

# Wycombe District Community Infrastructure Levy (CIL) Frequently Asked Questions (FAQ's) December 2012

## Introduction

Wycombe District Council introduced a Community Infrastructure Levy (CIL) Charging Schedule with effect from 1 November 2012.

This note is intended for information only and aims to answer some frequently asked questions (FAQ's) about CIL under a series of sub-headings as follows:

- **Principles**
- **Liability to pay CIL and calculating the amounts**
- **Liability – timing of development and timing of payment**
- **Charging rates and viability**
- **CIL and Section 106 Planning Obligations**
- **Making use of CIL funds**
- **Further information**

It also highlights where additional information and other FAQ's can be found. It is not intended to be a definitive interpretation of the legislation or the Regulations.

## Version control

- **October 2012** – First version.
- **December 2012** – Additional bullet point and link to online calculator added to FAQ 3; FAQ 4 added in respect of social housing and charitable relief; updated in light of The Community Infrastructure Levy (Amendment) Regulations 2012; link to instalments policy added to FAQ 9. Timetable for Cabinet approval of procedures around spending decisions in FAQ19 amended to June 2013.

## Principles

### 1. What is CIL?

It is a system introduced by Government allowing Councils to introduce a levy on specified development that is ring fenced to fund additional infrastructure to support the development of the area. The levy can be used to address the impacts of development by funding infrastructure that the Council and local communities support.

### 2. Is it the same as s106 developer contributions?

Like developer contributions CIL will be paid by developers and will be ring-fenced to fund infrastructure the need for which is related to development.

However, there are some important differences between the two, with CIL offering greater transparency, and certainty for developers, less need for legal agreements, and more flexibility for the Council in how they are used. Government regulations mean that the scope for pooled s106 contributions is being more tightly focused on infrastructure which is more closely linked to development (see FAQ 15).

## **Liability to pay CIL and calculating the amounts**

### **3. Will my development be liable to pay CIL?**

Whilst simple in principle, CIL liability, i.e. whether development must pay CIL and how much depends on a range of factors. This note sets out the key factors that may influence the calculation of CIL liability and in order to make things straightforward the Council has published [an online CIL calculator](#) which will let you work out an indicative CIL liability for a development. Definitive liability will be sent to applicants in a formal 'liability notice' once planning permission is granted.

A development may be liable to pay CIL if it is a building which people normally go into, and if upon completion the gross internal area of new build will be more than 100 sqm - including extensions to existing buildings – or if it involves the creation of a new dwelling even if this is less than 100 sqm. Changes of use may be liable but may be exempt subject to rules on demolition and continuous occupancy – see FAQ 5)

A development won't be liable to pay CIL if it is a structure or building into which people do not usually go, or go into only for maintenance (e.g. sports pitches, sub-stations or wind turbines), or:

- Is a change of use with no additional floorspace (if no new dwellings created);
- Is a change of use from a single dwelling house to two or more separate dwelling houses;
- Is for a use or area which benefits from a zero or nil charge (£0/sqm) set out in the CIL Charging Schedule (also see FAQ 12).

### **4. Are charities and social housing relief eligible for relief?**

The regulations give relief from CIL liability in two specific instances. First, a charity landowner will benefit from full relief from their portion of the liability where the chargeable development will be used wholly, or mainly, for charitable purposes. A charging authority can also choose to offer discretionary relief to a charity landowner where the greater part of the chargeable development will be held as an investment, from which the profits are applied for charitable purposes.

Secondly, the regulations provide 100% relief from CIL on those parts of a chargeable development which are intended to be used as social housing.

To ensure relief is not used to avoid proper liability for CIL, the regulations require that any relief must be repaid, a process known as 'clawback', if the development no longer qualifies for the relief granted within a period of seven years from commencement of the chargeable development. NB. At Wycombe, the Council has not thus far published any policies allowing further 'discretionary' relief from CIL for charities, or for developments facing exceptional financial circumstances due to the heavily proscribed circumstances within which developers may apply and the fact that the Regulations allow the Council to prepare and publish such policies at short notice, if experience suggests they are needed.

## **5. What if existing buildings are being demolished or converted?**

The gross floorspace of any existing buildings on the site that are going to be demolished or reused may be deducted from the calculation of the CIL liability. However, deductions are only applied where those buildings have been in lawful use for a continuous period of at least six months within the period of 12 months ending on the day planning permission first permits the chargeable development. In this context, "in use" means that at least part of the building has been in use.

The "day planning permission first permits development" is defined in the CIL Regulations as the date at which development may commence. If there are pre-commencement conditions attached to the planning permission, this date is the date at which the final pre-commencement condition is discharged. If there are no such conditions, then the date is the date of the planning permission.

## **6. Will a development be liable to pay CIL if there was a planning permission before publication of a CIL Charging Schedule, but an approval of a s73 application (variation of conditions), or a replacement planning permission (subject to a new time limit) is subsequently granted after publication of a CIL Charging Schedule?**

Yes. If full planning permission is granted before publication of a CIL Charging Schedule, but an approval of a s73 application to vary or remove conditions is made after publication of the CIL Charging Schedule, the approval does trigger a liability to pay CIL because it results in a new planning permission. However, the CIL (Amendment) Regulations 2012 confirm that although a new CIL liability is triggered, the new additional chargeable amount is equal only to the net increase in the chargeable amount arising from the original planning permission, so as to avoid double-counting of liability.

