors**

Tropes are figures of speech and arguments which influence understandings and meanings, they act as rhetorical devices and have persuasive power beyond their literal meaning (Fischer and Forester, 1996; Throgmorton, 1996). Tropes as a general term can include metaphors, metonymy and irony all as figures of speech and types of trope (Fischer and Forester, 1996). A Metaphor is understanding and experiencing one kind of thing in terms of another (Lakoff and Johnson, 1980), and can be helpful in understanding meanings. They often play an emblematic role and also a key role in changing policy direction as they influence actor's interpretation of meaning often in quite significant ways. Within this research the trope as the more general term has been used rather than attempt to categorise figures of speech more specifically, the main purpose being to identify figures of speech that have been influential on the policy making process.

#### **4.10.4 Change in policy practices and institutions**

The effects of these discursive mechanisms and storylines in particular on the implementation of policy, is reflected in the positioning of actors and the clustering knowledge claims, used to influence the construction of the policy problem and the meaning attributed to the policy. These mechanisms can also influence the everyday practices of actors involved in the process. Hajer defines practices as “embedded routines and mutually understood rules and norms that provide coherence to social life” (Hajer, 2006, p. 70).

In this way by analysing the discursive mechanisms, their influence on the policy implementation can also be studied within a specific local context as envisaged in the case studies. Interpretive policy analysis is a practice oriented approach seeking to understand the relationship between knowledge and action in practice within a specific context. Obtaining knowledge cannot be seen apart from the setting nor from the relationships between the actors involved, the knowledge is anchored in those relationships and who is involved and who is excluded (Wagenaar, 2011). If the planning decision making process (or CIL process) is conceptualised as a series of arenas in which knowledge claims are tested, with who's are included and who's excluded (Rydin, 2007) this again provides an appropriate framework for undertaking this research as the arenas link to the sites of argumentation within the Hajer methodology.

#### **4.11 Data Analysis**

In the 10 step Hajer (2006) methodology set out earlier, some initial data analysis was undertaken in the four steps discussed earlier under data collection, as it should be pointed out that the 10 steps were not entirely sequential with some running in parallel with each other. Steps 5 to 9 are, sites of argumentation, analysis for positioning effects, identification of key incidents and Interpretation, these are now discussed.

##### **4.11.1 Steps 5 to 9 Hajer Methodology**

As part of the analysis undertaken in step 4 of the Hajer methodology, the Document Analysis sought to establish a basic notion of the process of key events and the sites of discursive production. In the interviews with key players the key events were



discussed and the policy discourse reconstructed from the viewpoint of that actor to start the process of studying the impact of the policy on policy practices. The Sites of argumentation involves searching underneath the arguments deployed to account for the reasons and meanings attached to the arguments used. This information on meanings and causal mechanisms are useful to reconstruct the discourses, that actors then draw on and to analyse the reframing or cognitive shifts (Kern, 2009).

In this research the reframing and cognitive shifts were easier to discern over the 10 year period of the national policy analysis in chapter 5, from the Barker report (Barker, 2004) up to early 2015. In the analysis of the two case studies this was more challenging, as the period of study was only three years with more subtle shifts and reframing having to be considered, as discussed in the two case study chapters later. Using the three main sites of discursive production, the preparation of the viability assessment, the setting of the proposed rates and the preparation of the infrastructure delivery plan; an analysis of the discussions that took place were studied to ascertain the different meanings and ways of seeing the problem by the different actors.

This involved the identification of discursive mechanisms such as storylines and tropes as set out above; this was a challenging exercise and involved identifying phrases that were regularly used in different documents and interviews, sometimes by key actors to make specific points. Reading the documentation and interviews key events and arenas were identified showing the local policy making process. As the policy making progressed the different versions of key documents changed, as did the wording and phrases within them. These key phrases provided initially a long list of storylines and tropes, rereading of the source material via an iterative process, helped rationalise and reduce these to the key storylines and tropes. The key storylines and tropes were the phrases and wording, which were considered to have been the most influential on the policy making process as it developed, which justified a change in direction in the policy proposals.

National storylines and tropes were identified from an analysis of national policy documentation, the objectives and justifications set out in the CIL policy making process as it evolved through as series of events and versions of the documentation. At a national level the main objective was to remove the barriers to

new development and to facilitate this with the provision of new infrastructure. The main national storylines and tropes identified reflected this ambition to remove barriers and were considered to be the key influences on policy making at the national level and also influential at a local level.

The positioning of actors in the policy process was also considered in the case studies, and was also quite challenging within the limited time frame for the two case studies. The positioning of actors has been suggested, but it is recognised that these are often dynamic in nature and may not have much impact on the practices of the various actors in the policy process.

In considering the key events in the policy making process it became clear at both the national level and at the local case study level some key incidents were particularly influential on the policy implementation. Again at the national level some key decisions were made and set out in minutes of meetings and in formal policy documents. In the case studies some of the key decisions again were set out in minutes of committee meetings or in policy documents setting out changes in the direction of the policy implementation, these are set out in the next three chapters.

The analysis of practices involved in the CIL process and the key decisions that need to be taken, the argumentation influencing those decisions and can the meaning of what is said be related to the practices as required by the Hajer methodology. These linked to the interpretation step, in which discursive mechanisms were identified to establish an explanation for the course of events as they unfolded, across the three key sites of production. The national policy level is studied over a ten year period in chapter 5, setting out the discursive struggle at a national policy level with key national policy storylines and tropes identified, with the anticipated impact on policy practices also set out. In the case studies at a local level and studied over a shorter period, the discursive struggle between the national and local storylines and tropes is considered and the impact on local policy practices also set out in chapters 6 and 7.

The final step in the Hajer methodology is a second visit to the key actors, due to the rapidly changing policy background in both case study areas it was decided not to undertake this last step, it is not considered that much benefit would have been derived. At the local level the national storylines and tropes remained powerful in influencing local policy making and practices, but local storylines and tropes also had

influence. Having considered the methodology, it is now appropriate to consider the discursive mechanisms that underpin the Hajer analysis and the application of the methodology.

Finally, as referred to earlier interpretive policy research involves the view that meaning emerges from the interaction of various actors between themselves and with the wider environment. As part of the research process the researcher interacts with those involved in the research, this is integral to the research, but introduces the issues of reflexivity and the positionality and identity of the researcher, which are now considered in the next section.

## **4.12 Researchers Biography and Reflexivity**

### **4.12.1 Reflexivity**

As the research involves an interpretive policy approach the concept of reflexivity becomes an important part of the process at different stages (Schwartz-Shea and Yanow, 2012). Reflexivity requires the researcher to explicitly consider their ways of thinking and acting in relation to the research (Hewitt, 2011). As the researchers understandings develop, “the “practice” of reflexivity involves the self-conscious “testing” of these emerging explanations and patterns” (Schwartz-Shea and Yanow, 2012, p. 101).

It is Foucault’s concept of discourse that implies that the researcher cannot be considered as separate from the discursive formations and that the relationships between the researcher and the researched is contingent and relational and is subject to power relations. As Sharp and Richardson (2001) set out the position of the researcher needs to be explicitly acknowledged to assist the reader to understand the choices made in the research process. In this way it brings legitimacy to the research process and is particularly relevant to the knowledge generation and analysis (Schwartz-Shea and Yanow, 2012).

The socially constructed nature of the researcher and their dual identity as both practitioner and researcher is a further element of the reflexivity issue, with consideration of how this may shape the discourses and narratives identified in the research. This is considered further below following a brief biography of the researcher.

#### **4.12.2 Biography**

The researcher has worked as a Chartered Surveyor in the North East of England for approximately 30 years up to 2011, in a range of organisations but for the last 25 years within several public sector regeneration agencies, such as English Estates, English Partnerships, One North East and the Homes and Communities Agency. Whilst the remit of these agencies did change over the period in question, depending on the political and economic priorities of the Government at the time, in general terms the role of these central government agencies was to work in partnership with the public and private sectors to enable physical regeneration. One Northeast had a wider role as the regional development agency, however the researcher's main role was to assist primarily in the physical regeneration part of the wider economic regeneration role.

Accordingly the researcher developed and maintained professional relationships with a range of professionals and officers across the north east, although primarily in the northern part of the north east region, Northumberland and Tyne and Wear rather than in Tees Valley and Durham. The role placed significant emphasis on working with local authorities who would take the lead as the democratically accountable body, on priorities for regeneration. The role involved undertaking appraisals of viability of projects in order to secure funding from the agency itself or sometimes from central government if above certain delegated levels. The nature of the appraisals were in line with the requirements of the Treasury Green book (H M Treasury, 2003), and in house appraisal requirements based on this commensurate with the scale of funding requirement. These appraisals whilst different from private sector appraisals did employ similar techniques and as required sometimes input was sought from private sector consultants and agents to support the appraisal process. The main focus of the appraisals being to justify the need for the investment and to assess value for money of the public sector investment in terms of a range of outputs anticipated to be delivered by the project investment, such as numbers of houses, commercial floor space, land reclaimed for development and private sector money levered into the project.

The justification of many of these investments by the public sector also sought to place the individual project investments into a wider strategic setting, such as wider

regeneration strategies such as the Grainger Town strategy, the Gateshead Quays strategy or the Sunderland ARC strategy. This helped reduce the risk of investment for other partners in the area, particular the private sector, but presents a significantly different approach to an individual project and profit based approach employed by a private sector appraisal.

The researcher has therefore worked with some of the key officers from Newcastle City Council, Gateshead Council and Durham County Council, even if they had been in different roles at the time. In addition the researcher has worked with a range of chartered surveyors and other consultants who have been involved in the CIL process and made comments on the CIL appraisals. Finally, the researcher has also dealt with developers and house builders in the North East who have been recipients of funding or been involved in procurement exercises for securing developers for key regeneration sites. It is believed that this has been beneficial to the research not just in terms of access but also that the information was independently and honestly presented on the basis of trust and integrity between the parties, not just providing what the interviewee thought the researcher wanted. The technical knowledge and background of the researcher also assisted in securing the depth of knowledge involved in some of the policy making practices.

The researcher having worked in the north east has also some knowledge of the property market in the various sectors, but also of the history of the economic development priorities of the local authorities in the region. The researcher also has knowledge of some of the governance issues and of the nature of some of the relationships between public and private sectors and between public sector agencies themselves, all of which have impacted on this research. This insight is believed to be on balance helpful, allowing the researcher to save a considerable time having to investigate some of these matters prior to going into the field, also facilitating access to key interviewees some of which could be termed “elites”.

However, it is recognised as referred to above that the professional relationship the researcher has had before and may have after the research, did present problems of potential conflicts of interest and the need for reflexivity in considering the data that emerged from the research.

### **4.12.3 Identities and Impact on the Research**

As referred to earlier the researcher has two identities in relation to the research, the biography above sets out the practitioner identity, but there is also the researcher identity. A key part of acknowledging these twin identities is in relation to prior understandings of the subject domain from the past and how this may influence the interpretations made in the research. The twin identities were present in the data collection, in the interviews both identities were present especially with interviewees with which the researcher had previously dealt with in practice. This was explicit and acknowledged by both parties, however the two identities are less obviously apparent in the data collection and analysis of policy documents, in the selection of documents and in the reading and interpreting of them. Reflexivity as mentioned earlier assists the researcher to consider the choices and selections made and to explain why they were made.

In data analysis the positionality of the researcher as inside or outside the domain of the research is key. In interpretive policy analysis approaches the objective is to secure understandings of meanings, to achieve this the researcher needs to become an “insider” and cannot realistically take an “outsider” position. It is preferable to acknowledge the positionality rather than attempt to demonstrate a neutral position which would be impossible (Schwartz-Shea and Yanow, 2012).

The positionality relates to the researcher researching a topic where there are likely to be preconceived views and knowledge about the subject prior to the research. Having worked for 30 years in a similar area to that being researched this has to be acknowledged, and to some extent is unavoidable in any social research, but perhaps is a greater risk here than usual. The researcher has been aware of this throughout and whilst researching a subject of interest to him, the implementation of viability assessments within wider policy it is not one that the researcher has strong preconceived views about. However, the researcher has a stance of considering value capture as a worthwhile exercise to support public policy objectives, but with an appreciation and understanding of the need for the private sector to secure a level of profit to make a project viable. Using the CIL policy to investigate the viability assessment process and its relationship with wider policy implementation is one

aspect of the research; the other is to ascertain the key features of value capture policy to ascertain if any improvements can be made to make it more effective.

As stated earlier virtually all of the interviewees could be considered “elites” in that they were professionally qualified actors with clear views on the area being researched and used to providing views. In many cases they were also in senior positions in their organisations and sought to put a particular viewpoint across irrespective of the questions asked, this is reflective of Harvey (2011) in which he states that elite interviews differ from other interviews in that the interviewee may seek to control the interview and be selective on what questions they may wish to answer. The interviews with some senior figures did also reflect the power relations between the parties, typical of “elite” interviews (Rice, 2010) and the nature of the interview was less structured than with other more junior interviewees.

Nevertheless, this power balance can often be renegotiated (Rice, 2010) and the researcher’s previous experience and employment history was important in this respect. Mikecz (2012) talks about the preparation for elite interviews and suggests using research to increase the interviewer’s positionality and reduce the imbalance. In this case the researcher’s attendance at various conferences on CIL and building a detailed knowledge of the policy and its guidance did reduce the status imbalance and increased the researcher’s positionality including during the interviews. The tactics of impression management have also been identified as relevant in relation to interviews with developers and professionals in the built environment (Moore, 2015), this was apparent in a few of the interviews and reflected in the analysis of data from those interviews in the research.

The positionality of the interviewer is a key determinant of the researcher’s success and key to this is establishing a rapport, gaining trust and a reputation for reliability (Mikecz, 2012), in this case the researcher’s reputation was beneficial in this respect. It is believed that both in terms of securing access, another challenge of “elite” interviews (Harvey, 2011) and in the depth of the information secured, the researchers previous relationships and reputation were important. In terms of potential interviewees that were unable to be secured, they were generally less well known or unknown to the researcher before the research and indicate that the researcher’s positionality was an advantage in gaining access.

The positionality of the researcher is also effected by the researchers own professional status, as has already been stated the researcher has professional qualifications as a FRICS, in itself requiring certain levels of integrity and accountability especially in relation to potential conflicts of interest, see the RICS five ethical standards (RICS, 2015). In addition the reputation of the researcher as a professional has been a key advantage to being able to undertake this research and secure access to and the cooperation of, key interviewees, some of whom could be categorised as “elites”. This professional reputation is something which the researcher considers very important and has sought to preserve and protect throughout the research process. Especially in relation to the potential conflicts of interest involved in this research, and any potential ethical considerations which are now considered.

#### ***4.12 4 Ethical Considerations***

The nature of social research is that it requires trust between the parties and integrity on the part of the researcher. Accordingly it is hoped that the previous professional relationship the researcher has had with some key interviewees in the research, and the existing levels of trust and integrity that exist as a result, will benefit the content and depth of data secured from the interviews. However, the researcher due to those previous professional relationships, which are also likely to continue after the research is completed, will need to exercise significant caution, as it is recognised that potential conflicts of interest may arise.

This can occur in several ways, firstly the researcher may acquire knowledge that he could use within a professional context during or after the research period, to date this has not been an issue, primarily as much of the interview discussions concerned data in the public domain and was of little commercial value.

The second issue is more significant, that the researcher could use knowledge obtained from one interview and divulge this unintentionally in another interview to another party. There are two potential issues from this firstly that some confidential information may be divulged, this has been discounted as being very unlikely due to the limited amount of confidential information discussed and the caution used by both researcher and interviewees regarding this type of information. The second issue is more relevant for consideration, as over the quite lengthy period of the interviews



taking place undoubtedly the views of the researcher were shaped by the interviews and the content of earlier interviews and did influence the nature of the questioning in later interviews with some change of emphasis perhaps, although the same general topics and questions were asked. In many ways this is the nature of all research and can be seen as a positive factor, although care was taken to try and cover all the topics in the original interview questions, even if not necessarily in the same order, as the researcher had to adapt to the nature and flow of the interview and probe or pursue depth or clarification when the opportunity presented itself.

The third issue was the relationship between the researcher and the interviewee and could this influence the data secured from the interviews undertaken. In reviewing the fieldwork interviews it is clear that access was secured to some interviewees that may not have been secured so easily or even at all otherwise, which is clearly a major benefit to the research. The content of the interviews did sometimes include references to the researcher's previous employment or expertise in the research area, but this was rare and there was no indication that interviewees had answered questions in a particular way so as to provide an answer the researcher may want to hear. Similarly the researcher often sought to probe interviewees for explanation or depth but only very occasionally offered any opinion on the subject area and it is not believed that this unduly influenced the data secured from the interviews. As many of the interviewees could be considered "elites", in that they were professionally qualified actors with clear views on the area being researched, it is believed that the researcher had a limited influence on the data generated, but it is acknowledged that some influence was unavoidable. It is acknowledged that this may potentially impact on the outcomes of the research, but it is believed that this can be satisfactorily managed and that the potential benefits outweigh the problems of conflict of interest.

Another challenge relates to the researcher's objectivity, having previously worked in the field and with some of the key interviewees, the researcher may not be able to take as detached position as other researchers. However, Social research by its very nature always presents challenges of this type and again it is believed that this can be satisfactorily managed by the researcher being reflexive in relation to the research data as it emerges. Again the advantages of the researchers existing knowledge of the field, outweighs the problems of lack of objectivity.

#### **4.13 Conclusion**

This chapter has set out the basis of the approach to the research, from the ontological and epistemological position leading on to the selection of an interpretive policy approach as appropriate for this research and the selection of the methodological framework as a basis of the research (Hajer 2006). The details of the data collection and analysis were also set out, including the key discursive mechanisms involved in the discourse analysis which are key to uncovering the meanings involved in this approach to policy analysis. The case study design fits well with the aim of recovering situated and context based knowledge and to secure a depth of data to support an understanding the policy making process in a specific context.

Finally, the positionality of the researcher and its potential impact on the research is considered, including potential ethical issues, and the use of reflexivity as a concept to assist in addressing those potential issues. What is apparent is that the viability assessment process and the wider policy making process are both socially constructed in nature, they are constructed by the various actors involved and the interactions between them. This is why the interpretive policy approach has been employed, it assists in uncovering the meanings attached to policy proposals and how they influence the practices of actors in the process and in turn the outcomes on the ground.

It is now appropriate to consider the findings and analysis of the data generated beginning in the next chapter with a consideration of the national policy context followed by the findings from the two case studies.

## **Chapter 5 National Policy Perspective (From Value Capture to Supporting Growth)**

### **5.1 Introduction**

As part of the research is to consider how policy making is implemented at a local level in comparison with the objectives set out at a national level, before considering the locally based case studies, it is worthwhile looking at the policy perspective at a national level. To analyse how CIL as a policy emerged, its objectives and effects, in addition its relationship with other related policies, such as s106, the viability assessment of Local Plans, the SHLAAs and the policy context surrounding the CIL policy. The history of the CIL as a policy has been set out earlier in Chapter 2, setting out the changes to the regulations and guidance that have taken place since 2008 and its formal introduction in 2010, this chapter seeks to consider the background influences to those changes.

The origins of the policy have been traced back to the Barker Review into Housing Supply (Barker, 2004) commissioned in 2003, which is where the timeline for this policy analysis will start, this report recommended value capture via the Planning Gain Supplement, which was then later replaced by the CIL. From the wider value capture view this is a good point to start, as it reflected a growing dissatisfaction with the s106 system, as a result Barker (2004) justified an explicit tax on land value uplift, which had been abandoned in the UK for virtually 30 years. Furthermore, it linked value capture to the provision of infrastructure to support growth and to increased housing supply; this was the start of a reconceptualization of value capture as will be discussed later.

### **5.2 National Policy Timeline**

The timescale of the CIL as a policy is set out below and has three different phases, the period from 2004 and the Barker Report proposals up to October 2007 when the Planning Gain Supplement (PGS) was replaced by the CIL, then the period from October 2007 up to May 2010 when CIL was developed and introduced by the Labour Government and finally the last phase from May 2010 up to May 2015 when the Coalition Government retained the CIL policy but made a series of amendments

to the policy over the period. A review of national policy documentation was carried out from the Barker report (Barker, 2004) through to 2015, considering the evolution of the policy over the period, from this review of policy material the key events from the national perspective were identified as shown in table 5.1.

### **5.2.1 Key Events National Perspective**

<b>Key Event</b>	<b>Date</b>
<b>First Phase 2004 to October 2007</b>	
Delivering Stability: Securing our Future Housing Needs: Final Report— Recommendations	March 2004
Government's response to Barker review of Housing Supply	December 2005
Planning Gain Supplement – A consultation	December 2005
DCLG Committee – Planning Gain Supplement	26 October 2006
Governments Response to DCLG Committee	December 2006
DCLG Homes for the Future: more affordable more sustainable	July 2007
Ministers Statement re PGS	9 October 2007
<b>Second Phase October 2007 to May 2010</b>	
DCLG Community Infrastructure Levy	January 2008
DCLG the Community Infrastructure Levy	August 2008
DCLG CIL Detailed proposals and draft regulations for the introduction of CIL – Consultation	July 2009
DCLG CIL Detailed proposals and draft regulations for the introduction of CIL – Consultation – Summary of responses	February 2010
DCLG CIL Final Impact Assessment	February 2010

DCLG CIL Regulations	March 2010
Third Phase May 2010 to May 2015	
Greg Clarke – announced retention of CIL by Coalition Government	18 November 2010
DCLG Localism Bill – CIL Impact Assessment	January 2011
CIL (Amendments) Regulations	April 2011
CIL Detailed Proposals Consultation	October 2011
DCLG Committee – Regeneration	19 October 2011
DCLG National Planning Policy Framework	March 2012
CIL (Amendments) Regulations	April 2012
CIL Rate Setting Guidance	December 2012
Harman Report – Viability Testing Local Plans – Advice for Planning Practitioners	June 2012
RICS Financial Viability in Planning	August 2012
Ministerial Announcement	10 January 2013
CIL (Amendments) Regulations	April 2013
CIL Rate Setting Guidance	April 2013
DCLG Consultation CIL Further Reforms	April 2013
DCLG Governments Response	October 2013
CIL Getting it Right – Savills & HBF	January 2014
CIL (Amendments) Regulations	February 2014
National Planning Policy Guidance	March 2014
Formal Review into CIL	March 2015

*Table 5.1 Key Events National Policy Perspective*

Having set out the key events concerning the emergence and development of the CIL policy over the period, it was important to then set out the key sites of discursive production or argumentation, these are set out in the table 5.2. These key sites of discussion and debate, will have been supplemented with many more meetings and

discussions which have not been recorded with publicly available material, this analysis has studied the high level publicly available material to track the main influences on the policy development at a national level as context to the subsequent case study analysis of how the CIL policy has developed and been implemented within specific locations.

### **5.2.2 Key Sites of Argumentation National Perspective**

<b>Key Sites of Argumentation</b>	<b>Dates and Sources of Secondary Data</b>
<b>First Phase 2004 to October 2007</b>	
Delivering Stability: Securing our Future Housing Needs: Final Report— Recommendations	March 2004
Government’s response to Barker review of Housing Supply	December 2005
Planning Gain Supplement – A consultation	December 2005
DCLG Committee – Planning Gain Supplement	26 October 2006
Governments Response to DCLG Committee	December 2006
DCLG Homes for the Future: more affordable more sustainable	July 2007
Ministers Statement re PGS	9 October 2007
<b>Second Phase October 2007 to May 2010</b>	
DCLG Community Infrastructure Levy	January 2008
DCLG the Community Infrastructure Levy	August 2008
DCLG CIL Detailed proposals and draft regulations for the introduction of CIL – Consultation	July 2009

DCLG CIL Detailed proposals and draft regulations for the introduction of CIL – Consultation – Summary of responses	February 2010
DCLG CIL Regulations	March 2010
Third phase May 2010 to May 2015	
Greg Clarke – announced retention of CIL by Coalition Government	18 November 2010
CIL Detailed Proposals Consultation	October 2011
DCLG Committee – Regeneration	19 October 2011
DCLG National Planning Policy Framework	March 2012
CIL Rate Setting Guidance	December 2012
Harman Report – Viability Testing Local Plans – Advice for Planning Practitioners	June 2012
RICS Financial Viability in Planning	August 2012
Ministerial Announcement	10 January 2013
DCLG Consultation CIL Further Reforms	April 2013
DCLG Governments Response	October 2013
CIL Getting it Right – Savills & HBF	January 2014
National Planning Policy Guidance	March 2014
Formal Review into CIL	March 2015

*Table 5.2 Key Sites of Argumentation National Policy Perspective*

As can be seen there has been a considerable amount of discussion about the policy, from the initial proposals to introduce a levy or tax in addition to a scaled down Planning Obligations (s106) policy, up to the CIL policy position in 2015. The proposal for an additional planning gain measure to generate income to pay for extra strategic infrastructure was proposed as one of a range of measures to address the issue of inadequate housing supply and in turn the impact of volatility of house prices on the national economy and growth (Barker, 2004). Hence, the selection of the Barker Review as the starting point for the analysis and the focus on value capture policy from that point up to 2015. It is clear however, that even focussing on value capture policy and the mechanisms involved, the PGS/CIL policies cannot be seen in

isolation from other policies and how they have changed over the period, not least the s106 legislation and guidance and the Local Plan preparation regulations and how they interrelate with the PGS/CIL value capture policy.

### **5.3 The Main Events in the National PGS/CIL Process**

#### **5.3.1 First Phase 2004 to October 2007 – The PGS Proposals**

The commissioning of the Review of Housing Supply in 2003 (Barker 2004) was based on the concern that the supply of new housing was inadequate and a review was set up on 9<sup>th</sup> March 2003, with the following terms of reference

*"Conduct a review of issues underlying the lack of supply and responsiveness of housing in the UK." (Barker, 2004, p3)*

The objectives of the review were related to not just a lack of supply, but to issues of volatility in the housing market which "exacerbated problems of macroeconomic instability and had an adverse effect on economic growth" (Barker, 2004 p11) and of lack of affordability. The report went on to state

*"A key factor underlying the lack of supply and responsiveness is an inadequate supply of developable land. More land will need to be released or made viable for development, if housing supply is to increase. Better use of existing or previously developed land and buildings can be achieved through bringing derelict and contaminated land back into use. Many of the Review's recommendations aim to secure this objective" (Barker, 2004 p12).*

The report considered the challenge under five headings, planning for development, delivering development, contributing to development, accessing housing and the development industry. In terms of the capture of value this is primarily considered in the section "contributing to development". Under this section recommendation 26 stated the following regarding value capture

*"Recommendation 26*

*Government should use tax measures to extract some of the windfall gain that accrues to landowners from the sale of their land for residential development. Government should impose a Planning-gain Supplement on the granting of*



*planning permission so that landowner development gains form a larger part of the benefits of development. The following principles might be considered:*

- Information would need to be gathered as to the value of land proposed for development in each local authority. Sources of data could include actual transactions and/or Valuation Office Agency estimates as to the land prices in various local authority areas.*
- Government would then set a tax rate on these values. This tax should not be set so high as to discourage development, but at a rate that at least covers the estimated local authority gain from Section 106 developer contributions and provides additional resources to boost housing supply.*
- The granting of residential planning permission would be contingent on the payment of the Planning-gain Supplement of the proposed development.*
- Government may want to consider the operation of a (substantially) lower rate for housing development brownfield land, and the possibility of varying rates in other circumstances, e.g. for areas where there are particular housing growth strategies, or where other social or environmental costs may arise.*
- A proportion of the revenue generated from the granting of planning permissions in local authorities should be given directly to local authorities. Government should also amend the operation of Section 106 planning obligations, as set out elsewhere in Chapter 3, to take account of this new charge.*
- The Government may want to consider allowing developers to pay their Planning gain Supplement in instalments over reasonable time periods so as to ensure that house builder cash flow pressures are sufficiently accounted for.*

*The introduction of a tax would need to be accompanied by transitional measures to ameliorate the impact on developers already engaged in land sales contracts that were drawn up before this charge was introduced, or for those who hold large amounts of land already purchased, but where planning permission has yet to be secured” (Barker, 2004 p87).*

What is significant in the review is the justification of the value capture in terms of the windfall gains (economic rent) accruing to the landowner from the granting of planning permission to develop the land and how capturing this windfall gain was a key justification for value capture. Also that this income was needed to fund infrastructure provision and in turn to provide some greater certainty to infrastructure provision. It was however clearly presented that the PGS should not be seen in isolation but part of a wider policy package. As PGS was a tax on land value, this could potentially be a disincentive to landowners to bring forward sites for development, this was to be offset by other policy benefits such as the certainty of infrastructure provision and a more proactive planning system providing a supply of sites for development (Barker, 2004).

In December 2005 the Government commenced a consultation on introducing PGS (ODPM, 2005c) alongside a wider justification of its response to the Barker Review (ODPM, 2005b). Whilst the proposals in the latter document are set within the wider context of a step change in the provision of infrastructure and in the planning system, the PGS document presented a mechanism to capture the uplift in land value resulting from the grant of planning permission. This was also presented as part of a wider growth based strategy to bring forward more sites for housing development and more rapidly, supported by infrastructure provision, partially funded by the money collected from the PGS itself and with a more flexible and proactive planning system. The suggestion is also made that the PGS should be reflected in lower land values and lower bids for land by developers.

There were still further details to be worked up, but in Chapter 2 (ODPM, 2005c) the calculation of the charge was discussed; the difference between current use value (CUV) and planning value (PV) was a key issue. The proposals would need to be calculated based on market evidence this was a change from the average value for an area approach, proposed in the Barker review (Barker, 2004).

The other key concern was that the planning system by restricting the supply of sites had slowed down and stopped development. In addition, the restriction on the supply of sites by the planning system had also increased the value of land and therefore provided some justification for the capture of some of that increased value for the public sector.

The impact of the institutional structure of the British house building industry, being concentrated in a small number of volume house builders, who are focused on competing for a restricted supply of housing sites due to the planning system, was also considered. It was considered that the effect of this was to force up land values, but also potentially to slow down development as house builders try and keep a supply of sites flowing, if the securing of sites takes too long, this will lead to land banking and a slower pace of development overall (Barker, 2008).

The House of commons DCLG Committee in October 2006 (CLG, 2006b) also discussed the PGS and it again made reference to the fact that it was only fair that communities should share in wealth created by planning decisions made in their area. Whilst this was conceptually different from the s106 process, it was acknowledged that the existing s106 system had sometimes been used as a means of compensating communities for the negative consequences from new development in their area, and had therefore been used as an informal, variable and unpredictable tax on land value uplift (CLG, 2006b).

In December 2006 the Government published its response to the committee (CLG, 2006a), the Government still considered the PGS as appropriate and a fairer means of capturing land value, because it was based on land value uplift rather than on the costs of infrastructure. It went on to state that PGS was more proportionate and should not inhibit development on marginal sites. Whilst tariff based approaches such as that used in Milton Keynes had previously been supported, they didn't have the same potential as PGS (CLG, 2006a).

Issues had also been raised about the calculation of PGS and the valuation methodology, it was agreed that using actual valuations would be fairer to developers for the calculating of CUV and PV, but that standard definitions would need to be agreed and understood by various stakeholders including the development industry, this would be crucial (CLG, 2006a). The detail of the implementation of PGS would continue to be discussed, including two specific elements, the need to reflect actual site conditions, but also to assume a freehold vacant possession, rather than involve complex and costly valuations of different legal interests in land (CLG, 2006a).

However by July 2007 and the Housing Green Paper – “Homes for the future – more affordable, more sustainable” (CLG, 2007a), the Government whilst still stating that

PGS was its preferred option, wanted to be sure that it was the best option and consulted on four alternatives. Whilst still advocating that developers required reduced uncertainty regarding infrastructure delivery and that local communities should share in the benefits from planning gain. The four alternatives proposed were as follows:

- (a) Lower rate of PGS and reduced scaling back of s106, so no need for PGS to replace lost s106 income, to be additional income.
- (b) PGS limited to Greenfield sites, this would require EU state aid approval.
- (c) Charging system based on an expanded s106, this would be a standard charge to mitigate the impact of development and be set out in the LDF and clearly linked to infrastructure need and be evidence based justifying the charge level for different types of development
- (d) Statutory Planning Charge – local authorities to require standard charges to be paid for infrastructure need, enabling capture of planning gain more systematically. Developers would be required to pay an average standard charge based on total costs of infrastructure in their area. It had the advantage of easier collection and the collection of additional funding of a large proportion of developments of a small scale (CLG, 2007a).

After continued discussion with stakeholders and consideration of the feedback received by a range of organisations on 9<sup>th</sup> October 2007, the Minister for DCLG made a statement that PGS was to be withdrawn and replaced by a “statutory planning charge” (CLG, 2007b). The details were still to be prepared, but that this would be tested as part of the LDF process and would be based on the infrastructure proposals therein and taking account of land values.

The Pre-budget report in October 2007 (HMT, 2007) also confirmed that the PGS was to be replaced by a new planning charge. The Government published its response to the consultation as well, which highlighted its concerns with the PGS, which were about the calculation of the current use value (CUV) and planning value (PV), and the rate that would be charged, as no rate was ever set out (HMRC, 2007). A range of objections were raised to the PGS, some of which had been highlighted in the original Barker Report, that landowners would just wait to sell land and so supply

would fall, also there was concern about the impact on brownfield development. This new planning charge would be later named the Community Infrastructure Levy (CIL) and is now considered.

### **5.3.2 Second Phase October 2007 to May 2010 - CIL replaces PGS**

In January 2008 the first proposals were published for CIL (CLG, 2008) these still reflected the main justifications for the PGS, namely to capture increases in land value resulting from the granting of planning permission and that this should mitigate development impacts and provide infrastructure for communities, this was also set within a framework of making development more sustainable. The CIL was still also seen as a policy to “unlock development” and ensure more development is delivered, not just by funding infrastructure but also in providing more certainty to developers of what they may be expected to contribute. The reasons why new development should make a contribution were set out, based mainly on the research that most small and medium sized developments made no contribution and yet still impacted on infrastructure requirements (Crook *et al.*, 2008). Only large scale developments had s106 agreements negotiated and the time and costs involved precluded negotiations on smaller schemes. It was argued that the new CIL was therefore both fairer in spreading the burden more widely, but also by providing developers with more certainty on what they would be required to pay and speed up the planning system.

The support of various stakeholders to CIL was also set out; BPF, RICS and HBF were all quoted as supportive and that whilst the Planning Bill provided the overall powers, the details would be issued in regulations which would be discussed with the stakeholders. The CIL was also proposed to be a “Plan-led” policy very much tied into the LDF process, something very different to the previous proposals and also very much related to the infrastructure planning process as well. The ability of local authorities to use CIL income alongside other funding flexibly to fund infrastructure provision was also set out (CLG, 2008). Finally, the setting of the CIL rates was also discussed, again the link to the increases in land values resulting from the granting of planning consent was at the core of the thinking, and that if an affordable rate was set it would capture a proportion of the land value for infrastructure provision but also leave a sufficient incentive to develop. Some commentators had stated that this may

not be the most appropriate indicator upon which to set the CIL rate and this would be discussed further before proposals came forward (CLG, 2008).

