

Community Infrastructure Levy

Your questions answered

When will this have an effect on me?

The Community Infrastructure Levy Regulations 2010 have been laid in Parliament and are due to come into effect on 6 April 2010. Liability to pay CIL for a given development will not arise, however, unless and until a charging schedule for the relevant local planning authority (LPA) area is in place. Charging schedules need to be based on an up to date development plan and to have been published, consulted upon and examined by an independent examiner before they can come into effect.

How will the charge be set?

CIL rates will be set by individual LPAs at a rate per square metre and will be levied on the net additional floorspace as a result of the development. Rates will be set based on the actual and expected estimated cost of infrastructure required to support development in the local authority's area. Differential rates can be set across a borough and for different intended end uses of development. The planning permission will determine the number of chargeable units and the charging schedule will determine the rate per square metre, so the liability will simply be one multiplied by the other, plus any indexing for inflation. Developers will be advised of the amount of liability when planning permission is granted.

How often will the charge be reviewed?

The charging schedule should be reviewed as part of the Local Development Framework process. Review could occur more frequently but there needs to be an appropriate evidence base for the proposed charges.

Does it mean I will end up paying more than I used to?

Probably yes. In earlier consultations on CIL the Government always made clear that part of the intention behind CIL was to increase the contribution that developers would make towards funding infrastructure. Although CIL liability across individual local authority areas will depend on how the charging schedule is drafted it should be assumed that the overall burden on development may increase.

Will I be able to negotiate a reduction in the amount of CIL I have to pay?

In principle yes, so long as the LPA is prepared to entertain negotiations. This is an important change from the draft Regulations consulted upon. The starting point will always be the calculation based on the charging schedule but it is now accepted that CIL liability can be abated by willing LPAs. The LPA must consider that exceptional circumstances exist. There are also other qualifying criteria, including the information to be made available to support a request for relief and a requirement to then commence development within a set period.

What will happen to section 106 Agreements in the future?

Section 106 Agreements will still be used for impacts not covered by CIL, including (at least for the foreseeable future) for the delivery of affordable housing. LPAs who choose not to implement CIL will still be able to use them as before, although their ability to use more than five separate Agreements to pool contributions towards a common piece of infrastructure will be phased out by April 2014. Wherever a section 106 Agreement is now used, though, what used to be merely policy tests in Circular 05/2005 (namely that the 106 should be necessary, directly related to the development, and fairly and reasonably related in scale and kind) will become mandatory legal requirements.

If my development is reliant on a piece of community infrastructure, will I be held up pending it being provided even if I have paid my fair share towards it through CIL?

Potentially yes, if care is not taken with drafting planning conditions and obligations. Restrictions on commencement, occupation or use until a piece of infrastructure is provided should be resisted unless delivery is within the developer's control. Now that the Regulations have been finalised guidance is due to be published by the DCLG on how everything will work. Hopefully guidance on this point will be included within it.

I have an existing detailed permission. Will CIL affect it?

No. By definition your permission will have been granted before there is a charging schedule in place in this LPA area and so the transitional arrangements in the Regulations mean that this permission is exempt from CIL.

I have an existing outline permission. Will CIL affect either the outline permission or the future reserved matters that I obtain?

No. The transitional provisions make clear that if a permission (meaning in this case the outline permission) is granted before a charging schedule comes into effect in your area then the permission is exempt from CIL. This is so even if the reserved matters approvals under that outline are granted after a charging schedule comes into effect.

I have an existing permission but I am intending to make a section 73 application in respect of it. Will CIL affect the section 73 permission?

Possibly. A section 73 permission is a new permission, so if a charging schedule is in force when the section 73 permission is granted then it will be subject to CIL. It is irrelevant whether the original permission was caught by CIL or not.

What will happen to CIL if there is a change in Government?

The Conservatives have expressed an intention to scrap CIL and non-site specific planning obligations and instead introduce a single unified local tariff applicable to all residential and non-residential development but at graded rates depending on the size of the development. The reality is that this will be much closer to CIL than to the old system of section 106 Agreements.

How can I safeguard against being charged for CIL and having to meet a substantial s106 planning gain bill?

In drafting Section 106 Agreements now provisions should be included so that if CIL does become payable the obligations will be revisited to ensure that there is no double recovery. Advice should also be taken on whether the development could be structured in a way to qualify for any of the exemptions or reliefs from liability to pay CIL.

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