

# **Community Infrastructure Levy (CIL)**

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

### **A Guide for Developers in Newcastle upon Tyne**

### ***Revisions***

- *Front Page – amended date of document.*
- *Section 4 – amended definition of ‘in-use’.*
- *Section 11- removed ‘Discretionary Charitable or Social Housing Relief or Exceptional Circumstances Relief’.*
- *Throughout document – changed ‘city council’ to ‘City Council’.*

## **CIL Developer Guidance**

### **1. Purpose of the guide**

This document provides guidance to developers on how the Council is proposing to apply and collect the Community Infrastructure Levy. The introduction of CIL (Community Infrastructure Levy) changes the way in which developers contribute to the provision of infrastructure.

This guide explains the differences between CIL and S106 agreements, and the procedures that the Council will employ to collect contributions under the CIL regime. As CIL is a new system, this guide is intended to help developers through the process of making contributions under CIL and understanding how this relates to any S106 contributions that might also be requested.

### **2. What is CIL?**

The Community Infrastructure Levy (CIL) allows local authorities to raise funds from developers to pay for the infrastructure that is needed for the City as a result of development.

CIL takes the form of a tariff per m<sup>2</sup> of additional floor space. The level of the tariff is set by the local authority based on the needs identified through infrastructure planning, but also tested to ensure that it will not affect the overall viability of development of the area. The local levy rates are set out in a CIL Charging Schedule. Charges are index linked.

Payments are collected into a fund to pay for City wide infrastructure. The money will then be spent by the Council on infrastructure to support development of the City.

### **3. What happens to developer contributions under Section 106?**

The City Council has been operating a system of pooled contributions for certain types of S106 monies, including Urban Core Transportation, Outer Area Transportation, Open Space, Sport and Recreation and Education. The pooling of S106 contributions is now restricted to contributions from no more than five obligations for each infrastructure project or type.

For certain types of infrastructure CIL would therefore be the main source of developer contributions towards infrastructure beyond the immediate needs of the development site. However, the CIL regime does not replace S106 completely. Affordable housing provision or contributions that lie outside the remit of CIL would continue to be secured through S106. S106 would also continue to be used for local infrastructure requirements specific to a development site, such as local access or securing targeted training and employment training opportunities. Some of these requirements may be physically off site, but would be secured under S106 where they are clearly linked to the development site and needed to make that particular site acceptable. A Planning Obligations SPD has been produced which sets out what Newcastle City Council's approach is for Section 106 obligations.

Many developments will be required to pay CIL and enter into a S106 agreement. The CIL payment and S106 obligations would cover different things, and developments would not be charged for the same items of infrastructure through both obligations and the levy. There will be no actual or perceived 'double dipping'.

The City Council has published a draft Regulation 123 list which it intends will be wholly or partly funded by CIL. This list will be kept up to date to take into account any changes in circumstances and / or infrastructure needs identified in the future and will be reviewed at least every year. The list is available to view alongside this document on the City Councils website

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

This depends on the type of development and its location.

##### **Your development would be liable to pay CIL if:**

- it is a development containing at least 100 square metres of new build
- it is a development of less than 100 square metres of new build that results in the creation of a new dwelling, or
- it is the conversion of a building that is not in-use\*, which results in new dwellings.

\* The definition of use is contained in Regulation 40 (11) of the Community Infrastructure Levy Regulations 2010, which states that:

““in-use building” means a building which contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development.”

##### **Your development would not be liable to pay CIL if:**

- it consists of a development containing less than 100 square metres of new build, provided that it does not result in the creation of a new dwelling,
- it consists of the conversion of a building that is in use\*(definition as above)
- it consists of a building that is not in lawful use provided that it does not result in new dwellings (i.e. any form of residential or student accommodation),
- it will be used for charitable purposes
- it is a development of buildings into which people do not normally go, or into which they only go intermittently for the purposes of inspecting or maintaining fixed plant or machinery (for example wind turbines, electricity sub stations etc),

- it is a development that brings vacant buildings back into their previous use (for example if a vacant office building was brought back into use as an office and extended by more than 100 square metres only the extension would be liable for CIL), or
- it consists of a mezzanine floors of less than 200 square metres inserted into an existing building, unless they form part of a wider development (e.g. external alterations, changes of use etc.)

