

An Introduction to the Community Infrastructure Levy (CIL)

This note sets out nationally prescribed rules and regulation on CIL. The vast majority of the matters raised are not open to local interpretation.

What is CIL?

CIL is a mechanism that allows Charging Authorities to collect a standard charge from developers to fund infrastructure required as a result of development in the District.

Who can charge CIL?

Local Planning Authorities are the CIL Charging Authorities. This means that Sevenoaks District Council are the Charging Authority for the District.

What do Charging Authorities need to do in order to be able to charge CIL?

Charging Authorities need to adopt a Charging Schedule before they can begin charging CIL. Charging Schedules need to be subject to public consultation and independent examination. In this respect, Charging Schedules are similar to Development Plan Documents of the Local Development Framework, such as the Core Strategy.

Charging Schedules set out the charge per sq m of development. This can be different for different forms of development or in different areas but only where viability considerations dictate.

What needs to be considered in preparing a CIL Charging Schedule?

A sound CIL Charging Schedule must be based on evidence that infrastructure is required to support the development planned in the District. This must show a gap between funding available from other mainstream sources and what is needed to deliver the necessary infrastructure. A sound schedule must also be based on evidence that the delivery of the overall scale of development planned would not be non-viable as a result of the CIL Charge. The viability of individual sites does not need to be considered.

As long as the charge is less than or equal to the level required to fund the infrastructure required and less than or equal to the limit above which the overall scale of development is likely to be non-viable, it is up to the Charging Authority to determine what level the charge should be.

Can different CIL charges be applied to different forms of development or development in different areas of the District?

CIL charges can vary according to the type of development or the location. However, this can only be as a result of viability evidence showing that the rate applied in other parts of the District or for other types of development would not be viable. Policy decisions to promote development of a certain type or in a

certain area by setting a lower charge are considered to constitute 'State Aid' and are not permitted.

How is the CIL charge that a developer should pay calculated?

CIL is calculated by applying the relevant per sq m charge from the Charging Schedule to the floorspace of the permitted development minus the floorspace of any existing buildings on site. As a result, any change of use is not subject to CIL and the replacement of existing buildings on brownfield sites will reduce the CIL charge to be paid.

What forms of development are excluded from CIL?

As well as those uses that the Charging Authority excludes from the Charging Schedule on the grounds of viability, there are some forms of development that do not need to pay CIL. These are:

- any development of less than 100 sq m unless this is the development of one or more dwellings;
- affordable housing;
- any buildings into which people do not usually go or those into which people go only intermittently for the purpose of inspecting or maintaining plant or machinery; and
- development by a charity to be used for charitable purposes.

The Charging Authority can also choose to extend the exemptions to include:

- development by a charity that forms an investment from which the profits will be used for charitable purposes;
- development which can show exceptional circumstances exist (note: the tests for proving exceptional circumstances and issues that the Council must consider, such as 'State Aid' legislation, mean that there will be very few cases where exceptional circumstances can be accepted to exist).

Is CIL negotiable?

CIL is non-negotiable. It can only be waived in exceptional circumstances, if the Charging Authority chooses to allow this. The tests for proving exceptional circumstances and the issues that the Council must consider, such as 'State Aid' legislation, mean that there will be very few cases where exceptional circumstances can be accepted to exist.

Won't CIL make developments non-viable?

In setting the CIL charge, Charging Authorities must show that the overall scale of development planned would not be undeliverable as a result of viability issues. However, individual developments may be made non-viable by CIL. As CIL can only be waived in genuinely exceptional circumstances, some developers are likely to have to take a loss on development or wait for market conditions to improve. In the long-run, CIL will provide certainty about the level of charge that a developer must pay and he/she will be able to factor this in to the price that they pay for land. Recent consultation on s106 contributions issues suggests that developers would welcome this greater certainty.

Won't CIL put house prices up?

Prices of new houses are usually set with regard to comparable existing properties rather than build costs. CIL will either reduce the profits of developers or, more likely in the longer term, the price that they pay for the land.

It is also highly likely to be the case that the CIL charge will be a small percentage of the total build costs and significantly lower than the affordable housing contribution.

What can CIL be spent on?

CIL must be spent on infrastructure to support the development of the area. This can include infrastructure that falls outside of the Council's administrative boundaries.

CIL can be spent on the provision, improvement, replacement, operation or maintenance of infrastructure. It does not have to be used to fund capital investment.

Unlike planning obligations, there is no requirement that there is a functional link between the development paying and the infrastructure that it is funding.

There is no requirement that CIL funds are spent on the infrastructure identified in the evidence to support the preparation of the Charging Schedule.