In August 2008 a longer document on CIL was issued by DCLG (DCLG, 2008b), and whilst much of it was similar to the January document, it did set out more details on the setting of the CIL rates. The link to infrastructure planning and to the funding of infrastructure to support growth were still key elements, but the uncertainty around the setting of the rate too high was also raised and the need to ensure that the process for setting the charge achieves the right balance (see paragraph 3.25) (DCLG, 2008b). A whole section was included titled “setting charges to reflect development viability”, if set at too high a level CIL would not be delivering its objective of helping to unlock development. The identification of the uplift in land value from the grant of planning permission was again suggested, but with reservations from some stakeholders. With alternative assessments of level of developers profit or return on investment, impact on land supply or impact on delivery of the development plan proposed. There were proposals to develop a standard methodology, but acknowledged that several methodologies were already available that developers use to make development decisions on viability. The issue of skills within planning departments was also raised, although the Swindon Viability Study indicated that CIL as a policy could be delivered (DCLG, 2008b).

Also in August 2008 DCLG issued “common starting point for s106” (DCLG, 2008a) as changes to the s106 system was part of the proposed changes running alongside the CIL as envisaged by the Barker report. In fact the relationship between CIL and s106 was an important issue requiring clarification, identified by the Killian Petty Review of Planning System in November 2008 (DCLG, 2008c) and in the DCLG/NAO Planning for Homes; Speeding up planning applications for major housing developments in England published on 11 December 2008 (NAO and DCLG, 2008).

Over 2009 there were several reports issued about how to respond to the credit crunch and the downturn in the market, in July 2009 the detailed proposals and draft regulations for CIL were consulted upon, with the summary of the responses published in February 2010 (DCLG, 2010c). Much of this consultation was about the procedural detail of its implementation but one issue raised under the setting the CIL charge was a need for clarity as to what is intended by the term “economic viability of

development” in Question 7. The relationship with s106 and its proposed scaling back was also an issue, especially as the introduction of CIL was a voluntary choice by LPAs, but scaling back s106 too far would put pressure on LPAs to introduce CIL (DCLG, 2010c).

Also in February 2010 DCLG introduced CIL: Final Impact Assessment (DCLG, 2010a) which would support the CIL regulations, the document suggested that CIL had several advantages over the s106 system, simplicity, predictability, transparency, fairness and efficiency. A major feature of CIL highlighted was the loosening of the relationship between a development and the amount charged, as the charge would be an average distributed evenly across a number of developments. It also offered LAs a flexible tool to secure finances to fund infrastructure, also the charge should not place at serious risk the development of an area, and finally the expectation remained that

*“Ultimately, it is expected that the liability for CIL will fall on landowners, because developers would negotiate a discounted value for land when they put it to offset heir CIL liability” (DCLG, 2010a p10)*

The CIL Guidance: Charge setting and charging schedule procedures were issued in March 2010 (DCLG, 2010b) and came into force on 6<sup>th</sup> April 2010 and set out some detail on deciding the rate of CIL. The regulations set out that the charging authority must

*“aim to strike what appears to the charging authority to be an appropriate balance between the desirability of funding infrastructure from CIL and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area” (DCLG, 2010b p4)*

The regulations introduced the “striking the balance”, the “area wide approach” and “economic viability” of development all as parts of the calculation of the CIL rates, “appropriate available evidence” was also required to support the draft charging schedule. Charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area, with for residential development the SHLAAs should inform their approach (DCLG, 2010b).

What has become apparent is that the Barker report proposals for a tax on land value uplift have gradually changed to become a plan led levy linked to infrastructure planning at a local level and based on an area wide economic viability assessment of development. Although the main effect is still anticipated to be a lowering of land values, as developers factor this into their negotiations with landowners, this is now less prominent than the need to secure funding for infrastructure still to support growth. The viability issue which was never really addressed in PGS as the rate was never calculated, is now at the centre of the whole CIL proposals. The challenge of the detailed implementation, of the valuation methodology which was a factor in the demise of the PGS is now emerging as an issue with CIL even in the early stages and with the apparent support of various stakeholders. Finally, the relationship between a reduced s106 and CIL is an issue, as is the relationship between the CIL and other policies to stimulate growth.

### ***5.3.3 Third Phase May 2010 onwards - CIL is retained then amended***

In May 2010 there was a change of Government which in the previous occasions of national property taxes has often led to a repeal of the legislation, but somewhat unexpectedly the Coalition Government decided to retain the CIL, with an announcement made by DCLG Minister on 18<sup>th</sup> November 2010 that the CIL would be retained. As it provided a fairer system to fund new infrastructure and more certainty to developers cutting the costs of lengthy negotiations. There would however be amendments to the regulations, with a proportion of CIL passed directly to communities; also the system would be more transparent than s106 as the rates would be set in consultation with communities and developers, to make sure communities benefit from development in their area. “It will help change the debate about development from opposition to optimism” (DCLG Speech 18<sup>th</sup> Nov 2010).

The amount of CIL legislation and supporting guidance by the Government and by other organisations has been significant over the period from 6<sup>th</sup> April 2010 when the initial CIL regulations (DCLG, 2010c) came into force and 2015, when the CIL policy is the subject of a formally review. In fact the CIL regulations have been amended virtually every six months from April 2011 to February 2014 and the final version of the amendments.



The 2011 amendments were part of the Localism Act 2011, and the main changes to the original proposals related to the requirement to pass a significant proportion of the CIL income directly to the local communities; this was later specified as 25% if a neighbourhood plan was in place for the area. It also allowed the CIL funds to be spent on ongoing costs of infrastructure, this to allow extensions of existing infrastructure (*Localism Act*, 2011). The justification for these amendments was to support local communities and to give them more control as part of the Governments localism agenda. The restrictions on the s106 system was also progressed with a pooling of receipts under these limited to five planning applications and with a deadline set for these changes at 1<sup>st</sup> April 2014 (DCLG, 2011).

The justification for the CIL policy was presented in a similar way to the March 2010 document, the detailed guidance on how to set the CIL charging rates remained unchanged initially but various amendments and consultation exercises were undertaken between 2010 and 2014 resulting in the CIL guidance in 2014 (DCLG, 2014a). The major difference was in relation to the wording of the test which became more onerous on the local authority, but in the 2013 consultation document was “informed by practice experience to date from the development industry and local government” (DCLG, 2013b, p. 4).

The new wording in the CIL guidance was also a reflection of the National Planning Policy Framework issued in 2012 (DCLG, 2012b) which had also strengthened the viability testing of Local Plans, as set out in more detail in Chapter 2. Essentially the removal of the words “what appears to the charging authority to be” also removes the discretion of the LPA in determining the balance appropriate to its area and policy objectives. It seems to suggest a specific point at which economic viability and the collection of CIL funding can be balanced.

Other amendments related to being able to set differential CIL rates, by both use and scale of development, as well as spatially, the ability to accept payment in kind through the provision of infrastructure and the change to the deadline for the s106 changes from April 2014 to April 2015 (DCLG, 2014a).

These amendments over the four year period of CIL being in force as a policy, have moved away from the original objective of simplicity and the notion of value capture from land value increase from the granting of planning permission, a shift from the

original proposals by the Barker report. The policy is no longer a “land value tax”, it is a levy to pay for infrastructure, with a strong link to strategic infrastructure planning, also a link to the viability testing of the Local Plan and the SHLAA with the viability assessment for the CIL being much the same work. The relationship with s106 has been clarified to some extent, but remains a problem as any viability assessment has to take into account the “cumulative policy burden”.

The discussion now seems to focus on the delivery of development, the persuading of communities to support new development and the viability of development as key to delivery by the private sector. The increased emphasis on the need for evidence to support the viability assessment and the requirement in the National Planning Policy Guidance issued in March 2014, for “competitive returns to a willing land owner and willing developer to enable the development to be deliverable” (DCLG, 2014b), all reflect this shift to delivery of new development.

Having considered the evolution of the CIL policy over the period of 2003 to 2015, it is apparent that this CIL policy has developed within the context of a shortage of housing supply and the need to provide infrastructure to support growth generally. In parallel the role of the planning system is implicitly considered and related to this policy development, with an apparent need to make the planning system more flexible to support growth and housing provision. The changes in Government over the period and the dramatic macro-economic impact of the credit crunch and recession from 2008 onwards have also impacted on the policy, but nevertheless the problem and issues highlighted in the commissioning of the Barker review remain, even if the policy proposals have evolved and continue to evolve.

## **5.4 Discourse Analysis**

Having set out the national policy time line in this area, in order to uncover the underlying meanings behind the changes and to consider the potential impact on policy making practices resulting therefrom, an Interpretive Policy Analysis has been undertaken employing the Hajer (2006) methodology as set out in chapter 4.

### **5.4.1 Identification of Discourses**

The identification of the main discourses is critical to the discourse analysis process and can depend on either identification from theory and literature before entering the

field or alternatively from the actual fieldwork itself (Sharp and Richardson, 2001). At a national level the discourses emerged from a detailed analysis of a range of data sources, primarily national policy documentation, supported by committee reports, and comments made in the consultation exercises. As discussed earlier in chapter 4, discourses are defined by Hajer as a “discourse is a specific ensemble of ideas, concepts and categorizations that are produced, reproduced and transformed to give meaning to physical and social relations” (Hajer, 1995, p. 44). As such the key discourses identified from the national policy documentation will give meaning to the conceptualisation of value capture and how that has evolved over the period from 2003 to 2015.

The development of the policy of capturing value from planning or “planning gain” as it is sometimes termed, in a strategic way as opposed to the capture of value to mitigate site specific impacts of a particular development, is a new policy area in the UK. As discussed above it emerged from the need to address the shortage in housing supply and its effect on the growth of the national economy. The first discourse structuring the policy making in this area is therefore “supporting growth” this has been the discourse influencing the role of planning for some time and clearly influences any new planning policy. The second discourse is more specifically related to the policy area, and is termed “value capture”, this is a discourse which was first proposed at the beginning of the planning system in the UK in 1947, and has been something of an intermittent proposal over the period since then, with several attempts at a national land value tax all of which failed. Since 1985 the reliance on s106 as an unofficial and informal tax, but largely avoiding the funding of strategic infrastructure provision, rather than site specific mitigation measures, was changed again by the adoption of the proposals in the Barker report, with proposals for a tax in the form of the PGS which has subsequently changed into the CIL as type of impact fee.

The CIL policy has therefore emerged within the context of two discourses, “supporting growth” which has been a discourse influencing planning and its role generally, it has influenced the role of planning to be one of supporting and enabling the market to deliver and the second discourse “value capture” which has resulted from concern about s106 as a policy, and the return to a taxation of land value uplift

as a policy objective. Using the two main discourses of “supporting growth” and “Value Capture”, the development of policy in this area has been considered, storylines within these discourses have been identified, and an analyse of their discursive struggle and policy making impact analysed.

#### **5.4.2 Identification of Storylines**

As mentioned earlier in chapter 4, the Storyline is an important concept in analysing policy, it is defined by Hajer as “a generative sort of narrative that allows actors to draw upon various discursive categories to give meaning to specific physical or social phenomena” (Hajer, 1995, p. 56). They are reductive discursive devices that simplify complex debates through simplified narratives, as such they can often disguise contradictions and areas of misunderstanding with both positive and negative effects. They can legitimise policy whilst at the same time disguising incomplete arguments and institutional biases (Hajer and Versteeg, 2005, p. 177).

Several “storylines” have been identified which have influenced the development of the PGS/CIL policy over the period and these are shown in tables 5.3 and 5.4. These are based on an analysis of national policy and guidance documentation, as shown above in the key events and key sites of argumentation tables, and on how these storylines have influenced policy implementation at a national level. The storylines have been identified by studying the objectives and justifications made for the policy proposals overtime and how they have changed and the outcomes and impacts that are anticipated to result therefrom.

The justification of the policy is one element of the analysis, but the calculation of the charge is an important second element to be considered as it is inextricably linked to the policy making. This is apparent in two respects, firstly the challenge of making the necessary calculations for any charge and the discussion around this and the detail involved, secondly it also introduces the role of various actors in the policy making process and the assumptions that the national policy makes about that and the behaviours of those actors, in delivering the policy. The justification of the policy is based on economic theory and its assumptions about the behaviour of key actors, the calculation of the charge is about valuation methodologies and the role of actors within that process. The interrelation between these two aspects of policy making is a key aspect of this research.

### 5.4.3 Supporting Growth Discourse

Storyline	Description
Encouraging Developers	Encouraging developers to develop by allowing acceptable return in assessing level of levy  Viability = Delivery a new tax but with overall viability assessment as constraint
Incentivising Landowners	In assessing any levy need to allow acceptable return for landowners as an incentive to sell
Facilitating Local Authorities	Enabling Local Authorities to provide infrastructure to support growth as identified in Local Plan and IDP, a Plan-led approach
Persuading Communities	Persuading communities to accept new development

*Table 5.3 Supporting Growth Storylines*

The four main storylines have been identified from the policy documentation and debates that have taken place around consultations on the proposals as they changed over time. This discourse is about unblocking barriers to development, enabling the various actors to support and deliver new development, encouraging developers to increase the amount of development by assuming in any assessment of the CIL charge that a commercial return is required, that development has to be commercially viable to be able to be delivered. The second storyline is about “incentivising landowners” to release land for development by requiring an appropriate level of return to be included in the assessment of any charge. The local authorities has two roles firstly, providing the certainty of delivery of the extra infrastructure to support growth assessed as part of a Plan-led approach as part of the Local Plan process.

The second part of the local authority role is the collecting of the CIL income, this is constrained by the use of the viability assessment and the requirement to “strike the balance” between collecting funding and making development unviable, also the cumulative policy burden, means overall policy requirements also need to be

considered not just s106 and CIL but other policy requirements, such as sustainability requirements. This means that the CIL income collected will actually only fund a small part of the total infrastructure provision, potentially exposing the local authority to greater financial risk. Finally, the need to persuade communities to accept new development partly facilitated by the 25% share of CIL income, this is more relevant to areas where development is driven by high demand and where resistance to more development is likely to be greatest.

#### **5.4.4 Value Capture Discourse**

<b>Storyline</b>	<b>Description</b>
Making Development Contributions more predictable, simpler, and more transparent. More efficient collection of contributions	Taxing new development to mitigate impact and make it more sustainable, this resulting from dissatisfaction with the s106 system, justifying a new additional tax or levy and scaling back s106. Some of this income would provide strategic infrastructure in the area collected.
Windfall Tax on Land Value	Windfall Tax on Land Value Uplift on the unearned income accruing to landowners but also as part of tax to incentivise land sales to higher value uses such as a residential
Raising more income to fund more infrastructure provision	Collecting income to fund public goods and for community benefits and for strategic infrastructure
Compensating Communities with wealth generated from new development in their area	Compensating Communities with value from wealth generated in their area

*Table 5.4 Value Capture Storylines*

The four storylines under the value capture discourse (table 5.4) are more as a result of dissatisfaction with the s106 system; they are more reflective of the proposals of

the Barker report and the proposals for PGS and perhaps have been less reflected in the more recent changes to the guidance for CIL.

The first storyline emerges from the s106 system criticisms and the proposals and justification for an additional mechanism to collect more funding in a more predictable, transparent and simpler way, initially a tax and later a levy. This storyline whilst offering benefits to developers in terms of a simpler, more predictable and transparent system also introduces an additional mechanism, with the prospect of additional payments. The second storyline is the proposal that the impact of the levy would be passed from the developers to the landowners in reduced bids for land, should the development industry be willing and able to do so. The assumption is that the uplift in land values from granting planning permission even if reduced by the levy would still leave enough uplift to incentivise landowners to sell land for development. The third storyline reflects proposals for PGS, whilst collecting funding for additional infrastructure to support growth this wasn't specific about its distribution and seemed to imply it was not only for strategic infrastructure but other benefits. Finally, the last storyline is reflected in proposals to compensate communities for the impact of new development on their area by making it more sustainable and for the community to share in the benefit of wealth generated in their area.

### **5.5 Analysis of the impact of Discourses and Storylines**

Storylines are important and influential discursive mechanisms as discussed earlier in Chapter 4, they are employed by actors to influence the course of policy making and development, by influencing the meanings given to certain knowledge and how it is used in the policy making process. Storylines changed over the period and have three main affects, firstly, they can be used to position actors into certain roles, secondly, they can lead to the creation of discourse coalitions which are groups with, often only temporarily, shared aims and objectives in influencing policy development, they can be actors and groups which on the face of it would be unlikely allies but through the discourse have become so for shared objectives. Thirdly, storylines are used to cluster knowledge sources and can lead to a discursive mechanism known as "Black Boxing", where certain knowledge is placed into a "black box" where it is accepted as the norm and is beyond any challenge (Hajer, 1995).

The discursive struggle between discourses can lead to the dominance of one discourse, which is termed “discourse structuration” and if this starts to solidify into practices with institutional effects this is termed “Discourse Institutionalisation” (Hajer, 2010). The discursive struggle between the two discourses and their storylines was considered across four main areas, considering the impact on the main actors involved and how the conceptualisation of value capture shifted over the period.

The discursive struggle between the two different conceptualisations of value capture reflects the change in emphasis, from the Barker Review proposals of capturing a share of land value increases as a tax to redistribute value to communities as the main driver. To a different type of mechanism which is about collecting some value, determined by a Local-Plan setting out what infrastructure is needed to support growth and taking account of an appropriate level of return to developers and landowners and providing an income for communities enhanced if they organise at a local level, and capping public sector policy requirements in any assessment of the CIL rate.

### ***5.5.1 Encouraging Developers***

The “encouraging developers” storyline is about trying to get developers to build more development and removing barriers to that, the most important part of this is the emphasis placed in the policy documentation on viability. The need to provide a commercial return to developers to encourage development and this is established as a key part of the setting of the CIL rate. This reflects the dominance of the “supporting growth” discourse over the “value capture” discourse in defining the policy meaning in this area.

The developer oriented storyline of the “value capture” discourse is about dissatisfaction with the s106 system and trying to make a new mechanism more predictable, simpler, more transparent and more efficient, which should reduce the costs and uncertainties to developers and so assisting in reducing their costs and so making more development viable. CIL will offer several advantages over the current system of planning obligations: Simplicity, Predictability, Transparency, Fairness and Efficiency (DCLG, 2010a, p. 8).



The policy development from 2003 onwards, has not been particularly successful in these areas, the retention of the s106 alongside PGS and later CIL, has not made policy more predictable, nor simpler. Whilst transparency in relation to CIL is improved, as s106 continues, the original criticism still applies. The efficiency of collecting value has increased in areas where CIL is introduced as it applies to all new development rather than only those where an s106 is negotiated, but the CIL is not mandatory requirement and may not be introduced everywhere.

The new mechanism of value capture (CIL) is very much about encouraging developers to build to support growth and by protecting the commercial viability in any assessment of the value capture mechanism, the assumption is that viability equals delivery. The assumption is that all development is undertaken by the private sector and all require a commercial return for the risk involved.

*“The levy is expected to have a positive economic effect on development across a local plan area. When deciding the levy rates, an appropriate balance must be struck between additional investment to support development and the potential effect on the viability of developments.” (DCLG, 2014a p12)*

This is in contrast to the initial ambitions of the Barker review and response about a more efficient collection of income and criticism of the s106 system causing uncertainty and delays. The “encouraging developers” storyline becoming more dominant over time has positioned developers as key deliverers in the policy area, it also positions local authorities as having been inconsistent and not particularly effective in implementing the s106 system, hence the criticisms and perceived need for a new system to capture value. The storyline has also positioned local authorities as not always having appropriate knowledge of the development industry and having unrealistic expectations.

The clustering of knowledge sources has involved being knowledgeable of the decision making of developers and what will encourage them to develop. The problem is that the business models and decision-making of developers is highly confidential, also developers are not a homogenous group with differing objectives, business models and attitudes to risk.

The change in the conceptualisation of the value capture process over the period is reflected in the guidance as to how to implement the policy and how that has changed over the period. Part of that change reflects the shift to “encouraging developers” storyline to build and make more profit, rather than “a more predictable, simpler and efficient way of collection” storyline, which declined in importance, even if it could also be seen as trying to encourage developers as well. The impact of these storylines on practices in terms of the guidance is considered later.

### **5.5.2 Incentivising Landowners**

The second discursive struggle is about ensuring that a supply of land comes forward to support new development and growth, again the conceptualisation of this reflects the shift towards the dominance of the “supporting growth” discourse over the “value capture” discourse. The shift in conceptualisation of value capture to support new development, rather than to redistribute wealth or promote more sustainable development, as envisaged in the Barker Review and policy proposals up to 2010.

*“Government should actively pursue measures to share in windfall development gains accruing to landowners so that increases in land values can benefit the community more widely. Capturing part of these values will provide a funding stream for a number of other policies that will support increasing housing supply.” (Barker, 2004 p69)*

The initial proposals were about a windfall tax on the unearned income to landowners, but whilst the later CIL guidance did still acknowledge that the impact could be on lowering land values, this was a very much reduced aspect of the policy. The intention had been to redistribute the unearned land value uplift to local communities, with the view taken that the uplift in land Values would be more than enough to pay the “tax” as well as incentivise the landowner to sell his land

*“One option could be to use taxation as a method of incentivising land to be brought forward for development in the first place. Land could be taxed according to its market value and land that had a high value, and was therefore in greatest demand for use, would attract a higher tax liability to encourage its development, or its most efficient use. Since the most profitable of these possible uses would often be residential development, this could*

*increase the amount of land that landowners wish to sell for housing development overall.” (Barker, 2004 p71)*

The Report did go on to say that this was still something which had to be considered in detail and implementation had been challenging in the past.

*“As with any government intervention, there would remain difficulties and issues to consider. Government will need to give these particular attention in order to make the contribution regime a success:*

- *Permanence: Government would need to make – and win – the case for sharing development gains and build a national consensus on the merit of such a system. It is, however, worth noting that Section 106 has come to operate in a way similar to capturing development gain, and its core principles command widespread support.*
- *Transitional measures: contributions levied at the planning permission stage would need to involve some transitional measures “ (Barker, 2004 p 86)*

The later guidance has shifted towards the assessment of the CIL having to take account of a premium over existing use value to incentivise landowners to sell land for development, this is clearly a shift in emphasis in the policy towards delivery rather than any value capture prioritisation.

The result of these storylines is that landowners are positioned as key enablers of development along with their advisors whether planning or property professionals and consultants and even developers as all key intermediaries in the process. Somewhat different from the initial positioning of landowners as undeserving beneficiaries of “unearned income”.

*“Taxes can extract economic ‘rents’ – the unearned windfall that accrues to landowners when land is designated for residential use. This has primarily been the rationale for development and land taxes in the past. Capturing this ‘development gain’ could, in principle, allow it to be used to deliver the benefits of development to the wider community and support other housing policies.” (Barker, 2004 p70)*

The clustering of knowledge sources around these storylines are about knowledge of land values, which are difficult to ascertain, also knowledge of land ownership patterns in an area and how that may influence supply and on the objectives, motivations and business models of land owners bearing in mind they are not a homogenous group and vary significantly.

The change of the conceptualisation of the value capture process as determined by the discursive struggle between the discourses and storylines again reflects the dominance of delivery as a driver of policy change. This dominance of the “supporting growth” discourse and “incentivising landowners” storyline has not only changed how land value capture has been conceptualised, but also in the practices set out in national guidance and regulations for the assessment of this value capture. Shifting from how to assess the land value uplift in order to tax it, to how to incorporate via the TLV assessment, an appropriate return to the landowner to incentives him to sell for development, which will be discussed later.

### **5.5.3 Facilitating Local Authorities**

The discursive struggle between the “supporting growth” and “value capture” discourses is also reflected in the way the supporting storylines conceptualize the capture of value to fund infrastructure provision. The policy making initially was couched in terms of increasing value capture to provide more infrastructure to support new development and growth, but also to compensate communities and provide more sustainable development, it also provided greater certainty of infrastructure provision for developers.

*“Policies should reflect better both the positive and negative externalities associated with housing. This means the environmental costs of housing should be considered alongside the social and economic benefits, ensuring that land is used efficiently, that the most valuable undeveloped land is preserved and that development promotes sustainable communities.” (Barker, 2004 p27)*

There was clearly a shared objective of facilitating local authorities to provide infrastructure for growth but with a wider objective around redistribution of wealth. Over time the storyline of “facilitating local authorities” has become more dominant in

terms of defining the meaning of the policy making over the “raising more funding” storyline. The emphasis has been again on facilitating delivery of development over other policy objectives. The CIL policy introduced three important points in this respect which were significant changes to the PGS proposals.

Firstly, the “Plan-led” approach, this tied the provision of infrastructure to the Local Plan process and to the growth strategy within those proposals. But this also restricted the flexibility of the local authority over what to spend the money on, to that of specific infrastructure to support specific development.

*“The CIL should be ‘plan led’. This means that it should support the delivery of (for example) the homes and jobs envisaged in an authority’s development plan. CIL spending will need to be underpinned by a costed list of infrastructure projects that are needed to support development. The Bill allows Regulations to set out the procedure which should be followed in preparing such a list, which may include consultation with those affected, including the infrastructure providers themselves.”(CLG, 2008 p13)*

In later CIL policy the introduction of the 123 list was a further tightening of this defining of the infrastructure in terms of what it can be spent on.

*“When a charging authority introduces the levy, section 106 requirements should be scaled back to those matters that are directly related to a specific site, and are not set out in a regulation 123 list. For transparency, charging authorities should have set out at examination how their section 106 policies will be varied, and the extent to which they have met their section 106 targets”. (DCLG, 2014a p52)*

*“The charging authority’s proposed approach to section 106 contributions should be set out at examination and should be based on evidence. Where a regulation 123 list includes project-specific infrastructure, the charging authority should not seek any planning obligations in relation to that infrastructure.” (DCLG, 2014a p53)*

Secondly, “striking the balance” also reflects a shift, from a general tax proposal of PGS, where no tax rate was actually proposed, although reference was vaguely

made to the need to strike a balance even then, but from the outset was relevant to CIL.

*“The Government wants CIL funds to unlock development. But if the levy is set too high, it might cause some development to become unviable. Because it is the purpose of CIL to ensure that more development is delivered, the level of CIL must be set to ensure it supports and does not prevent development. In setting charges, charging authorities will therefore need to take account of land value uplifts in their area.” (CLG, 2008 p 4)*

When the CIL proposals were introduced the notion of striking a balance emerged and effectively restricted the local authority to take account of the impact on viability and deliverability which in 2010 was in the local authorities view, later restricted further to a balance based on evidence.

Finally, the “cumulative policy burden” was introduced as a further emphasis on delivery and capping value capture for policy objectives in a wider sense, initially set out in paragraph 173 for the National Planning Policy Framework (DCLG, 2012b). This also featured in the Harman Report guidance and has become an important influence on policy practice.

*“Some may be deemed to be critical for development to be acceptable in planning terms and some may be more discretionary and/or only applied to certain types of development or geographies. Through discussing this, appropriate trade-offs can be made to ensure that the cumulative policy burden does not make the plan undeliverable.” (Local Housing Delivery Group, 2012 p 33)*

The outcome of the discursive struggle in this area of policy development has again been dominated by the “supporting growth” discourse in defining the meaning of the policy and establishing “discursive closure” (Hajer 2006). The storyline positions the local authority as facilitators of developers as key deliverers by providing certainty over infrastructure provision. The clustering of knowledge sources are around the Plan-led need for growth, identifying the growth and new development needed and the infrastructure required to support that growth, as set out in the Infrastructure Delivery Plan (IDP) and 123 list. Knowledge sources about the viability of

development and of policy impacts also become relevant when assessing the CIL rate to set.

The change in national policy guidance in this area has been quite extensive and accordingly the impact on practices have been significant on how the local authority seeks to secure its value capture income and facilitate the provision of infrastructure. Policy practices around the Plan-led approach, the preparation of the Infrastructure Delivery Plan, the “striking the balance” and “cumulative policy burden” in setting the rates are discussed below.

#### **5.5.4 Persuading Communities**

The fourth area of discursive struggle at the national policy making level is in relation to local communities, the “supporting growth” discourse again strongly oriented towards delivery looks at persuading communities that may oppose new development into accepting new development. In the speech on 18<sup>th</sup> November 2010 the Minister not only confirmed CIL was to be retained, but also changed the emphasis from the notion from the sharing of wealth and compensating communities for accepting development in their areas, which was based on the more redistribution justification of the PGS, to the idea of persuading communities who may resist new development to instead accept it.

The introduction of the Community percentage also further emphasises this point of the shift more towards persuading communities to accept new development.

*“Alongside the New Homes Bonus, this is another way to make sure communities benefit from development in their area. It will help change the debate about development from opposition to optimism” (Communities to share in the advantages of development – Ministers Speech on 18th November 2010)*

The discursive struggle in this area over the meaning attributed to the policy is less significant than in some of the other areas, but there still has been an impact on practices, not least the implementation of the community share.

*“Neighbourhoods that take a proactive approach by drawing up a neighbourhood development plan, and securing the consent of local people in*

*a referendum, will receive 25% of the revenues from the Community Infrastructure Levy arising from the development that they choose to accept.” (Planning Minister Nick Boles announces new cash incentives. 10<sup>th</sup> January 2013)*

The positioning of communities as potential victims of and objectors to new development leads to them being perceived as a barrier to new development that needs to be addressed. The clustering of Knowledge sources relates to the impacts of new development in terms of new infrastructure requirements, but then also the control over the spend and what it is spent on and who decides.

Having considered the national level discursive struggle and the prevalence of the “supporting growth” discourse and its supporting storylines in reconceptualising what is meant by value capture between 2004 and 2014, it is now worthwhile considering the impact of this on the practices involved in policy implementation as set out in national policy regulations and guidance, before considering these again in a local context in the case studies.

## **5.6 Policy Impact of the Discursive Struggle**

The effects of storylines on the implementation of policy in terms of positioning actors and clustering knowledge claims to influence the construction of the policy problem and the meaning attributed to the policy have been outlined above, this can also influence the everyday practices of actors involved in the process. Hajer defines practices as “embedded routines and mutually understood rules and norms that provide coherence to social life” (Hajer, 2006, p. 70). He goes on to state on his website “If discourse analysis is the analysis of language-in-use then practices are the sites where language is used.” (Hajer, 2016).

Accordingly, as this analysis is at the national policy level the focus has been on the changing guidance over the period and how this has proposed changes in practices as influenced by the storylines as discussed above. This can only be a partial analysis of the practices based on the codified knowledge set out in the guidance, it is important however, to establish the anticipated practices as seen from a national level and in formal guidance before looking at practices within a local context. How



the storylines have interacted within a local context and how they have influenced practices at a local level are considered in the case studies.

At the national level the value capture concept has shifted towards one of supporting growth and delivery of development with the capture of value being subordinated to this as an objective. The capture of value is seen as worthwhile provided it doesn't jeopardise delivery of new development.

There are four areas of practice that have been identified from the national policy documentation and these are now considered as to how they have changed over the period.

### **5.6.1 The preparation of the IDP (How will the income be spent)**

The initial proposals for PGS didn't specify how the income would be spent other than on infrastructure to support new development, the introduction of CIL as a policy introduced the "plan-led" approach which linked the levy to specific infrastructure provision in support of growth and as set out in the Local Plan.

*"The CIL should be 'plan led'. This means that it should support the delivery of (for example) the homes and jobs envisaged in an authority's development plan. CIL spending will need to be underpinned by a costed list of infrastructure projects that are needed to support development." (CLG, 2008 p 13)*

This establishes a clear new practice to the UK of capturing value for infrastructure provision from the planning process via a plan-led approach, instead of either a site by site negotiated approach such as the s106 system, or a tax collected at a national level. The CIL process was specifically to support growth and new development as set out in the Local Plan and to help fund that specific infrastructure requirement as set out in the IDP.

It differs from the s106 system in that it seeks to fund strategic infrastructure rather than site specific infrastructure and affordable housing provision which remain to be funded from s106 agreements. The national taxation approach as advocated by the PGS and several earlier proposals were not linked to any specifically identified infrastructure projects.

This change to a “plan-led” approach places an increased importance on the Local Plan and its status, the CIL either having to follow an approved and adopted Local Plan or running in parallel with the Local Plan process.

*“The Government expects that charging authorities will implement the levy where their ‘appropriate evidence’ includes an up-to-date relevant Plan for the area in which they propose to charge. As set out in the National Planning Policy Framework in England, where practical levy charges should be worked up and tested alongside the Local Plan. (DCLG, 2012a p 6)*

Of course the CIL will only provide a small proportion of the IDP requirement, which is the total infrastructure provision to support the Local Plan. It is also a requirement that there is a funding gap identified to be filled by the CIL, with the funding of this infrastructure being an important aspect of providing certainty to developers.

*“The role of the list is to help provide evidence on the potential funding gap – it is not the purpose of the examination to challenge the list. A charging authority may undertake additional infrastructure planning to identify its infrastructure funding gap, if it considers that the infrastructure planning underpinning its relevant Plan” (DCLG, 2014a p 15)*

The growing importance of the IDP and what the money would be spent on is reflected in the changes in the guidance for CIL, with the February 2014 version including a specific section regarding advice on preparing the IDP something not included in any earlier guidance (DCLG, 2014a).

The CIL guidance regarding setting the rates was significantly different in February 2014 compared to the earlier versions of March 2010, December 2012 and April 2013. The emphasis in the final version was much more on the requirements for the CIL examination process and particularly about the relationship between what was spent through the s106 and what spent through CIL.

*“At examination, the charging authority should set out a draft list of the projects or types of infrastructure that are to be funded in whole or in part by the levy (see Regulation 123). The charging authority should also set out any known site-specific matters for which section 106 contributions may continue to be sought. This is to provide transparency about what the charging authority*

*intends to fund through the levy and where it may continue to seek section 106 contributions.” (DCLG, 2014a p13)*

This reflects the concern over time by developers, as the CIL started to be implemented nationally, about potential double payments by developers for the same infrastructure. The 123 list which sets out a specific list of items which will be either wholly or partially funded from the CIL income and which is a sub selection of the IDP.

The shift in policy guidance over the period and in turn on the practices of local authorities implementing CIL is to reduce the local authority flexibility and to provide more constraints on how the money is spent and by whom, with a whole additional section in the February 2104 guidance (DCLG, 2014a).

Finally, the introduction of the involvement of local communities in the spending of 15% of the CIL receipts and up to 25% in areas which have a Neighbourhood Plan has been set up, the CIL receipts will then be passed directly on to the Town or Parish Council. The complexities around the spending of the CIL income and practices are still being resolved in specific areas, but clearly this is another change of practice in the guidance and set out in some detail in the February 2014 guidance.

### ***5.6.2 The Viability Assessment (including the Assessment of Threshold Land Value)***

Having considered what the funding is needed for, the next area of practice is how to assess how much money may be available, and again this is an area of guidance that has changed significantly over the period. The initial proposals for the PGS didn't really need to look at the effect of the tax or levy on the viability and by extension the deliverability of development. Although it is acknowledged that the PGS proposals did state that care must be taken not to set the tax too high so as stop development coming forward.