Please note that if you're seeking charitable relief for your development you will have to formally apply for this relief before development commences.

CIL only applies to certain development uses in certain parts of the City where it is considered that it is viable to charge a CIL Levy. The CIL maps of the proposed residential and commercial charging areas can be found on the Council's website.

### **5. How can I calculate how much CIL a development will pay?**

The amount of CIL you would 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 of net additional floor space.

The gross floor space 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, these deductions in respect of demolition or change of use would only apply where the existing building has been in continuous lawful use for at least six months in the 3 years prior to the development being permitted.

Your liability would be subject to the liability rules in the previous section and would be based on the CIL charging schedule in force when the development commences.

The City Council has set the CIL charging rate for certain uses at £zero, based on viability considerations. Therefore development of these types would not pay the levy.

The chargeable amount would be calculated using the formula set in national regulations (Regulation 40 of the Community Infrastructure Levy Regulations 2010, as amended).

We are in the process of developing a CIL calculator which will be available on the City Council's website. This will allow developer's to calculate what their CIL charge would be for their proposed development (the charge amount will be subject to confirmation from the City Council).

### **6. What are the CIL rates in Newcastle?**

The proposed rates that development in Newcastle would be liable to pay are set out in the City Council's CIL charging schedule.

### **7. What information will I need to submit with my application?**

The introduction of the levy will mean that the Council requires additional information to determine whether a charge is due and to determine the amount. Applicants would therefore be required to answer additional questions to enable the Council to calculate your levy liability. The information required is:

- How much floorspace (in square metres) are you proposing?
- Has a building or a part of a building, on the site been in use for a continuous period of at least six months within the past 3 years? What use(s) has it been in? How much gross internal floorspace of this building do you intend to demolish or change the use of?

The planning portal has provided a form which you fill in and submit alongside your planning application to provide all the information the Council would require to calculate your CIL liability correctly -

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

## **8. How will I be notified of any CIL liability?**

You will be informed formally of your CIL liability by a 'CIL liability notice', which the Council will issue to you once planning permission is granted, or once you have given us notice of chargeable development where planning permission was not required.

As outlined above the City Council will be offering a CIL calculator on our website which will easily allow you to estimate your likely CIL liability.

If your development is liable to pay CIL, but the chargeable amount is £0, for example if your development attracts a £0 rate of CIL, or if your total liability is less than £50\*, you will still be sent a CIL liability notice, confirming that your liability is £0.

\* If your liability is less than £50, it will be deemed to be £0.

## **9. Letting the Council know who will pay the CIL linked to a development**

You should assume liability to pay the levy charge by sending a completed assumption of liability form to the Council. This notice can be provided at any time up to the point where the development commences however it would be better if the City Council was informed earlier in the process ('Form 1: Assumption of Liability, available on the Planning Portal:

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_1\\_assumption\\_of\\_liability.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_1_assumption_of_liability.pdf)).

If you later want to withdraw or transfer this liability, for example if you sell the site, you must complete either 'Form 3: Withdrawal of Assumption of Liability' or 'Form 4: Transfer of Liability' (both available from the Planning Portal:

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_3\\_withdrawal\\_of\\_assumption\\_of\\_liability.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_3_withdrawal_of_assumption_of_liability.pdf)

and

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_4\\_transfer\\_of\\_assumed\\_liability.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_4_transfer_of_assumed_liability.pdf))

and send it to the Council.

The Council will issue the CIL Liability Notice to parties who have assumed liability, as well as the landowner, if the two are different.

## **10. Claiming Relief**

If you think your development should not attract CIL due to Mandatory Social Housing, Charitable or Self Build Relief, you should make a claim once Planning Permission has been granted, although you can inform the Council that you intend to do this earlier in the process.

To claim relief, you must use Form 2: Claiming Exemption and Relief, available from the Planning Portal at:

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_2\\_claiming\\_exemption\\_and\\_or\\_relief.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf)

The Council will send you a revised liability notice (stating a £0 charge) once your claim has been dealt with.

Please note that Newcastle City Council is not offering Discretionary Charitable or Social Housing Relief or Exceptional Circumstances Relief. The CIL discretionary and exceptional circumstances relief mechanisms will be kept under review on an annual basis and will be introduced, subject to CIL regulations, if there is a clear case for doing so.

