

# Community Infrastructure Levy

## Your questions answered

### **What is the Community Infrastructure Levy (CIL)?**

CIL is a mechanism by which Charging Authorities can collect a standard charge from developers to fund infrastructure required to support the development of new buildings in the District.

### **Who can charge CIL?**

Local Planning Authorities are the CIL Charging Authorities so North Dorset District Council (NDDC) is the Charging Authority for the North Dorset District area.

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

Charging Authorities must adopt a Charging Schedule before they can begin charging CIL. Charging Schedules are subject to public consultation and independent examination before being adopted.

### **What is in a Charging Schedule?**

Charging Schedules set out the charge per square metre 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 allow.

### **What is the process for putting a CIL Charging Schedule in place?**

For Charging Authorities, the basic CIL process is as follows:

1. Public consultation on Preliminary Draft Charging Schedule
2. Public consultation on Draft Charging Schedule
3. Charging Schedule Examination in Public
4. Examiner's report published
5. Approval of Charging Schedule by resolution of the full Council of Charging Authority

### **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 unviable as a result of the CIL Charge. The viability of individual sites does not need to be considered.

It is up to the Charging Authority to determine the level of charge as long as it is not more than the level needed to fund the required infrastructure and not so much that development is likely to be unviable.

## **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 is considered to constitute 'State Aid' and is not permitted.

## **What about different charges 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 is constitutes appropriate evidence to justify the CIL charges proposed. However, the guidance states that charging authorities should use an area-based approach, which involves a broad test of viability. Charging authorities are advised that they should avoid undue complexity.

## **How much can authorities charge?**

There is no limit on the CIL rates which an authority can charge but any charge must be supported by viability evidence. Wandsworth London Borough has a residential CIL rate of £575/m<sup>2</sup>, for example, whereas Bassetlaw District Council is charging as little as £5m<sup>2</sup> in one of three residential charging zones and rising to £20m<sup>2</sup> and £50m<sup>2</sup> in the other two.

## **How will CIL money be used?**

CIL funds paid to NDDC will go into a central fund for allocation to projects to support development. The arrangements for the implementation of CIL are still to be made but funding is likely to be allocated on the basis of where infrastructure is needed to support development rather than how much has been collected where.

## **What can CIL money be spent on?**

CIL receipts must be spent on infrastructure to support the development of the area. This can include infrastructure that falls outside the Council's administrative boundaries. CIL money can be spent on the provision, improvement, replacement, operation or maintenance of infrastructure - it does not have to be used only to fund capital investment.

Unlike S.106 planning obligations, there is no requirement for a functional link between the development subject to the CIL and the infrastructure that it is funding. Also, there is no requirement that CIL funds are spent on the infrastructure identified in the evidence to support the preparation of the Charging Schedule.

Up to 5% of CIL money can be spent on the administrative costs of operating the system.

CIL money cannot be spent on anything that is not related to development of the area. It cannot be used to fund Council services that are not necessary to support new development (for example, environmental health inspections) and it cannot be used to provide infrastructure to support existing development.

## **What is infrastructure?**

Amongst other things, infrastructure includes:

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

## **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 parts of a district can only be justified where there is a risk that a significant proportion of development in that area would no longer be viable if the higher charge proposed elsewhere in the district were charged there. Differential charges cannot be used to encourage a particular 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 about 20% of development value) if the charge were higher. The effect of all this should be to make the CIL rate equally affordable in different areas.

## **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 currently 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 (includes shared ownership but affordable housing relief depends on it remaining as social housing for 7 years from commencement);
- 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 (however, 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 will be acceptable).

## **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, 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.

### **Can the CIL charge be paid in instalments?**

A Charging Authority can adopt a policy allowing the payment of CIL dues by instalments.

### **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.

### **Is CIL going to 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 may have to take a lesser profit or even a loss on a development or wait for market conditions to improve before applying for planning permission on a site.

### **How does CIL fit in with the use of planning obligations / S.106 agreements?**

Planning obligations will still be used to secure S.106 contributions for site specific infrastructure, 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 S.106 agreements will in the future be secured through CIL. (See also Section 123 List.) 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 five S.106 agreements, if the infrastructure they are funding could be secured through CIL. At present, affordable housing would continue to be funded through S.106 agreements. Therefore, the pooling restriction would not apply.

### **Will CIL put house prices up?**

Prices of new houses are usually set with regard to comparable existing properties and developers' profit margins 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 very 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.

### **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, S.209) 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.

### **What role do other organisations play in the CIL process?**

The regulations state that a proportion of CIL receipts are to be paid to the community (in all probability the respective town or parish council). If no Neighbourhood Plan<sup>1</sup> is in place then Parish/Town Councils will receive a capped<sup>2</sup> 15% share of the CIL charge on each development in their area. If the Parish/Town has an adopted Neighbourhood Development Plan this rises to an uncapped 25%. Town and parish councils would still need to spend this money on infrastructure to support development.

The Government has decided that where a Neighbourhood Plan is in place a local community will receive 25% of CIL monies collected relating to that area. Payment will be based on that proportion multiplied by however much CIL liable development takes place within the specific community. Parish and Town Councils will only receive CIL monies if growth occurs in their area that attracts CIL, unless there is a specific infrastructure project which the District Council prioritise for CIL within their community. Community bodies are expected to work with the local planning authority in spending this money.

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

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.

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

Whilst it is likely that NDDC will want to transfer some CIL receipts to other organisations (in addition to the community's proportion) where they are the relevant infrastructure providers, there is no requirement in legislation, regulation or policy that they must.

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

Town and parish councils will only automatically receive CIL money when qualifying development occurs in their area. NDDC 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.

### **What is the Regulation 123 List?**

Under Regulation 123 of the CIL Regulations, the Charging Authority is required to publish a list of relevant infrastructure "that it intends will be, or may be, wholly or partly funded by CIL". Subject to

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<sup>1</sup> Look here <http://www.dorsetforyou.gov.uk/neighbourhoodplanning/north> for Information on neighbourhood planning in North Dorset.

<sup>2</sup> The cap will be £100 per existing council tax dwelling.

the requirements of the CIL Regulations, the Council cannot require infrastructure to be funded through a planning obligation (Section 106 Legal Agreement) which it is proposing to fund through CIL. The list can be changed as the Council sees fit.

**Where can further information on the CIL be found?**

More information on its preparation and implementation can be found at:

<http://www.pas.gov.uk/community-infrastructure-levy>

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

Detailed CIL guidance is available on the [Planning Practice Guidance website](#).