Where all of the criteria set out in paragraph (3) of Regulation 128B of the CIL (Amendment) Regulations 2012 are satisfied, applications to renew an existing planning permission, which was granted before a CIL Charge was in place, will not be liable for CIL.

## 7. How much CIL will I pay?

The amount of CIL you will be liable to pay ('the chargeable amount') depends on the size, type and land use(s) of your development. CIL is levied as a charge per square metre measured as the gross internal area (GIA) floorspace in accordance with the rates set out in the CIL Charging Schedule in force when the development commences – see below:

Type of development	Zone A	Zone B
Residential (C3; C4 including sheltered accommodation)	£125/sqm	£150/sqm
Convenience based supermarkets and superstores <sup>1</sup> and retail warehousing <sup>2</sup> (net retail selling space of over 280 sq metres)	£200/sqm	£200/sqm
All other retail A1 – A5 and sui generis uses akin to retail*	£125/sqm	£125/sqm
All other development including B, C1, C2 and D uses.	£0/sqm	£0/sqm

\* sui generis akin to retail includes petrol filling stations; shops selling and/or displaying motor vehicles; retail warehouse clubs.

## 8. My development is for new build floorspace of over 100 sqm e.g. a large domestic extension; it isn't eligible for relief and isn't zero rated but it is permitted development so does not need planning permission. Will I be liable to pay CIL?

From 1 April 2013 development commenced under 'general consent' will be liable to pay CIL. 'General consent' includes permitted development rights granted under the General Permitted Development Order 1995, and developments permitted through a Local Development Order. If you intend to develop under general consent you must submit a 'Notice of Chargeable Development' (Form 5 available on the Planning Portal website) to the Council before development commences. NB. You do not need to submit such a notice if your development is less than 100 sqm of new floorspace and it does not comprise one or more new dwellings. If a development of 101 sqm is liable taking account of existing floorspace, reliefs etc then CIL will be charged on the whole floorspace rather than just that part above 100sqm.

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<sup>1</sup> Superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit.

<sup>2</sup> Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers.

## **Liability – timing of development and timing of payment**

### **9. My development is liable. When will I have to pay the CIL?**

The levy charge becomes due when development commences and the CIL regulations assume as a default payment within 60 days of commencement. However, the Council has also produced an instalments policy, which allows phased payments for larger amounts. NB. If a commencement notice isn't served or nobody has assumed liability to pay CIL then the instalments policy does not apply and the full liability is payable within 60 days of the notified or deemed commencement date of the chargeable development. Refer to the instalments policy in the documents to download box at:

<http://www.wycombe.gov.uk/council-services/planning-and-buildings/planning-policy/community-infrastructure-levy.aspx> for further details.

### **10. What about planning applications and appeals that pre-date 1<sup>st</sup> November 2012 when CIL comes into effect in Wycombe?**

The Regulations require the levy to be applied to all new planning consents granted after the date that the charging schedule comes into effect (1<sup>st</sup> November 2012). The date at which the application was made is not relevant, neither is the date of the officer's recommendation nor the date at which a planning application was considered by committee. The Council has no discretion in this matter, which is set by statute. On introduction the levy will also apply to any permissions issued by a Planning Inspector as a result of a successful planning appeal, (or appeal against enforcement notice).

### **11. I have an existing outline planning permission, so would I have to pay the CIL Levy when the reserved matters are approved?**

If your outline was granted prior to the introduction of CIL, no, because the reserved matters do not constitute a new planning consent. You would only be liable for the levy if you receive permission on a new outline application or detailed full application.

## **Charging rates and viability**

### **12. Why are some types of use zero rated in the Charging Schedule, i.e. the charging rate has been set at £0/sqm?**

The Council has set the CIL charging rate for certain types of development at £0 per sqm in order for them to remain financially viable. Those uses include all B uses (i.e. B1 Business, B2 General Industry and B8 Storage or Distribution) C1 Hotels, C2 Residential institutions (such as nursing homes and colleges and D uses (i.e. D1 Non-residential Institutions (such as clinics and places of worship) and D2 Assembly & Leisure (such as areas for indoors sports and gyms). Therefore development of these types will not pay the levy.

### **13. Why are there two different rates for residential development?**

There is clear evidence of higher house prices in those areas north and south of the main A40/M40 corridor and a viability report commissioned by the Council showed that a baseline rate of £125/sqm could be refined to apply a higher rate in the areas either side of the main transport corridor without adversely affecting the overall viability of development. This pattern was not clearly found for other uses that are being charged.

### **14. My development may not be able to afford to pay CIL and still be viable. If there are special circumstances, can I claim an exemption from paying CIL?**

No. The Council has considered the option of offering exceptional circumstances relief but decided not to adopt a policy allowing for such relief given the heavily proscribed circumstances within which developers may apply and the overriding concern to maintain an approach that is transparent, efficient and offers certainty.