## **11. Paying the Levy**

The levy charge becomes due when development commences. Regulation 70 (7) of the Community Infrastructure Levy Regulations 2010 (as amended by the Community Infrastructure Levy (Amendment) Regulations 2011) sets a default of full payment of the Levy within 60 days of the commencement of development. The regulations also enable a Charging Authority to set an Instalments Policy that allows payments to be spread over longer periods.

The context for this proposed Instalments Policy is the Council's strong desire to support and enable development and economic growth in the City. The Council recognises the significant economic constraints upon development and investors at this time. It therefore proposes a policy that allows CIL payments to be phased, including payments over longer timescales for large scale projects. This allows for

payments to be spread across the development process so that they are, where possible, synchronised with development progress and development cash flow.

The commencement date is the date given on the commencement notice as advised by the developer under CIL Regulation 67. A failure to notify the Council of a commencement date results in an automatic surcharge and removal of the privilege to utilise the Council's Instalments Policy.

The Newcastle Community Infrastructure Levy is proposed to be payable by instalments as follows:-

Where the chargeable amount is <b>less than £15,000</b>	Full payment within 2 calendar months of commencement
Where the chargeable amount is <b>between £15,000 and £50,000</b>	Due in 2 equal instalments within: <ul style="list-style-type: none"> <li>• 3 months of commencement</li> <li>• 6 months of commencement</li> </ul>
Where the chargeable amount is <b>over £50,000 but below £100,000</b>	Due in 3 equal instalments within: <ul style="list-style-type: none"> <li>• 3 months of commencement</li> <li>• 6 months of commencement</li> <li>• 9 months of commencement</li> </ul>
Where the chargeable amount is <b>£100,000 or above</b>	Due in 4 equal instalments within: <ul style="list-style-type: none"> <li>• 6 months of commencement</li> <li>• 12 months of commencement</li> <li>• 18 months of commencement</li> <li>• 24 months of commencement</li> </ul>

The liability for outline permissions will be calculated on the day that the final reserved matter is approved. If an outline application includes phasing of development, each phase is treated as a separate development for the purpose of paying CIL.

It may be possible for a full or outline planning application to be subdivided into 'phases' for the purposes of the levy, so that CIL is only liable on each phase as it is developed. This would need to be specified in the description of development on the planning application form and you are advised to discuss this with the Council at pre-application stage and finalised during the application process.

Whoever has assumed liability to pay CIL must issue a commencement notice to the Council and to all owners of the relevant land to notify them of the intended commencement date of the development. The collecting authority will then send a CIL Demand Notice to the person or persons who have assumed liability - Form 6: Commencement Notice':

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_6\\_commencement\\_notice.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_6_commencement_notice.pdf)

After this, the liable parties should follow the correct payment procedure, including payment dates. When monies are received the Council will issue a receipt.

Information on how CIL will be collected is covered in Planning Practice Guidance – Community Infrastructure – Collecting the Levy. Information on this can be viewed using the following link:

<http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/>

## **12. 'Payments in kind'**

The CIL Regulations make provision for payment in kind to be made in the form of land. However, the Council does not anticipate this provision being utilised frequently, if at all, and advises any developers who might be contemplating the possibility of making such payment in kind to initiate early, pre-application discussion to determine whether such payment in kind might be acceptable. Independent valuation (at the developers expense), and legal contractual processes would need to be followed, if such payment in kind was to be acceptable.

