

## An Introduction to the Community Infrastructure Levy (CIL) Q&A

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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 the development of new buildings 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 gross internal floorspace of new 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 in an authority's Local Plan would not be non-viable as a result of the CIL Charge. This should be an area wide and broad viability assessment.

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.

### **On what basis can different charges be identified in different areas?**

Variations in charges across an authority's area can only be justified on the basis of viability evidence. The Government's statutory CIL guidance notes that it is up to local authorities to decide what constitutes appropriate evidence to justify the CIL charges proposed. However, the guidance does state that charging authorities should use an area-based approach, which involves a broad test of viability. It also states that authorities should avoid undue complexity.

The approach proposed in the Draft Charging Schedule is based on the conclusions of a CIL Viability Assessment, which has been carried out for the Council by independent consultants. The assessment is considered to comply with the approach required by the statutory guidance. The different charge areas have been identified on the basis of ward boundaries, as critical information, including house price data and house prices per sq m, also uses these boundaries. In reality viability considerations will vary from site to site and street to street.

### **Will the different charges in different areas mean that more money can be spent on infrastructure in areas with higher charges?**

CIL funds paid to SDC will go into a central fund that can then be allocated to projects to support development. Although the arrangements for the implementation of CIL are yet to be determined, funding should be allocated on the basis of where it is needed to provide infrastructure to support development rather than how much has been collected where.

If, as expected, the Government's amendments to the CIL regulations require a percentage of CIL receipts to be paid to the town and parish council for the area where development occurs, those with a higher charge could receive more than those with a lower charge. Should this be the case, SDC would be able to consider allocating additional funding to support the development of infrastructure projects where they are agreed to be a local priority.

### **Will lower charges in some areas mean that developers are more likely to build there than those areas with higher charges?**

Under the regulations, different charges in different areas can only be justified on the basis that there is a risk that a significant proportion of development in an area would no longer be viable if the higher charge proposed elsewhere in the District were charged there. Differential charges can not be used to incentivise a form of development or development in a certain area. This means that lower charges can only be set where there is a significant risk that developers could not afford to build and receive a reasonable profit (assumed to be 20% of development value) if the charge were higher. The effect of this should be to make the CIL rate equally affordable in different parts of the District.

In the case of the proposals for Sevenoaks District, the CIL Viability Assessment finds that there would be a significant risk of development not being viable if the charge of £125 per sq m was to be charged in all areas of the District. It finds

that in certain areas (such as Swanley and Edenbridge) only a £75 per sq m charge will not have an unacceptable impact on viability.

#### **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 gross internal floorspace of the permitted development minus the gross internal areas of any existing buildings on site. As a result, 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 new buildings 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 payable on Gypsy and Traveller development?**

The definition of development for CIL is different to that for determining whether or not planning permission is required. The definition of development on which CIL is payable (Planning Act 2008, s209) relates to the creation of a new building or anything done to an existing building. Where Gypsy and Traveller development does not meet this definition, as may be the case with the moving of caravans onto a site, CIL will not be payable. This will also be the case with the development of mobile home parks for non-Gypsy and Traveller households.

#### **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. It is difficult to identify exceptional circumstances in advance as they are supposed to be circumstances that are genuinely not easily repeatable.

### 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 some 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. However, the Council is required to identify the types of infrastructure that it will fund through CIL and those that it will secure through s106 agreements.

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.

### **Is there a limit to the length of time that CIL can be spent on operation or maintenance?**

The legislation on CIL does not place a limit on this. However, the reference to CIL being able to be spent on 'operation or maintenance' of infrastructure is a relatively new addition to the primary legislation (brought in by the Localism Act 2011). The Government is currently drafting new regulations which potentially could place limits on this. If they don't then SDC (and the town and parish councils) will need to ensure that the need to support certain forms of existing infrastructure is balanced with providing new infrastructure, given that there will only be a certain amount of money to be spent.

### **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 solely 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 has asked 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. In effect, this will mean that much of the funding that has previously been sought through s106 agreements will in the future be secured through CIL. Restrictions are in place in regulations to ensure that developers are not charged twice for the same infrastructure. 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.

**How do SDC's proposed charges in the Preliminary Draft Charging Schedule compare with previously secured contributions through s106 agreements?**

Historically SDC has only secured financial contributions for infrastructure on larger residential developments (generally of at least 10 dwellings), where as CIL is intended to capture contributions from a wider range of site, including single dwellings. An assessment of financial contributions secured for infrastructure through s106 on selected sites is set out below.

The following assessment of what SDC might receive on developments of similar scales under CIL is based on:

- Development of all units at the national average new build dwelling size of 76 sq m (as reported by CABE); and
- CIL not being paid on affordable housing.

This assessment is purely indicative and should not be relied upon as an assessment of the CIL payment that would be required in the event that any of the developments that have not been completed were to become liable to pay CIL in the future (if a new planning permission were to be granted, for example). In this event, significantly more detailed calculations would be required.

| Development                                  | Number of Additional Units | Number of Market Units | Total S106 contribution Secured | S106 contribution per dwelling | CIL Rate (£ per sq m) | Total Estimated CIL | Estimated CIL per dwelling |
|--|----------------------------|------------------------|---------------------------------|--------------------------------|-----------------------|---------------------|----------------------------|
| Eden Valley School (10/01735)                | 40                         | 20                     | £92,320 (1)                     | £2,308 (1)                     | 75                    | £114,000*           | £2,850*                    |
| West Kent Cold Store (09/02635)              | 500                        | 400                    | £2,684,699 (2)                  | £5,369 (2)                     | 125                   | £3,800,000*         | £7,600*                    |
| St. Bartholomews Hospital Laundry (09/00274) | 65                         | 42                     | £206,520                        | £3,177                         | 75                    | £239,400*           | £3,683*                    |
| Halstead Place School (08/01915)             | 31 (3)                     | 20                     | £85,485                         | £2,758                         | 125                   | £190,000*           | £5,757*                    |
| Stacklands Retreat (09/01319)                | 14 (4)                     | 14 (4)                 | £22,512                         | £1,608                         | 75                    | £79,800*            | £5,700*                    |

Notes:

(1) Development also includes the provision of a community centre, for which no financial payment will be received and is not included in this analysis.

(2) Development also included the provision of highway works, for which no financial payment will be / was received and is not included in this analysis.

(3) Of which 29 were new builds and 4 were developed through conversions.

(4) Of which all were developed through conversions.

\* All of these sites involved the replacement or conversion of existing buildings. Under CIL, conversions of buildings will not be liable and only the net increase in floorspace (where existing floorspace has recently been in use - defined as 6 months of the past 12) is liable to pay. Therefore, it is likely that the CIL payment for each development would have been lower than those shown in the table above.

Only the West Kent Cold Store development included a payment for education, following KCC assessments of local school provision. Under KCC's Developer Contributions Guide 2008, an additional £590 - £5,560 per dwelling would be required where additional primary school places are needed and £590 - £5090 per dwelling required where additional secondary school places are needed. The sum would have depended on whether the dwelling was a house or a flat and whether a new school or an extension was required.

### **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 further amendments will be made through the proposed [CIL \(Amendment\) Regulations 2012](#). It is anticipated that further amendments will be made in 2013.

Statutory Guidance on CIL is set out in [Community Infrastructure Levy: Guidance](#).