*“The property industry, including both commercial developers and house builders, has been working over the last ten weeks to prepare a response to the invitation contained in the Housing Green Paper to consider a number of alternative approaches to a Planning-gain Supplement (PGS).*

*Our alternative is a tariff based system with the tariff set at the local level according to planned infrastructure needs and levied on all but the most minor development. Payment would be made directly by the developer to the local authority and there would be provision for essential site mitigation needs to be met under a simplified Section 106 arrangement. We set out, in the attached paper, more details on how we believe this system would work.*

*We have also sought the views of local authorities, both individually and through their representative bodies, and have been re-assured to find that all those we have contacted also favour a tariff-based approach in preference to PGS.*

*The property industry has accepted the Government's wish to have a more comprehensive approach to contributing to infrastructure than is provided for by the variably applied Section 106 process. Moreover, there is a growing body of real evidence that tariffs can be implemented effectively by local authorities in a way that does not discourage development." (Home Builders Federation et al., 2007)*

The change to CIL required a major change in approach with the levy linked to a local authority area and determined within that local context, with even the option for a local authority not to introduce CIL.

The switch from PGS to CIL was at least partially instigated by consultation with the development industry who had strongly opposed the PGS. But who also considered the CIL a better approach in principle at least, although again concern about the method of assessment was an important detail to be resolved satisfactorily.

*"There has to date been a consensus among stakeholders in favour of CIL. The Confederation of British Industry identified the benefit of "greater certainty for businesses" offered by the CIL,<sup>15</sup> while in its briefing to MPs in advance of the Commons Report stage of the Bill, the British Property Federation (BPF) highlighted "the property industry's continued support for the Community Infrastructure Levy (CIL)." The BPF went on to say that "significant progress has been made with the practical detail. CIL remains the most sensible approach towards obtaining a contribution from developers to support the*

*infrastructure requirements which are a consequence of new development.”*  
(DCLG, 2008b p23)

The value capture concept and idea is always inextricably involved with the issues about how the tax or levy is calculated, and the important challenges around that issue and as flagged up by the Barker report. The initial proposals were to assess land value increases due to the grant of planning consent, based on land registry data, this is very different from the assessment of land values from a residual valuation approach, advocated by CIL as considered later. In fact the challenge of finding a satisfactory method of calculation for PGS may in itself have been a factor in its abandonment as well as the opposition and criticisms.

*“The Planning-gain Supplement (PGS) remains the Government’s preferred option for securing more of the benefits conferred by the planning system to support housing growth. However, before legislating, the Government wants to be sure this is the best option.”* (CLG, 2007a p44)

In paragraph 34 on page 55, four alternatives were set out for consideration, and the Government were clearly prepared to changes PGS (CLG, 2007a).

*“Hold discussions prior to the Pre-Budget Report with key stakeholders to discuss possible changes to the design of PGS, particularly focusing on the proposed scale back of section 106 and on whether the alternatives they have proposed might be better.”* (CLG, 2007a p56)

The CIL as a policy however placed the assessment of viability at the heart of its assessment

*“It is for charging authorities to decide how to present appropriate evidence on how they have struck an appropriate balance between the desirability of funding infrastructure from CIL and the potential effects of the imposition of CIL on the economic viability of development across their area.”* (DCLG, 2010c p8)

The methodology to assess economic viability has been an area about which the national policy has been rather unspecific, even though initially a standard methodology was considered

*“John Calcutt’s recent report to the Government on housing delivery recommended that the Government should work with the Homes and Communities Agency, the development industry and local government to develop or adopt a standard methodology to assist local planning authorities in assessing what level of developer contribution is viable for any particular development. Several methodologies or ‘tool kits’ already exist to help inform decision-making on the level of developer contributions where viability is an issue and, as Box 3.3 shows, some local authorities are commissioning detailed analyses to assist viability judgements at the plan level rather than on individual sites. The Government is considering what further support and guidance could be given to assist charging authorities to make plan-level viability assessments, and chapter 6 considers further the skills issues that this requirement may raise.” (DCLG, 2008b p52)*

Whilst this led to the HCA area-wide model in 2011 (HCA, 2011), in fact no methodology has been advocated, leaving this to the local authority to decide upon, with which to defend its decisions.

*“There are a number of valuation models and methodologies available to charging authorities to help them in preparing evidence on the potential effects of the levy on the economic viability of development across their area. There is no requirement to use one of these models, but charging authorities may find it helpful in defending their levy rates to use one of them.” (DCLG, 2013a p8)*

This position on the economic viability section has remained relatively unchanged throughout the guidance from 2010 to 2014, “the appropriate available evidence” to be included, the economic viability to be included in a separate document, the history of s106 contributions and whether affordable housing targets have been met, are also to be included as evidence. Some additional sections were added in February 2014 reflecting the increase in the prescription of what is required and reduced flexibility for local authorities, there has been an increased emphasis on using evidence to support the viability assessment over time.

*“A charging authority must use ‘appropriate available evidence’ (as defined in the Planning Act 2008 section 211(7A)) to inform their draft charging schedule. The Government recognises that the available data is unlikely to be fully*

*comprehensive. Charging authorities need to demonstrate that their proposed levy rate or rates are informed by ‘appropriate available’ evidence and consistent with that evidence across their area as a whole.” (DCLG, 2014a p 16)*

The impact on the viability assessment process has therefore been influenced by other guidance issued over the period, the HCA guidance in 2011, the Harman guidance in June 2012 and the RICS guidance in August 2012. As discussed earlier in chapter 2, this has not always been helpful nor consistent with conflicts between the guidance.

There are two main areas of practice to be influenced by this guidance, the assessment of the TLV (which is the assessment of the land value at which a landowner will sell land for development) and the Economic or Area Wide Viability Assessment (which attempts at a high level to model the residual land values for different uses and locations across a local authority area).

The assessment of the threshold land value is an area of much conflict in the guidance and potential impact on practice. The main areas are about how to measure the uplift above existing use value to incentivise the landowner to sell land, and secondly how evidence is used in any assessment and finally using the proportion of the estimated value of the completed development as check.

The calculation of the uplift is a challenging area and the simplest approach is one of the existing use value plus a premium, usually a percentage decided by the valuer. This is included in the HCA guidance as well as the in the Harman Guidance. It is problematic for several reasons set out by (Wyatt and McAllister, 2013) the lack of any empirical basis to support the incentive premium, it is not linked in any way to the final end use value of the development, it doesn't necessarily reflect landowners expectations based on their knowledge of other transactions and the use of a static model to incentivise landowners to sell doesn't take account of changing market conditions over time and in any event the deal in selling land may not be based purely on price but be more complex factors.

The RICS guidance is more related to comparable evidence and adjusting it to take account of planning policy assumptions in making those adjustments. This leads to

the second area, the use of evidence, all the sources of guidance talk about evidence, even the Government guidance talks about “appropriate available evidence”, this is one of the problems, the lack of land value evidence. The Harman and HCA guidance also advocate the use of comparable evidence, the differences are in respect of what is relevant evidence, in terms of local markets, but perhaps more crucially in how that comparable evidence is adjusted.

The third issue is included in the Harman guidance and is a useful double check or sense check on the other calculations. The Harman guidance suggests that the time horizons of landowners should be considered, plus the structure of landownership in an area, the nature of the location as rural or urban, the differing levels of “hope value” in an area over existing use value and the Development or Local Plan allocations. The RICS guidance suggest a wider view of market value rather than just local market evidence and that market evidence based on Development Plan policies that have now changed should be disregarded or adjusted. The site value should reflect emerging policy proposals that may affect market values, including the CIL policy itself. This last point is the main area of significant difference between Harman and the RICS guidance.

What is clear is that this impacts on practice and in turn on the CIL viability assessments, it also implicitly requires local authorities to have an understanding of the structure of landownership in their area as well as some understanding of landowners decision-making as well as sources of evidence. The practice of trying to assess the uplift in land value resulting from the grant of planning consent advocated in the original Barker proposals is still in some ways present, but it has been changed round to say what uplift does the landowners need to sell rather than, the landowner will gain an uplift in value some of that should be shared by the public sector and community who have generated value.

The other element of the assessment is the area wide appraisal to determine a range of residual land values across the local authority area to show differing viability in different locations and for differing uses, this is vital to support differential CIL rates, to comply with EU State Aid regulations.

*“However, charging authorities should be mindful that it is likely to be harder to ensure that more complex patterns of differential rates are State aid compliant,*



*so for example, charging authorities need to be consistent in the way that appropriate available evidence on economic viability informs the treatment of a category of development in different zones.” (DCLG, 2012a)*

The CIL guidance (DCLG, 2014a) has become more prescriptive over time about the selection of hypothetical sites and the process required prior to CIL examination.

The residual valuation process again is a standard valuation approach of subtracting development costs from development values to produce a residual site value. The assumptions made about the development costs have been influenced by the Examiners Reports as they are released, they are also influenced by what are seen as industry standards such as developers profit should be 20% of Gross development value, which has been established as a standard. This reflects the change in guidance to include a “competitive returns to a willing landowner and willing developer to enable the development to be deliverable” as stated in paragraph 173 in the NPPG in March 2014.

*“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.” (Para 173 DCLG, 2014b)*

The building cost assumptions are also based on certain standards and the BCIS are a major source of evidence, but then so is the development industry in a local area and hence the importance of consultation and engagement as discussed later. The market value assessment is based on market values in a local area and these may or may not be easy to obtain, they often require adjustment, and again they may be supplied by developers in a local area.

The changes in the guidance as relating to practice in this area have been more about the detail of specific assumptions rather than the general approach, as the residual method of valuation is long established. The biggest impact on practice is whether the residual method of valuation which traditionally has been applied to a specific site to ascertain its value, usually for a specific client for their specific proposals, can be satisfactorily adapted to work effectively over an area wide basis across a local authority area.

The use of hypothetical sites with hypothetical assumptions is the approach proposed (DCLG, 2014a) and sometimes this is supplemented by the evidence of residual valuations of specific sites in the Local Plan or SHLAA to assess their viability for development, but again these are at least partially based on hypothetical assumptions. Even the use of actual site based viability appraisals from actual s106 negotiations whilst useful, as these have been undertaken prior to development starting on site, still don't always reflect the real development position.

The challenge of trying to map across a local authority area the zones of different value for different property sectors is challenging as to how boundaries are drawn and values derived from available evidence, clearly an area of conflict between actors. Added to this is the assessment of cost variations across individual sites for different forms of development proposals, these are in reality very site specific, but for the area-wide viability assessment need to be averaged out based on generalised assumptions as to costs, this is clearly also an area for conflict between actors in the process.

The Comparison between the TLV and the residual valuations in each zone across the area wide appraisal determines the available headroom for charging CIL in that area and will inform the setting the rate practice which is now considered.

### ***5.6.3 The Setting of the Rate (Striking the Balance and Cumulative Policy Burden)***

The practices of establishing what the CIL income will be spent on in the IDP and of undertaking the viability assessment are brought together in the practice of setting the rate. This has also been the subject of significant changes in national policy guidance over the period, this is the practice of deciding what will actually be payable

in the tax or levy. It is a political decision but based on a more technical assessment as discussed above, in the initial proposals for PGS a national tax rate was never set, but figures of 20% were suggested, perhaps learning the lessons from previous proposals of 100%, 80% and 70% tax rates, which stopped development proceeding.

*“If applied at a sensible rate, landowners could still enjoy significant potential development gain and thus land sales can still profitably proceed. This is in contrast to both the tax rates of some previous DGTs, which were frequently punitively high, and to VAT, where the effective tax rate on land can often surpass 100 per cent of land value.” (Barker, 2004 p85)*

The switch to the CIL is partially as a result of concern over the whole approach to the calculation of the PGS, with some commentators suggesting the whole calculation approach was flawed.

*“The Government agree that it will be important to strike the right balance between raising additional revenues and preserving incentives for development in setting the PGS rate. As proposed in Planning-gain Supplement: a consultation (HM Treasury, HMRC & Office of the Deputy Prime Minister 2005), PGS would be set at a modest rate across the UK in order to generate additional revenue for investment in infrastructure at the local and regional levels while preserving incentives for development to come forward. This principle will guide decisions about the PGS rate. The Government will continue to work with stakeholders to consider the impact of PGS on development.” (CLG, 2006a p6)*

Even with the CIL proposals the details of how it would be calculated was from the outset an issue and concern.

*“Some commentators, particularly from the commercial development sector, have argued that land value uplift arising from the grant of planning permissions in an area may not be the right indicator to which charging authorities should have regard in setting CIL levels when they prepare their charging schedule. The Government’s view is that the increase in value arising from commercial development will be reflected in a land sale price eventually” (CLG, 2008 p 19)*

*“However, commercial developers have argued that it may not be necessary or desirable to carry out an assessment of land value change in order to decide what level of CIL is affordable, and that there could be other more immediate proxies. The Government is in discussion with the industry to establish whether other measures or proxies might be appropriate.” (CLG, 2008 p 19)*

The issue of “striking the balance” was set out from the early stages and has become a key phrase or trope in the process in placing viability at the heart of CIL assessment. The initial guidance for setting CIL rates (DCLG, 2010b) stated

*“Regulation 14 requires that a charging authority, in setting CIL rates, ‘must aim to strike what appears to the charging authority to be an appropriate balance between’ the desirability of funding infrastructure from CIL and ‘the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area” (DCLG, 2010c p 4)*

This provided the local authority with some flexibility in determining what was appropriate for its local area, but as highlighted earlier this wording has changed through the various versions of the setting the rates guidance in (DCLG, 2012a; DCLG, 2013a) and, (DCLG, 2014a) with the most significant change being in the February 2014 guidance with the removal of “what appears to the charging authority to be” and replace it with “should use evidence”.

*“Charging authorities should use that evidence to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential impact upon the economic viability of development across their area.” (DCLG, 2014a p12)*

This is a clear change in emphasis and potential influence on practice, this is also reflected in the minor changes of wording to the section on “what is meant by the appropriate balance” (April 2013) becomes “what is meant by an appropriate balance” (February 2014) and from “support development of their area” (April 2013) becomes “support development across their area” (February 2014). These reflect a change in the local authority’s level of control and leadership of the CIL rate setting process as set out in the guidance.

Also added to the guidance in February 2014 was the need to justify rates based on evidence much more strictly than in the earlier guidance, shown by the contrast between the two quotes below, with the 2014 quote added to the 2013 quote.

*“there is no requirement for a proposed rate to exactly mirror the evidence, for example, if the evidence pointed to setting a charge right at the margins of viability. There is room for some pragmatism.” (DCLG, 2013a p 9)*

*“It would be appropriate to ensure that a ‘buffer’ or margin is included, so that the levy rate is able to support development when economic circumstances adjust. In all cases, the charging authority should be able to explain its approach clearly.” (DCLG, 2014a p 16)*

This again restricts the freedom of the local authority to set rates especially when as acknowledged the availability of evidence is problematic and contested. The latest guidance becomes much more formalised around the CIL examination, what is required and the consideration of evidence in that arena.

The other major change is the emphasis placed on the term “cumulative policy burden”, whilst this was introduced by paragraphs 173 to 177 in the NPPF in 2012, it was not referred to in the December 2012 or April 2013 CIL guidance which stated in regulation 14 (1)

*“In meeting the requirements of regulation 14(1), charging authorities should show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant Plan and support the development of their area.” (DCLG, 2012a p 6)*

*“As set out in the National Planning Policy Framework in England (paragraphs 173 – 177), the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.” (DCLG, 2014a p 12)*

Again, whilst clearly the NPPF was in place and needed to be taken into account in any CIL rate setting before February 2014, the emphasis on the term “cumulative policy burden” seeks to change the meaning, it refers to the fact that a whole range of other policies impact on viability, not just development contributions such as s106

agreements or CIL, but also policy requirements relating to design or sustainability to be included in new developments. The quotes below were also added to the February 2014 guidance illustrating the point.

*“A realistic understanding of costs is essential to the proper assessment of viability in an area. Development costs include costs arising from existing regulatory requirements, and any policies on planning obligations in the relevant Plan, such as policies on affordable housing and identified site-specific requirements for strategic sites.” (DCLG, 2014a p 17)*

*“Differential rates should not be used as a means to deliver policy objectives.” (DCLG, 2014a p 17)*

The overall impact of these on the viability and therefore deliverability of development needs to be explicitly considered, this places a cap on the policy objectives as a whole as required by local authorities, determined by an economic viability assessment.

#### **5.6.4 Consultation and Engagement Process**

The change in the guidance and its potential impact on practice is also apparent in the change in how consultation and engagement is undertaken in the CIL policy process. Again in the PGS proposals this was not a particular issue, but the change to the Plan-led approach of the CIL required consultation in a similar way as to that required by the Local Plan process.

The CIL guidance set out a formal process with two formal stages of consultation, at the publication of the Draft Preliminary Charging Schedule stage and at the Draft Charging Schedule stage. This would then be followed by the CIL Examination itself and the Inspectors Report, before formal adoption by the local authority. In the guidance on setting the CIL rate little or no reference was made to the consultation or engagement process up to the February 2014 guidance.

*“charging authorities should consider views of developers at an early stage.” (DCLG, 2013a p10)*

In the February 2014 guidance a whole section on how the Charging Schedules should be prepared, including engagement with and requiring support from local

developers. This clearly will likely have an impact on the practices required to implement the CIL policy and reflect the relationship the local authority has with local developers and property professionals in its area, this is something which is new in the implementation of CIL compared to s106 or earlier national taxation mechanisms.

*“Charging authorities should seek early engagement with local developers, others in the property industry and infrastructure providers when preparing their charging schedules.” (DCLG, 2014a p14)*

*“a charging authority should directly sample an appropriate range of types of sites across its area, in order to supplement existing data. This will require support from local developers.” (DCLG, 2014a p16)*

There is also a whole section on what the CIL can be spent on and by whom and the impact of Neighbourhood portion of the levy, which was introduced by the Localism Act in 2011 but only included in the CIL guidance for setting the rates in February 2014. This requirement to pass a proportion of the income from CIL directly to a Town or Parish Council or where a Neighbourhood Plan has been prepared, will clearly also require a change in practice and an implicit requirement to consult and engage over the priorities for spending in a local area. There will be a need to align future spending plans between the community and the local authority and to engage in planning future infrastructure provision.

Many of these changes in the national CIL policy regulations and guidance are still relatively recent, the full impact on practices are still being considered, what is clear is that as in the change in the conceptualisation of value capture that has taken place over the period 2003 to 2015, the CIL guidance on setting rates has also shifted over the period and requires changes in practices around the implementation of the policy, how they will translate into practices at a local level will be considered in the Case studies.

## **5.7 Conclusion**

The emergence of the CIL as a value capture policy is part of the need to secure more funding to support the provision of infrastructure to in turn support growth. The Barker review into the provision of housing supply (Barker, 2004) identified the need for an additional value capture mechanism to Planning Obligations, to fund strategic

infrastructure to support growth. Initially the Barker review proposed a new land tax, the Planning Gain Supplement (PGS) but this eventually became the CIL which in itself has evolved since its initial proposals in 2008, but the whole rationale was to support growth and new housing supply.

This was the start of the reconceptualization of value capture from one of a redistribution of unearned land value to one of funding infrastructure, from explicit taxation in terms of PGS to implicit taxation via CIL. This was reflected in the discursive struggle between the storylines promoting the “value capture” discourse and the storylines promoting “supporting growth” discourse over the period. The storylines related to the key actors involved in the discursive struggle and the storylines of “encouraging developers”, “incentivising landowners”, “facilitating local authorities” and “persuading communities” became dominant supporting the “supporting growth” discourse, as they were based on removing the barriers to the delivery of new development and growth.

The changes in the national policy increasingly emphasised the need to remove barriers to development and the change from PGS to CIL. This increased in CIL to ensure a supply of land via the “incentivising landowners”, to promote development via “encouraging developers” by protecting the viability and deliverability of projects within the assessment of CIL, the provision of funding for strategic infrastructure in addition to S106 funding to “facilitate local authorities” and finally the “persuading communities” by the 25% payment to neighbourhoods. These storylines were identified in national policy guidance and its changes over the 10 year period from 2005 to 2015; they also envisaged impacts on policy practices.

In tracking the changes to national policy regulations and guidance it is clear that the three challenges faced by all value capture mechanisms persisted; the assessment of the development value, the sharing out of this between the various actors including what amount to capture by the public sector and finally how that funding would be spent, these were the key areas of policy practice. In addition, the consultation and engagement process was a key fourth policy practice and important in how the policy would be implemented involving key actors in the process.

The national policy guidance changed in relation to the four areas of policy practice changing the emphasis and restricting the discretion of local authorities. Firstly, the



IDP would set out the infrastructure needed to support the growth identified in the Local Plan and on which the funding would be spent, this was further restricted by the subsequent requirement to provide a 123 list setting out the specific items the envisaged income would be spent on. The policy practices were envisaged to restrict local authorities to spending of CIL on growth related infrastructure only. Secondly, the Viability assessment was to assess the amount of development value available to be shared between the various actors, the viability assessment was placed at the heart of the CIL policy, with the threshold land value assessment protecting the landowner's value and the 20% profit level protected for the developer for taking the risk in undertaking the development. Thirdly, the setting the rate policy practice influenced by key metaphors "striking the balance" and "cumulative policy burden", also restricted the discretion of local authorities in setting a CIL rate, with increasing emphasis on evidence in the decision making process, it also forced local authorities to make policy choices within the viability assessment headroom. Finally, the consultation and engagement process over time increasingly emphasised collaboration with developers, in turn increasing the influence of developers on the CIL process and the asymmetry of knowledge and power between the parties.

The national policy guidance and its codified knowledge provided a context for local policy implementation outlined above, how this translated into policy practices at a local level is considered in the case studies in the next two chapters.

## **Chapter 6 Durham Case Study (Business not as usual)**

### **6.1 Introduction**

The research undertaken considered two case studies in the north east of England, Durham and Newcastle/Gateshead, these were selected for several reasons, firstly the ability to secure a depth of primary data collection by being able to gain access to key actors in the case studies, this partly as a result of the contacts the researcher had in the field of research having worked in the north east for over 25 years.

Secondly, the fact that they were the only two CIL proposals that had been progressed in the north east, which stood in a clear contrast to other areas of the country, illustrating the challenge of implementing such a policy in the north east.

This challenge made it of particular interest to research, as an appropriate context in which to study the micro-political processes involved in the implementation of the CIL policy, as these would be more apparent and observable than in other contexts where the policy implementation was less contested. The choice of two case studies also afforded an opportunity to compare features between the two case studies themselves and to make comparisons with the national perspective of the policy and its objectives and how they worked out in practice.

### **6.2 Methodological Approach and Link to the research questions**

As set out earlier in chapter 4 the research sought to investigate the policy making process using the argumentative discourse analysis approach of Hajer (1995) and his 10 stage methodology (Hajer, 2006) to undertake the research process. The research has used an interpretative policy discourse analysis in a similar way to that employed in the national policy analysis in chapter 5, analysing the dominant “supporting growth” discourse and its supporting storylines and their impact within the context of the Case Study of the Durham CIL. Attempting to uncover the main discursive mechanisms used in the policy making process at the micro-political level and their impact on policy practices in a local context.

This analysis assists in the consideration of the research question about the relationship of planners with other actors in the policy making process, in trying to uncover their understanding of the behaviour and decision making of the other actors

in the process, such as developers and landowners and how that has influenced the policy implementation.

The other research question is more concerned with the production and use of knowledge claims within the process and the use of knowledge by planners in their decision making within the policy making process. This analysis will attempt to show how various actors have used various knowledge claims within their storylines and how this in turn has influenced the policy implementation. It is hoped this will assist in understanding how the planners use knowledge in their decision making process.

### 6.3 Description of County Durham

Durham County Council in terms of population is the fourth largest Council in the country and the largest in the north east, with a population of over half a million. It was established as a unitary authority on 1<sup>st</sup> April 2009, when the seven district councils were abolished and the powers transferred to the new unitary authority (Durham County Council, 2011). It is a varied council with former industrial areas mainly in the east of the County in the former coal mining area, in the south and west it is mainly agricultural and rural, with the northern part being part of the commuter area into Newcastle and Tyneside. Durham City is the main settlement and administrative centre; it is famous for its cathedral and university and is growing as a tourist destination. Durham City is 18 miles south of Newcastle and on the main east coast rail line some 233 miles north of London.



Figure 6.1 Location Map for Durham

The diverse nature of the County is illustrated by the fact there are 250 separate settlements, there are 13 town councils, 91 parish councils and 22 parish meetings where no formal local council exists (Durham County Council, 2011). As will be discussed later, this is also reflected in the varied housing market conditions across the county and the difficulties in establishing property market boundaries.

## 6.4 The County Durham Plan

The County Durham Core Strategy (The County Durham plan) has been in preparation since the creation of the new unitary authority and went to examination in public in September 2014. It is an ambitious plan looking over a 20 year timescale; it seeks to promote economic growth, with a “focus on tackling the worklessness problem and rebalancing the labour market taking into account demographic and commuting patterns” (Durham County Council, 2012d).

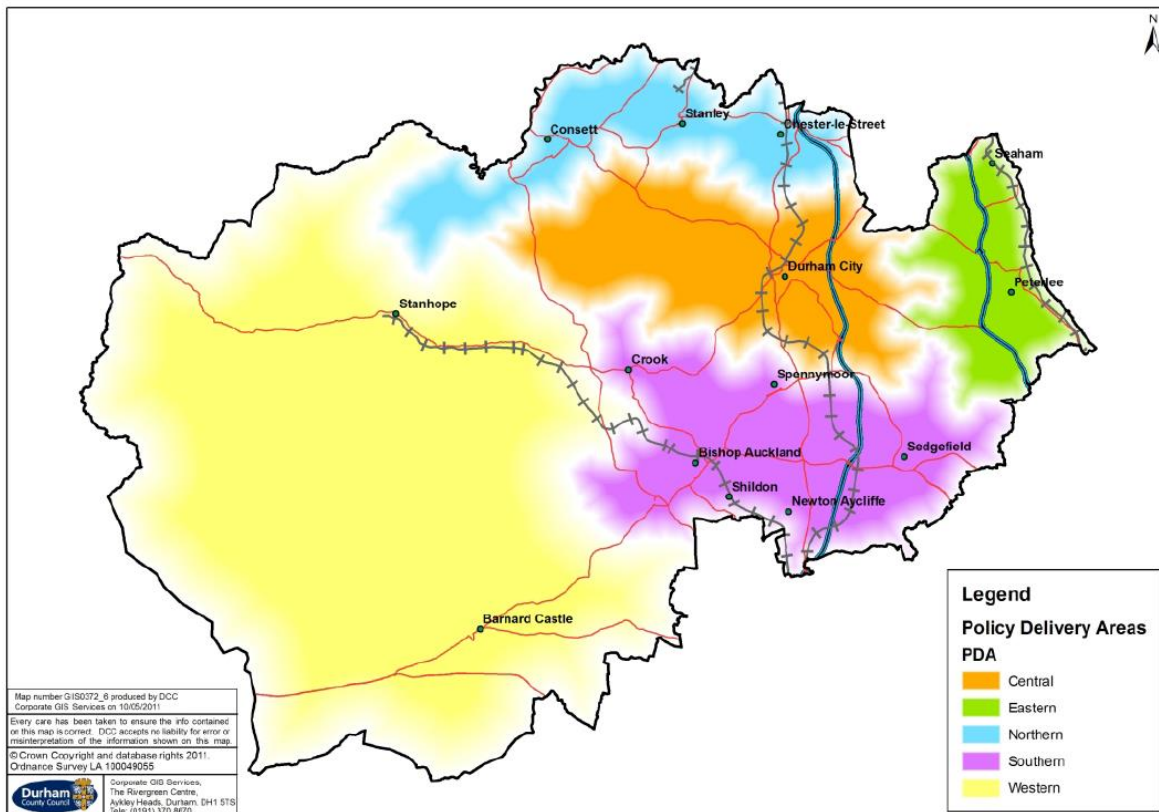


Figure 6.2 Map of delivery areas in County Durham Plan

Durham City is the main driver for that growth, which involves growing the working population of the County and attracting high value jobs into the County around Durham City and building housing to attract and retain people employed in those

jobs. This is seen as the only way to turn around the long term decline that the County has experienced and has manifested itself in ambitious growth plans for 38000 new homes up to 2030 and with 29000 homes identified in the Plan, many of these new homes being executive homes. The delivery of the Plan has been split over 5 areas as shown on the plan below and comprises north, south, east, west and central Durham.

In order to bring forward these housing sites requires a significant amount of infrastructure and this is also how the requirement for the introduction of the Community Infrastructure Levy (CIL) has emerged, to part fund this infrastructure alongside s106 contributions. It is important to stress that the introduction of the CIL is as a direct consequence of the nature of the County Durham Plan. It also directly relates to one of the main discourses analysed in the research, that of “supporting growth”, which has emerged nationally impacting on the role of planning and locally on the County Durham Plan.

### **6.5 Timeline for the CIL process in Durham**

The CIL stakeholder event on 2<sup>nd</sup> March 2012 has been identified as a key event in the CIL process where Durham made public its intention to proceed with a CIL charge; it was well attended in numbers although many organisations had rather junior representation. Many of the issues which featured in later debates were raised here. Following this event, there was also a formal response by the Home Builders Federation (HBF) and again this was indicative of their stance going forward. A draft preliminary charging schedule was prepared in July 2012 (Durham County Council, 2012b) and this was in fact amended before its formal issue in September 2012 (Durham County Council, 2012a) (see figure 6.3), A formal consultation took place between 10<sup>th</sup> September and 26<sup>th</sup> November 2012 and these responses as they related to the subject of viability, were very limited in number and mainly restricted to house builders, surveyors and planning consultants, these were analysed to determine the main storylines within the policy making process as discussed later.

Type of development	CIL rate			
	Durham City Strategic Zone	Durham City and Chester-le-street Zone	HMR Zone	County Durham Zone
Residential development	£250/m <sup>2</sup>	£80/m <sup>2</sup>	£0/m <sup>2</sup>	£15/m <sup>2</sup>
Large food retail - 1000 m <sup>2</sup> or above	£200/m <sup>2</sup>	£200/m <sup>2</sup>	£0/m <sup>2</sup>	£200/m <sup>2</sup>
All other A class development (shops and similar establishments; financial and professional services; food and drink (classes A3-5))	£0/m <sup>2</sup>	£0/m <sup>2</sup>	£0/m <sup>2</sup>	£0/m <sup>2</sup>
All B class development (business, industry, storage and distribution)	£0/m <sup>2</sup>	£0/m <sup>2</sup>	£0/m <sup>2</sup>	£0/m <sup>2</sup>
Hotels	£200/m <sup>2</sup>	£200/m <sup>2</sup>	£0/m <sup>2</sup>	£200/m <sup>2</sup>
Student accommodation	£50/m <sup>2</sup>	£50/m <sup>2</sup>	£0/m <sup>2</sup>	£50/m <sup>2</sup>

*Figure 6.3 Draft Preliminary Charging Schedule (September 2012)*

The response and pressure from the HBF did lead to two changes, firstly the role of the consultant HDH seemed to change and be enhanced to deal with the challenge to the planners and secondly also to the establishment of a panel or working group to engage and work with the HBF. It should be pointed out that the proposal to introduce a CIL charge of £250/sqm on the Durham City Strategic zone in the draft preliminary charging schedule was ambitious and was as high as any local authority was proposing anywhere across the country. This appears to have galvanised the house building industry to work together to respond and strongly challenge what they believed to be a serious threat to the delivery of housing development in Durham, and perhaps setting a precedent to other local authorities in the area. The prospect of CIL as a generator of significant income was also an important expectation of some Council members and local communities at this time.

Between November 2012 and October 2013 there was a period of delay until the issuing of the draft charging schedule in October 2013 (see figure 6.4), which was now preceded and supported by a substantial report by consultants HDH (Durham County Council and HDH, 2013), which prepared several detailed appraisals of sites

and provided key justifications and evidence in support of the CIL charge proposals and informed the CIL rationale document (Durham County Council, 2013a). The other important change was the removal of the proposals for the Durham City Strategic zone and replacement by a west Durham area at £30/sqm and a reduction in the rate proposed for the northern area of Durham and Chester-le-street from £80/sqm to £60/sqm. As can be seen other changes were made to the retail rates and for student housing but the discussion and comments on these were rather limited compared to the engagement with the house building industry. Once again these proposals went out to formal consultation from 16<sup>th</sup> October 2013 to 9<sup>th</sup> December 2013 with a greater number of responses to those for the draft preliminary schedule, but broadly similar in nature.

Type of development	CIL rate			
	Durham City and Chester-le-street Zone	West Durham	County Durham Zone	HMR Zone
Residential development (including sheltered housing)	£60/m <sup>2</sup>	£30/m <sup>2</sup>	£15/m <sup>2</sup>	£0/m <sup>2</sup>
Large food retail - 1000 m <sup>2</sup> or above	£150/m <sup>2</sup>	£150/m <sup>2</sup>	£150/m <sup>2</sup>	£0/m <sup>2</sup>
All other A class development (shops and similar establishments; financial and professional services; food and drink (classes A3-5))	£0/m <sup>2</sup>	£0/m <sup>2</sup>	£0/m <sup>2</sup>	£0/m <sup>2</sup>
All B class development (business, industry, storage and distribution)	£0/m <sup>2</sup>	£0/m <sup>2</sup>	£0/m <sup>2</sup>	£0/m <sup>2</sup>
Student accommodation	£150/m <sup>2</sup>	£150/m <sup>2</sup>	£150/m <sup>2</sup>	£150/m <sup>2</sup>
Extra Care Housing	£0/m <sup>2</sup>	£0/m <sup>2</sup>	£0/m <sup>2</sup>	£0/m <sup>2</sup>

*Figure 6.4 Draft Charging Schedule (October 2013)*

In December 2013 the Council's Scrutiny Committee (Durham County Council, 2013b) also investigated the progress of the CIL and introduced some new areas of discussion relating to the proposed CIL charge rates and competition with neighbouring local authorities. It's not clear if the change in proposed rates was part of that discussion, or whether members had become aware of developers concerns

about proposed rates and the risk of stopping development, or that with the reduction in the proposed CIL rates there would be an impact on expected receipts and that CIL was not going to be the same source of funding as initially hoped.

Finally on 19<sup>th</sup> March 2014 the Cabinet confirmed the CIL should be submitted to the Inspector for Examination in public (Durham County Council, 2014a) and that this would be undertaken jointly with the Local Plan process, although at the end of a three stage process. Following approval by the full Council the submission was made in April 2014 with a revised rationale report and supported by a full report from HDH (Durham County Council and HDH, 2014). In that report and confirmed in the semi-structured interviews, the role of the working group/panel with the HBF was discussed, as a problematic arena for discussion that it appears to have been. With seemingly amicable meetings haven taken place, with in the Council's opinion, some tentative agreements having been reached, to find repeatedly after the meeting the HBF representative indicating that there had in fact been no agreement reached. This remained the position up to the Local Plan Examination in Public, in spite of some attempts to reach agreement on some points before the expected CIL Examination. The role of this group and that of some of its members will be discussed later as it is a key factor influencing the implementation of the CIL policy in Durham.

The Examination in Public of the Local Plan commenced in September 2014 with the CIL examination anticipated to take place in early 2015, in the event the Interim Inspectors Report issued on 18<sup>th</sup> February 2015, placed the CIL process along with the Local Plan process on indefinite hold and unfortunately the CIL Examination was not able to be included in the research (Harold Stephens – Development Plan Inspector, 2015).

## **6.6 Key events and sites of argumentation**

It typically takes around two years to progress through these stages and Durham progressed broadly in line with that timescale up to the stopping of the process in February 2015, the main events set out in the table 6.1.