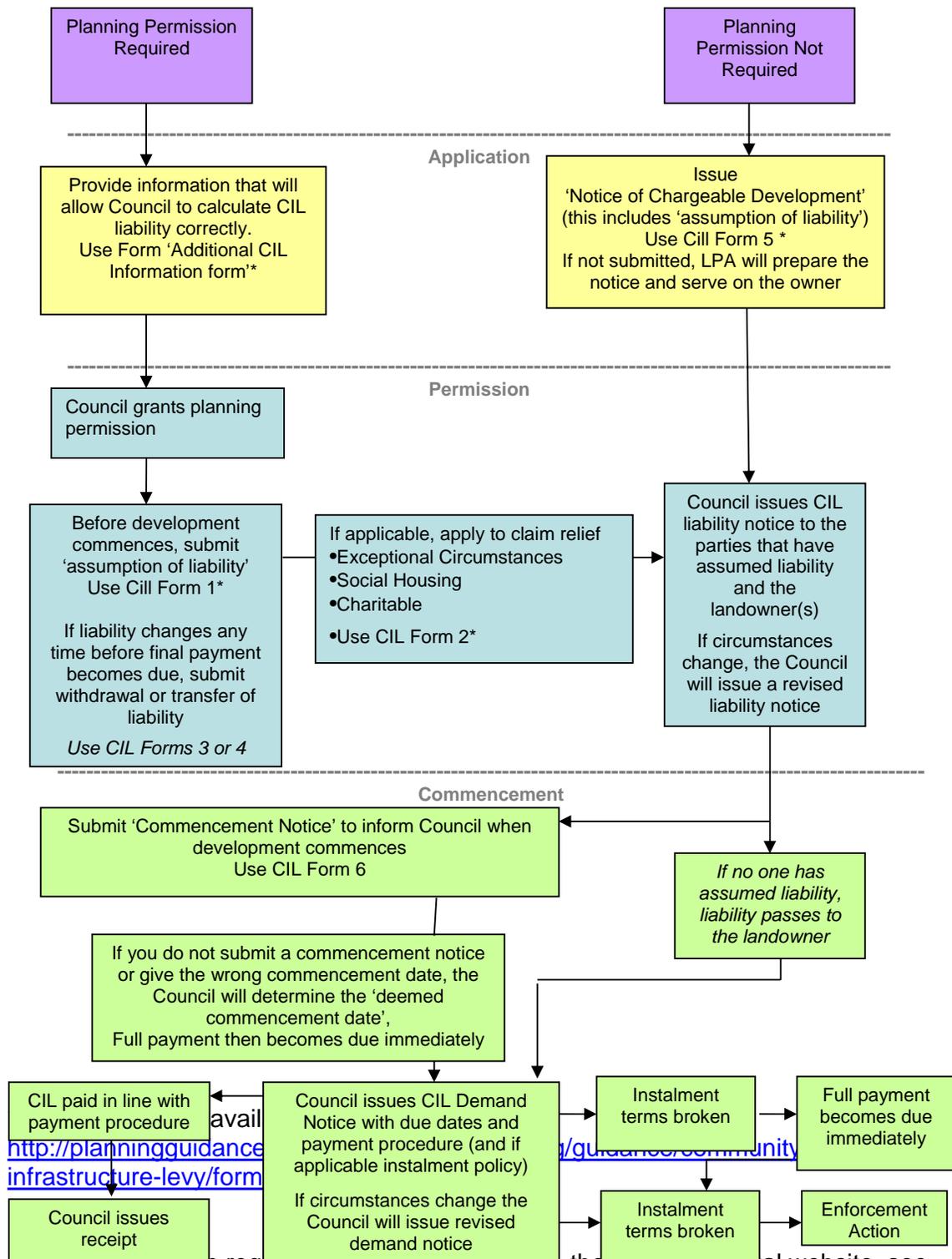
## **13. Enforcement**

If the correct payments are not received at the right time, the Council has the power to issue a range of surcharges, stop notices and if necessary to recover funds through legal action. The enforcement tools available to the Council are set out in Regulations 80-107 of the CIL Regulations 2010.

## **14. Monitoring**

The CIL regulations require the Council to report on CIL collection and spend. The Council would do this as part of Development Management's Planning Committee Monitoring Reports, showing how much CIL has been collected and how much has been spent and on what.

## 15. CIL Process



Further information regarding CIL can be found on the Planning Portal website, see link below.

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

**16. What about applications that pre-date the date CIL comes into effect in Newcastle?**

The Regulations require the levy to be applied to all new planning consents granted after the date that the charging schedule comes into effect. 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 City Council has no discretion in this matter, which is set by statute. The levy will also apply to any planning consents issued by a Planning Inspector as a result of a successful appeal after the introduction of the levy.

**17. I have an existing Outline 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 a detailed full application after the introduction of CIL.

**18. My development does not need planning permission. Will I still pay CIL?**

From when the City Council implements CIL, 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' to the Council before you commence this development. Form 5 available on the Planning Portal provides this notice:

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_5\\_notice\\_of\\_chargeable\\_development.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_5_notice_of_chargeable_development.pdf)

You do not need to submit such a notice if your development is less than 100 square metres of new floorspace and it does not comprise one or more new dwellings.