

Community Infrastructure Levy - gathering momentum

The Community Infrastructure Levy (CIL) is a new levy that local authorities can choose to charge on developments in their area. The money can be used to fund local infrastructure that the council, local community and neighbourhoods require (an announcement will be made in October 2012 as to whether it can additionally be spent on affordable housing).

Who can charge CIL?

CIL can be charged by district and metropolitan councils, London borough councils, unitary authorities and the Mayor of London.

How is a CIL charge calculated?

The levy is charged in pounds per square metre on the net increase in floor space on buildings that people normally use. The levy can only be charged if the new build is 100 sq.m. or more, or an additional dwelling is erected even if that dwelling is below 100 sq.m.

Who is liable to pay CIL?

Liability rests with the landowner - freeholders and leaseholders with more than 7 years left to run on the day planning permission is granted. In the absence of agreement between landowners as to how it will be apportioned between them, the local authority will decide but will impose surcharges for doing so. Others involved with a development can also pay, provided they have assumed liability by notifying the local authority. Liability to pay CIL runs with the land on which the development is situated.

My site already has planning permission, should I be concerned about CIL?

Yes, on larger schemes it is rare that you will not need to go back for revisions to the planning permission. As the law currently stands, once a CIL Charging Schedule is in force, any application for variation of an existing planning permission will attract CIL for the entirety of the scheme, even if the original planning permission was granted pre-CIL (although the government has just announced that it will bring in amendments to the current regulations in October 2012 so that only any increase in floor space included in the s.73 variation application are caught).

Does CIL replace traditional s106 Agreements?

s.106 agreements will not die; existing s.106 agreements remain in force and they will continue to be used for site specific mitigation, "softer" types of contributions (e.g. employment and training contributions) and affordable housing.

Can all existing floor space on the site be deducted to reduce the charge?

Existing floor space which is to be demolished can only be deducted if it has been in continuous lawful use for 6 out of 12 months prior to the grant of the permission. (Note that use of only part of a building prior to demolition may still allow deduction of all floor space in the building.)

Does CIL apply to "permitted development"?

There is no exemption for GPDO permitted development, although in practice the categories of permitted development that exceed the 100 sq.m. threshold will be limited e.g. warehouse and industrial extensions. Also note that if you're relying on permitted development rights you will still need to serve a Notice of Chargeable Development before starting work; otherwise you will be liable for a 20% surcharge.

Planning specialist Alex Ground has put together some Top CIL Tips:

- Check what stage the appropriate council is at with its CIL levy and see if it is possible to accelerate your plans for development to avoid it - grant of planning permission is the key date (reserved matters approvals post CIL charging schedule don't trigger it provided outline permission was pre CIL charging schedule coming into force).
- When selling or buying land with development potential, factor CIL payments into the price.
- When running your viability appraisal ensure that a CIL payment is factored in if appropriate (there are various exemptions but check the rules carefully before assuming they apply).
- Ensure you submit Liability Notice forms if a party other than the freeholder is to pay otherwise the owners will be liable and will not be able to benefit from any option for payment by instalment.
- If you want to apply for exemption for relief due to the scheme incorporating either social housing or development for charitable purposes this must be done prior to commencement of development.
- If you want to amend an extant planning permission granted before CIL was applicable but in respect of which CIL now bites, consider waiting until October 2012 before making the application for the amendments.

For more information, please contact:

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