COMMUNITY INFRASTRUCTURE LEVY (CIL)

FREQUENTLY ASKED QUESTIONS

Completed by the West Northamptonshire Joint Planning Unit on behalf of the partner Councils of Daventry District, Northampton Borough and South Northamptonshire.

1. What is the Community Infrastructure Levy?

A Community Infrastructure Levy (CIL) is a fixed charge that local authorities in England and Wales can choose to charge on new developments in their area. The charge can be levied on new developments of more than 100m² of floorspace and on those creating one or more dwellings, even where the floorspace is less than 100m². In cases of redevelopment, the charge will on be levied on any net additional floorspace created.

There will be no CIL charge for Change of Use applications unless additional floorspace is created and no charge for subdivision of existing dwellings, self-build dwellings and domestic extensions, subject to conditions. Affordable housing and development for charitable purposes are also exempted from CIL.

2. How will CIL be charged?

CIL is charged in £s per square metre against new floorspace created. Any floorspace which is demolished is discounted from the final chargeable amount (e.g. 50sqm of floorspace demolished to make way for new build of 100sqm, chargeable floorspace = 50sqm).

New build development (a new building or an extension to an existing building) is only liable for the levy if it is 100 sq. m or more or if it involves the creation of a new dwelling (even if below 100 sq. m)

There are however some exemptions from CIL including affordable housing and charity landowners.

3. What types of developments are liable for CIL?

Most buildings that people normally go into are liable to pay the levy. Structures such as pylons and wind turbines will not be liable to pay the levy. The levy will not be charged on changes of use or on development that does not involve additional floorspace. Retail mezzanine floors (although an increase in floorspace) are also exempt.

Viability work shows that only residential and retail development is viable enough to contribute towards a CIL in West Northamptonshire. Other types of development will continue to contribute solely through s106 planning agreements (see Question 7).

4. Who may charge the Levy?

For West Northamptonshire the charging authorities are Daventry District Council, Northampton Borough Council and South Northamptonshire Council.

5. When is it paid?

CIL is payable on the commencement of development although the local authority may operate a phasing policy if it chooses. The partner Councils have made a draft instalment policy available for comment alongside the Draft Charging Schedule consultation.

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6. Who collects it?

Collection of the levy is carried out by the charging authorities. Northamptonshire County Council will collect the levy charged by districts on developments for which the County Council gives consent, but they then pass it back to the charging authority.

7. What is the difference between CIL and S106?

The partner Councils currently collect financial contributions through Section 106 legal agreements (S106).

The use of S106 obligations is restricted to site specific impacts (for example the provision of a new pedestrian crossing next to a development site or the provision of on-site open space) and the provision of affordable housing. CIL will partially replace the current practice of pooling S106 contributions from numerous development sites towards the provision of infrastructure. From April 2015, or the date, on which CIL is adopted if sooner, the CIL Regulations limit the use of S106 planning obligations.

The pooling of financial contributions from developments is important. It provides the Councils with opportunities to fund larger items of infrastructure such as improvements to the strategic road network or new secondary schools. CIL also ensures that all developments contribute towards infrastructure so that the gradual development of small sites and their impact on local infrastructure is captured.

The levy gives developers more certainty about costs and gives councils and local communities more flexibility about how infrastructure is funded.

Contributions currently sought under S106 will not disappear completely but their use will be scaled back once a CIL charge is adopted. Where land is required to provide new infrastructure such as schools or community facilities the council could accept 'payment in kind', whereby the total CIL amount payable is reduced by the value of the land or building being offered.

8. Why should development pay for strategic infrastructure?

Most development has some impact on the need for infrastructure and amenities, or benefits from them. It is considered fair that such development pays a share of the cost. It is also right that those who benefit financially when planning permission is given should share some of that gain with the community. By paying a contribution, developers will help fund the infrastructure that is needed to make development acceptable and sustainable.

9. How will the Community Infrastructure Levy be spent?

The Planning Act 2008 provides a wide definition of infrastructure which can be funded by the levy, including (but not exclusively) transport, flood defences, schools, hospitals, other

health care, social care, play areas, parks and green spaces, cultural and sports facilities, district heating schemes, police stations and other community safety facilities. The regulations presently rule out the provision of affordable housing by CIL monies.

The Councils will publish a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL. This is known as the "Regulation 123 List", more commonly known as the R123 List. The partner Councils have prepared a draft R123 List available for comment alongside the Draft Charging Schedule consultation.

Infrastructure projects included in this list cannot be financed from Section 106 agreements. This ensures that a developer does not pay twice for the same item of infrastructure. The R123 list can be updated periodically as infrastructure projects are completed, or new requirements are identified. Any proposed amendments would be subject to a public consultation.

Revenue from CIL will be used to fund the delivery of infrastructure and will be directed to address the funding gap identified in the Infrastructure Delivery Plan (IDP) which supports the Councils' growth, regeneration and development plans. It cannot be used to remedy pre-existing deficiencies in infrastructure provision unless such deficiencies will be made more severe by new development.

10. Why is it important for Parish and Community Councils?

The Regulations require the Councils to allocate a "meaningful proportion" of the revenues from CIL receipts to the neighbourhood within which the CIL chargeable development took place. In January 2013 the Government announced that Neighbourhoods (with a Neighbourhood Plan) will receive 25% of the revenues from the CIL arising from the development that they choose to accept – and neighbourhoods without a plan will receive 15% share of the levy revenue, subject to a cap of £100 per council tax dwelling per year.