Key Event	Date
CIL Stakeholder Event	2 <sup>nd</sup> March 2012 (meeting with minutes)
Formal response of HBF to CIL discussions	2 <sup>nd</sup> April 2012
Draft CIL Rationale and Preliminary Charging Schedule & Cabinet Report	24 <sup>th</sup> July 2012 (report and document)
Cabinet Report with Affordable Housing & CIL Development Viability Study (HDH) & CIL Rationale & Preliminary Charging Schedule	12 <sup>th</sup> September 2012 (report and documents)
Formal Consultation on Draft Preliminary Draft Charging Schedule	10/9/12 to 26/11/12 (schedule of responses)
Meetings with HBF and Panel	March to October 2013 (minutes of some meetings)
Cabinet Report with Local Plan & CIL Development Viability Study (HDH) & CIL Rationale and Draft Charging Schedule	9 <sup>th</sup> October 2013 (report and documents)
Formal Consultation on Draft Charging Schedule	16/10/13 to 9/12/13 (schedule of responses)
Cabinet Report re CIL	19 <sup>th</sup> March 2014 (report)
Submission to Examiner - Local Plan & CIL Development Viability Study (Pre-submission Notes) (HDH) & CIL Rationale and Draft Charging Schedule (Schedule of Changes)	25 <sup>th</sup> April 2014 (documents)
Local Plan – Inspectors Interim Report	18 <sup>th</sup> February 2015

*Table 6.1 Key Events in Durham*

In terms of the research and the methodology, in addition to identifying key events in the process, it was also important to identify key sites of argumentation to try and identify the ideas and concepts which shaped the discussions and debates.

As the research was on the use of knowledge by planners in the CIL implementation process in relation to the capture of value, there was initially more focus on the discussions regarding the assessment of viability and on the setting of the CIL rates rather than on the spending of the money collected. However, as the nature of the

process was investigated it became apparent that three sites of argumentation or arenas were key (as shown in table 6.2) and that the spending of the funding whilst perhaps less contested nevertheless was an integral part of the CIL process and that the three arenas overlapped and interrelated to each other.

<b>Site of Argumentation</b>	<b>Description</b>
What is the funding to be spent on	Preparation of the Infrastructure Delivery Plan (IDP) what infrastructure needed for Local Plan and the 123 list setting out what infrastructure items CIL to be spent on within IDP
Viability Assessment	Preparation of the Viability Assessment Report comprising area wide appraisal and assessment of Threshold Land value (TLV) to establish headroom available for CIL rates
Setting of the Rates	Preparation of the Draft Preliminary Charging Schedule and Draft Charging Schedule setting out the proposed CIL rates

*Table 6.2 Key Sites of Argumentation in Durham*

The data from these sites of argumentation have been studied together with the data from a series of semi-structured interviews with key actors in the process. To ascertain the key ideas, concepts and categories through which meaning is given to the discussion and arguments made, to help identify the discourses and storylines structuring these discussions and which in turn have influenced how the policy becomes implemented.

## **6.7 Discourse Analysis**

### **6.7.1 Identification of Discourses**

As mentioned earlier the identification of the main discourses is critical to the discourse analysis process and can depend on either identification from theory and literature before entering the field or alternatively from the actual fieldwork itself (Sharp and Richardson, 2001). The discourses emerged from a detailed analysis of a range of data sources, including policy documentation (which often quoted from national CIL policy documents), committee reports, comments made in the consultation exercises undertaken in the process and importantly in semi-structured interviews with key actors in the CIL process from the County Council and outside organisations. In identifying discourses it is important to consider that a discourse is defined as “an ensemble of ideas, concepts and categories through which meaning is given to social and physical phenomena and which is produced and reproduced

through an identifiable set of practices” (Hajer, 1995, p. 44) it is not a discussion it is more a set of concepts that structure the contributions of the actors into the process.

As stated earlier the discourse of “supporting growth” has become particularly influential and dominant at a national policy-making level. Using discourse analysis and the Hajer (2006) methodology the impact of this discourse was analysed in chapter 5, it can be argued that the discourse has achieved “Discourse Structuration” as the meaning of value capture in policy terms has been reconceptualised from one of being driven by redistribution to one of supporting delivery and growth. Accordingly this is acknowledged within the case study as being the dominant and only discourse, the more pertinent point to consider is the impact of the four national storylines identified earlier, each seeking to remove barriers to delivery and growth, and how they interact with the locally generated storylines and influence policy making in the local area.

### ***6.7.2 Identification of Storylines and Tropes***

As mentioned earlier the Storyline is an important concept in analysing policy, it is defined by Hajer as “a generative sort of narrative that allows actors to draw upon various discursive categories to give meaning to specific physical or social phenomena” (Hajer, 1995, p. 56). Tropes are similar they are figures of speech that simplify debates and influence the meanings attached to problems and also influence policy practices. They are both reductive discursive devices that simplify complex debates through simplified narratives, as such they can often disguise contradictions and areas of misunderstanding with both positive and negative effects. They can also legitimise policy whilst at the same time disguising incomplete arguments and institutional biases (Hajer and Versteeg, 2005).

The storylines and tropes identified within the Durham case study are shown in the table 6.3, these comprise a mixture of national storylines identified in the last chapter together with national tropes identified in the national policy documentation (both shown underlined), that have been employed by actors in the policy making process in Durham these are both shown underlined. In addition, there are locally generated storylines and tropes which have emerged from a consideration of the local data sources and interviews.

Site of Argumentation	Storylines	Tropes
What is the funding to be spent on	Why the CIL is needed <u>Facilitating Local Authorities</u> CIL policy not being applicable to the north east Why is CIL needed	<u>Plan led approach</u> <u>double counting of developer contributions</u>
Viability Assessment	Artificial Process <u>Incentivising Landowners</u> Robust Viability Assessment <u>Encouraging Developers</u>	Playing Games Granular Property Market <u>Appropriate Available Evidence</u>
Setting the Rate	Reasonable CIL proposals Unrealistic proposals Business not as usual Reduced Ambition	<u>Cumulative Policy Burden</u> <u>Striking the Balance</u>

*Table 6.3 Storylines and Tropes in Durham*

The discursive struggle between the national and local storylines and tropes has been considered across three sites of argumentation as key arenas where policy debate and decision making took place in the production of key documentation to support the CIL process. The “what is the funding to be spent on” arena prepares the IDP setting out the infrastructure needed to deliver the new development and growth in the County Durham Plan, the “viability assessment” arena prepares the viability assessment document to support the third decision in the final arena “setting the rate” in which the CIL rates are decided and included in the formal preliminary draft charging schedule and draft charging schedule.

The discursive struggle between the storylines and tropes is now considered within the three different sites of argumentation.

## **6.8 Analysis of Storylines and Tropes at Key Sites of Argumentation**

Storylines and tropes are important and influential discursive mechanisms as discussed earlier, they are employed by actors to influence the course of policy

making, by influencing meanings attached to knowledge claims and how this in turn influences policy making practices.

According to Hajer (1995) storylines can have three main affects, firstly, they can be used to position actors into certain roles, secondly, they can lead to the creation of Discourse Coalitions which are groups often only temporary in nature with shared aims and objectives in influencing policy development, they can be actors and groups which may seem to be unlikely allies but through the storyline have become so due to shared objectives. Thirdly, storylines are used to cluster knowledge sources and can lead to a discursive mechanism known as “black-boxing” where knowledge claims become accepted as the norm and beyond challenge (Hajer, 1995).

Operational storylines and tropes achieve these impacts, firstly by influencing the problem definition, seeking to achieve “discursive closure” whereby a definition is produced and accepted and thereby prevents consideration of alternatives (Hajer, 1995, p. 22). Secondly, by “mobilisation of bias”, this is where an actor via the use of a storyline or trope attempts to influence what is included or omitted in the policy debate (Hajer, 1995, p. 42).

Finally, actors may use three methods to support their construction of reality, firstly, credibility, this is not just the plausibility of the argument but the authority of the authors, secondly acceptability, which implies the position is attractive or at least necessary and finally trust, this can refer to the procedure by which the definition of reality was reached and can suppress doubts (Hajer, 1995, p. 59). These can be used positively as above or negatively to discredit arguments, cast a position as unattractive or to establish doubts and thereby undermine trust, this in turn can also position other actors.

Having set out the main national and local storylines and tropes within the Durham case study it is now appropriate to consider the nature of the discursive struggle within each of the three main sites of argumentation.

### ***6.8.1 What is the funding to be spent on?***

The discursive struggle between the national and local storylines and tropes have been analysed over the period from the start of the CIL process in Durham in March 2012 up to the Inspectors Interim report stopping the process in February 2015. This

site of argumentation dealt with the production of the IDP setting out the infrastructure needed to support the delivery of the new development sites included in the new Local Plan.

In this site of argumentation the local authority employed a combination of both local and national storylines and tropes to justify the introduction of CIL as a policy, bearing in mind it was not mandatory for a local authority to introduce CIL. As mentioned earlier the Council proposed an ambitious growth oriented Local Plan reflecting the nationally dominant “supporting growth” discourse.

In County Durham the Durham Local Plan outlined an ambitious growth agenda as set out earlier. This in turn generated a requirement for strategic infrastructure in particular the two relief roads around Durham City. The County Council employed a combination of local storyline “why the CIL is needed” together with the national policy trope “plan-led approach” as it sought to establish credibility, acceptability and trust for the this policy of promoting growth as a new approach to regenerating the county as a whole. The “why the CIL is needed” is reflected in

*“Funding received from the CIL contributes to the key infrastructure which is required to deliver the Plan. The overarching priority of the Plan is to improve the economic performance of County Durham. The Plan seeks to create conditions to provide development and the right infrastructure so a greater proportion of the working age population can be in employment and so improve the resident’s health, wellbeing and economic potential.” (Para 1.21 Durham County Council, 2012a)*

*“also national government were pushing us at the time we started looking at this we were really worried about where s106 was going until got guidance etc., felt compelled to investigate it (CIL), on small community and political side again, national government big signs, neighbourhood planning you will get your percentage, this rationale for neighbourhoods to get together and provide the basis for new housing sites coming forward” (LA:D4 Interview)*

The promotion of a growth based strategy requiring infrastructure to support it as set out in the IDP reflected the national policy trope of a “plan-led approach” and supported the national storyline to “facilitating local authorities”.

There was some resistance and opposition to the proposals, by a local storyline about the “CIL policy not being applicable to the north east” due to low land values and a poor property market. The second, challenge was more specifically about the need for some of the infrastructure and the need for CIL to fund it, in the local storyline “why is CIL needed”.

The principle of the applicability of the policy to the north east was raised in a very limited way, but as the Councils ambitious growth proposals were generally well supported, this storyline as a general comment on national policy was not particularly influential. More opposition came more from the “why is CIL needed” storyline, which argued why the need for the infrastructure proposed and whether the CIL or s106 should be used to fund the infrastructure provision.

The justification for the CIL was linked to the green belt release around Durham City and in particular the Northern Relief Road. The house builders were generally supportive of the new housing proposals and of the growth proposals.

*“we have been involved in the formulation of policy particularly in Durham which is our home county, is more than we just want our sites to work we want the Plan to work for Durham” (DV:D/NG4 Interview)*

There was also a concern in the early stages from the development industry about potential “double counting of developer contributions”, but the national policy trope tightened up this area, with the provision of the 123 list resolving many of those concerns.

An argument can be made that discursive closure was established by the local authority that CIL was needed to fund the infrastructure to support growth, this was however undermined later by the problems raised by the draft Planning Inspectors Report following the Local Plan Examination in Public and which has caused both the Local Plan and CIL processes to be stopped (Harold Stephens – Development Plan Inspector, 2015). The Inspector questioned the need for the ambitious growth proposals, accordingly much of the credibility, authority and trust built and established from this storyline over the period from March 2102 until February 2015 has been severely weakened and the initial achievement of Discursive Closure has been undone.

As a result of this discursive struggle the local authority has been positioned as the facilitator of the infrastructure even if only partly funded from the CIL income. The clustering of knowledge claims from this discursive struggle were around the Local Plan process, establishing the case for growth, and in turn the infrastructure needed and therefore the need for CIL, whilst that appeared to have been established during the Local Plan process this was later completely undermined after the Local Plan Examination in public and Inspectors Report.

### **6.8.2 Viability Assessment**

This was an important and highly contested site of discursive struggle, to produce the area wide viability assessment document for County Durham. The Council sought to employ the storyline of “robust viability assessment” to support its promotion of this viability work and to support its overall ambitious proposals for growth and CIL proposals. There are two parts of the viability assessment calculation process, the area wide assessment and the assessment of the threshold land value, both of which were challenging in the Durham case study.

Firstly, the area wide assessment involving the residual valuation of a series of hypothetical sites across the county, for a series of different uses, to attempt to map the variations in property markets and therefore viability across the county. This was particularly challenging in Durham due to the nature of its geography

*“whereas in Newcastle/Gateshead you are able, probably just the quantum’s of the areas and the conurbation factor you are able to supposed to do a bit ..... more able to identify the markets as larger chunks of land” (LA:D3 Interview)*

*“it’s the way Durham is, whereas Newcastle/Gateshead does operate as one area (conurbation) there is a sort of relationship between even Rowlands Gill and Gateshead centre there is a link people will go from Rowlands Gill to Gateshead centre catch the metro or bus to it. Whereas the relationship of even the big towns in Durham just isn’t there in the same way, there is probably not a relationship between Barnard Castle and Seaham, Newton Aycliffe is linked to Darlington (a neighbouring unitary authority) in how it*



*operates day to day, Sedgfield has not got a lot to do with Chester-le-street and that's with the bigger places" (LA:D3 Interview)*

*"yes, we took 7 sites which were actual developments which have been anonymised we have put the first round appraisals we did were hypothetical sites, which the house builders weren't quite happy because they weren't providing a realistic reflection of what was going on in the market so we took 7 sites that had planning approval and we have put each of these 7 sites into a delivery area NE, SW etc., applied the values in those areas to those sites to arrive at the residual value and we calculate the CIL from that the 7 notional sites each in a different area obviously each has got a different density we have worked out the residual value, the existing use value, the additional profit and that's where the CIL rate is derived from" (LA:D3 Interview)*

The local trope "granular property market" was used by HDH to illustrate the challenge of mapping very localised spatial variations in the housing market, with significant differences of residential values within even one small settlement, this made it practically impossible to draw boundaries for different areas and led to the county wide CIL rate proposal.

*"interesting point Simon Drummond Hay made he has done 6 or 7 CILs for other counties, he said he has never come across this problem anywhere as bad as us, everywhere else has a really clear valuation pattern and Durham hasn't hence the "granular market" (LA:D3 Interview)*

Secondly, the threshold land value calculation is one of the most difficult aspects of the viability assessment and has been the subject of varied and sometimes conflicting national guidance which has changed over the period.

*"There is considerable common ground between the RICS and the Harman Guidance but unfortunately they are not consistent. The RICS Guidance recommends against the 'current/alternative use value plus a margin' which is the methodology recommended in the Harman Guidance." (Para 1.44 Durham County Council and HDH, 2013)*

In the early stages of the period studied the local authority sought to promote its local storyline of "robust viability assessment" and local trope of "granular property market"

indicating the specific challenges of the area wide viability assessment process in Durham. The ambitious proposals for the CIL rates discussed in the next section supported by the early versions of the viability assessment reports were however the subject of a strong challenge by private developers.

Using national storylines “encouraging developers” and “incentivising landowners” as well as the national policy trope “appropriate available evidence” private developers challenged the viability assessment work by the Council and its “robust viability assessment”. This can be considered in three broad areas linked to the three discursive mechanisms highlighted above, the “encouraging developers” which challenged the assumptions within the area wide appraisal, the “incentivising landowners” which challenged the threshold land value assessment and the national policy trope “appropriate available evidence” which challenged the evidence base to the work.

The assumptions in the viability assessments were strongly challenged particularly by the HBF, with assumptions about developers profit and marketing costs also disputed, this relates to the national policy storyline of “encouraging developers”.

*“contradictions between Viability appraisals and what’s happening on the ground because been too lenient with the house builders may be should have held our ground and said we disagree with that assumption we think it should be 20% profit on cost not on GDV, but been trying to work with them and try and reflect their views as much as we can but swung the other way round and is not reflective of what’s on the ground we are getting permissions and sites developed out in certain areas where not viable” (LA:D2 Interview)*

*“I think one of the biggest issues was the profit margins when we started out we put 20% of total development costs, as developers return, went down badly, weren’t happy. We backed down on that and used 20% of gross development value” (LA:D3 Interview)*

The main challenge by developers using the “encouraging developers” storyline was that there was a lack of understanding by the local authority planners and of the in-house surveyors of the economics of development. This reflects the use of the

storyline to undermine the credibility and trust attached to the Councils storyline of “robust viability assessment” and is illustrated by:

*“Development Economics is absolutely vital I went for 5 years to Town Planning and never touched an economics course surprises me how little taught on viability, if you want to deliver, you have to deliver, the government is giving you no choice” (DV:D/NG3 Interview)*

The planners however considered that their knowledge of viability was in fact improving over time, but lacked confidence and required the support of an independent external consultants view on values and market conditions, this will be considered further when the impact on practices is considered.

In challenging the TLV calculation the volume house builders and the HBF on their behalf were particularly concerned that too low a land value had been included in the assessment and that this wouldn't provide enough “incentive for landowners” to sell land and that this would stop development coming forward. Volume house builders as the term would suggest rely on a significant supply of sites to maintain the scale of development their business model requires, hence their especially strong concerns about land value assumptions.

*“I think at the land values set just in Durham, nobody will sell the land, land will not come forward to the market in values set out in Durham's Local Plan” (DV:D/NG3 Interview)*

As discussed earlier evidence was given greater emphasis over time in national policy guidance as illustrated by the national policy trope “appropriate available evidence” and this also played a key part in the discursive struggle. The Council not having credible evidence in the eyes of the developers, and the evidence provided by the developers not being completely trusted by the local authority officers.

*“evidence have had challenges from industry stating (developer) “I know the abnormal cost on that site you (the council) don't” but then not prepared to give it to the council, but will at examination here's the evidence that you have under estimated abnormal costs” (LA:D2 Interview)*

*“Local authorities don’t believe the evidence or don’t get access to it”  
(DV:D/NG3 Interview)*

The discussion about values and evidence was difficult as a result and the issue of using second hand values as comparable evidence for new housing development appraisals, was an issue. The issue of build costs also was disputed in great detail and was considered to be a bigger issue in some respects than the market values evidence. This was something where the developers clearly had much more detailed information from specific sites, although the Council did use its own evidence from s106 negotiations as evidence.

*“The additional evidence of actual development land transactions support the assumptions used around viability thresholds and land values.” (Para 8.8 Durham County Council and HDH, 2013)*

Following the strong challenge to the proposals the local authority sought to build credibility, acceptability and trust by presenting detailed and transparent documentation showing all the assumptions and evidence supporting the viability assessment.

When this was challenged strongly by the HBF in early 2013, a small panel or working group was established to try and resolve the areas of dispute, this was an important arena in which viability was contested, including both the assumptions used in the calculations and the evidence upon which these assumptions were based. Whilst the working group had been established to build trust and acceptability, in fact this was not particularly successful.

*“House builders need them on board cannot do with, cannot do without them its where get a lot of evidence from, same time mindful are pushing assumptions in a direction they want them to go” (LA:D2 Interview)*

The outcome has been that the County Council and their consultants have stated that agreement was reached on specific matters and the HBF representatives have disputed that, stating that matters were not agreed.

*“Importantly the methodology and assumptions were confirmed through an open and transparent consultation process. Where there was not a consensus*

*or the consultees have subsequently made further or different points we have considered these in the context on more recently available information.” (Para 8.3 Durham County Council and HDH, 2014)*

*“the truth is we don’t understand them and they don’t understand us”  
(DV:D/NG3 Interview)*

This has also been reflected in the local authority’s frustration and disillusionment with the viability assessment process with local storyline of “artificial process” together with the local trope of “playing games”.

The clustering of knowledge claims are based on the knowledge of building economics and viability and are developed from training and experience, the house builders and agents have training in this area and have day to day experience, the planners in the local authority have neither, and lack confidence as a result when challenged. Hence the need for both consultant and peer group support, it has also revealed a difference in values, as the local authority think the viability assessment is “an artificial process” and doesn’t reflect reality on the ground, and it is developers “playing games” as they have more knowledge and evidence.

*“Surely the viability appraisal is not fit for purpose and you know the developers will always be one step ahead of the local authority because even though our understanding of viability appraisals has gone up massively since viability became part of planning, we still will never be able to do a viability appraisal like a developer will, who knows every little detail, how to reduce cost of development” (LA:D1 Interview)*

The trust between the actors is eroded to the point where the Council don’t believe the information and evidence from the developers thinking they are hiding something and the developers think it is a waste of time providing the information as the Council ignore it, so don’t want to waste their time, hence the resolution at the CIL Examination.

*“the house builders know they are playing the assumptions to their advantage and so think the Council must be as well. Which clearly we the Council are not, as we would be still using asking prices. Different cultural viewpoints*

*negotiation position v finding the right answer [the house builders] didn't trust the Council, but did the agents on evidence.” (LA:D2 Interview)*

There were several attempts to try and resolve this conflict but these were only partly successful, a key final meeting on 1<sup>st</sup> October 2013 for example.

*“The above results were presented to the HBF working group on the 1st October 2013. There was universal agreement that there are sites across the whole County that are able to bear some affordable housing and that it was appropriate to have an affordable housing policy in all areas and to do so would not put the development plan at serious risk. Through drawing on the findings of this study, recent planning consents, the industry's' detailed knowledge of the market and officers' experience it was concluded that the following affordable housing targets are appropriate and viable providing that the policy continues to be worded in such a way which would allow flexibility and for site by site negotiations where viability issues arise.” (Para 9.12 Durham County Council and HDH, 2013)*

As mentioned earlier this discursive struggle is yet to be resolved as the dispute has been left to be resolved at the CIL Examination if and when that takes place. What has been evident from the discursive struggle from 2012 to 2015 is that the positioning effects have been to position developers and consultants as experts on development economics and viability with the local authority being less knowledgeable and having less evidence.

The clustering of knowledge is at the heart of this discursive struggle with sources of evidence and knowledge claims disputed by the storylines. The process of assessing viability is an imprecise exercise involving making judgements about the future based on evidence from the past, it also involves trying to anticipate the decision making and behaviour of key actors, landowners in assessing the TLV and of developers in the overall viability assessment.

#### **6.8.4 Setting the Rate**

The final area of discursive struggle is about the setting of the CIL rates, this is a process which brings together information from the other sites of argumentation; on what infrastructure is needed to support growth and its funding requirements in the

form of the IDP and the available headroom within which to set the CIL rates derived from the area wide viability assessment.

The setting of the rate is however essentially a political decision and the local authority has a range of matters to consider, what level of risk it is prepared to take, the managing of expectations by both Council members and of communities, the impact of relationships with developers, the track record of the local authority in delivering development in its area and in securing s106 income. The other factors are the impact of CIL on other policies, including s106 and affordable housing provision and even other policy objectives such as design or sustainability requirements. Finally the CIL rate proposals compared to neighbouring and competing local authorities elsewhere in the country.

The proposals by Durham were always presented as cautious and reasonable but a proposed residential level of £250/sqm, which is one of the highest rates in the country this was somewhat contradictory to the perception of other actors in particular the house builders.

*“at one point we had the highest in the UK, and we had the HBF nationally challenging us on this, as again setting a precedent, and this is the problem in the planning is the dangers of setting precedents of on the one hand, not being the only authority not to set one, or look at one, on the other to have actually set the largest and it being in the north east of England, what does that say to the south east etc” (LA:D4 Interview)*

The storyline of “unrealistic proposals” promoted by the developers was successful in reducing the proposals considerably over time and illustrates that the storylines influenced policy practice as will be discussed in more detail later.

*“what happened in Durham was they published a plan that would have in effect have crippled the house building industry no doubt about it, in terms of its policy requirements it was death for me” (DV:D/NG3 Interview)*

The debate about the rates whilst primarily around the residential development impacts also was disputed in relation to student accommodation and was contested around retail proposals, both of which were also changed over the period.

The length and robustness of a formal Local Plan process was also important in establishing its authority in promoting the growth based strategy and the change in approach from previous County Durham strategies. Also indicating a new ambition to national Government this reflects the “business not as usual storyline”.

*“it’s about a proactive strategy again you have to have the right governance behind it, you have to get the right politicians the right management etc. but once you have got that and the plan itself aligned we have gone from a position of talking down Durham to get money oh it’s so hard up here, the health’s bad the jobs bad to actually selling Durham as the best place outside of London to be the best place to be part of” (LA:D4 Interview).*

Another element of this was that County Durham was a relatively new unitary authority, since 1<sup>st</sup> April 2009 and wished to establish a positive new relationship with national Government. As well as being something of a frontrunner with its early adoption of the CIL policy within the north east region, this also illustrated the “business not as usual” storyline. Towards the end of the period studied the “reduced ambition” storyline emerged, as the influence of the discursive struggle in the other two arenas reduced the level of CIL rates and therefore accordingly the amount of funding to be collected and in turn the amount of infrastructure able to be funded.

The discursive struggle between the storylines remains unresolved as the proposed rates of CIL will be considered at the CIL Examination if and when it takes place in the future. There remains a fundamental disagreement about whether they are affordable at proposed rates in some sectors.

The positioning effects from these storylines reinforce those of the other storylines, that developers are deliverers of development and therefore require a commercially viable return for the risk they are taking, the developers and consultants are experts on viability and the local authority is the facilitator of infrastructure provision all of which broadly reflect the national positioning effects. The clustering of knowledge is on the balance between the need for CIL income and the potential headroom available for securing that income. But other knowledge about policy priorities, judgements about developer’s perceptions and decision making and about competition with other areas are also relevant to this area.



The struggle between the storylines and tropes outlined above can lead to the dominance of one definition of the meaning of the problem, this is termed by Hajer as “Discourse Structuration” (Hajer, 2006). At this stage it is difficult to conclude that Discourse Structuration has completely been achieved in Durham, however it was apparent that national storylines have been influential on the discursive struggle. When the impact of the dominant discourse starts to influence practices and has institutional effects this is termed as “Discourse Institutionalisation” (Hajer, 2006) and the impact of the policy storylines and tropes on policy practices are now considered.

## **6.9 The impact of the discursive mechanisms on the CIL process**

The effects of storylines on the implementation of policy in terms of positioning actors and clustering knowledge claims to influence the construction of the policy problem and the meaning attributed to the policy have been outlined above, this can also influence the everyday practices of actors involved in the process. Hajer defines practices as “embedded routines and mutually understood rules and norms that provide coherence to social life” (Hajer, 2006, p. 70). Accordingly, the impact of the main storylines and tropes used in the three sites of argumentation and how they have impacted on the policy practices in Durham over the research period are now discussed.

### **6.9.1 The identification of what CIL spent on**

There are two areas of practice in this category, the preparation of the IDP required to support the delivery of the Local Plan, this is based on the “Plan-led” approach set out in the national policy guidance, and secondly the demonstration of the need for the funding from CIL to fill the funding gap, linked to the preparation of the 123 list, which sets out the specific items in the IDP that CIL will actually fund.

The first area of practice is the preparation of the IDP document which sets out the infrastructure requirements to support the Local Plan and this changed over the period, the CIL Rationale summarises the position of the IDP, the original IDP document was produced in June 2012 (Durham County Council, 2012c), was updated in October 2013 and with a final version in April 2014. Initially the total IDP cost was £165m of which the CIL income would be a £104m contribution (Durham County Council, 2012a), this was changed in October 2013 to a total IDP cost of

£297.43m of which CIL would contribute £49.251m (Durham County Council, 2013a) and in the final submitted version in April 2014 the IDP total was £93.570m with the CIL income still at £49.251m (Durham County Council, 2014b), (part of the change in cost figures reflects the fact some costs were not included as not finalised as well as changes to what was included).

The second area of practice was from the national guidance that required local authorities to provide evidence that there was a gap in existing funding provision for the IDP from other sources, for the CIL to help fill. Hence the need to show how projected CIL income contributes to the larger funding requirement. As the national CIL guidance was tightened up in response to the development industries concerns about double counting and double payment, the 123 list requirement was introduced which specifically set out which infrastructure projects were to be funded by CIL. This was also amended during the Durham CIL process and was reduced to a small specific list (Durham County Council, 2012a; Durham County Council, 2013a; Durham County Council and HDH, 2014).

*“Regulation 123 list is very limited very tightly drawn, if not for the northern relief road wouldn’t have a CIL, but traffic model showed a benefit to the whole county, wider benefit implication for all sites and development to contribute as all benefit, if not then wouldn’t have bothered with CIL” (LA:D2 Interview)*

The other aspect of practice and how this changed over the CIL period researched was in relation to the justification given as to why developers should pay for strategic infrastructure, the wording was amended between September 2012 (Durham County Council, 2012a) and October 2013 (Durham County Council, 2013a) with the removal of “making development acceptable and sustainable” which indicated a general change in tone of the later document, to being more formal an example is shown below.

*“This consultation document is the second formal step in setting a CIL for County Durham. Stakeholder responses to this CIL Rationale and Preliminary Charging Schedule have been considered and can be viewed in the Statement of Consultation for the Preferred Options Local Plan against the Developer Contributions Policy. These responses together with a working group nominated by the Home Builders Federation have informed the Draft*

*Charging Schedule together with an update of the Local Plan and CIL Viability Report.” (Para 1.2 Durham County Council, 2013a)*

As the national CIL policy became more complex and formalised, this increased the importance of the CIL examination in the process and the Durham CIL process reflected this even though it has not reached that stage. The practices in this arena became more formalised and specific over the actual CIL spend and reduced any discretion the Council had over future spending with CIL income.

### **6.9.2 Calculation of Viability**

The practices in relation to the above contain two elements, firstly the establishment of the threshold land value and secondly the residual valuations of a range of hypothetical sites to establish an area wide viability assessment.

The HDH Viability Assessment used the term of “additional profit” which is defined as

*“Additional Profit is the amount of profit over and above the normal profit made by the developers having purchased the land, developed the site and sold the units (including providing any affordable housing that is required). In this case ‘normal profit’ is the 20% of GDV (as discussed above) we used in the appraisals. The additional profit is the maximum available from which any financial contribution can be made whilst paying for the land at the thresholds land value and providing the developer with a competitive return.” (Para 7.41 Durham County Council and HDH, 2013)*

*“Our approach to calculating this was to complete the appraisal using the same base cost and price figures, and other financial assumptions, as used in the preceding chapters. However, instead of calculating the residual value, we incorporated the viability threshold value (alternative use value plus uplift) into the cost side of the appraisal, as a land cost, to show the resulting profit (or loss).” (Para 7.42 Durham County Council and HDH, 2013)*

The main issue around the TLV was that the uplift in land value for residential land included in the viability assessment was considered to be much too low by the volume house builders, who were concerned that it would stop sites and housing coming forward in the County.

*“I think at the land values set just in Durham, nobody will sell the land, land will not come forward to the market in values set out in Durham’s Local Plan which is £110,000/acre might be a little bit here and there” (DV:D/NG3 Interview)*

*“but in Durham the biggest worry for me was they wouldn’t listen to us they kept listening to Simon Drummond-hay and if I don’t get the land value at least up to £200k/acre or something like that landowner will not sell its fundamental” (DV:D/NG5 Interview)*

The Viability Reports produced by HDH were very detailed and set out in great detail the national regulations and guidance and the County Council placed much reliance on this to support its proposals and accordingly required greater involvement from HDH to defend them when challenged.

In relation to the second element there was a change in the number of and configuration of the hypothetical sites in response to the consultation process. The establishment of boundaries for housing markets and values was particularly challenging with the term of “granular property market “coined by HDH

*“a large proportion of the sites in the County are not viable in the current market. This is not a surprise, County Durham has some of the lowest house prices in England and therefore experiences very challenging circumstances in terms of achieving viable residential property development. Having said this it also has a granular housing market with high and low values being found in very close proximity to each other.” (Para 9.15 Durham County Council and HDH, 2013)*

The interesting thing to note from a look at the change in proposed CIL rates between the draft CIL rationale report in July 2012 (Durham County Council, 2012b) and the formally issued September 2012 report with DPCS, was that the proposed CIL rate for large food retailing which was reduced between from £400 to £200. The influence of the September Viability Appraisal work by HDH (Durham County Council and HDH, 2012) had changed some of the available CIL headroom for various uses, in particular showing more CIL headroom for the Durham City Strategic Zone (where the £250 rate was proposed) presumably providing the Council with greater

reassurance about that ambitious rate at that stage, but only changes one of the proposed CIL rates in the PDCS itself.

The hypothetical nature of the area wide assessment exercise was an issue, the local authority officers in the process of engagement with developers would amend and adjust the assumptions in the model. As greater and greater parts of the county became unviable for housing development as the developers assumptions were put into the model, there began to emerge a rather sceptical view of the appraisals, as just an “artificial” and “academic” exercise that didn’t reflect what was happening on the ground in the real world. As actual housing development was taking place in areas that the model indicated were not viable.

*“because a lot of work is unviable, doesn’t reflect what is on the ground interesting to see how the inspector interprets that” (LA:D2 Interview)*

*“and that’s the problem of viability it’s not based on real appraisal it’s based on an academic consideration of the issues” (LA:D1 Interview)*

This reinforced the earlier view that the developers were just playing games, it also eroded the engagement process as the model became viewed as also not reflecting the Council’s own evidence from its own site sales and from s106 negotiations.

*“The Council is a very significant landowner within County Durham and owns much of the land that has been included within the Plan (over 50% in the East Delivery Area). This gives the Council a greater insight into the reasonable competitive returns expected by landowners. The Council, based on its land disposal strategy can have greater confidence that development will come forward, even in the lowest value areas”, (Para 8.4 Durham County Council and HDH, 2014)*

*“This is supported by the past patterns of delivery and development activity on the ground which indicate that throughout the economic cycle development has come forward in all parts of the County and importantly, even in the lowest value areas affordable housing and other policy requirements have been delivered.” (Para 8.5 Durham County Council and HDH, 2014)*

The viability assessments did change over the period and with changes to the boundaries of the proposed CIL rates as well between the DPCS in September 2012 and the DCS in October 2013. This reflected local factors and the consultation, it also resulted in a reduction in the projected CIL income.

The assumptions used in the residual valuations were challenged, with two examples provided below, firstly the use of asking prices rather than actual sale prices which is not evidence and the use of a single second hand house price as in the developers view not being reflective of the likely house prices achievable for a whole new development in that location.

*“we just looked at house price data rather than values to inform the development appraisals to try get the pricing correct before we did the appraisals new build as well, more difficult as there were very few transactions back in 2011” (LA:D3 Interview)*

*“we gave Barrett a list of our anticipated sales revenues, went through in 30 seconds and crossed them all out, but the actual sales achieved, or what he told us the sales process were, - even though we got our data from “Right Move” worked out the size of the house and translated to a rate per sqm crossed them all out, rubbish they are all wrong and put his rates in which were 25% lower or something like that” (LA:D3 Interview)*

*“and I found this with Durham that Durham would just pluck a value from an individual house and say well that house sold for £300/sqft, it might have done I can take you to a house in Consett sold for £300/sqft but do they all sell for £300/sqft” (DV:D/NG3 Interview)*

Secondly a major area of conflict was over build costs, and one aspect of that was the availability of evidence, of which the developers had much and the Council little instead relying on BCIS. This evidence when provided by the house builders was not always trusted by the Council. Conversely the house builders considered that the Council should have had the skills to have understood the measurement of areas such as gross internal and net internal in assessing costs and values. Also that the Council should have had enough capacity to do the analysis itself rather than to have it all provided by them which often was not trusted.