However, the Charging Schedule has been subject to two rounds of public consultation and an independent examination which concluded that it provided an appropriate basis for the collection of the levy having regard to detailed evidence on economic viability and showing that it was set at a level that will not put the overall development of the area at risk. Guidance on the Council's approach towards viability where this is raised as an issue will be set out in a new Planning Obligations Supplementary Planning Document (SPD) which will replace the existing Developer Contributions SPD and associated Developers Guide.

## **CIL and Section 106 Planning Obligations**

### **15. What about Section 106 Planning Obligations?**

Section 106 Planning Obligations will continue to be one tool that is available to secure funding from developments for off site infrastructure, provided the relevant tests set out in Regulation 122 of the CIL Regulations 2010 (as amended) are met (see below).

The system of tariff style or pooled contributions for certain types of infrastructure that has been operated by the Council for a number of years, and which is described in the Developer Contributions Supplementary Planning Document (SPD) and accompanying Developers Guide 2011 will no longer apply once CIL has come into effect.

Affordable housing provision currently lies outside the remit of CIL and will continue to be secured through s106 agreements. On larger sites (typically 40+ dwellings) specific open space requirements may also be secured by a planning obligation.

s106 will also continue to be used for local infrastructure requirements on development sites, such as local access or connections to services where these are needed to make that particular site acceptable in planning terms. Individual and pooled s106 contributions may still be sought if restricted to contributions from no more than five developments for each infrastructure project or type. A new Planning Obligations SPD is being prepared that will describe the Council's approach in detail.

#### **16. So can a development be liable to pay CIL *and* also enter into a s106 agreement?**

Yes. Some developments will be liable to pay CIL *and* enter into a s106 agreement as the mechanisms will cover different things. However, developments will not be charged for the same items of infrastructure through both s106 planning obligations and the levy.

CIL Regulation 122 confirms that planning obligations may only be used if they are:

- necessary to make the development acceptable in planning terms;
- directly related to the development;
- fairly and reasonably related in scale and kind to the development.

### **Making use of CIL funds**

#### **17. How may the CIL funds be spent?**

Taking account of the Infrastructure Delivery Plan the Council has published a list under Regulation 123 of the CIL Regulations (hence known as the R123 list) the purpose of which is to set out what types of infrastructure, and some specific projects, may be funded from the CIL. As a result of producing this list, s106 contributions cannot be sought for those items. The R123 list may be changed to take changing circumstances and priorities into account and the current version, which has been approved by Cabinet, will be published on the Council's website.

What the government has described as a 'meaningful proportion' of CIL funds must be spent directly in the area from which the funds accrued. This so called 'meaningful proportion' will be passed directly to parish and town councils to be spent on infrastructure to support the development of their areas. In unparished areas the Council will spend or allocate funds on behalf of communities taking into account local wishes and requirements, after consultation. It is expected that updated CIL Regulations and statutory guidance will be published in the coming months setting out what percentage of funds constitutes a 'meaningful proportion'.

#### **18. How much will be available each year?**

This will depend on a range of factors critically including the amount of 'CIL chargeable' development that comes forward. There will also be a lag as larger developments will not have to pay in full immediately (this is to help

ensure that these developments remain viable and in a position to make s106 contributions where appropriate). Once the system is established it is expected that over £2m per annum will be available. However the cost of infrastructure requirements estimated in the Infrastructure Delivery Plan far exceeds this amount so funds will continue to be scarce.

### **19. When will decisions on use of CIL fund be made and by whom?**

It is anticipated that the process to programme and release CIL funds will commence during summer 2013, culminating in a decision by the Council's Cabinet in February/ March 2014, for use in 2014/15 financial year. This process will be coordinated with the process to release s106 developer contributions. A draft 'Programme Approval Protocol' document which was consulted upon in March 2012 sets out the timetable for spending services to produce their annual infrastructure programmes, the criteria that will be used to assess programmes and the process to be followed in releasing the funds. A final version will be put before Cabinet for approval in June 2013.

### **Where can I find further information?**

Further information about the Wycombe CIL regime is available at:

Wycombe District Council:

<http://www.wycombe.gov.uk/council-services/planning-and-buildings/planning-policy/community-infrastructure-levy.aspx>

Additional guidance and FAQs are also available on the following web pages:

Communities and Local Government:

<http://www.communities.gov.uk/planningandbuilding/planningsystem/communityinfrastructurelevy/>

Planning Portal:

<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>

Planning Advisory Service:

<http://www.pas.gov.uk/pas/core/page.do?pagelD=1242969>

The full CIL regulations can be found at:

The Community Infrastructure Levy Regulations 2010:

<http://www.legislation.gov.uk/ukdsi/2010/9780111492390/contents>

The Community Infrastructure Levy (Amendment) Regulations 2011:

<http://www.legislation.gov.uk/uksi/2011/987/contents/made>

The Community Infrastructure Levy (Amendment) Regulations 2012:

<http://www.legislation.gov.uk/uksi/2012/2975/contents/made>