Amongst other things, infrastructure includes:

- roads and transport facilities,
- flood defences,
- schools and educational facilities,
- medical facilities,
- sporting and recreational facilities, and
- open spaces.

Currently, affordable housing is specifically excluded. However, the Government is considering giving local authorities the ability to include this.

A proportion of CIL can also be spent on the administrative costs of operating the system.

What can CIL not be spent on?

CIL can not be spent on anything that is not required to support the development of the area. It can not be used to fund Council services that are not necessary to support new development, i.e. it can not be used to provide infrastructure to support existing development.

What role do other organisations play in the CIL process?

The Government is proposing to amend the regulations to ensure that a 'meaningful proportion' of CIL is paid to the town or parish council. It has not decided what this proportion should be.

CIL funds passed to town and parish councils would still need to be spent on infrastructure to support development.

Town and parish councils would have a statutory responsibility to report annually on how CIL funds collected are being spent, amongst other things.

SDC needs town and parish councils, particularly in areas where development is planned, and other infrastructure providers (including the NHS, KCC, Kent Police) to identify what infrastructure is required to support development in order to ensure that there is enough evidence of a funding gap to justify a CIL charge.

Monies paid to town and parish councils can be transferred to other organisations, at the discretion of the town or parish council, where they are delivering a key local infrastructure project (i.e. KCC to develop a school)

Will the Council be required to give CIL receipts to other organisations?

It is the Government's intention that a 'meaningful proportion' of CIL receipts should be passed to town and parish councils in which development occurs. Whilst it is likely that SDC will want to transfer some CIL receipts to other organisations where they are the relevant infrastructure providers, there is no requirement in legislation, regulation or policy that means that they must.

Will town and parish councils where no development is proposed benefit from CIL?

Town and parish councils will only automatically receive CIL money when qualifying development occurs in their area. SDC could choose to allocate CIL money to other town and parish councils where infrastructure in their area is necessary to support development in another town/parish or in the District generally.

How does CIL fit in with the use of planning obligations / s106 agreements?

Planning obligations will still be used to secure site specific s106 contributions, as long as this is not for infrastructure that could be funded through CIL. Once CIL is adopted or from April 2014, whichever comes first, developer contributions will no longer be able to be pooled from more than 5 s106 agreements, if the infrastructure they are funding could be secured through CIL. At present, affordable housing would continue to be funded through s106 agreements. Therefore, the pooling restriction would not apply.

What are the benefits of CIL?

CIL will provide more certainty to developers about what they will have to pay for infrastructure, which will help them to decide upon an appropriate price to pay for development land.

CIL will also provide more certainty for local authorities and infrastructure providers on what funds they can expect to receive.

The system will be more transparent and evidence based than the current planning obligations system, with the public and developers being able to see how funds have been spent.

The CIL system will be speedier as there will be no time needed for negotiation.

The CIL system will be fairer as it will apply to all developments. In the past, smaller developments have rarely contributed towards new infrastructure.

What are the potential negative impacts of CIL?

Some developments may be made non-viable as a result of the need to pay CIL.

The process of preparing a Charging Schedule is time consuming and requires a detailed evidence base.

Statutory Basis for the Community Infrastructure Levy

The primary legislation for CIL was introduced by sections 205 to 225 of the [Planning Act 2008](#). This was amended by sections 114 and 115 of the [Localism Act 2011](#). The main changes related to the power of examiners considering CIL Charging Schedules and to the payment of a proportion on CIL to town and parish councils.

Regulations on the operation of CIL are set out in the [Community Infrastructure Levy Regulations 2010](#). These regulations have been amended by [CIL \(Amendment\) Regulations 2011](#) and it is anticipated that they will be amended again in April 2012 by a new set of regulations.

Statutory Guidance on CIL is set out in [Community Infrastructure Levy Guidance: Charge Setting and Charging Schedule Procedures](#).

Sound Charging Schedules and the CIL Levies Set

London Borough of Redbridge

£70 per sq m for all types of development anywhere in the District.

Shropshire Council

£40 per sq m for residential development in certain parts of the District and £80 per sq m for residential development in other parts of the District.

Nil charge for all non-residential development.

Newark and Sherwood

£0, £45, £55, £65 or £75 per sq m for residential development depending on where it is in the District.

£100 per sq m for retail (A class) uses anywhere in the District.

£0, £5 or £15 per sq m for industrial development depending on where it is in the District.

Nil charge for all other forms of development.

Portsmouth City Council

£105 for all types of development except:

A1 – A5 in centres and small out of centre retail (less than 280 sq m) = £53

B1, B2, B8 = £0

Hotels = £53

Residential Institutions = £53

Community Uses = £0