*“had assumed all measuring in the same way, House builders net saleable and Council using GIA, NM been teaching us, but because of that we have got stronger and got to the point where he is now a bit threatened because we have built up this information” (LA:D2 Interview)*

These perceived inadequacies in practice by the local authority supported the house builder’s view of the lack of skills and capacity within the local authorities to support the implementation of the CIL policy. The use and role of consultants by the local authority and the skills and capacity of the local authority as related to this.

The County Councils initial decision to appoint HDH as consultants reflected its view that it didn’t have the capacity or skills to implement CIL as a policy without external assistance. The rapidly changing national policy regulations and guidance was of particular concern and a main reason for the appointment. The initial consultation event on 2<sup>nd</sup> March 2012, before any proposals were published, was merely to announce the Council’s intention to implement the CIL policy, but the Council considered that an independent view of the market and of values was needed to assist the justification of the proposals at an early stage.

*“viability is the one thing which I have been really nervous about so we thought the more we get an independent person involved in that” (LA:D4 Interview)*

*“we commissioned HDH, at the time didn’t have that much viability expertise in house. It has come on a hell of a lot, but even 2 years on, needed someone with authority to challenge the house builders, as we know what the house builders are like, with working with them on other issues, we know they would run circles round us unless we had someone” (LA:D1 interview)*

The Council did involve their in-house surveyors in the process, but again their involvement was limited, confidence in their capacity and level of experience and knowledge was not very high in what was still the early days of a new policy. The working relationship between the two teams was good but at times the in-house surveyors felt rather in a secondary role.

*“xxxxx and other planners have very regular meetings with representatives from Barratt’s and one or two others from NLP, we are not really involved with that side of things” (LA:D3 Interview)*

The consultants involvement was to provide a detailed viability assessment which would fulfil two functions, firstly to support the viability assessment to support the Local Plan process and to provide confidence in the deliverability of the Local Plan, and secondly to support the CIL proposals. Durham County Council decided to run the CIL process in parallel with the Local Plan process, which is in contrast to Newcastle/Gateshead which consciously chose to separate them due to capacity issues. This is another reason for the significant involvement of HDH from early 2014.

Following the publication of the DPCS in September 2012 (Durham County Council, 2012a) and the ambitious CIL rates proposed therein, which resulted in a strong challenge particularly from the house building industry, the role of the consultants was increased, not only using his appraisal model and methodology but involving HDH in some of the key meetings and engagement with developers.

This reflected the lack of capacity and confidence in their skills by the local authority officers in the face of a strong and well-resourced group or Discourse Coalition. Yet over time these officers had considered their skills and knowledge of viability had grown over time, although they always thought they would be one step behind the development industry.

*“the viability appraisal is a bit of a game being played out between LA and developers, developers will always have the upper hand as even if LA gets an expert like Simon Drummond Hay or any surveyor. As like a “black box” they can know how to reduce costs which won’t even make it into the assumptions it’s just a game.” (LA:D1 Interview)*

The practices in this arena reflected the reduced discretion from national policy influences and the increasing reliance for private sector consultant support in the face of strong challenges from the private sector. Key practices such as the acceptance of profit levels as standardised and the asymmetry of evidence between the parties were influential at the local level.



### **6.9.3 Setting of the Rates**

The setting of the rates is a decision making process which is influenced by national policy regulations and guidance but also by other local factors as it is essentially a political decision. The rates were changed between the DPCS in September 2012 (Durham County Council, 2012a) containing the particularly controversial £250/sqm rate and the DCS in October 2013 (Durham County Council, 2013a) with the highest residential rate reduced to £60/sqm. The County wide rate remained unchanged at £15/sqm, and the boundary changed with the removal of the Durham City Strategic zone and a new West Durham zone now added. The retail rates also changed with a reduced rate from £200 to an overall £150. The proposal for a CIL for hotels was dropped but conversely the CIL rate for student accommodation was significantly increased from £50 to £150 (Durham County Council, 2013a). The DCS had made reductions more than increases and reflected a more cautious approach.

*“the Policy Burden on a site” so LAs imposing policies on to a developer that 99 times out of a 100 they have no idea what they have done or what they are seeking to achieve” (DV:D/NG3 Interview)*

In studying the VA documents produced by HDH from September 2012 (Durham County Council and HDH, 2012), October 2013 (Durham County Council and HDH, 2013) and the Pre-submission note of April 2014 (Durham County Council and HDH, 2014), to support the CIL charging rates and the Local Plan viability assessment, there is an increasing emphasis on justifying the CIL rates and the deliverability of the Plan, in a wider way than based purely on viability assessments.

*“It is important to note that whilst viability is not the primary information to define these areas, viability is one of the key factors when developing policies within each area.” (Para 9.8 Durham County Council and HDH, 2013)*

*“Viability is an important factor when developing policy but it not the only, or even the principle factor.” (Para 9.14 Durham County Council and HDH, 2013)*

The October 2013 document makes several references to this mismatch whilst also acknowledging that the CIL regulations state that CIL charging zones must be set with regard to viability.

*“The CIL Regulations are clear, CIL Charging Zones can only be set with regard to viability – and the context is whether the delivery of the Plan as a whole is threatened. Initially the Council and consultees expressed a firm preference for CIL to follow other policy areas (i.e. the Delivery Areas) as this would be a simple and straight forward approach. As the project developed it was recognised that this was not possible as the Planning Delivery Areas do not follow the viability areas.” (Para 9.18 Durham County Council and HDH, 2013)*

This difficulty is partly due to the very challenging process of assessing the viability across the county, in the October 2013 Viability Assessment (Durham County Council, 2013a), the first reference to the “granular” market and the challenges of the rate setting, something emphasised again in the April 2014 pre-submission note.

*“There has been a significant challenge in undertaking this work. The County Durham housing market is highly granular with large differences in the nature of housing and the value of it over very short geographical distances.” (Para 9.3 Durham County Council and HDH, 2013)*

*“The principle challenge in preparing the Viability Study and subsequently interpreting the results has been the granular nature of the County Durham property market and we take this opportunity to stress again that it would be inappropriate to consider the Viability Study in isolation and without putting due weight in what is actually happening on the ground and the local patterns of land ownership.” (Para 8.1 Durham County Council and HDH, 2014)*

There is also over time in the HDH VA documents a greater emphasis on the engagement with stakeholders and the HBF working group in particular.

*“As set out above the Council met with the HBF working group on the 1st October to discuss the final refinement of the affordable housing and policies and appropriate rates of CIL. It was agreed that following residential CIL charges were reasonable and would not undermine the delivery of the majority of sites nor would they undermine the delivery of the Plan.” (Para 9.20 Durham County Council and HDH, 2013)*

In the April 2014 pre-submission note this becomes even more an issue reflecting the difficult engagement process with specific reference to matters having been specifically agreed.

*“During the preparation of the Viability Study the modelling and price assumptions were explicitly agreed with the HBF. The assumptions are necessarily cautious and representative of the anticipated pattern of development.” (Para 8.6 Durham County Council and HDH, 2014)*

The interaction with other policy objectives was less clearly evident except in the taking account in the appraisal work of the Affordable Housing rates for different areas of the County to demonstrate that both CIL and the affordable housing rate, which would be recovered via an s106 agreement, could be afforded within the appraisal.

*“The Council recognises that the rates above are not affordable on all sites and as based on the appraisals carried out as part of this study. This is in large part due to the highly granular nature of County Durham’s housing market. The majority of development is expected to come forward over the Plan Period will be in the larger sites in and around Durham and Chester-Le-Street and around Barnard Castle. Development in these key areas are able to bear these levels of CIL (and the agreed affordable housing targets). The Council have worked closely with the development industry particularly the HBF to formulate rates of CIL and affordable housing that are deliverable and over which there is a consensus.” (Para 9.21 Durham County Council and HDH, 2013)*

The managing of expectations was another important part of the practices, especially as the Council members had expectations of significant income to fund infrastructure which was reduced over time. There were several briefing sessions about the impact of viability and about the process. In December 2013 a Council scrutiny committee discussed CIL, this may have been as a result of them becoming aware of developer discontent. As comments were made about the competitiveness of the CIL rates with neighbouring local authorities and the concern about discouraging investment.

*“Ensure that we are mindful of the levels of CIL charges compared to neighbouring local authorities to alleviate any chance of losing investment opportunities.” (Durham County Council, 2013b)*

There appeared to very limited discussion about the rates of other local authorities and in fact limited discussions with other local authorities in the region about CIL. There was some liaison with officers at Newcastle/Gateshead as the only two active CIL processes in the north east and some involvement in the POS best practice group and also some involvement and help from PAS.

The mismatch between where money collected and where spent (the hypothecation issue) and where needed was also an emerging issue, as well as the emergence of Neighbourhood Plans being proposed to capture the 25% CIL income which was also beginning to happen.

*“pockets of high deprivation and pockets of high value so had to take a cautious approach, Sedgfield Village (Neighbourhood Plan) progressing interested in 25% share, were unhappy at £15 CIL rate being the same as other areas, asked why not higher” (LA:D2 Interview)*

Practices also changed in relation to the consultation process, partly reflecting the difficult process of engagement with the private sector for Durham. The October 2013 rationale supporting the DCS (Durham County Council, 2013a) as well as acknowledging the formal consultation exercise after the PDCS in September 2012, also made explicit reference to the working group with HBF.

*“An important part of the process of preparing the viability report has been engagement with stakeholders - particularly the development industry. All stakeholder comments have been considered and the results of a stakeholder workshop held early in the process are set out in the LP&CIL VS. All comments to the CIL Rationale and Preliminary Charging Schedule are set out within the Statement of Consultation Preferred Options Local Plan. The affordable housing targets and CIL charging rates have been agreed by the working group nominated by the Home Builders Federation prior to the publication of the Draft Charging Schedule for consultation. The detailed viability report by HDH in October 2013 also included many references to the*

*ongoing engagement with the HBF and the apparent agreement to certain elements of the appraisal.” (Para 3.8 Durham County Council, 2013a)*

The final evidence about viability submitted for the Examination in April 2014 (Durham County Council and HDH, 2014) also made references to the process of engagement and agreement of certain points.

*“During the preparation of the Viability Study the modelling and price assumptions were explicitly agreed with the HBF. The assumptions are necessarily cautious and representative of the anticipated pattern of development.” (Para 8.6 Durham County Council and HDH, 2014)*

There was no real engagement with any landowners other than to respond in general terms to some agents who had made some general comments as part of the formal consultation processes at DPCS and DCS stages. There was likewise little consultation with the communities, about the rates although some had indicated that they thought the CIL proposal was too low in their location.

*“pockets of high deprivation and pockets of high value so had to take a cautious approach Sedgefield Village (Neighbourhood Plan) progressing interested in 25% share, were unhappy at £15 CIL rate being the same as other areas, asked why not higher” (LA:D2 Interview)*

*“but as I say, we got a number of Neighbourhood Plans coming through in Durham now, I think we are up to 15 that are interested and when you talk to them it’s not about more housing coming forward but it’s actually about just getting that little bit extra bunce as they see it for 15% up to 25% - the only reason there in it” (LA:D4 Interview).*

As the consultation and engagement process proceeded the two main groups became more entrenched in their positions and hence the intention to proceed to a formal arena to decide matters. This also reflected the underlying differences in skills, education and cultures between the local authority officers and the private developers, which was revealed by this process, this didn’t help the decline in trust between the two groups and the decline in the engagement process. The Council officers felt that the development industry were just playing a game, and were from a culture of negotiation and would negotiate in any event.

*“if they don’t feel they have been in a bit of a battle they feel cheated is I think how they feel so it’s almost you have to go through the process for them to feel content” (LA:D4 Interview)*

This decline in the effectiveness of the engagement process contrasted with the national policy guidance placing increasing importance on this engagement. Practices in this arena also reflected the influence of national policy in restricting discretion for local authorities in setting rates and the emphasis on deliverability and viability and the need to take account of wider policy requirements and their impact on those factors.

### **6.10 Conclusion**

The Durham case study presents an example of the challenges of implementing the CIL policy in an area of poor economic and property market conditions, even though the County Council sought an ambitious growth policy to address those issues. The discursive struggle over the research period from March 2012 to February 2015 reveals that the national “supporting growth” discourse remained important as did the national storylines of “encouraging developers”, “incentivising landowners” and “facilitating local authorities” up to the interim report from the Local Plan inspector, which stopped the process. The local storylines demonstrated a decline in the “business not as usual” with its ambitious policy practices to be replaced by a “reduced ambition” storyline of lower CIL proposals and some disenchantment with the CIL as a policy revealed by the “an artificial process” storyline and “playing games” trope.

The County Council were broadly successful in promoting the justification for the CIL policy in general terms, they were challenged much more strongly in their approach to the proposed CIL rates and in relation to the skills and capacity of the local authority, and the consultation and engagement process became a significant issue. The proposal of very high CIL rates initially, led to a more difficult discursive struggle around the calculation process than perhaps might have been the case and also to the setting the rate struggle.

One of the main issues arising, was the increasing formality of the CIL process which in this case was forcing resolution of the disputes into the formal arena of the CIL

examination in public. This is in contrast to the national Government promoting a shift to increasing emphasis on engagement and consultation especially with the development industry. The engagement process became dysfunctional in spite of significant efforts by various actors to engage on a regular basis, but the lack of trust between the main actors become clear, again supporting the need for formal resolution in a formal arena. The very ambitious proposals may have partly led to the scale of the problem, but there are also the different cultures, skills, education and objectives of the actors revealed through this conflict and disagreement.

The engagement process also became focused on the technical aspects of the viability assessments and this excludes some parties, as specialist knowledge claims and skills were involved. For those actors involved the imbalance of skills and asymmetry of knowledge was also an influential factor, impacting on the use and role of consultants and on the confidence of planners. It also supports the importance of evidence in the process, its ownership, control and interpretation thereof, which rested with certain key actors. Evidence is also something which the national guidance has given increased emphasis to over the period.

The setting of the rates whilst a political judgement, is an increasingly constrained area of judgement due to the changes in the national policy regulations and guidance. The impact of the tropes of “cumulative policy burden” and “striking the balance” were influential in again constraining the flexibility and discretion available to local authorities in setting rates

The mismatch between viability zones deciding the ability to generate CIL funding, in a difficult “granular property market” and the appropriate zones for delivery of planning policy, reflects the challenge of hypothecation issues, which relate to many value capture mechanisms as well as CIL.

What has become clear is that even in studying the process over a relatively short period of time is that the impact of the struggle between the storylines did impact on practices by the actors involved in the process. The impact of local factors such as the Councils approach to the implementation, the use of consultants, the engagement process, the detail of the viability assessment process, the decision to set rates at certain levels are all clearly influential. The impact of the changing

national CIL regulations and guidance over the period on the practices is also observable, this will be considered further in a later chapter.



## **Chapter 7. Newcastle/Gateshead Case Study (Business as usual)**

### **7.1 Introduction**

As mentioned earlier case studies were studied which used CIL policy as a lens through which to study the micro-political processes involved in value capture policies in local contexts where due to challenging economic and market conditions the process would be more contested and therefore more observable. The selection of Newcastle/Gateshead also afforded the opportunity to study the implementation of a joint CIL being introduced by two local authorities working together and what influence that may have on the policy making process. The selection of a second case study also allowed a comparison to be made with the findings from Durham.

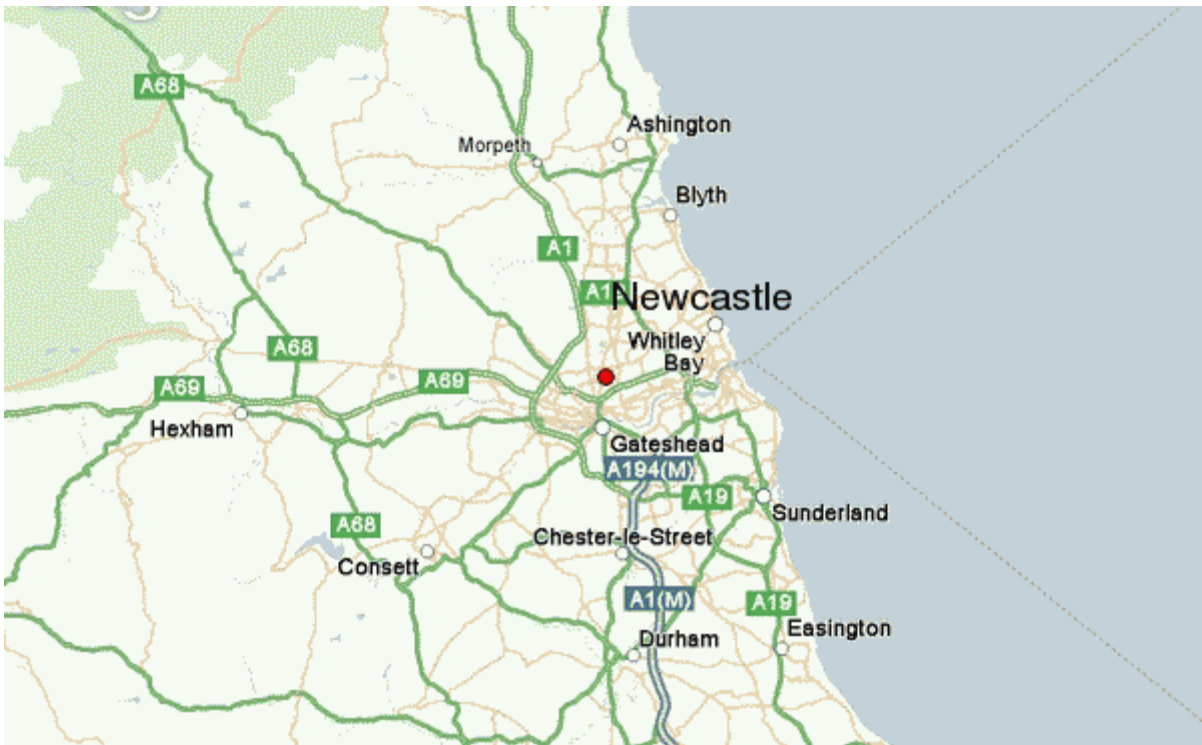
### **7.2 Methodological Approach and Link to the Research Questions**

As set out in chapter 4, the same approach and methodology were used as in the Durham case study. By studying the operation of discursive mechanisms within the policy making process, the use of knowledge by local authority planners in their decision making can be considered, both in how knowledge claims are generated and tested, but also in the effects on the relationships between various actors and on policy practices.

### **7.3 Description of Newcastle and Gateshead**

The City of Newcastle upon Tyne and the neighbouring town of Gateshead lie to the north and south respectively of the River Tyne at the highest bridging point of the river. The river Tyne gorge presents a distinctive landscape for the area with the famous bridges crossing the river and the important developments on both sides of the river such as Newcastle Quayside, the Baltic Art gallery and The Sage Gateshead. The area attracts approximately 4.4 million visitors per annum from around the world and is growing as a tourist destination.

It is located some 95 miles north of Leeds and 106 miles south of Edinburgh the two nearest other urban centres. The urban area is located on the main east coast rail line and main A1 road linking London to Edinburgh, it is also linked to Carlisle in the west by the A69 and has its own regional airport.



*Figure 7.1 Location for Newcastle/Gateshead*

It is the regional centre and main employment source and economic driver for the north east region, with 299,000 people working in Newcastle and Gateshead, 44.9% of them commuting in from surrounding areas every day. This predominately urban conurbation is illustrated by the fact that there are no Town Councils within the area and only seven parish councils, which are located within the limited rural hinterlands around the main urban area. The housing market of Newcastle overlaps with North Tyneside and Northumberland to the north of the Tyne, whilst Gateshead's housing market overlaps with the northern part of County Durham south of the Tyne.

#### **7.4 The Newcastle/Gateshead Core Strategy and Urban Core Plan**

Whilst two separate unitary local authorities Newcastle City Council and Gateshead MBC have worked together since 2009 to prepare a joint planning strategy for their area believing this was to the economic advantage of both areas. The "Planning for the future Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne" (the Plan) (Newcastle City Council and Gateshead MBC, 2015) was formally adopted in early 2015 and sets out the vision for the two areas up to 2030.

The current population of the two Authorities is 475,400 (from the 2011 census) and this is expected to grow by 50,000 by 2030, of this 23,000 currently live in the urban core. There has been an outward migration of families and working aged population from Newcastle particularly to North Tyneside, the Plan seeks to address this issue by proposing ambitious growth proposals to accommodate a population of over 500,000 by 2030, by building 30,000 new homes and generating 22,000 new jobs in the area.

The Plan has identified that to deliver this new development there is a need to alter the Green Belt boundaries around the main urban area to be able to meet the required 5 year housing land supply (DCLG, 2012b). There are also proposals to bring forward 380,000 sqm of office space and 50,000 sqm of new retail space in the Urban Core within the plan period.

In order to bring forward this scale of new development significant strategic infrastructure is required, as identified in the “Infrastructure Delivery Plan” (IDP), in order to contribute to the funding of this infrastructure the CIL is proposed to be introduced as now considered.

### **7.5 Timeline for the CIL Process**

The CIL process within this case study starts with the first mention of CIL in documents in 2011, relating to the funding of infrastructure to support the Core Strategy. The Core Strategy process was already underway at this time and the decision to pursue growth by releasing greenbelt sites for housing had already been proposed. The first substantial discussion of the CIL policy by the two Councils was a cabinet report to Newcastle City Council on 30<sup>th</sup> May 2012 (Newcastle City Council, 2012a), which attached the proposed Preliminary Draft Charging Schedule with proposed CIL charges as shown below in figure 7.2.

This report was supported by a Viability Assessment document (Newcastle City Council and Gateshead Council, 2012a) and a CIL Background Paper (Newcastle City Council and Gateshead Council, 2012b) setting out the justification for the CIL, the national policy guidance, the methodology used in the viability assessment and the context for introducing the policy.

Two important drivers emerge from this report, firstly the importance of continuing to receive s106 income, even to the extent that two interim developer contribution models were also presented to the same meeting for approval in order that the City Council could continue to receive income before CIL was fully in place., Secondly, the calculation of the CIL charge rates were also considered, affordability was key with the previous level of payments made under s106 agreements an important strand of evidence in the assessment of the proposed rate. The second comment made in the covering report itself was revealing about the local position

*“The level of the charge is set by each local authority but it must not undermine the viability of development. Each local authority will be watching how neighbours set their charges. We are therefore aligning with Gateshead, given our economic cooperation.” (Newcastle City Council, 2012a)*

The report also referred to the “striking the balance” and the “margin of viability” and took a cautious view of the proposed rates set, it also set out the importance of consultation. The Viability Assessment report had been prepared by in house surveyors in Newcastle and Gateshead, however the background report which summarised the position and justification had been prepared with assistance from Simon Drummond-Hay in the role as a “critical friend”, even at this early stage of the process.

It is interesting that Gateshead Council’s reporting to their cabinet did not in fact take place until the 17<sup>th</sup> July 2012 (Gateshead MBC, 2012) during the consultation period and then as a minor addition to a general update report on the progress of the One Core Strategy and Urban Core Area Action Plan update. This report has much less detail than the Newcastle report and makes reference to the Council and communities deciding where the money will be spent and on what. In addition to the comment on striking “an appropriate balance” in setting the rate, the justification is framed in terms of growth and competitiveness

*“based on an initial review of the infrastructure needs identified in the draft One Core Strategy, alternative funding sources, objectives for the growth of Gateshead, and the desire for Gateshead to remain competitive” (Gateshead MBC, 2012)*

<b>Newcastle Preliminary Draft Charging Schedule: Residential Rates</b> (£/square metre)  <b>Zone A £88/sq m</b>  <b>Zone B £16/sq m</b>  <b>Outside of Zone A&amp;B £0</b>
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<b>Newcastle Preliminary Draft Charging Schedule (£/square metre)</b>  <b>Commercial Rates</b>
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Chargeable Use	Zone 1	Zone 2	Outside of Zones 1 & 2
<b>A1 supermarket</b> (over 1,000 sq m,)*			£128/sq m
<b>Small scale A1, A2, A3, A4, A5 uses</b> (1,000 sq m or under)	£128/sq m	£128/sq m	£0
<b>A1 comparison, A2, A3, A4, A5 uses, vehicle sales (sui generis)</b> (over 1,000 sq m)			£80/sq m
<b>Office B1</b>	£64/sq m	£0	£0
<b>Hotel C1</b>	£3/sq m	£40/sq m	£0
<b>Shared/Student Accommodation (C3, C4, sui generis)</b>	£16/sq m	£16/sq m	£0

*Figure 7.2 Draft Preliminary Charging Schedule (May 2012)*

Following the publication of the Preliminary Draft (figure 7.2) above there was a formal consultation period from 20<sup>th</sup> June 2012 to 13<sup>th</sup> September 2012 during which a series of breakfast meetings took place, one on the 19<sup>th</sup> July 2012 specifically on the CIL proposals. The event was attended by 36 representatives who included several of the major house builders and quite a range of other local authorities and public sector agencies (such as the Environment Agency) who were primarily interested in where any income from the levy would be spent, there was little representation by property agents other than Savills, although several planning consultants did attend. Several questions were asked some relating to viability, how the money will be spent and the mechanics of how CIL worked. What is apparent from the formal note reported to the Council in September 2012, was at the early stages of the CIL policy, knowledge was limited about the CIL mechanism and its

potential impact. As the CIL event took place between two other events on the Core Strategy; it appears that some representatives were really more interested in issues of greenbelt sites in the Core Strategy rather than in CIL.

Newcastle City Council also issued in July 2012 “Community Infrastructure Levy (CIL) CIL and Section 106 Planning Obligations - A Guide for Developers in Newcastle upon Tyne” (Newcastle City Council, 2012b) a document relating to how the CIL and s106 will operate together. This reflected the need to both raise awareness and to set out how the policy would operate in practice, such as how the CIL will be charged on a planning application, the CIL preliminary draft charging schedule was also set out in the document. This is perhaps a response to the apparent lack of understanding of the policy generally, and being aimed at reassuring the development industry and their advisors, reflecting the difficulties that were being experienced at the time in the informal consultation process, with the property and development sector in particular about the assumptions used in the appraisal work and the evidence used to support that.

In terms of the formal responses to the consultation period these have been analysed and several groups have been identified, the first group were Government Agencies such as Natural England, Sport England, Highways Agency and the Environment Agency who were concerned with the spending of the levy income and wished to be consulted further in the process. The second group were the Chartered Surveyors mainly commercial property agents who commented on the viability issues but generally at a high level, the next group were the house builders (the main volume house builders but also specialists such as McCarthy and Stone and Banks Group) who made a range of comments from generally supportive and general viability comments to very detailed viability comments, there were also comments from retailers Asda and Tesco but very much at a general level. There were also comments from campaign groups such CPRE and the Green Party and also from the Citizens Advice Bureau and two Landlords Northumberland Estates jointly with Bellway and Capital Shopping centres (owners of Eldon Square and the Metrocentre). These were reported to the Newcastle Cabinet in the Cabinet report on 22<sup>nd</sup> May 2013 (Newcastle City Council, 2013).

There was a significant period of time from the end of the formal consultation period in September 2012 up to May 2013, during which the CIL process was not progressed. The Newcastle Cabinet report of 22<sup>nd</sup> May 2013 sets out the Council's thinking at that time in three respects. Firstly, the consultation responses were reported to be noted but with very limited comments. Secondly, the major request was to approve a pause in the CIL process due to changes and uncertainty about the national CIL policy and the likely approval at that time of a further delay in the deadline for the restrictions on the pooling of s106 contributions from April 2014 to April 2015, thereby reducing the time pressure on the Council to progress CIL. Finally the third element was an approval being requested to approve s106 contributions models for Education and Transport to enable continued collection of developer contributions.

At this time the Core Strategy was progressing with its consultation and there was concern in Newcastle City Council that the assumptions in the viability assessment needed to be consulted upon again, to support the Core Strategy and the viability of the five year housing supply, rather than in relation to CIL. It was at this stage that the decision to separate the Core Strategy from the CIL process was made for reasons of resource, but also based on counsel's legal advice regarding risk to the Core Strategy being approved.

There was an effort to engage with both the housing developers primarily on a one to one basis, and with the commercial property agents, with a RICS event organised on 3<sup>rd</sup> June 2013 which was quite well attended following a poorly attended earlier event. Some progress was made on assumptions and evidence and a revised Viability Assessment Report was produced in July 2013 (Newcastle City Council and Gateshead MBC, 2013). Interestingly following the move of one of the authors of the original May 2012 Viability Assessment (Newcastle City Council and Gateshead Council, 2012a), (the Gateshead Council contributor), the revised Viability Assessment report has seemed to have been predominantly written by the Newcastle City Council representative, with agreement and some limited input from Gateshead Council estates team. Reflecting the concentration on the Core Strategy and pause in the CIL process the "Infrastructure and Developer Contributions Technical Paper - September 2013" (Newcastle City Council and Gateshead Council,

2013) was issued which reflects the discussions about viability up to that point and the production of the Infrastructure Delivery plan (Newcastle City Council and Council, 2013) which is a crucial document to both the Core Strategy and CIL processes, this report refers to the revised Viability Assessment report as September 2013 but in terms of evidence to support the Core Strategy this is the same document as the July 2013 version (Newcastle City Council and Gateshead MBC, 2013).

The formal consultation on the Core Strategy took place between the 9th September 2013 and 21<sup>st</sup> October 2013 and included proposals regarding developer contributions, these were later discussed at the Examination in Public of the Core Strategy between July and September in 2014. In February 2014 a revised Viability Assessment report (Newcastle City Council and Gateshead MBC, 2014) was produced as evidence to support the Core Strategy Examination in Public process, this was an extended version of the July 2013 (Newcastle City Council and Gateshead MBC, 2013) report referred to earlier. It sets out much detail on the methodology used to assess viability of sites across the two local authority areas, although the writing of the document was very much led by and based on the viability appraisals by Newcastle City Council. Whilst the report relates to viability, it is very much focused on the Viability Testing of the Local Plan (Core Strategy), although the responses to the consultation on the CIL Preliminary Draft Charging Schedule proposals are discussed in detail with amendments proposed or not in response to the comments. Much of this work would be equally applicable to the CIL process, but it is clearly framed in terms of the Core Strategy. At the examination in public for the Core Strategy there was very little comment or discussion on the Developer Contributions section of the Core Strategy proposals.

The Core Strategy was formally approved by the Inspector in his report dated 24<sup>th</sup> February 2015 and following that the CIL process was restarted with cabinet reports to Gateshead Council on 24<sup>th</sup> March 2015 (Gateshead MBC, 2015) and to Newcastle City Council on 25<sup>th</sup> March 2015 (Newcastle City Council, 2015; Newcastle City Council and Gatehead MBC, 2015). Which both request a restart of the whole CIL process with an issuing of the CIL preliminary draft charging schedule as set out on figure 7.3.



	Residenti al Zone A	Residenti al Zone B	City Centre Zone 1	Commerci al Zone 2	Outside City Centre (Zone 1) & Commercial Zones 2
C3 Dwellings (inc. sheltered housing)	£60/sqm	£30/sqm	£0	-	-
Shared/ Student Accommodation (C3, C4, Sui Generis)	-	-	£80sqm	£80sqm	£0
Hotels (C1)	-	-	£0	£40	£0
Small retail A1, A2, A3, A4 A5 units ≤ 280 sqm	-	-	£0	£30 sqm	£0
A1 supermarket* > 280 sqm	-	-	£30/sqm	£30/sqm	£30/sqm
A1 Comparison > 280 sq m A2,A3,A4,A5 uses, vehicle sales (Sui Generis)	-	-	£0	£80/ sqm	£80/ sqm
All B classes (business, industry, storage and distribution)	-	-	£0	£0	£0
Extra Care Housing (C3)	£0	£0	£0	-	-

Figure 7.3 Revised Draft Preliminary Charging Schedule (March 2015)

As can be seen the proposals for the new CIL preliminary draft charging schedule were significantly lower than those in the 2012 proposals, approval was also requested to a “planning obligations supplementary planning document” which would seek to secure developer contributions up to when the CIL is formally approved, especially as the pooling restrictions for s106 contributions came into force 1st April 2015, the timing of the report is timely in that respect.

## 7.6 Key events and sites of argumentation

Having set out the time line and discussed some of the main events in the CIL implementation process in Newcastle/Gateshead these are summarised in the table 7.1.

Key Event	Date
One Core Strategy 2030 Newcastle/Gateshead – Topic Paper: Infrastructure and Resources Core Strategy and Urban Core AAP joint technical paper – infrastructure overview	January – October 2011 (topic paper)

Cabinet Report (Newcastle City Council) with background papers - CIL Background Report, Viability Assessment Report, CIL Preliminary Draft Charging Schedule	30 <sup>th</sup> May 2012 (report and documents)
Formal Consultation on Draft Preliminary Charging Schedule (including two stakeholder breakfast meetings on viability)	20/6/12 to 13/9/12 (schedule of responses)
CIL Breakfast Event	19/7/2012 (note of event)
Guide to Developers	July 2012 (document)
Cabinet Report (Gateshead MBC) with Revised Viability Report (16/7/13)	17 <sup>th</sup> July 2012 (report and documents)
Breakfast Meeting Feedback report	19 <sup>th</sup> September 2012 (report)
Cabinet Report (Newcastle City Council)	22 <sup>nd</sup> May 2013 (report)
Consultation events re viability and questionnaire on viability assumptions (April to June 2013)	May to July 2013 (RICS event 3 <sup>rd</sup> June 2013) (some notes and minutes)
Revised Viability Assessment Report	July to September 2013 (report)
Background Paper 2013 Consultation Statement Infrastructure and Developer Contributions Technical paper	September 2013 (document)
Formal Consultation on the Core Strategy and Urban Core Plan	9/9/2013 to 21/10/2013 (schedule of responses)
Revised Viability Assessment Report	February 2014 (report)
Examination in Public of the Core Strategy and Urban Core Plan	May to July 2014 (notes)
Cabinet Reports (Gateshead MBC and Newcastle City Council) with background papers Background paper and Preliminary Draft Charging Schedules	24/3/2015 (Gateshead) and 25/3/2015 (Newcastle) (reports and documents)

*Table 7.1 Key Events in Newcastle/Gateshead*

The key events are however only part of the process of attempting to reconstruct the policy making process, it is important to also identify the sites of discursive production or argumentation. These sites or arenas where knowledge is produced, tested and contested between the various actors involved in the policy making process are shown in the table below (table 7.2), they are the same main arenas as identified in the Durham Case study and relate to the key policy making decisions and key documents that are at the centre of the CIL process.

Site of Argumentation	Description
What is the funding to be spent on	Preparation of the Infrastructure Delivery Plan (IDP) what infrastructure needed for Local Plan and the 123 list setting out what infrastructure items CIL to be spent on within IDP
Viability Assessment	Preparation of the Viability Assessment Report comprising area wide appraisal and assessment of Threshold Land value (TLV) to establish headroom available for CIL rates
Setting of the Rates	Preparation of the Draft Preliminary Charging Schedule and Draft Charging Schedule setting out the proposed CIL rates

*Table 7.2 Key Sites of Argumentation in Newcastle/Gateshead*

As with the Durham case study the focus of the research has been in relation to the capture of value, rather than decisions about how the money is to be spent. Accordingly the initial focus of the analysis was on the assessment of viability and setting of the CIL proposals, rather than on where and how the money would be spent, what became apparent however was that these three arenas interrelated to each other even if the spending arena was somewhat less contested.

These sites of argumentation have been studied considering key documents together with data from a series of semi-structured interviews with key actors in the process. To ascertain the key ideas, concepts and categories through which meaning is given to the discussion and arguments made, to help identify the storylines and topes that structured these discussions and which in turn influenced how the policy became implemented.

## **7.7 Discourse Analysis**

### **7.7.1 Identification of Discourses**

As in the Durham case study the main national discourse of “supporting growth” is acknowledged as the dominant discourse influencing policy making in this case

study. Accordingly the influence of the national storylines and tropes identified in chapter 5 and how they interact with locally generated storylines and tropes is more the focus of the case study analysis.

### 7.7.2 Identification of Storylines and Tropes

As mentioned earlier storylines and tropes are important concepts in analysing policy, they are reductive discursive devices that simplify complex debates through simplified narratives or figures of speech, as such they influence the meaning attached to a policy problem and in turn influence policy practices. They can often disguise contradictions and areas of misunderstanding with both positive and negative effects. They can also be used to legitimise policy making decisions whilst disguising incomplete arguments and institutional biases (Hajer and Versteeg, 2005, p. 177).

Site of Argumentation	Storylines	Tropes
What is the funding to be spent on	Why the CIL is needed <u>Facilitating Local Authorities</u> CIL policy not being applicable to the north east Why is CIL needed	<u>Plan led approach</u> <u>double counting of developer contributions</u>
Viability Assessment	<u>Incentivising Landowners</u> Robust Viability Assessment <u>Encouraging Developers</u>	<u>Appropriate Available Evidence</u>
Setting the Rate	CIL at a cautious level <u>Margin of Viability</u> Business as usual Demonstrating Deliverability Securing Income Reluctant Acceptance	<u>Cumulative Policy Burden</u> <u>Striking the Balance</u>

Table 7.3 Storylines and Tropes in Newcastle/Gateshead

The storylines and tropes identified in the Newcastle/Gateshead case study are shown in the table 7.3, the national storylines and tropes are shown underlined and have been identified in the national policy documentation as it has evolved over the period. The locally generated storylines and tropes have been identified from the local policy documentation and interviews and consideration of the main events of the policy making process during the period being studied.

Having set out the main storylines and tropes involved in the policy making process, it is now appropriate to consider how they interacted in Newcastle/Gateshead and with what impacts on policy practices.

### **7.8 Analysis of Discourses and Storylines at Key Sites of Argumentation**

As discussed earlier storylines and tropes are important and influential discursive mechanisms, they are employed by actors to influence the meanings attached to knowledge claims, which in turn influence the policy making process. Actors may use three methods to support their meaning or construction of reality, firstly, credibility, combining the plausibility of the argument with the authority of the authors, secondly acceptability, implying that a position is attractive or at least necessary and finally trust, which seeks to support and suppress doubt about how this definition of meaning was reached (Hajer, 1995, p. 59). These methods can be used positively or negatively to discredit arguments, to establish doubts, undermine trust, and in turn position other actors. These discursive mechanisms can determine what can and what cannot be discussed in the policy making process (Hajer, 1995), and when the problem definition is accepted to a point where alternatives are not even considered “discursive closure” can be considered to have been reached (Hajer, 1995).

Storyline and tropes can have three main affects, firstly, they can be used to position actors into certain roles, secondly, they can lead to the creation of Discourse Coalitions which are (often temporary) groups with shared aims and objectives in influencing policy development, and finally to cluster knowledge sources (Hajer, 2006). These methods and affects will be used to support the discussion of the discursive struggle within the three main sites of argumentation in the Newcastle/Gateshead case study from May 2012 to March 2015.

### **7.8.1 What is the funding to be spent on?**

The discursive struggle within this site of argumentation concerned three main areas, the justification of the CIL as a policy, which linked to the new development identified in the Local Plan and the need to maintain income from developers whilst not stopping development.

To justify the introduction of the CIL policy into its area Newcastle City Council employed the “why the CIL is needed” storyline. This was influenced by the requirements of national policy and the link to the Local Plan and the national “planned approach” trope, to determine the infrastructure required to support new development and growth, which is set out in the Infrastructure Delivery Plan. The local authority sought to establish credibility, acceptability and trust for the “why we need CIL” storyline by using the need for growth established in the Local Plan process as also a need for strategic infrastructure, it derived authority from a lengthy and robust Core Strategy process and CIL was presented as necessary to contribute part of the funding for this infrastructure.

*“Without the timely delivery of required infrastructure to support development the Core Strategy ambitions cannot be delivered. CIL is one of a number of fundamental funding streams that will help to pay for such infrastructure. There is a difficult balance to be struck as the provision of infrastructure funded by CIL will be an essential element to supporting the provision of quality housing, sustainable neighbourhoods and attractive accommodation for business.”*

*(Newcastle City Council and Gateshead MBC, 2015, p. 6)*

This has been challenged by private sector actors in two main respects, firstly the storyline “CIL policy is not applicable to the north east”, with claims it is a south east policy. Secondly, the challenge over the need to fund the infrastructure from CIL, in terms of whether s106 could be used instead or whether all of the proposed infrastructure was really needed, encapsulated in the storyline “why is CIL needed”.

The principle of inapplicability of the policy to the north east and to Newcastle and Gateshead, especially at a time of poor economic and market conditions was used by a range of actors especially specialists such as property agents, but this was not particularly effective in influencing policy. The questioning of the CIL as a

mechanism was also relatively ineffective, as the restrictions on s106 funding effectively forced the local authorities to introduce CIL to maintain income levels.

As the local authority established the need for growth as part of the Local Plan process, they then employed the national storyline “facilitating local authorities” to justify some contribution from developers. There was also a concern in the early stages from the Development industry about potential “double counting of developer contributions”, but the national policy was tightened up on this over the period, by introducing the 123 list at a national level and this reduced the impact of this trope at a local level.

As a result of the discursive struggle various positioning effects can be seen, primarily in this arena that the local authority is positioned as the facilitator of infrastructure, even if this is only partly funded by CIL, (27% of the total cost in Newcastle), the national policy requires a gap in funding to be set out.

The clustering of knowledge claims and creation of Discourse Coalitions from the storylines and tropes also reflects the discursive struggle outlined above, with the main knowledge claims being about the Local Plan establishing the need for growth and new development. Once established and supported by significant research and evidence in the Local Plan process and overcoming opposition from communities to some development proposals, the CIL justification was relatively straight forward to establish in principle, based on the need for infrastructure to support that new development.

### **7.8.2 Viability Assessment**

This was another important area of discursive struggle as the local authority pursued its calculation of the viability across its area and was challenged by a range of actors. This is a specialist area of expertise, which also serves to exclude some actors from this part of the process. There are two parts of this site of argumentation, the assessment of the threshold land value and the area wide appraisal, together which are combined in the Viability Assessment document as

*“There are differing industry terminologies for assessing the level at which land could be transacted, including the ‘benchmark value’ and ‘threshold value’. For the purposes of this report we refer to threshold value being: “the value at*

*which a typical willing landowner is likely to release land for development, before payment of taxes (such as capital gains tax).” (Harman Report)”*  
*(Newcastle City Council and Gateshead MBC, 2013 p6)*

The TLV assessment is also acknowledged as a very difficult part of the assessment process but as the quote above shows, the assessment reflects the national storyline of “incentivising landowners” to sell land to enable new development to go ahead.

*“that was again one of the lengthy debates because again we just had to take, we called it the benchmark value didn’t we, trying to think now just in my head, that was probably one of the longest early debates was how we set that level and then also communicate that level as well” (AS Interview)*

*“Identifying what constitutes the threshold value and thus viability of development is one of the most challenging aspects of the viability appraisal process. Identifying and justifying a reasonable value is a complex process and can be particularly challenging in the absence of recent and comparable land transactions. The emerging position in relation to threshold land values is that their establishment is a matter of an iterative process between local authorities, landowners and developers. The following is an analysis of published work and a critique of the Councils’ approach to establishing a robust threshold land value.” (Newcastle City Council and Gateshead MBC, 2013, p. 7)*

It has also been the subject of several sources of guidance which unhelpfully actually conflict and which have changed over the period. In challenging this assessment most of the concern has been raised by the volume house builders, who have a great dependence on numbers and on land supply.

*“The RICS involvement has not been helpful with the 2012 guidance being unhelpful only 6 weeks after the Harman report and stating it didn’t recognise the Harman methodology as a valid approach, it is not a valuation method, but is certainly a much and long used and valid approach to the industry.”*  
*(CA:D/NG3 Interview)*

The second element relates to the area wide appraisal which is the calculation of residual valuations across a range of hypothetical sites spread across the local



authority areas to try and reflect the differing market conditions and values, based on differing uses and location. These residual valuations have been undertaken by in-house surveyors from the local authorities and contain assumptions on end use values and development costs (including the profit level for the developer to undertake the development). The assumptions used and the evidence used to support the assumptions were expected to be a major area of challenge, with virtually all detailed areas of the residual valuations contested. This reflects the national policy storyline of “encouraging developers” which requires the viability assessment to reflect within it, an appropriate return to developers. The comparison between the threshold land value and the residual valuations from the range of hypothetical sites produces the available CIL headroom across the whole local authority areas for a range of different uses.

The local authorities sought to build credibility, acceptability and trust by presenting a detailed and transparent viability assessment document showing all the assumptions and calculations, this is part of their employment of the “robust viability assessment” storyline. Nevertheless, there was much debate about sources of evidence, with the local authorities being criticised for using inadequate evidence, with private developers and surveyors employing the national policy trope “appropriate available evidence” to discredit the local authorities appraisal work. The local authorities in turn requested assistance from the other actors who held this evidence but this was not always forthcoming, due to the confidentiality of developer’s business models and of some evidence.

An important part of the discursive struggle concerned the local authority and its skills and capacity to implement the CIL policy and the role of planners as having to take the lead on introducing the CIL policy. The capacity of the local authority to implement the policy again was a key challenge, in a period of very significant cuts in funding and staffing, the implementation of a new policy with sometimes conflicting and rapidly changing guidance is also difficult. Newcastle/Gateshead used in-house surveyors to undertake much of the viability assessment work, this was due to several reasons, resources for the appointment of consultants needed to be justified in times of very tight budgets, and it was considered that they had the expertise and capacity internally.

However, it became apparent that much of this work was undertaken by Newcastle with much less involvement from Gateshead. The local authorities used a consultant HDH Planning and Development, but in a “critical friend role” which was a fairly constrained and with limited involvement. There was however a recognition that they required specialist knowledge of the national policy guidance on CIL, especially as it changed and evolved over the period and to ensure their process was robust.

The local authority planners also valued the support from the Planning Officers Society (POS) who had an established network to exchange best practice, this was considered a key assistance to supporting skills development and of building confidence in an area of expertise where they did sometimes feel uncomfortable.

*“because we are members of the Planning Officers Society there is the a couple of national groups we meet every quarter but we are in contact I had three emails this morning constant emails and circulations anyone who has a question will send it on to the group and the group will come back with answers” (LA:NG7 Interview)*

Similarly to Durham the positioning effects from this discursive struggle is to position developers, consultants and agents/surveyors as experts on development economics and viability, with the local authority being less knowledgeable and having less evidence.

The clustering of knowledge from this discursive struggle puts sources of evidence and specialist knowledge claims at the heart of the policy making process. The process of assessing viability is an imprecise exercise, making judgements about the future based on evidence from the past, it also attempts to anticipate the decision making and behaviour of actor’s, landowners in assessing the TLV and of developers in the area wide viability assessment.

### **7.8.3 Setting the Rate**

The final area of discursive struggle is about the setting of the CIL rates, this is a process which seeks to bring together information from the other sites of argumentation, on how much headroom is available from the viability assessment and how much infrastructure funding is required in the IDP, then making a decision on the rates to set.

In making this decision the local authority has a range of considerations to consider, what level of risk is it prepared to take around the proposed CIL rates, even within the restrictions required of the CIL regulations and guidance. The managing of expectations, of Council Members around income to fund infrastructure provision, the expectations of communities also in this respect. The impact on developers of the local authorities attitude to new development and growth, the track record of the local authority in delivering development (see below) and securing s106 income, and the impact on affordable housing provision and delivery of other policy objectives. Also perhaps what CIL rates, if any, neighbouring and competing other local authorities may be proposing and the potential impact on competition for development.

*“The Councils will need to show that they are doing what they can to facilitate development throughout the economic cycle. The Councils have a strong track record of past initiatives in this regard, although it must be noted that in the current economic climate there is little government money to provide such help” (Newcastle City Council and Gateshead MBC, 2014, p. 47)*

Newcastle City Council sought to promote credibility and acceptability with the local storylines of “CIL at a cautious level” combined with the “business as usual” in which in the early stages the Council sought to say that developer contributions were at the same level but via a different mechanism. The Council also employed the national policy trope “margin of viability” to indicate that the CIL rates were not at the margin of viability and that most sites were still viable.

Newcastle City Council also having an existing income from s106 agreements were keen to retain this income yet also didn’t want to stop development, hence initially the Council promoted a storyline of “business as usual” to indicate that developer contributions would not increase only change from one mechanism to another.

*“Most development has some impact on the need for infrastructure and amenities, or benefits from them. So it is considered fair that such development pays a share of the cost. By paying a contribution, developers will help fund the infrastructure that is needed to make development acceptable and sustainable. CIL will be equitable as it shares the costs across developments that can withstand a charge.” (Newcastle City Council and Gatehead MBC, 2015, p. 6)*

However the CIL process was separated from the Core Strategy process, as reflected in the local storyline of “demonstrating delivery” this stopped the CIL process and used the viability evidence to support the Core Strategy showing it was deliverable. When the Core strategy was approved, the need to continue the receipt of income from the s106 agreements that had originally driven the need for the CIL policy led to the local storyline of “securing income” emerging at the end of the period of study when the CIL process was restarted with some urgency to retain income. Alongside this whole CIL process, Gateshead Council pursued an implicit local storyline of “reluctant acceptance” as Newcastle led the joint process.

In setting the rates the national policy tropes of “striking the balance” and “cumulative policy burden” were again even in the early stages of this policy process influential in the policy making process. The “striking the Balance” trope clearly influencing the whole City Council approach of pursuing a CIL that wouldn’t stop development as in “business as usual” and in spite of the need to secure continuation of income. The “cumulative policy burden” was employed within the Council documentation from national guidance. These tropes influenced policy practices as will be discussed in the next section, the cautious approach of the City Council in relation to setting CIL rates meant that the discursive struggle was not strongly contested in marked contrast with the Durham case study.

There was a challenge about local authority capacity and concern generally about delays and the lack of being able to respond to private sector developers. This was more in connection with s106 negotiations, a general concern about progressing planning applications, there was a general concern of loss of staff with experience, expertise and a “loss of corporate memory” of the history of an area. The long established relationships were highlighted as a key factor and many of these were being lost.

*“what I am a bit worried about, I am to be honest, we worried about the brain drain from the public sector, I think there I even go back 5 or 10 years, now if I needed to go in I would come in and be able to make decisions, would meet some senior people who would talk back to me in the way, that in the way we are having a conversation now, who could say .....no I will not accept that,*

*but who would give you it who you want they are clued up” (DV:D/NG5 Interview)*

*“there is a huge problem at the minute and you feel desperately sorry for local authorities at the moment because so many people have been made redundant they don’t have the capacity or a lot don’t have the capacity or don’t have the resources and are making tricky decisions at the minute where you don’t need to be rushed on this stuff you need the evidence and things like that and there are local authorities who just do not have the resource and do not have the policy resource to deal with these things which leaves them open to challenge at a later stage” (DV:D/NG1 Interview)*

The discursive struggle here again is not resolved, as the CIL process is not completed, but the adoption of the Local Plan has strengthened the local authorities storyline and the setting of a cautious rate suggests that whilst a Discourse Coalition of developers, house builders, agents and consultants may oppose the proposals this is significantly weaker than in Durham. As referred to earlier there may be a culture of challenge, but this is a standard response rather than a really determined challenge based on real concerns, as has been more evident in the Durham case study.

The positioning effects from this storylines reinforce some of those in the other arenas, that developers are key deliverers of development, that developers, agents and consultants are experts on viability and that the local authority is the facilitator of the infrastructure. The clustering of knowledge again is more the gathering together of knowledge from the other arenas on the need for the CIL income, the potential headroom for income and on the balance of policy priorities. But other judgements about developer’s perceptions and competition with other places are also relevant.

The struggle between the storylines and tropes outlined above can lead to “Discourse Structuration” (Hajer, 2006), at this point the construction of the policy problem and the meaning attached to it have been established by one definition. It is difficult to conclude that Discourse Structuration has been achieved in the Newcastle/Gateshead case study especially at the relatively early stages of the policy making process studied. Yet national policy storylines and trope have been influential in what has been a much more measured and cautious approach taken by

Newcastle City Council compared to Durham County Council. When the dominant discourse starts to influence practices and has institutional effects this is termed by Hajer as “Discourse Institutionalisation” (Hajer, 2006) and the impact of the policy storylines and discourses on policy practices are now considered.

## **7.9 The impact of the discursive mechanisms on the CIL process**

Having considered the discursive struggle between the different storylines and tropes within the three sites of argumentation above, the impact of that struggle on day to day policy practices is now considered. Hajer defines practices as “embedded routines and mutually understood rules and norms that provide coherence to social life” (Hajer, 2006, p. 70).

### **7.9.1 The identification of What CIL spent on**

The first area of practice relates to the production of the IDP document which sets out the strategic infrastructure required to support the growth in the Local Plan. The main change in practices over the period of the research is in relation to the IDP document, was the defining of what is included and excluded from the document. In Newcastle/Gateshead an initial IDP was produced in 2012, amended in September 2013 with a final version issued in March 2015. In many of these earlier documents the list of items were not fully costed, but it appears that the overall costs have increased over the period, the CIL income expected also has not been set out until the final report in March 2015 when a Newcastle’s income from CIL is estimated at £27m out of a total IDP cost of £242.9m and Gateshead £12.5m out of £208.5m.

The need to define a list of infrastructure from within the IDP, to be specifically funded from CIL, termed the 123 list, reflected concerns from the development industry nationally about double counting of costs between different mechanisms, in particular s106 and CIL. These national policy changes have impacted on local practices and tightened up the work with the 123 list. Yet at a local level some actors still had concerns about double counting between mechanisms.

*“the CIL 123 list this important list of all the factors that are on CIL that should be contributed to fairly across an area gets distorted and it gets double counted so between CIL and s106 and primary taxation I believe personally there is a lot of double counting going on” (DV:D/NG5 Interview)*

The second area of practice is the requirement to show a gap in funding of the IDP infrastructure, supporting the need to levy CIL, even if CIL is only to fund a small part of the overall IDP costs. In discussions with the local authorities there was some concern that this presented a conflict between the preparation of evidence for the Local Plan and its requirement to show certainty of delivery and the preparation of evidence in support of the CIL process needing to show a funding gap to justify CIL.

*“well I think that the joint EIPs for Plans and CILs were very early stages and there wasn’t much to learn from but we felt it was an uncomfortable set of evidence because the evidence are to a certain extent conflicting between CIL evidence you have got to prove a funding gap and the plan you have to prove deliverability” (LA:NG6 Interview)*

This appears to have contributed to the strategic decision to separate the two pieces of work completely and to the conscious delay in the CIL process whilst the Core Strategy was progressed due to possible conflicts in evidence. This separation contrasts with Durham’s combining of the CIL and Local Plan processes as suggested in early National policy documents.

There was some comment that the CIL policy wouldn’t work in the North East but this seemed to have very limited impact on the practices of implementing the CIL policy in the area. However, it was apparent probably because of the much greater history of securing of s106 income and the greater values and more expensive development proposals in the joint Local Plan that Newcastle City Council were far more strongly driven to introduce CIL, Gateshead if they hadn’t been part of a joint Local Plan may not have pursued the CIL policy

*“Newcastle certainly wanted it, I think in the early days as well there was probably within the Council there was some people thought that CIL was going to be a really big cash cow so the expectations probably four years ago about what CIL would bring in to Gateshead hasn’t been played out in land values” (LA:NG8 Interview)*

*“there is no change their particularly as we have bought into a joint Plan with Newcastle, and Newcastle are in a different position, so I have no doubt we will progress, what benefit actually for Gateshead remains to be seen*

*particularly as you are right whether it is CIL or s106 there are highway works and other accommodation works that will be required to bring these sites and as I say contamination probably land condition issues as well that need to be paid for its not going to be straightforward “(LA:NG8 Interview)*

The issue of planning infrastructure such as schools and the income from CIL also presented problems and contradictions.

*“how do you get a CIL contribution to a school you have an ideal that investment is needed or a new school is needed but actually in 5 years’ time the picture can have changed and particularly under the current government where its only schools that are good or excellent can cut the mustard so you got a failing school deemed to be failing now what do you do with that a good school today may not be a good school in 5 years’ time so I think the school one is a really interesting one (LA:NG8 Interview).*

It was acknowledged however, that it would be important to show central Government that an effort had been made to secure funding at a local level when and if bidding into national funding pots.

### **7.9.2 Calculation of Viability**

The practices in relation to the above had two distinct elements, firstly the establishment of the threshold land value and secondly the residual valuations of a range of hypothetical sites to establish the area wide viability assessment.

The establishment of the threshold land value is one of the most challenging practices involved in the Viability Assessment, and requires an understanding of the decision making of developers and landowners as set out in national guidance but was also reflected at the local level.

*“The emerging position in relation to threshold land values is that their establishment is a matter of an iterative process between local authorities, landowners and developers.” (Newcastle City Council and Gateshead MBC, 2014, p. 8)*

In the case study in spite of setting out much of the guidance and updating this as the various versions of the Viability Assessments were issued, there was little change in



practice in respect of the assessment of TLV, other than changing the label from benchmark to threshold land value to bring it in line with national guidance. The guidance from the Harman (Local Housing Delivery Group, 2012) and RICS reports (RICS, 2012) were set out and discussed in the later reports in July 2013 and February 2014, the initial report from May 2012 predated the guidance and relied on the HCA advice (HCA, 2011).

The conflict between the guidance was played down and the Viability Assessments stated that they believed that both sources of guidance had been complied with. The May 2012 report was very detailed in describing the process and stated that little evidence was available. The July 2013 (Newcastle City Council and Gateshead MBC, 2013) and February 2014 (Newcastle City Council and Gateshead MBC, 2014) reports were less about the CIL and more about the Viability Assessment for the deliverability of the Local Plan, this change in emphasis is reflected in the presentation, the February 2014 report is however directly referred to as evidence for the new CIL Preliminary draft charging schedule issued in April 2015, so hence its inclusion here.

There is much more evidence included in the July 2013 report, as well as the guidance, in the February 2014 report the recent decisions and guidance are added and a whole section is added to the July 2013 report, dealing with evidence from the Council's own land sales and commenting on market and land owner expectations.

It is also perhaps revealing that the Norwich CIL examiner is quoted in respect of his comments that land values may be expected to fall

*“Ultimately, as the Greater Norwich case referred to above indicates, land values may fall as a consequence of an adopted CIL, and note the values above are from transactions prior to adoption of a CIL charge.” (Newcastle City Council and Gateshead MBC, 2014, p. 19)*

In spite of all the further justification and discussion the same land value adjusted from the VOA report 2011 was used although the percentage between urban and non-urban sites across the 5 value zones was increased from 30% to 40%, increasing the urban rural differential.

*“As a result of a virtually static land trading market the figure of £1.28m/ hectare has been used for benchmarking purposes.” (Newcastle City Council and Gateshead MBC, 2014, p. 14)*

The threshold Land value for the commercial urban core was excluded as too difficult to assess.

*“There is no stated threshold value for City Centre sites as it is extremely difficult to establish a threshold value as these developments tend to involve existing buildings being remodelled and extended as opposed to being bare development sites. The nature of the Newcastle market is that there are complex ownership arrangements in place and inevitably the price that a seller would be prepared to sell a site at will already have substantial existing use value plus a premium to incentivise the sale, and as such bare development sites are not usually traded.” (Newcastle City Council and Gateshead MBC, 2014, p. 39)*

However, compared to the concern about the TLV in Durham which was the subject of considerable challenge, the TLV assessment in Newcastle was much less contested, many developers feeling that the assessment was unlikely to be a problem in terms of ensuring that landowners would allow sites to come forward, which had been the major concern in Durham especially with the volume house builders.

The second element of practice is the residual valuations for a range of hypothetical sites to reflect variations in use and location across the local authority's areas and trying to establish different value zones. This area of practice was also influenced by national policy and guidance, especially in relation to the use of evidence, with new guidance on “appropriate available evidence” (DCLG, 2014a). Whilst the assumptions used in the residual appraisals, varied very little between 2012 and 2014, the sources and interpretation of evidence however became an issue especially in the commercial property sector. In spite of several meetings and attempts at trying to discuss evidence, the view taken by some of the commercial property agents was that the local authorities didn't use the right evidence and wanted the local agents to do the viability work on the “cheap” for them, a reference

perhaps that the Councils had decided to do the work in-house rather than employ agents or consultants.

*“well I think its demonstrated lack of understanding of it and you know I think they have tried to do it on the cheap” (CA:NG2 Interview)*

*“just doing Newcastle central business district office market on its own is a big piece of work, what became apparent was that the evidence that they were using in the respective town halls was at least two years out of date” (CA:NG2 Interview)*

*“I think the problem came about on Newcastle/Gateshead in my mind at least was when they tried to justify and by just producing to the private sector the evidence base that they were using, frankly it wasn't worth the paper it was written on and it lost the confidence of the people who were trying to engage with and who just then went you know haven't got time for this” (CA:NG2 Interview)*

The position on evidence in the commercial sector remained unresolved up to the restarting of the CIL process in April 2015. The evidence in relation to the residential sector was also disputed but was much less contested than had been evident in the Durham case study.

The configuration of housing mix and size was amended between the 2012 and 2013 reports and there was also much more discussion on the response to consultation and in justifying the proposals. This included a specific response to comments from Barratt with the additional material in the appendix added in February 2014.

The CIL headroom is derived by comparing the TLV with the residual valuations, much was made of the “cautious approach” and “comfortable developers profit on GDV” seeking to give comfort on deliverability required by the NPPF for assessing Local Plans.

*“The viability model used is based on assumptions of cost, such as build costs, professional fees and marketing costs, which were the subject of much consultation and engagement with stakeholders. It allows for significant and comfortable developers' profit on Gross Development Value of a scheme and*

*was developed and run to meet the Councils' requirements for informing the preparation of CIL and supporting the development of the emerging Core Strategy and Urban Core Plan. For residential schemes the assumption is for 20% on GDV and for commercial schemes it allows for 20% profit on cost, this compares well with the Shinfield case<sup>9</sup> where 20% on GDV for residential development was agreed.” (Newcastle City Council and Gateshead MBC, 2014, p. 19)*

In the 2014 report extra testing of a selection of the SHLAA sites to show deliverability was added, to the hypothetical sites across the local authority areas in earlier reports. In addition, new sections were added to the February 2014 report on using evidence from Council owned sites in areas that may otherwise not be deliverable and to also provide comfort of deliverability of the overall Plan for both Newcastle and Gateshead. In a similar respect there was also discussion in the July 2013 and extended in February 2014 report on “Economic Development and Regional Working” and “New Development Deals” which again sought to provide comfort on deliverability of the Local Plan especially in locations and sectors which traditionally had required regeneration and public subsidy. This had not appeared in the May 2012 report (Newcastle City Council and Gateshead Council, 2012a) but was now seen as important with several pages, it discussed the importance of the “combined authority and “Local Enterprise partnership” and the local authorities track record of delivery.

*“Together the local authorities are also recognising the need for greater regional collaboration to achieve common goals. This finds its focus in the North East Local Enterprise Partnership (NE LEP) but also via the emerging combined authority. The seven NE LEP local authorities have collaborated and are currently consulting on a Draft Strategic Economic Plan<sup>18</sup>” (Newcastle City Council and Gateshead MBC, 2014, p. 44)*

The Viability Assessment is a complex and specialist area of work, and the two local authorities working together decided they had the skills and capacity to undertake the work in-house, using internal surveyors to carry out the appraisal work. This was partly not wishing to pay extra fees for consultants when skills were available, but

also because they believed they had good local knowledge of the area and property markets as they were active in selling land and working in those markets.

*“yes I mean as resources within Authorities drastically reducing we do need to make the most use of the competencies we have in house and we are required to do that before we go out to procurement. Do we have the competencies in house, that’s a question you need to answer before you even start to think about procurement, and we did have the competencies in house, we might not have the consultant with the overview of how CIL and Local Plan viability assessments have been undertaken nationally, but so we hired, we procured a critical friend Simon Drummond-Hay [HDH]” (LA:NG6 Interview)*

*“we basically have him for a day every 6 months where we just go through everything we have done and then just bombard him with emails and he reads them over the weekend and we come in and talk about our approach, we use him, critical friend is the role is the right thing, so he would look at all of our reports and say change this, add this, beef that up, you know do a bit more on this, and it’s been really useful and I think because he’s nationally renowned now as well, I think that’s useful so it’s better to have him our side” (LA:NG7 Interview)*

The in-house surveyors produced the Viability Assessment documents, jointly authored in May 2012 (Newcastle City Council and Gateshead Council, 2012a), but the later versions of July 2013 (Newcastle City Council and Gateshead MBC, 2013) and February 2014 (Newcastle City Council and Gateshead MBC, 2014) were produced by the in-house surveyor at Newcastle jointly with the in-house planners. This reflects the greater importance of the CIL process to Newcastle, whilst there was some input from internal surveyors at Gateshead, this was very much in a supporting role with lack of capacity cited as the reason.

*“yes from the very beginning it was something we thought we could do in house we have had to rely more on Paul than I thought we would” (LA:NG7 Interview)*

*“yes well, it was originally Paul and Andrew Holtham so when he went (Andrew) really it was just again there just wasn’t capacity to maintain that level of involvement so we just relied on Paul” (LA:NG7 Interview)*

*[Note Paul Scaplehorn was Newcastle City Council’s surveyor and Andrew Holtham from Gateshead who left to go to Durham County Council.]*

The in-house surveyor even produced his own bespoke appraisal model and all the detailed appraisal work was undertaken in-house. The use of consultants was very much in the role of a “critical friend”, and Simon Drummond-Hay of HDH was appointed into that role. This involved monthly meetings for a day, when the in-house planners and surveyors sought advice on the national guidance regarding CIL and on the presentation of the viability assessment. This role remained unchanged over the period, in contrast with the more intensive and increased role of the consultant over time in the Durham cases study.

In relation to skills, the numerous changes to and the complex nature of the national policy guidance, had been a challenge for local authority planners and surveyors and hence the appointment of a consultant as support in this area. The skills of in-house planners and surveyors had developed over the period and this had also been very much facilitated by the PAS with training sessions. But perhaps more importantly the POS network to disseminate best practice and experience from across the country from other local authorities, which was an important support for knowledge, but also provided emotional support and confidence at times.

*“Gateshead are part of a Planning Officers Society learning group which is really helpful too, and then obviously Simon Drummond-Hay our critical friend. Very much you know he attends lots of the examinations and he is very clued up on those types of things, so he will point things out, if you could watch out for this change” (LA:NG6 Interview)*

### **7.9.3 Setting of the Rates**

The practices in this area were influenced by the national policy guidance about the “striking the balance” and “cumulative policy burden”, other local factors of having to manage member expectations, the general risk level and “margin of viability” issue

and the nature of competition with neighbouring and or competing local authorities were also relevant.

The practices in setting the rate, were influenced by the change to the CIL regulations and guidance over the period and the reduction in the discretion available to the local authority in making a judgment about the appropriate rate for its area. The CIL rates in Newcastle/Gateshead were changed between 2012 and 2015 with removal of the rates for office development, hotel and comparison retail and changes to the student housing which was increased from £16 to £80 sqm. The residential rates changes with the zone A being reduced from £88 to £60 sqm, and zone B increasing from £16 to £30 sqm, and the retail supermarket being reduced from £128 to £30 sqm.

The changes in rates were a reflection of a change of policy practices and even further caution in setting the rates, after the challenge from the retail and housing sectors and clearly influencing the assessment of the balance.

The consideration of the CIL rate within the wider policy context has also influenced the practices in this area, with a whole extra section added to the VA report in February 2014, "Policies scoped for costs", this seems to be a direct response to the requirement to assess the cumulative policy burden and the impact of CIL alongside the other policy objectives, not least s106. The section is included to provide comfort about the deliverability of the Local Plan and that policy requirements will not jeopardise that delivery. The section sets out the costs of various policy objectives and the impact on viability across a range of sites, it is careful to state that it is "not weighted or a prioritisation of policies", but can be varied site by site

*"the specific type of developer contribution that could be sought in the essential to transformational categories. It is an indication only of the likely priorities applied; however, this will vary depending on the specifics of individual planning applications and is thus a strategic guide, rather than a weighted policy requirement". (Newcastle City Council and Gateshead MBC, 2014, p. 19)*

This sits alongside the categorisation of infrastructure as essential and transformational as contributions. A typical site should be able to bear the "policy

costs”, as this is a requirement of NPPF as is also referred to. This is similar to the “margin of viability” requiring that any rates don’t stop development of a majority of sites across an area.

The cumulative impact of policies is a particular concern to developers who consider the requirements for other contributions, for say s106 for affordable housing or sustainability or design requirements all have an effect on the viability of schemes (especially sustainability requirements such as included in the Code for Sustainable homes). There was also a view from the development industry that sometimes local authorities and their members had unrealistic expectations and just didn’t appreciate the impact of these policy requirements on development viability.

*“my role is to try is balancing the impact of policy burden on cost and therefore return to myself and the landowner” (DV:D/NG3 Interview)*

*“my experience in terms of CIL is probably actually rather limited because it falls for me within that whole concept of policy what we call in HBF, the Policy Burden on a site, so LAs imposing policies on to a developer that 99 times out of a 100 they have no idea what they have done or what they are seeking to achieve .....a fantastic example is the code for sustainable homes (CSH) if you ask a LA what the CSH is all you will get, it’s about renewable energy, one tiny bit of it is about renewable energy” (DV:D/NG3 Interview)*

On the other hand the managing of expectations of members was important for more senior local authority officers, to realise the impact of decisions on viability and delivery and that things were now different, also to manage expectations on the amount of money that would be collected. This was much stronger in Newcastle than in Gateshead due to the history of collecting s106 monies, and hence the regular return to cabinet for approval of temporary mechanisms to continue to collect income. It also influenced the rate charged for CIL with reference to previous rate levels as a comparison throughout the period. In the February 2014 report there were even an analysis of the CIL rates as a percentage of GDV to show how reasonable they were.

The emergence of competition between different local authorities over CIL rates was not a particularly strong issue amongst the local authorities Officers but was raised



by Council members. There was some liaison between the different local Authorities at Officer Level, but this was more on general planning matters rather than on CIL. There was a CIL officer group but this didn't meet often and was more about best practice rather than rates, some of the other local authorities just weren't interested as they weren't going to implement CIL in the foreseeable future.

*“we have a on paper we have a group of the lead officers from the Tyne and Wear area but there has been so much change as well on that basis we have not met in a while we used to meet you know 3 or 4 times a last few years”  
(LA:NG7 Interview)*

*“well we have the we have a heads of planning group which is across the seven local authorities’, the seven northern authorities, there is so we have a regular meeting there where everything is on the agenda so we have the general discussions there but there is also you have got spatial planning officer groups as well north and south of the Tyne and they have had discussions on CIL” (LA:NG5 Interview)*

The importance of the CIL rates and the competitiveness of the North East and Newcastle City Centre was an interesting issue that emerged, it was a concern to Newcastle City Council, but also to the commercial letting agents and to groups such as “G9” and “Developing Consensus” who comprise Local Commercial agents and developers and sometimes other business representatives. They engaged with the local authority and expressed views about the promotion of the area for inward investment enquiries and were clearly interested in letting commercial property and didn't want CIL to become a problem.

*“what we said [G9 group of agents] that they must all of the Tyne and Wear authorities and ok with Northumberland and Durham should produce one inward investment portal” (CA:NG1 Interview)*

*“well they are still into development and letting properties that's all they want at the end of the day, what I said, what is the outcomes we all want, let's start on what's the outcome, letting property for them or developing property and for us it's for landing the investment and getting the jobs, so there exactly so we actually all want the same thing” (LA:NG2 Interview)*

*“what I think CIL does, potentially does it is it acts as a brake on speculative development activity particularly in marginal marginally viable locations and I think that, that’s where Developing Consensus and G9 are looking at inward investment, because that’s about driving occupation demand, which will move a lot of these sort of notional areas. If you can get demand there you can move some of these areas where there is no anticipated CIL collection from unviable to viable, so then actually you have got some land value and you get business rates” (CA:NG2 Interview)*

The other issue that influenced the practice round the setting of the rate was that of the delivery of infrastructure, or the rational nexus issue. The CIL policy didn’t provide the same level of certainty to developers, as that promised by the certainty of a legal agreement under a s106 agreement, which the development industry considered as more secure.

*“there is money in my budget to deal with these various things and I know because I have got a scheme within my legal agreement that I know can be delivered within highway land to a cost of lots of money, I know if I spend that and do that I get the ticket to build beyond it, if you were just paying a contribution to CIL what to is there to ensure that that scheme is delivered by the time its needed to mitigate the impact of my traffic on my development” (DV:D/NG5 Interview)*

*“where in traffic terms its indicating you need that by then in order to mitigate the effect in accordance with European Legislation and in the mechanism to do it is not there, there is the whole question about whether you are carrying out development lawfully” (DV:D/NG5 Interview)*

The local authority also had the issue of guaranteeing delivery without the certainty of timely funding and this was also a slight concern to various actors.

*“There is a risk re growth and how fast we get the CIL income.” (LA:NG1 Interview)*

*“we are trying to plan it but my fear is that a combination of circumstances we may well underplay income from CIL because we cannot, it’s not exact science” (LA:NG8 Interview)*

The mismatch between where collected and where spent and where it was needed was also an emerging issue, the hypothecation issue. This was made more complicated by the community 25% share, and there was some evidence that whilst most community involvement had been to oppose new development as part of the Local Plan process. Following adoption of the Core Strategy and having to reluctantly accept this new development, that these communities may well establish neighbourhood groups to secure CIL money, although to date this had not been the case.

***“(Has there been any move to set up neighbourhood plans as a result of that?) no I am surprised I really am surprised” (LA:NG7 Interview)***

*“there is a lot of work involved in it and if you did a neighbourhood plan realistically now it’s purely to get the income because you cannot influence development anymore” (LA:NG7 Interview)*

The consultation and engagement process was somewhat fragmented as in summer 2012 a CIL process was commenced, then a delay until 2013 when a consultation in relation to the viability assumptions was undertaken, which was related to the viability assumptions supporting the Local Plan preparation and trying to show deliverability rather than for a CIL rate proposal. Then a further document issued in February 2014 for the Local Plan preparation process and the Examination in Public for the Local Plan in September 2014. The CIL process was restarted again in April 2015 after the formal adoption of the Local Plan in March 2015 (Newcastle City Council and Gateshead MBC, 2015), with some urgency due to the risks of losing income.

The strategic decision to separate the two processes as mentioned above taking precedence to manage capacity and risk.

*“basically the advice and we took counsels advice because of the shifting sands, I suppose this year of the guidance and the regulations, we well internally we didn’t feel confident enough in our ability to decipher the various legal language and then the regulations to make that call. So we sought Counsels advice through chambers in London, about what our stance, what our position should be. What our next steps should be and even that is*

*difficult, because between Newcastle and Gateshead we also had different interpretations of the situation” (LA:NG7 Interview)*

*“so that was the debate for a while we got counsels opinion back and his recommendation was that we don’t do anything for a start until the inspectors report has been produced because one we wouldn’t want to risk mischief making shall we say again from objectors just to the plans saying hold on if you are consulting again on something that has an impact on the Plan or if we do more viability work and find our assumptions are slightly needing updated the does that actually undermine the assumptions that are in the Plan and about delivery and about growth so his very clear recommendation was do nothing until the inspectors finished writing” (LA:NG7 Interview)*

What is also apparent is the inclusion of increasing amount of commentary and explanation of how the consultation was undertaken and what account was to be taken of the comments, even if in reality this was actually not that significant. The national policy guidance placed a greater responsibility to show engagement after 2014 and this is reflected in the documentation.

The importance of engagement with the Development industry in particular is increasingly emphasised in the guidance over time. Consultation with local communities is something different, it is notably absent from much of the documentation, although Gateshead make specific reference in their Cabinet papers (Gateshead MBC, 2012; Gateshead MBC, 2015). When the issue of community involvement was raised at a Newcastle cabinet meeting in May 2013 by a Council Member the formal response recorded in the minutes by the planning department was rather vague and somewhat defensive, (see quote below).

*Q1. CIL was introduced nationally in 2010 the government states” The Levy provides funding for infrastructure that the council, LOCAL COMMUNITY, neighbourhoods and delivery partners need to support development. The council has consulted on the CIL; how many members of the community took part.*

*A. Last summer (20 June- 13 September) the Council undertook a ‘CIL Preliminary Draft Charging Schedule’ consultation which was run alongside*

*the 'Major Changes to the Joint Core Strategy' consultation to encourage engagement on what is a technical subject. Letters seeking views were sent to all types of consultees on the LDF database including 10,214 residents, seeking their views on the proposals. There were consultation fact sheets available to help answer questions and the technical documents were available for inspection at the civic centre and libraries.*

*Q2. As we can see from the background papers the developer had a lot to say but poor if no representation from the public. How do officers mean to improve this given that they recommend a delay AND HAVE NOW TIME TO DO MORE MEANINGFUL CONSULTATION THE SORT CLLR BELL TALKED ABOUT NEEDING AT THE RECENT CALL IN OF THE JOINT CORE STRATEGY.*

*A The next Draft Charging Schedule consultation event will take place in the autumn of 2013 will also include extensive consultation with all types of consultees on the LDF database including 21,000 residents. This is a technical consultation programme and we seek to engage with appropriate stakeholders.*

*Q9. What evidence can Officers produce to show they have been consulting with neighbouring authorities when setting CIL value? Has this been done through the LEP?*

*A. Newcastle has from the outset, worked with Gateshead Council to develop a shared methodology to rate setting for CIL and has discussed methodology with authorities in the wider region. Consultation with neighbouring authorities has occurred at officer level and through the Local Plan Duty to co-operate north of the Tyne. (Newcastle City Council, 2013)  
[Note: the letters in capitals are as shown in the original document]*

## **7.10 Conclusion**

The Newcastle/Gateshead case study presents an alternative to County Durham of the challenges of successfully implementing CIL policy in an area of difficult economic and property market conditions. The nature of the geographies of the two areas are different and the joint working between Newcastle City Council and

Gateshead MBC also provides an extra element to consider. Due to the delays to the CIL process the time period studied from May 2012 to April 2015 did not see the discursive struggle brought to a conclusion, but again even taking a snapshot of the policy implementation process reveals impacts on policy practices.

The CIL policy making in this case study was influenced by the discursive struggle across three sites of argumentation involving various actors using both national and local storylines and tropes to influence the definition of the meaning of the policy. The CIL process studied was very much a start stop start process in this case study, it also reflected the cautious approach taken by Newcastle City Council to the CIL policy in spite of the need to continue the receipt of funding from developer contributions.

Some of the main issues arising, were the deliberate separation of the Local Plan and CIL processes, the approach to using in house capacity with little use of external consultants, the differences in the main drivers to the process between Newcastle and Gateshead and to an extent their involvement in the viability assessment process. The importance of continued s106 income and the much more significant new development proposed in Newcastle compared to Gateshead. The importance of the inward investment as an issue (with groups such as G9 and Developing Consensus), as Newcastle as the regional capital has the main office market in the north east, and the involvement of professional bodies such as the RICS and the Planning Officers Society.

The challenge to the skills and capacity of the local authorities has been less than in Durham but the process was still at a relatively early stage, the more cautious approach to the setting of rates may also be a factor in this respect. Again, evidence and specialist knowledge emerge as important, with ownership and control of evidence a key point, even when national level guidance requires greater collaboration between actors about evidence.

The setting of the rates reflected the constraints being placed on local authorities by the changes in national policy guidance, the tighter assessment of the striking the balance and the impact of the cumulative policy burden on the viability assessment and rate setting and with the need to set out much more detail on the justifications in the appraisal work. The need to present policy impacts and options in a wider

regeneration context to provide confidence on the delivery of the Plan, involving the LEP and Combined Authority. The influence of the viability assessment in framing the policy choices and priorities was also apparent and also in constraining the judgement and discretion available to local authority planners.

What is clear that even in studying a snapshot of this process over a short period, has started to reveal the impact of national regulations and guidance as they interacted with local drivers of policy to influence policy practices. In the next chapter a comparison between the two case studies is considered, alongside the actual policy impacts on practice as compared with those anticipated at a national policy level set out earlier.

## Chapter 8 Calculating, Capturing, Spending...

### 8.1 Introduction

In this chapter the research questions are addressed utilising the findings from the two case studies and the anticipated impact on policy practices from the national policy perspective. The process of CIL policy making as a specific subset of planning policy has been conceptualised as a series of arenas in which knowledge claims are tested drawing on (Rydin, 2007). Three main arenas within the CIL process have been identified and these are considered in terms of the types of knowledge generated and tested in those arenas, the actors involved in the process and the influence on policy practices as studied over the period in question. This has been analysed using the methodology set out in chapter 4; where a key part of the analysis is the construction of storylines, which involves the bringing together of different knowledge claims and knowledge types (experiential and codified), to influence policy practice. Accordingly the analysis of storylines and tropes as identified in the arenas is also an analysis of knowledge generation and testing in those arenas as required by the research question below.

#### **How is knowledge generated and validated to support planning decisions in relation to the delivery of infrastructure as funded by value capture mechanisms?**

Three main planning decisions within the CIL process take place each within their own arena to produce three separate but related documents, they are the viability appraisal which attempts to calculate the value available to be captured, the setting of the rate for CIL which seeks to capture a share of the value for the funding of infrastructure; and the Infrastructure Delivery Plan which sets out the infrastructure to be funded, three arenas of Calculating, Capturing and Spending.

These three planning decision arenas are now considered in turn, setting out the effects of the discursive mechanisms on policy practices and comparing the national policy perspective with the case study findings. This is convenient to facilitate analysis but it should be noted that they overlap and interrelate to each other in practice.



## **8.2 The CIL Decision Making arenas**

### **8.2.1 *The Viability Assessment (Calculating)***

The viability assessment is the planning decision which seeks to calculate the value that is available to be captured. As part of this process an assumption about the level of profit required by a developer is required, as is the price of land required by a landowner in order to sell (the threshold land value calculation). Whilst these are part of the work and decision making in the viability assessment, they implicitly influence the second planning decision of the sharing out of the value, and the decision of how much value to capture for the funding of infrastructure.

The knowledge in this arena is generated from: a mixture of codified and experiential knowledge of land and property markets and values; the costs of development; the specialist knowledge of appraisal software and methodologies and codified guidance in this area; and, experiential knowledge as dispersed across a range of actors involved in the policy making process.

Within this arena the most influential storylines and tropes from the cases are compared to national policy aims. Table 8.1 shows the main storylines and tropes identified in the two case studies with the national policy storylines and tropes shown as underlined. Storylines simplify complex debates with reductive narratives that seek to legitimise a certain position and also often disguise contradictions and misunderstandings (Hajer, 2006). Storylines have a beginning, middle and an end, they are employed by various actors to convey meaning within the policy making process. Tropes similarly influence meanings and understandings, as figures of speech they act as rhetorical devices beyond their literal meaning and often play an emblematic role in changing policy understandings and in turn impact on practices (Fischer and Forester, 1996).

What is apparent is that national policy storylines and tropes were very influential at a local level, as they interacted with locally generated storylines or tropes, some supporting the national policy practice and others not. The overarching discourse at a national level was the dominance of the “supporting growth” discourse which shifted the policy in this area from a capture of land value uplift for community benefit; towards an area wide viability assessment to fund infrastructure provision to support growth; reflecting a reconceptualization of value capture. The calculation of

the value has been a long standing challenge to policy in this area in a range of different value capture mechanisms and this is also apparent in this arena of the CIL policy.

<b>Viability Assessment Arena</b>	<b>Storylines</b>	<b>Tropes</b>
Durham Case Study	Artificial Process <u>Incentivising Landowners</u> Robust Viability Assessment <u>Encouraging Developers</u>	Playing Games Granular Property Market <u>Appropriate Available Evidence</u>
Newcastle/Gateshead Case Study	<u>Incentivising Landowners</u> Robust Viability Assessment <u>Encouraging Developers</u>	<u>Appropriate Available Evidence</u>

*Table 8.1 Storylines and Tropes from Viability Assessment arena in case studies*

The national storyline of “incentivising landowners” was about ensuring a supply of land for new development and growth, it is also about ensuring land value for landowners is protected within the appraisal process, within the assessment of the threshold land value. The TLV requires an assessment to be made of the uplift above current use value required by a landowner in order to persuade him to sell the land for development. The practice of assessing the TLV was acknowledged in both case studies as challenging and problematic, due to a lack of evidence, limited engagement with landowners and poor understanding of the landowner’s business models and motivations for selling land. The conflicting guidance in this area between the Harman (Local Housing Delivery Group, 2012) and RICS (RICS, 2012) as mentioned earlier in Chapter 2 was also unhelpful in this respect.

In Durham, the TLV was a major area of disagreement between the LPA and volume house builders over the assessed TLV level and the potential impact on the supply of housing land. In Newcastle/Gateshead the TLV assessment was a much less contested issue reflecting the cautious approach taken by Newcastle to the appraisal process.

In a similar way the national storyline of “encouraging developers” was influential in the preparation of the viability appraisals in the CIL process. Specifically the main influence on local policy practice was the fixing of the profit level at 20% of Gross

Development Value within appraisals. This was partly as a result of examiners reports on CIL establishing this precedent alongside other national guidance. This was adopted as the norm in both case studies after being initially contested within Durham by the local authority planners.

The national trope “appropriate available evidence” was also influential in both case studies. This was set out in national policy guidance (DCLG, 2014a) and reflected the change in policy making emphasis at a national level placing greater importance on evidence to support the viability assessment process. The meaning of “appropriate” can be interpreted by different actors in different ways, with the quality of evidence used by local authorities a major area of criticism by developers and agents. The meaning of “available” introduces the issue of control and ownership of evidence which also became apparent in both case studies and finally the meaning of “evidence” became more and more important over the period as required by national policy guidance but was interpreted differently by different actors as a specialised knowledge source.

The importance of evidence was apparent in the Durham case study in the panel process with the HBF and the discussions about evidence between the parties. In Newcastle/Gateshead evidence was also a concern, firstly the quality of evidence used by the Council was contested by the private sector, secondly when the Council requested access to private sector evidence issues were raised about ownership and its confidentiality and finally across both cases the interpretation of evidence was also contested.

The increased emphasis on evidence and collaboration revealed the asymmetry of the parties, with the private sector having access to and ownership of more evidence than the local authority. It also supported the national policy guidance for increased engagement and collaboration with developers in the CIL process with part of that being to agree evidence. In Durham as discussed earlier this collaboration broke down into disagreement after a significant period of engagement. In Newcastle/Gateshead the evidence position remained unresolved in the period of study, but was somewhat reduced in its effect on practice by the cautious nature of the proposals. This suggests a reduced flexibility and discretion available to local authorities in both this arena and the setting the rate arena considered next. The

Newcastle/Gateshead proposed a low CIL rate as they had limited evidence available to support their proposals and the need to have good evidence was required by national policy.

Having considered the national storylines and tropes, it is worthwhile considering the impact of the locally generated storylines and tropes. In both case studies the local authorities presented a storyline of a “robust viability assessment”. As perhaps could be expected these storylines were of limited effect within the arenas, as the viability assessments were strongly contested by other actors in the process especially in Durham.

In the Durham case study the local authority and their consultant generated the trope of “granular property market” which was reflective of the unusual and difficult challenge of establishing market and value boundaries across County Durham with big variations in residential values within localised geographic areas. As the CIL guidance states that values must drive the viability assessment this was particularly challenging hence the emergence of this trope. It reveals the complex nature of the viability assessment exercise, the need for judgement and specialist knowledge and expertise which will be considered further later in this chapter.

Finally, the locally generated storyline “artificial process” supported by the local trope of “playing games” together reflect the disillusionment of the local authority in Durham with the viability assessment process over time and the view that the discussions with the private sector were problematic. The “artificial process” storyline reflects that the collaboration with the panel involved regular rerunning of the appraisal model with different assumptions and evidence, which over time produced results that showed the whole county as unviable for housing development. This was not borne out by the reality on the ground where house building was taking place, the nature of the area wide assessment also required hypothetical residual valuations and appraisals to be produced not based on specific site based information as in a s106 appraisal. It also was the source of the trope “playing games” reflecting the Council’s view that the private sector were using the appraisal modelling process to influence the policy making process and that it was a negotiation or even a game.

What these last two discursive mechanisms reveal is that the viability assessment is a complex process involving specialist knowledge, which excludes some actors from

the process and introduces power relations into the policy practices within this arena. Examples of which are the control of evidence emphasising the asymmetry of knowledge sources between actors and the use of specialist knowledge to influence the policy making process and potentially forcing matters into formal arenas for determination. Whilst the national policy guidance presents the viability assessment as a techno-rational process, these storylines and tropes reveal the much more socially constructed nature of the viability assessment process at a local level which will be considered further later in this chapter.

### **8.2.2. The Setting of the Rates (Capturing)**

If the viability assessment sets out the value that is available to be shared between the parties involved in the development process, the setting of the rate starts to look at the sharing out of this development value between the various parties. As mentioned above the assessment of the threshold land value presents the share to the landowner, the assumption about the level of profit in the viability assessment also seeks to set out how much the developer gets as a return for the risk taken in undertaking the development. In the viability assessment the headroom or value available for sharing is established, the setting of the rate seeks to set out what share the public sector takes as value capture to fund infrastructure provision.

<b>Setting the Rate Arena</b>	<b>Storylines</b>	<b>Tropes</b>
Durham Case Study	Reasonable CIL proposals Unrealistic proposals Business not as usual Reduced ambition	<u>Cumulative Policy Burden</u> <u>Striking the Balance</u>
Newcastle/Gateshead Case Study	CIL at a cautious level <u>Margin of Viability</u> Business as usual Demonstrating Deliverability Securing Income Reluctant Acceptance	<u>Cumulative Policy Burden</u> <u>Striking the Balance</u>

*Table 8.2 Storylines and Tropes from the setting the rate arena in case studies*

The types of knowledge claims involved in this arena are less specialist and technical than in the last arena, table 8.2 shows the main storylines and tropes. The testing of the knowledge claims in this arena were often linked back to the technical issues within the viability assessment arena, as the national storylines and tropes influential in this arena placed an increasing importance on viability in framing the setting of the CIL rate.

The preparation of the charging schedules and the setting of the CIL rate is essentially a political decision by a LPA and is influenced by local factors, but also framed by national policy guidance. Much of the knowledge is generated in the other arenas, the viability assessment arena providing the headroom value available to be captured and the spending funding arena providing the infrastructure needed to be funded. These are combined with the experiential knowledge of previous policy delivery and the policy requirements of the area, and with the codified knowledge of the national guidance in relation to setting the CIL rates. National policy placed increased emphasis on collaboration with other actors especially developers this is reflected in the changes in the local storylines promoted by the local authorities over the period.

The two most important national policy influences on the policy practices in the case studies were the tropes of “striking the balance” and “cumulative policy burden”, these are both derived from the national policy guidance and were employed in the CIL policy making process by various actors.

The “striking the balance” trope relates to balancing the need to capture funding with setting a levy rate at such a level that it may stop development. As mentioned earlier, the test for assessing this balance has been more restricted over the period of CIL guidance with reduced flexibility and judgement available to local authorities in setting the rate. The main contrast between the two case studies was the ambition in setting the rates, which in Newcastle/Gateshead was from the early stages cautious and set out as a continuation of the existing developer contribution requirements. It was designed to not reduce development activity, this ties in with the local storylines of “business as usual” and “CIL at a cautious level” as discussed below. Newcastle City Council also employed the national policy storyline of “margin of viability” complementing the “striking the balance” trope to support its cautious approach, the

“margin of viability” storyline requiring that CIL rates not be set at the margin but to include a buffer in the value. In the Durham case study the “striking the balance” trope was supported by the local authority storyline of “reasonable CIL proposals”, but the ambitious rates proposed by Durham were challenged by the local developer storyline of “unrealistic proposals”.

The “cumulative policy burden” trope was also from the national policy guidance and was employed by the private sector actors in the policy making process. The meaning of “cumulative policy” meant that the impact of the CIL rates needed to be considered in their impact on viability, but not just alongside other developer contributions such as s106 requirements but also all other policy requirements that could impact on viability of new development, such as design and sustainability requirements. The sustainability requirements were a particular concern to some private developers, which in their view, was a cost of development with no impact on higher values and so had a negative impact on viability. The meaning of “burden” also conveys the view that policy requirements were a burden for new development to bear, having a negative effect on delivery of new development.

The important differences between the two case studies was the way that CIL as a new policy was promoted. Whilst in both cases it was still influenced by the “supporting growth” discourse with both having growth oriented Local Plans under preparation at the same time as CIL, the presentation of the CIL differed. In Durham the new ambitious growth oriented Local Plan was presented to national Government and to private sector actors in the storyline as “business not as usual”. This was the change in approach from a County Council previously promoting itself as an area of industrial decline to one of promoting growth. This partly resulted from the creation of a new unitary authority from 2009 and a reappraisal of its strategic direction. In terms of CIL this manifested itself in a very ambitious CIL rate proposal and following a very strong challenge to the proposals by the private sector a revised storyline emerged of “reduced ambition”. Linked to this change in storylines were the conflicting storylines of “reasonable CIL proposals” promoted by the County Council and the opposing private sector view that the CIL proposals were “unrealistic proposals”. These reflect the break down in the relationship during the CIL process which was not the case in the other case study.

In Newcastle/Gateshead the “supporting growth” discourse also inspired a growth based Local Plan and the need to introduce the CIL as a policy to fund the infrastructure needed to support the new development. In this case however the presentation mainly to the private sector was a storyline of “business as usual”, derived from the need to reassure the private sector that the history of s106 and the collection of developer contributions would continue but via a different mechanism. This complemented the “CIL at a cautious level” storyline which was also promoted by the Council who were keen to see this policy as not stopping development.

The “demonstrating deliverability” storyline represented the strategic decision by the two local authorities to stop the CIL process and give precedence to the Local Plan process. It was considered that the need to employ viability evidence to support the deliverability of the Local Plan was more important than to support a CIL proposal, hence the renaming of and change of emphasis in the viability reports. It also revealed a concern that there was a contradiction between demonstrating deliverability of a Local Plan including provision of development and infrastructure whilst also having to show a funding gap to justify CIL. Once the Local Plan process was completed the storyline switches to “securing income” as the need to continue the developer contributions income stream is vital for the council and hence the urgency to restart the CIL process in early 2015.

The Newcastle/Gateshead policy making was dominated by Newcastle City Council mainly driven by its greater number of new development sites, but also by its history of collection of s106 contributions which had been much lower in Gateshead. The joint Core Strategy (Local Plan) by the two local authorities also required a joint CIL, Gateshead Council if producing its own Local Plan may not have proposed a CIL and hence the “reluctant acceptance” storyline, which whilst it was not particularly openly articulated was reflected in the policy making process.

What the discursive struggle between the very influential national policy topes and the locally generated storylines revealed is that in both cases a cautious CIL rate was proposed, even if via differing routes. This reflects the overriding importance placed on delivery over the collection of funding, and the influence of viability on setting the rates. This led on to the framing of policy decisions being made within the ceiling of viability, this reinforces the performative effect of the viability assessment on this



arena. Whilst essentially a political decision, national policy guidance has increasingly presented the setting of the rates as a techno rational decision based on viability evidence, but again as can be seen it is socially constructed. By interpreting knowledge from other arenas, together with policy and political priorities, local authorities have to consider matters both strategically and tactically as will be considered further later in this chapter.

### **8.2.3 The Infrastructure Delivery Plan [what is the funding to be spent on] (Spending)**

This leads on to the other big planning decision that is required, what is the funding to be spent on. Occurring in the arena dealing with the preparation of the IDP, the infrastructure needed to support the new development sites as determined by the Local Plan, reflecting the national trope of the “plan led approach”. The knowledge claims in this arena relate to the policy strategy of the local authority going forward, this implicitly includes place competition with other areas, the decisions about growth and where it is located and the infrastructure needed to facilitate that. The main storylines and tropes identified in the case studies are shown in table 8.3 with the national storylines and tropes shown as underlined.

<b>Spending the Funding Arena</b>	<b>Storylines</b>	<b>Tropes</b>
Durham Case Study	Why the CIL is needed <u>Facilitating Local Authorities</u> CIL policy not being applicable to the north east Why is CIL needed	<u>Plan led approach</u> <u>double counting of developer contributions</u>
Newcastle/Gateshead Case Study	Why the CIL is needed <u>Facilitating Local Authorities</u> CIL policy not being applicable to the north east Why is CIL needed	<u>Plan led approach</u> <u>double counting of developer contributions</u>

*Table 8.3 Storylines and Tropes from the Spending the funding arena in case studies*

The testing of the knowledge claims here was less significant than the other arenas although the principle of what the funding is to be spent on was used by the LPAs as a justification for the CIL policy introduction. The local authorities employed the national discourse of “supporting growth” and the national storyline “facilitating local

authorities” to justify the introduction of the CIL policy (as it is not mandatory for a CIL to be introduced). These were supported by the locally generated storylines of “why the CIL is needed” which was in Newcastle primarily to continue funding income from s106. Other actors employed challenging storylines such as “not being applicable to the north east” and questioning “why is CIL needed”, both locally generated but with limited success.

At both a national and local level the trope of “double counting of developer contributions” of funding and spend was raised, at a national level this led to the introduction of the 123 list, which sets out what specific infrastructure CIL will fund. At a local level this trope illustrated the distrust developers had in local authorities in administering the policy and whether as developers they would contribute twice to the same infrastructure. The discursive struggle around the preparation of the IDP in this arena, was however limited, partly because the value captured by the CIL mechanism doesn’t have to pay for all of the infrastructure identified in the IDP and in many cases, including the two case studies, could only make a small contribution.

In the Newcastle/Gateshead documentation a key justification for the CIL was to ensure the timely delivery of required infrastructure to support development and delivery of the Core strategy. This reflects the “rational nexus” issue of ensuring timely delivery and the importance of a better link between collecting funding income and when and how it is spent. There are however problems as the timing, as the income is uncertain and market determined, it in any event is only making a small contribution to the total, the planning of infrastructure provision is therefore difficult going forward.

In Durham the IDP was very much driven by ambitions of Growth and Economic performance, Durham as a new Unitary Authority, was keen to change the image and perspective of the County, from an area of decline and need, to one of growth and opportunities. Latterly this has somewhat been questioned by the problems encountered by the response of the Planning Inspectorate questioning the realism of those growth ambitions. Yet the main actors involved were supportive of these proposals.

Several issues are highlighted from the discursive struggle within this arena, firstly, the lack of flexibility the local authorities had on how the funding collected could be

spent, quite restricted due to the “plan-led approach” trope included in national policy. The spending could only be used to fund infrastructure to support growth and new development, as set out in the IDP and Local Plan. The 123 list constrained matters even further with a specific list of CIL funded infrastructure items having to be identified, reflecting the lack of trust the private sector had in the LPAs in this respect, this was “facilitating local authorities” but in a restricted way.

The separation of collection and spending of the income also became apparent. Three issues emerged, firstly the rational nexus issue and the certainty of timely delivery of the infrastructure by the Council in return for the payment by the private sector. Secondly, the uncertainty of the timing and amount of income to the Council with which to provide this funding of infrastructure being to a certain extent dependent on the market. Lastly, the hypothecation issue of the mismatch spatially of income collection and the areas of policy priority and spending need.

Similar to the other arenas the LPA has to consider the strategic policy requirements of its area within the frame of a growth based policy. The justification of the CIL policy is to support growth and requires a growth oriented Local Plan and IDP, however spatially and temporally the matching of new development with infrastructure provision is challenging both strategically and tactically, which will be considered further later in this chapter.

#### ***8.2.4 Summary of Research Question 1***

The construction of storylines involved the combining of different knowledge claims and employing them within arenas to influence policy making practices. Within the CIL policy making process three arenas have been identified each reflecting a key area of planning decision making. Whilst there is some overlap between these arenas, they assist analysis of the discursive struggle between and generating storylines and tropes. This discursive struggle illustrates a testing of knowledge claims contained within the storylines and their impact on policy practices it also shows the operation of power within the arenas. The discursive struggle within the arenas within the two case studies have been compared and considered against the anticipated impact on practices envisaged by national policy guidance.

The main points that emerged were that firstly, within the viability assessment arena that the discretion and flexibility available to local authority planners is constrained by

the guidance. The increased importance placed on evidence to support viability assessment, the challenging nature of the assessment of the threshold land value and the encapsulating of profit levels within appraisals are all performative in nature (Christophers, 2014) and restrict the judgment and flexibility available to local authority planners in preparing viability assessments. The control, ownership and interpretation of the evidence are reflected in the asymmetry of knowledge between the actors, enhanced by national policy requirements for local authorities to collaborate with developers in relation to this evidence and knowledge. The complexity of the viability assessment process requires specialist knowledge even to interpret the figures, termed as “black boxing” (McAllister *et al.*, 2015). This excludes some actors from the process and introduces the issue of skills and the need for and role of specialist consultants and advisors in this difficult policy making area. The viability assessment process is also presented as a technical-rational decision making process, providing objectivity and precision, termed by (McAllister *et al.*, 2015) as a “calculative practice” when in practice this is revealed to be socially constructed and influenced by the power relations between the parties involved.

In the setting of the rates arena the importance of viability is established by national policy as the main determinant on the policy making, supporting the view of McAllister *et al.* (2015) that the viability assessment process helps make this complex process more governable. This however also restricts the discretion and judgement available to the local authority planners in setting the rate, reflecting a trend of diminishing “judgement space” (Vigar, 2012) or “discretionary space” (Gunn and Vigar, 2012). The need to demonstrate a balance between collecting funding and not stopping development, assumes that a balance can be realistically determined within a dynamic market based on evidence. The effect on policy practices are of separating viability from policy objectives and of using viability as a frame within which policy choices have to be made by local authorities, this reflects the trend towards more market oriented planning as in other value capture mechanisms (Campbell and Henneberry, 2005). The local authority has to consider its political and policy priorities strategically as well as the tactical issues of the policy implementation and proposed rates.

Finally, in “what is the funding to be spent on” arena the main points are again the discretion and flexibility available to local authority planners in making decisions, the

collected funding is restricted to be spent on funding of infrastructure to support growth as set out in the Local Plan (Rydin, 2013). This is further restricted to the need to identify the specific items to be funded by CIL from within the IDP, which reflects a lack of trust by the private sector in the local authority in this matter (Adams and Tiesdell, 2013). The planning of and certainty of infrastructure provision into the future are problematic for local authorities as well, as they are tied to market forces and timing of future development, this also causes uncertainty to developers. Finally, the mismatch between the collection of funding and the spending of funding again emerges as an issue as with other value capture mechanisms (Oxley, 2004a).

National Policy guidance is very influential at a local level, whilst there are locally generated drivers which influence the policy making process these are often more tactical exercises by the local authorities to achieve local goals within the constraints of the national policy guidance as will be discussed more fully later.

### **8.3 Wider Governance Arrangements**

Having considered the process of generating and testing knowledge within the CIL policy making process by analysing the discursive struggle between storylines and tropes and their impact on planning practices, the wider governance arrangements are now considered, founded on how the practices within these arenas have influenced the roles of various actors involved in the process. The second research question (shown below) suggests that policy making could be improved by a better understanding of these roles and this is now considered by reviewing the operation of the three arenas and roles of the various actors within them.

**Can policy making be improved by planners having a greater knowledge of the decision making of developers and the operation of land and property markets?**

#### **8.3.1 Viability Assessment Arena (*Calculating*)**

In the earlier analysis of this arena, several key policy practices were identified as influenced by the discursive struggle; the calculation of the TLV, the area wide appraisal, the establishment of boundaries of values, the use of evidence in the appraisal process and the collaboration and engagement process, these are now considered in relation to their impact on the roles behaviours of various actors.

The calculation of the TLV, is a challenging element of the viability assessment process the amount of uplift over current use value that is required to provide an incentive to the landowner to release land for new development. A greater understanding of the motivations of landowners in selling land, which can vary significantly as landowners are not a homogeneous group, would be very beneficial to policy making but this is challenging.

The decision making of landowners is often not transparent nor the nature of transactions between developers and landowners. The actions of landowners are influenced by intermediaries such as consultants, agents and developers, in the case studies landowners had very little direct involvement in this or indeed any of the arenas. Developers however were proactive in protecting a level of land value in the TLV calculation, to ensure a supply of development land was likely to come forward to maintain development activity, this was particularly the case in Durham. This is in contrast with the policy objective of seeking to reduce land values over time and the former conceptualisation of value capture as capturing undeserved land value uplift. Other factors influencing landowner's decision making are assumptions about future values and future policy with often a decision to delay selling land due to unrealistic expectations. Policy making could also be improved by a better understanding of the structure of the land ownerships across local areas and of the operation of the land market this is also challenging for similar reasons of lack of transparency.

The area wide appraisal involves carrying out a series of hypothetical appraisals and as such is an artificial exercise, it is not even based on specific site based assumptions as with of s106 negotiations. This averaging issue is also problematic, the fixing of boundaries for values across an area can be particularly difficult as in Durham. The viability assessment is also problematic in temporal terms, as viability appraisals are forward looking, having to forecast future values, costs, market and policy conditions some way into the future, they of course never turn out as forecast. These judgements were based on high levels of specialist experiential knowledge, excluded actors without the specialist knowledge. Although things are improving local authority planners are struggling in this area with skills and confidence, in the face of other actors with specialist knowledge. The role of consultants emerges as key to support local authority planners with specialist knowledge, especially in relation to appraisal software and methodologies and also national policy guidance.

Policy making could be improved by local authority planners having a better understanding of the appraisal process, but consultants and agents control this specialist knowledge and many local authority planners due to lack of confidence are willing to leave much of this work to specialist consultants, the degree of involvement of consultants depends upon the amount of control the local authority wishes to have, including the running of the appraisal software. The assumptions included in the appraisals are also highly contested but with key assumptions such as developers profit being embedded as fixed. This is in spite of the fact that developers are not a homogenous group and are very varied, having an improved understanding of developers decision making would be helpful to the policy making process. Which leads on to the relationship between local authority planners and developers which is part of this increased understanding, yet is currently an area of much misunderstanding and little trust.

National Policy places a greater requirement for the local authority to collaborate with private developers on evidence and assumptions which places more power to the developers in the policy making process. The requirement nationally to require more evidence to support the viability assessment process also places more power with private developers, where there is already a significant asymmetry in terms of specialist knowledge and evidence. Developers and consultants have control of the evidence in some cases, they also have greater specialist knowledge to interpret this evidence determining what counts and doesn't count as appropriate evidence in certain situations.

One of the main issues that emerged was the view that whilst this viability assessment process is presented as a rational-technical exercise of assessment, in practice this is not the case. The increasing importance placed on collaboration with developers and on the evidence base to support the assessment as required by national policy, in practice increases the asymmetry of knowledge and evidence between different actors. It is also illustrative of the power relations that underlie the process and the socially constructed nature of the process. Policy making assumes that actors make rational and fully informed decisions, but the lack of information transparency and the institutional influences on the decision making in the local context from the case studies show that rational price based decision making is too simplistic an assumption to make.

### **8.3.2 Setting the Rate Arena (Capturing)**

The key policy practices identified as influenced by the discursive struggle in this arena were; the setting of the rate reflecting viability to not stop development across the area, the consideration of policy priorities against viability and the strategic approach of the local authority combined to its tactical approach of getting the policy approved. The relationship of the local authority with national government, developers, and landowners and with other neighbouring local authorities were also important factors in this arena.

This arena was also a strongly contested element of CIL policy making and due to national guidance placing viability at the heart of the CIL policy making process is very much linked to the early arena about the assessment of viability. However, this arena takes the viability assessment input and seeks to decide how much of the available headroom can be captured for the funding of infrastructure. The national guidance in this area of decision making has reduced the discretion available to local authorities from some limited discretion to little or no discretion in setting a CIL rate.

The need to strike a balance between collecting funding and stopping development is a challenging judgement to make and suggests that a balance point or equilibrium point can be assessed. This reflects the implicit assumption of a rational technical decision making, but which in practice is a political decision reflecting the institutional context of the local area. The local authority's strategic position on what level of CIL to introduce, and the balance with the other developer contribution mechanism s106. There has been much confusion about the relationship between s106 and CIL and this was still apparent in the case study areas.

The relationships with developers and to a lesser extent with landowners is important, to understand the decision making of these actors and the operation of the land and property markets, this all influences the decision on the CIL rates.

Newcastle took a more cautious approach compared to Durham and perhaps from a tactical point of view were more successful in managing the approval of the policy through the process.

The expectations of Council members over the income, the retention of funding income in Newcastle's case and the issue of competition with other areas in attracting development and investment were also relevant within the CIL rate setting



process. The relationship with other neighbouring or competing local authority areas was also a factor, in competing for new development the CIL had a risk in making the area less attractive. In Newcastle the private sector were also concerned about the potential impact on inward investment to the City.

Another important practice was to place a ceiling on the cumulative policy requirements that could be afforded across the local authority area, this could mean that policy choices and priorities had to be decided within that ceiling, forcing local authorities to choose may be between affordable housing provision, sustainability standards such the code for sustainable homes and the provision of strategic infrastructure as funded by the CIL. This viability ceiling or headroom which was indicative at the stage of setting of the CIL rate to show deliverability, as the CIL is an up-front flat rate levy, could be considered again in the planning process on specific projects as they proceeded to the planning application stage, with may be a renegotiation of the s106 requirements due to the impact on viability. Again due to the importance of viability an understanding of land and property markets and of the decision making of developers are important to improve policy making in this arena.

### ***8.3.3 What is the funding spent on Arena (Spending)***

The main practices that emerged from the discursive struggle in this arena related to the identification of infrastructure needed to deliver the new development in the Local Plan (IDP) and those items within that to be funded by CIL (123 list). These restricted the freedom of the local authority on how to spend the income from CIL to growth oriented expenditure. This arena also promoted the principle of CIL as a policy, as it is not a mandatory requirement to introduce the policy.

This arena was less contested than the other two but nevertheless some issues emerged regarding the role of the various actors and the operation of the arena. The CIL was always a growth policy and linked to growth oriented Local Plans, the Infrastructure Delivery Plan setting out the infrastructure needed to support the Local Plan new development restricts what CIL funding can be spent on, hence the funding collected has to be spent on growth supporting infrastructure. This was further restricted by the introduction of the 123 list to set out the specific items of expenditure to be funded by the projected CIL income. This further restricted the discretion and flexibility of local authorities on the spending but perhaps more interestingly revealed

at both a national level and it was also raised in the case studies, the lack of trust that the private sector had in the local authority in its spending of the income and that they may be charged for something twice over.

This lack of trust was also reflected in the private sectors view over the certainty of the delivery in a timely manner of the infrastructure to be funded from CIL, this is termed the “rational nexus” issue (Crook, 2016b). Due to the fact that CIL is only to provide a small proportion of the overall funding costs the sourcing of the other funding and its timing are a reasonable issue to raise. This also suggests that a better understanding of the decision making of developers and their need for more certainty to reduce risk would be helpful in policy making in this area.

But of course this works the other way, the local authorities have a challenge to deliver the infrastructure provision with an uncertainty of not only the timing of the CIL income but also of the other sources of match funding. This contradiction was also apparent in the way that Newcastle/Gateshead consciously separated the Local Plan viability testing from the CIL viability assessment process due to their perceived contradiction between showing deliverability for the Local Plan but at the same time showing a funding gap to show a need for CIL funding.

The other issue that should be mentioned although it was fairly limited in effect over the period of the research was the “hypothecation” issue (the mismatch between the areas of collection and spending of funding), this was only apparent in early stages in a few communities, but was envisaged by planners at Durham County Council that it could emerge as a problem, as the places where the funding is collected are not necessarily where the funding is then spent. The move by some neighbourhoods to capture some funding is motivated by the fact that some communities want control of funding raised from their areas to spend on their priorities, this of course doesn't always align with the local authority priorities or areas of greatest need.

The promotion of the CIL as an appropriate policy for the area, usually to support growth, but in Durham the CIL policy was seen as an important demonstration to national government of a change in strategic direction by the County Council, in Newcastle it was about continuation of income. The initial simplicity and certainty of the CIL policy as benefits over the s106 mechanism have been weakened over time

with more and more complexity and many changes to the policy, in addition the s106 mechanism has been retained also undermining the original objective.

Finally, the sources of and mechanisms for funding infrastructure provision were raised, the national policy shift to secure more funding from the private sector to reduce the traditional burden on the public sector. The assumption that this will not impact on the delivery of new development is contradictory, as the capture of value must impact on either land value, developers profit or be reflected in higher property prices to end users. The debate on how that is shared out is the discussion of the other two arenas, but the discussion about whether a local levy, as opposed to a national tax or indeed existing taxation as sources of funding, were raised in discussion with various actors and are more relevant to this arena, as some actors believed that in areas with challenging property markets introducing CIL as a policy was not realistic and that even using s106 was challenging. In this arena the importance of infrastructure provision and its certainty on the development industry and its decision making would be helpful in policy making. The clarity about the value capture mechanisms and their certainty and predictability also is an important part of understanding, but the development industry perhaps also need to understand the uncertainty this value capture mechanism presents to the local authorities in their funding and planning of infrastructure provision.

#### **8.3.4 Summary of Research Question 2**

Having identified the policy practices in the three main arenas, in addressing the second research question, the roles and behaviours of the various actors were considered with a view to establishing how policy making could be improved by planners having a better knowledge of the operation of land and property markets and of the decision making of other actors.

In the viability assessment arena, policy making would benefit from better knowledge of the role of landowners in bringing forward land for development, their motivations and decision making, something which has had relatively little research since Goodchild and Munton (1985). Planners also could benefit from a greater knowledge of the structure of land ownership in their area and as far as possible of the operation of the land market, but this is a challenging proposition with transactions often very confidential and ownership not always obvious (Adams *et al.*, 2012a). Greater

knowledge of appraisals methodologies and software would also be helpful, the complexity and opaqueness of this area of specialist knowledge is also a challenge to local authority planners and hence the reliance on specialist consultants (McAllister *et al.*, 2015). This is linked to the issue of relationships with developers, which is vital to being able to understand their decision making and behaviour, but is challenging to local authority planners (Adams *et al.*, 2012a; Adams and Tiesdell, 2013). The viability assessment whilst presented as technical and rational, in fact is socially constructed (McAllister *et al.*, 2015) and dependent on relationships between key actors (Henneberry and Parris, 2013).

The importance of viability transfers into the setting the rate arena as set out earlier, this also requires local authority planners to have a better understanding of property markets and the influence of planning policies such as CIL on developers decision making (Adams *et al.*, 2008). Property development as a process is relational (Guy and Henneberry, 2000) and based on reputation and trust (Adams and Tiesdell, 2013). Planners are market actors (Adams and Tiesdell, 2010) and need to understand other actors in the planning process (Hillier, 2000). This requires planners to acquire and develop market skills, market information and market networks (Adams and Tiesdell, 2010) The need to balance viability and policy objectives is a major challenge to the role and identity of planners with another example of the commercialisation of planning practice in value capture (Campbell and Henneberry, 2005). It also requires a general consideration of best practice networks to support local authority performance as in planning obligations (Dunning *et al.*, 2016).

In the spending arena the need for greater knowledge of land and property markets and the decision making of other actors is less specifically relevant to that arena, but the same issues of knowledge of markets, viability and actor decision making emerge. In this arena it is more about reducing uncertainty for developers around the introduction of two value capture mechanisms, also over the certainty of the provision of infrastructure to open up new sites for development, both requiring knowledge of developer decision making (Adams *et al.*, 2008). The relationship with local communities didn't emerge strongly in either of the case studies, but the mismatch between viability and the collection of funding with policy needs and spend is a problem which could increasingly involve communities.

The lack of trust is apparent across all three arenas, reflecting the differing cultures, values and objectives of the different actors, also the differing professional training and education. There is often misunderstandings between the different actors as well as lack of trust, as shown by the double counting of spend issue, the mis trust of each other's evidence and the general different approaches, one side believing the other are both unrealistic and don't have the specialist knowledge and expertise, whilst the other side believe that the other are playing games and using their superior knowledge to influence the outcome in their favour. This is reflective of other research of relationships between developers and planners (Adams *et al.*, 2012a; Tait, 2012).

The overall tactics of local authorities to deliver this CIL policy were also indicated by the policy making with contrasts in strategic approaches between the three different local authorities involved. Newcastle City Council needing to retain s106 income had less ambition regarding the CIL rates not wanting to stop development, but also showing an awareness over maintaining relationships with developers who wanted to take advantage of the opportunity of attractive new sites opened up by the Core Strategy and who tacitly accepted the CIL as part of that opportunity. Gateshead with neither the history of income from s106 nor the same level of attractive development sites, took a much lesser role and had a reduced involvement. Durham were more ambitious in terms of the proposals for growth in the Local Plan especially around Durham City and also initially in terms of the CIL rate proposals, this was a much higher risk strategy and encountered difficulties as a result. What is apparent is that whilst local factors within the local authorities differed and influenced the CIL policy making in each area, this was still within the framework of a very influential national policy within which the local authorities had to work and which produced cautious rates of CIL proposals.

#### **8.4 Conclusion**

The dominance of the "supporting growth" discourse was apparent within both case study areas and represented an important shift from capturing value from land value increases or from the development process to compensate communities and collect unearned income; to value capture framed by a need to support growth and new development, hence the need for a growth based Local Plan and CIL to fund

infrastructure only to support that growth. The CIL policy is a growth policy and is about removing barriers to growth and new development, it is plan-led, even though it is capturing value from the development process. The main national storylines support this by seeking to support in differing but complementary ways the different actors involved in the development process.

At the local level the influence of the national storylines was still apparent although the “persuading communities” was perhaps less significant in the north east than it is likely to be in other areas of the country. This of course could change as communities who are unhappy about having to accept new development as part of the Local Plan process may see CIL as a source of funding to compensate them when the CIL scheme is fully operational in their areas.

Hajer (2006) describes Discourse Structuration as when the construction of the problem and the meaning attached it are dominated by one discourse. In this case the “supporting growth” discourse seems to have achieved this dominance. Hajer (2006) goes on to say that when the dominant discourse starts to influence practices and in turn has institutional effects then “Discourse Institutionalisation” is said to have been achieved. The supporting growth discourse having placed delivery at the centre of policy making in this area, then having equated viability with delivery based on the assumption that delivery will be by the private sector, has influenced policy making practices as described above to such an extent that it seems significant Discourse Institutionalisation has also been achieved.

## Chapter 9 Conclusion

### 9.1 Research aims, objectives, research questions

This thesis employed a new approach to analysing value capture policy mechanisms. It highlights the impact on policy making practices of both a new value capture mechanism CIL, but also how it represents a shift in policy from a value capture for redistribution objectives towards value capture to support growth. This also reflects a shift away from social town planning towards planning's role in securing economic growth through land and property development.

The main aim of the research was to better understand the viability assessment process as it operates in practice and the CIL as a policy offered an appropriate opportunity in which to undertake this research. The objectives were twofold, firstly to identify the key features of value capture mechanisms which could then perhaps inform the design of future value capture mechanisms. Secondly, the study of this policy making process in a local context presented an opportunity to consider how the national policy making assumptions of rational decision making and viability as a techno-rational exercise actually turned out on the ground.

The first research question addressed the process of how knowledge is generated and tested, in studying three separate but related arenas key to the CIL process, it became clear that specialist knowledge was especially important in the "calculating" arena, with the effect that it excluded some actors from the process and resulted in an asymmetry of knowledge and evidence between actors. The control and ownership of this specialist knowledge and evidence in turn influenced the testing process and policy making process. This confirms the view that whilst the CIL policy is presented as a techno-rational decision making process it is in fact socially constructed and influenced by the institutional context. National policy was also influential reflecting the shift to an emphasis on supporting growth and delivery. This in turn impacts on both the skills of planners, needing to understand specialist knowledge around viability issues, but also the importance of relationships with other actors.

The second research question addressed this issue more specifically in relation to planners understanding of the operation of markets and decision making of developers as key actors. The importance placed on viability and delivery in national policy makes the relationship between planners and various other key actors in the CIL process particularly important. The increasing commercialisation of planning requires planners to understand their role as “market actors”, in spite of the skills, knowledge and cultural challenges that may involve. The research examined various relationships and the issue of lack of trust and misunderstandings between actors was revealed reflecting their different objectives, education and values. The research also revealed differing strategic approaches by local authorities and how this interacted with national policy within a local context and impacted on policy making.

## **9.2 Key contributions**

There are several areas where the thesis has contributed to existing areas of research, these are in relation to the research methodology approach; the viability assessment process; the impact on planning practice and on the comparison between CIL and other value capture mechanisms. With also proposals on how policy making for this subject of value capture may be improved into the future.

Methodologically the linking of the Rydin (2007) concept of planning decision making as a series of arenas where knowledge claims are tested, with the Hajer (2006) approach of using an interpretive policy approach of discourse analysis to uncover policy meanings and practices is particularly appropriate to this subject area. It is believed that discursive mechanisms such as storylines, which combine knowledge claims and arguments together to influence policy practices usefully illustrate how knowledge is generated, tested and in turn influences practices. The designation of three main arenas for these discursive struggles between storylines and tropes has assisted the analysis, although it is acknowledged that there is some overlap between the different arenas. Each arena has a particular focus and tangible output document, the approach has been helpful in uncovering the knowledges used, the practices influenced and the characteristics and behaviours of the actors involved in them. Whilst this policy analysis approach has been employed in other subject areas



(Hajer, 1996; Kern, 2009; Hajer, 2010; Hewitt, 2011) it has not been applied in the contested policy area of value capture.

The three arenas identified in the case studies also fit well with the history of policy in value capture, as the issues of the calculation of the development value, how it is shared out between the different actors to the development process and how the collected funding are to be spent, have always been central to the effectiveness and delivery of policy in this area as will be discussed later.

The viability assessment process is very much at the centre of the CIL decision-making process as set out by national policy guidance. The role and importance of the viability assessment has been considered in (McAllister *et al.*, 2013; Christophers, 2014; McAllister *et al.*, 2015) the research suggest that the viability assessment as a calculative practice does have a performative effect, by embedding certain key assumptions as beyond challenge. The fixing of the 20% profit on Gross Development Value as an example which couldn't be challenged in the Durham case study. The calculative practice suggests an objectivity and accuracy that in reality is not the case (McAllister *et al.*, 2015). The whole process in fact is socially constructed and influenced by the knowledge and evidence available to various actors in the process. As an example in the Newcastle/Gateshead case study the quality of the Council's evidence was questioned by other actors who had access to and control of more and better evidence. In discussions in Durham there was greater trust in the evidence supplied by consultants and agents than by the Council.

The viability models and tools are also complex and require specialist knowledge and expertise to be operated, this meant that local authority planners had to rely on consultant support. These sophisticated software models make forecasts about the future and appear accurate, but depend on the assumptions and evidence input. In Durham the viability model eventually showed most of the County as not being viable for development when on the ground development was taking place, leading to the local authority planners becoming very disillusioned about an artificial process. These models are always forward looking and making forecasts about the future but can be used to influence policy making.

The view of Christophers (2014) is that they have become more than analytical tools to try and predict the future, and have become more performative in nature, the

model determining the outcomes, with the actors merely inputters of data. The research didn't compare appraisal models in enough detail to support this, but the choice of software or model, is important and even with the same input assumptions and evidence may produce different results due to different software algorithms. The confidentiality of some models makes comparisons difficult and often an agreed model is used and the main negotiation is about the inputs, this is reflected in both case studies.

The contrast in the two case studies over the software model used is also indicative of the performative nature of the viability appraisal. The software was built and run in-house in Newcastle/Gateshead but by an external consultant in Durham. This showed the importance of control over the appraisal process in Newcastle. In Durham the greater use of consultant support over time reflected the lack of confidence of the local authority planners and the need to use the reputation of the consultant in the engagement process.

The performative effect of the viability appraisal in how it starts to frame policy choices has been outlined earlier. This supports the research regarding the reduced discretion available to local authority planners in decision making (Gunn and Vigar, 2012; Vigar, 2012). CIL is therefore part of a wider policy trend in this respect. The potential conflict between viability and policy requirements highlighted in both cases also reflects the tension between the values of local authority planners and what may have to be accepted. The research suggests that whilst the decision making discretion is reduced, the importance placed on viability as a techno-rational decision over policy requirements challenges planners not just in terms of skills but also in terms of their values, culture and identity, similarly as suggested in (Henneberry, 2016). Disillusionment with the whole viability assessment process as both artificial and being a game in the Durham case study supports this concern about viability and its impact on planning practice. With greater specialist knowledge of building economics, more evidence on costs and values the developers had power to influence policy discussions using this asymmetry of knowledge.

This introduction of commercial considerations and viability assessments is not confined to the CIL process, it has increasingly been part of the S106 process, researched by (Campbell and Henneberry, 2005) amongst others. This challenges

the nature of the planning system as a whole from one of social planning to one of being primarily to support economic growth as discussed earlier. It also challenges the skills, values and culture of local authority planners, requiring them to consider commercial considerations as well as the public good, which has been resisted by some planners (Campbell and Henneberry, 2005). The practical collaboration process generates a socially constructed meaning of the policy which is reflected in both cases by a cautious setting of the CIL rates, resulting from the collaboration process (Davoudi, 2015). This has been studied using an interpretive approach to seek to understand the social construction of meaning in the policy making process.

The research has provided an alternative approach to studying the area of value capture and viability assessment, recognising that it is socially constructed in nature, rather than as often presented a techno-rational exercise. The socially constructed nature of the policy making acknowledges the influence of relationships between actors on the process and in turn the power held by the different actors. This is illustrated by the cautious level of rates set by Newcastle realising the reliance on private developers to continue developing in the city. In Durham the power of the Council in setting high CIL rates caused a strong response by the private sector, which illustrates that the hierarchical power of government whilst less than previously is still such that it has the ability to pursue policy objectives and takes a concerted effort from other actors to stop. Had the market conditions been less challenging there may have been less of an effort to resist the proposals, accordingly whilst the findings suggest that Council's will pursue cautious CIL rates there may be more room for ambition depending on the market context.

Finally, this prompts the reflection as to whether this approach of considering the micro-politics within the key arenas could be developed into a framework with which to analyse different value capture mechanisms and in other institutional contexts. The framework has demonstrated that the viability assessment process is socially constructed in nature and that in practice planners are currently disadvantaged in policy making involving viability assessments in three key respects. Firstly, viability assessments by their very nature use the tools of developers and accordingly developers have therefore more knowledge and experience in using these tools. Secondly, the national policy context has increasingly emphasised the need to support growth and new development and the need to facilitate new development

coming forward, to remove barriers. This has caused planners to have much reduced discretion and to have to accept development on whatever basis. In the CIL policy there has been reduced discretion over setting the rate and the need to not stop development coming forward. Finally, the policy guidance has also required greater collaboration with developers strengthening the developer's position. The greater reliance on evidence to support the decision making on rates also strengthened the developer's position having most of the evidence.

This approach could be used in combination with more quantitative analysis providing detailed behavioural input into the rational decision making assumptions of the quantitative approaches. As discussed earlier the three main arenas studied in relation to the CIL policy making process map well on to the key areas by which the effectiveness of value capture mechanisms can be considered (Oxley, 2004a). Bringing this together more formally could be helpful in studying value capture mechanisms further and could be an area of future research.

### **9.3 Effectiveness of Value Capture Mechanisms**

In light of the review of value capture policy in the UK context and the assessment of national taxation and Planning Obligations mechanisms using the framework set out in chapter 2, (Oxley, 2004a). Four main areas were highlighted that need to be considered when looking at the effectiveness of value capture policy. These are the calculation of the value, the sharing out (or capture) of the value, the spending of the captured value and the governance of the approach. It is appropriate to compare the CIL policy against the other mechanisms using this same framework.

The calculation of the value, this is a fundamental issue to any value capture mechanism, but with significantly different approaches for the three main mechanisms. The national betterment taxation approach is derived from using actual transaction values (or valuations as an alternative), to provide transaction and site specific value to be captured. A completely different approach is taken in relation to Planning Obligations, this policy only considers the value to be captured if the spending is considered to be so high as to require a level of value not available within the site or the proposal. This mechanism starts from a cost basis whereas the national taxation starts from a value basis. The CIL also starts from a value basis but instead of a site by site approach it seeks to take an area wide approach with

generalised values rather than site specific details. The value is calculated in terms of head room, within which some value can be captured for spending on infrastructure. The area wide assessment is a particularly problematic area for CIL and a major arena for contestation as not based on actual or site specific information.

The capturing of value, is also fundamental to any value capture mechanism, the national taxation approach is based on setting a percentage rate to be applied on the value figure, it has been even as high as 100% on occasions, which reflects the context of those policies as based on a taxation of unearned value, usually land value uplift, driven by the objective of redistributing this to other parties. Planning Obligations take a very different approach, being cost driven rather than value driven. They only really consider this capture of value (or sharing of the value by the public sector to fund infrastructure), when the costs requested start to impact on the viability of a project, when negotiations take place, on the basis of site specific costs and values. In relation to CIL the capturing of value is determined by the setting of the rate for CIL as a charge, but must be set at a rate strongly influenced by viability. The TLV as a share to landowners, developers profit within the area based appraisals as the return to developers and an appropriate charge for the public sector. The share of the development value captured by the public sector from CIL will be a much lower rate than under national taxation rates and lower than the capture from Planning Obligations which is very varied in any event and dependent on the market as well as quality of planning practice (Dunning *et al.*, 2016).

The spending of the captured value is also an important element to all value capture mechanism, the provision of infrastructure is one of several options for the collected funding. In the case of the national betterment taxes they were driven by the notion of redistribution of the value generated, with the funding collected as national taxation, the issue of where it was to be spent and what on was not relevant. Planning Obligations were completely different, with the items of expenditure being the main driver of the discussion, the mechanism being about the mitigation of impact of the proposed development. The spending of the captured value is the most important element and reflects the promotion of the policy, not as a tax on value, but rather as funding secured from the development to mitigate its impact, nevertheless, implicitly the funding has to be captured from value, even if not explicitly. The CIL again has a different approach setting out infrastructure specifically linked to a growth

and Plan-led approach, but which may be only partially funded from CIL. The hypothecation issue is ignored in the national taxation mechanism, it is very clear and direct in Planning Obligations and is somewhat problematic in CIL as the collection and spend are spatially separated. Similarly, the Rational Nexus issue, is ignored by national taxation, it is again clear and direct under Planning Obligations with a legal contract covering the commitments, under CIL it is problematic as it may be only a small element of funding, the income is also uncertain and hence the spend.

Finally, the governance of the mechanism is also important to the effectiveness of the different value capture mechanisms. They can be national such as national taxation or local such as Planning Obligations and CIL, they can be site specific in terms of costs and values such as National Taxation or Planning Obligations or more widely applied such as CIL. They can be negotiated between parties such as Planning Obligations or determined within a wider engagement process such as CIL, or by a national policy with little consultation such as National Taxation. The governance also includes issues, such as what is the nature of the policy guidance, how prescriptive is it, how much flexibility and choice is there available. What is the policy process, what knowledge and information is required, how is this generated, validated and challenged; by whom and in what arenas; what is the micro-politics between the various actors involved, who gains and who loses.

The CIL policy presents a new approach in the English context, to these areas and has partly arisen as a response to the criticism of the s106 policy, which has curiously been retained anyway. It also reflects the shift in the funding of strategic infrastructure to be funded more from the private sector and less from the public sector. The policy has potentially many benefits over the other previous policy mechanisms, in terms of predictability, certainty, transparency and efficiency, but the increased complexity of the CIL policy changes have somewhat eroded those benefits. It is an additional vehicle to capture extra funding from developments that didn't contribute in the past. The implicit assumption of seeking to reduce land values, an aspiration in the Barker Review (Barker, 2004) from the policy is rather more doubtful. This appears to have virtually disappeared as an aspiration, always challenged by the policy contradiction of the TLV assessment which seeks to protect land values for landowners to maintain land supply.

What is more evident from this research is that the charge levels proposed will reflect the market context and will either be reflected in higher end use values in areas of high demand. In areas of low demand where end use values cannot be increased then the return to the other three main actors will be reduced. This is either the land value to the landowner, who may then not sell and therefore stop development going ahead; a lower profit level to the developer, who may then decide not to proceed again stopping development going ahead; or the amount recovered by any value capture mechanism to fund infrastructure. This last element will not stop the development going ahead on a commercial basis, but will reduce the funding of mitigation measures or infrastructure provision. At a time where the main policy objective is delivery, where the assumption is that delivery is by the private sector, the main pressure for any reduction will be on heavily on the value capture element.

In addressing the earlier research objective of identifying the key features of value capture mechanisms, four features can be set out as follows. Firstly, the conceptualisation of value capture as either an explicit taxation of value, or more an implicit tax being linked to the costs of infrastructure provision or mitigation of impact. This feature is linked to the wider issue of the funding and delivery of infrastructure, by the state and the availability of resources at a national or local level. It is also about the political perception of the share of land value retained by the landowner; the current English position is to avoid explicit taxation. Secondly, the timing and certainty of the operation of the mechanism, the greater the certainty and the earlier in the development process the value capture mechanism, then the more it may be able to be accommodated in any negotiations between developers and landowners and therefore reduce land values. Conversely, the greater the level of uncertainty then the better the opportunity to negotiate more value from the development process by the public sector. This is provided the mechanism is not too late in the development process, when the land price is already fixed and then the developers profit and value capture mechanism are in direct negotiation. As seen in CIL a fixed levy early in the development process is more cautious in the level of value capture compared to negotiated s106 agreements later in the development process, this does also depend on market conditions and the performance of the LPA in its practices. Thirdly, if the nature of the value assessment is based on real figures, then the value capture mechanism is likely to be more effective. But again this

depends on being later in the development process and involves greater uncertainty, delay and costs than more generalised hypothetical assessments, with the need for more resources. The balance between the costs of a site by site negotiated approach and its opportunity to secure more value capture from the process, has to be balanced against the higher costs involved to all parties in its operation. From the private sectors viewpoint the uncertainty and costs are the basis of their criticism of the s106 mechanism but the basis on real figures has the advantage of realism in a real development appraisal even if not necessarily reflected in the land value. The CIL whilst more certain and predictable may impact on reducing land values over time, but this is still unknown. What is clear from this research is that developers often argue for higher land values within the viability assessment to ensure the continuity of land supply rather than the policy pushing down land values. Finally, the application of a value capture mechanism universally to all new development is also a key point, it will collect more funding but has to be a lower rate than may be negotiated site by site, it will also always be perceived as more of a tax. There is also then the question of how the rate is determined, nationally or locally and with what methodology. A key criterion with CIL was simplicity but over time it has become more and more complex.

Perhaps a better solution is to share the risk and reward between the parties, acknowledging that landowners, developers and the state/community are all needed to bring forward new development and perhaps all need to have a financial contribution and stake in the success of the development and the market uncertainties over time. The capture of value would then reflect the real world outcome of the development, but relies on the need for site by site negotiation and an agreement between the parties monitoring openly. The resources and expertise required would be higher, but it may provide more return to the public sector if a longer term partnership mechanism were established. Conversely it may also provide for a later payment of the value capture in the development process and only when the actual position was clear, if the market worsened there would be a safety net for the developer rather than the stalling of a site forcing the need to renegotiation of developer contributions, to allow the site to restart. If the market improved some of the super profit could be shared with other parties as true sharing of risk.



Whilst in principle this may work, it will require three key changes, a culture of openness and trust between the parties over the period of development, extra resources and expertise from the public sector and the commitment to share risk and reward, all of which are potential barriers to its operation, similar to the operation of all value capture mechanisms.

#### **9.4 Reflections on the research process**

The approach has explicitly taken an interpretive policy analysis approach seeking to uncover meanings and the power relations between different actors involved in the policy making process. This approach assumes that the production of knowledge is socially constructed from the interactions between actors and contrasts with the more traditional quantitative approaches usually employed to research in this area. The approach also sought to consider the institutional context at a local level, in contrast with the classical economic assumptions often underpinning much of national policy making which assume rational decision making when in local contexts things are often more complex.

The choice of case study areas has been determined by the available access to key actors in the policy making process in the two areas, which have enabled a depth of material to be secured. This has nevertheless introduced two other issues, firstly the positionality of the researcher and his former professional relationships in the area, which have been carefully considered within the interview and analysis process.

Secondly, the research of two case studies, is also limited in whether these findings can be generalised on a wider basis (Yin, 2009). The research has analysed two specific cases in a geographic area with challenging economic and market conditions, whilst this was considered to be helpful in research question 1 revealing particularly clearly the contested nature of the discussion over viability, it is not necessarily representative of a typical case for CIL policy implementation across England.

The research is also limited in that it covered a restricted timescale, and due to delays in the policy implementation and unexpected occurrences in the case study areas didn't proceed as anticipated. Accordingly whilst the original hope had been to study the whole CIL process for the two areas, in fact this was not possible as in Durham the Local Plan and CIL processes were halted by the interim report from the

Local Plan inspector (Harold Stephens – Development Plan Inspector, 2015). In Newcastle/Gateshead the process has been start/stop and was not restarted until March 2015. The research has still however provided a useful snapshot of the policy making process over a three year period from 2011 to 2015, and the challenges of policy making in this field. Whilst the research has focused on the CIL policy making process, this has been used as a vehicle to investigate wider policy making processes of value capture and viability assessment, in a changing planning policy picture.

The operationalisation of the methodology was also quite challenging, the identification of storylines and tropes was not always straightforward and the subject of much deliberation and refinement over the period. An example of this was in identifying national and local storylines and tropes and then how they interacted to influence policy practices. The Hajer methodology did provide a useful approach to trying to analysing the policy making process within the two case studies and some practical assistance on how to operationalise the methodology was assisted by two other research theses (Kern, 2009; Hewitt, 2011) and also from (Sharp and Richardson, 2001). The Hajer (2006) ten step methodology whilst helpful, has been employed as a general guide rather than as a detailed process, some of the steps are challenging to operationalise as others have also indicated (Hewitt, 2011) and is more applicable to longer term changes in national policy than shorter periods of analysis. The final step requiring a return to the actors to reflect on the data has not been undertaken due to the practical issue that in both case studies things have moved on such that in Durham the CIL and Local Plan process has completely stalled and in Newcastle the process has proceeded rapidly through the stages from April 2015 and to review this earlier part of the process would be difficult due to having been completely overtaken by practical events in the real world.

The Hajer methodology is perhaps more applicable to the analysis of a longer term policy making periods, was useful to determine the powerful influence of the “supporting growth” discourse at a national policy level (set out in chapter 5), from the commissioning of the Barker report in 2003 up to 2015. At a local case study level (in chapter 6 and 7) it has been and has assisted in uncovering influences on policy practices in a local context and in turn reveal some of the behaviours of key actors.

It is hoped that the findings from the research can have some relevance to value capture as a subject area in a more generic way, in identifying local level micro political relationships and how they may relate to strategic areas of policy debate. The three arenas identified and analysed are generic to all types of value capture mechanism and may provide a framework to compare different mechanism in differing contexts to assist future policy development in this field.

### **9.5 Future areas of research**

A consideration of CIL policy making over a longer time period to cover the whole process in the case studies and elsewhere would be valuable, especially in being able to track the impact of the changes in national policy over a longer period. In addition, a consideration of a greater number of case studies would also be useful perhaps to be able to make comparisons between the policy making process in areas of differing economic and market conditions.

The impact of the viability assessment process on the overall policy making process as a whole, the relationship between the two could also be an area of future research. The promoted rationality of the viability assessment process and how it interacts with the wider policy discussion and the framing of policy priorities could also be considered further.

The approach taken in this research to employ an interpretive approach to seek to understand the process of the social construction of viability assessments could perhaps be employed more widely to viability assessments in other policy contexts, as a way to analyse what has traditionally often been viewed as a technical and rational decision making process. The use of the interpretive and quantitative approaches in a complementary way may provide a useful area of future research.

This research has revealed the socially constructed nature of the viability assessment process especially when considered in a local context; it is influenced by the knowledge and power of the parties involved. National policy making however still uses classical economic models and assumptions of rational behaviour as the basis of policy making, as has also been seen this can lead to unforeseen outcomes and consequences at a local level. Assumptions of practices and behaviours from the national policy may not play out as envisaged in a local context, especially as the local contexts vary so considerably, in terms of economic and market conditions, the

differing expertise and resources of local actors, and the differing micro-politics and relationships between local actors.

The use of the three arenas as a framework in other case studies in other contexts could provide a more nuanced view of the local decision making of actors taking account of the micro-politics and behaviours as highlighted earlier. This in turn could perhaps better inform future national policy making decisions in this area, and move away from a reliance on a classical rationalist approach and inform policy making based on a more socially constructed model, in turn perhaps helping to construct better value capture mechanisms which can operate in differing local contexts.

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