The introduction of CIL puts communities at the forefront of infrastructure planning within their areas. The Councils will work closely with Parish and Community Councils to determine infrastructure priorities. Subject to agreement the charging authority may retain the neighbourhood funding to spend on a particular item of infrastructure. This prevents money passing between bodies when it is not necessary because priorities are aligned and helps to ensure that all available funding for infrastructure can be used to the greatest effect. It may be that this infrastructure is not in the Parish or Community Council's area, but will support the development of the area. This might be a bypass or school in the local area. Parish and Community Councils, and charging authorities, should work together to discuss priorities.

Where money is not used to support development of the area within five years of receipts, or is used for purpose contrary to the Regulations, each Council is able to recover those funds.

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11. Can the county council collect CIL for developments for which they have granted permission, and then spend it?

Northamptonshire County Council can be a collecting authority for development that it grants but they have to pass it back to the charging authority to spend. They can keep up to 4% to pay for their administrative expenses.

12. Can the county council pass CIL monies to non-charging organisations for them to spend?

Yes. Provided the money is ultimately spent on infrastructure to support the development of the area.

13. Can CIL be spent on infrastructure projects outside the charging authority area?

Yes, a charging authority can give money to bodies outside of their administrative area to deliver infrastructure which will benefit the development of the area, such as the Environment Agency for flood defence or, in two tier areas, the county council, for education infrastructure. Councils can pool CIL funds from other charging authorities to support the delivery of 'sub-regional infrastructure', for example, a large transport project which would support the development of their own area.

14. How much is the 'meaningful proportion' to be passed to neighbourhoods?

This depends on whether or not there is a neighbourhood plan – if there is a neighbourhood plan 25% of the CIL gets passed to the parish directly or is spent by the charging authority on behalf of the community in which the development is located. If there is no neighbourhood plan the sum that is either passed to the parish or spent on behalf of the community is reduced to 15%. In addition this amount is capped at £100 per existing dwelling.

15. Can neighbourhoods spend their meaningful proportion of CIL on anything?

The 'meaningful proportion' can be spent on infrastructure or anything else which is concerned with addressing the demands that development places on an area. (NB that's development generally, not a specific development).

16. Who decides what the levy will be set at?

The charging authority should propose a rate which does not put at serious risk the overall development of their area. The partner Councils have commissioned viability evidence to determine their CIL rates. This will be tested by an independent examiner in due course.

17. What does an authority need to have in place to raise a levy?

Local authorities need to have an up to date development plan supported by reasonable infrastructure planning. The development plan in West Northamptonshire is the Joint Core Strategy which is supported by an Infrastructure Delivery Plan.

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The local authority must demonstrate that there is a funding gap between the cost of the infrastructure required to support new development and the amount of funding secured or likely to be secured to provide it.

The charging authority must provide evidence of an aggregate funding gap in order to levy a charge. This will demonstrate the need for CIL and show how much the charging authority intends to raise from it.

The partner Councils have provided evidence of a funding gap in the Infrastructure Delivery Plan. This is further developed in the CIL Background Paper which identifies a CIL related funding gap and outlines the amount of funding likely to be secured by a CIL.

18. Why would an authority choose to have differential CIL rates?

Differential rates are a way of dealing with variations in economic viability within the same charging area. This makes CIL more flexible to local conditions. Otherwise, you may have to charge a low CIL for areas or uses that are not as viable so that they still come forward and lose CIL revenues where the development could have withstood a higher charge.

19. How can an authority have just one rate – surely there are different levels of viability within their area?

Some places have little variation in values, or the majority of anticipated growth is of one type and mostly in one area.

20. Is it best to use existing boundaries e.g. parish or local plan settlement boundaries to define charging zones?

Charging zones should only be defined by the viability of development within them. Don't assume that existing administrative or policy boundaries will always be appropriate.

21. Can a charging authority set types of development at a zero rate without having evidence? (For example community uses such as school and hospitals)

No, the charging authority will need to have evidence illustrating that in terms of viability these developments can or cannot withstand a CIL charge. The partner Councils have commissioned this evidence and it is available alongside the Draft Charging Schedule consultations.

22. Is an examiners report binding?

Yes. However, the Government has included provisions in the Localism Act to limit the binding nature of examiners' reports on levy rates. Under these provisions examiners are only able to ensure councils do not set unreasonable charges. Councils will be required to correct charges that examiners' consider to be unreasonable but have discretion on how this is done.

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23. How regularly should a CIL be updated?

The Community Infrastructure Levy Guidance encourages authorities to keep their charging schedules under review to ensure that that CIL charges remain appropriate over time. For instance, as market conditions change, and also so that they remain relevant to the gap in the funding for the infrastructure needed.

24. Post adoption; does a refresh of the CIL need to go through an examination?

Yes. To revise or refresh a CIL a charging authority would need to follow the same process as applied to the preparation, examination, approval and publication of their initial CIL charging schedule.

25. My development is not viable, what are my options?

Although the CIL is not negotiable, save for the Social Housing Relief, Charitable Relief, Exceptional Circumstances Relief and exemptions on self-build (conditions apply) a viability argument can be made to review the planning obligations within the S106 Agreement. Therefore if viability is considered to be an issue then you should discuss this with your local planning authority.

A charging authority may offer Exceptional Circumstances Relief. If this is offered by the charging authority then a statement to that effect will be available on their website.

26. We have recently granted outline permission for some developments. The details won't come until after we've adopted our charging schedule. Can CIL be collected following granting consent on the details?

No. A charging authority is not able to collect CIL on 'reserved matters' planning permissions if you have granted outline planning permission prior to CIL coming into force locally.

27. How long does a building have to be vacant before the floorspace can no longer be offset against CIL liabilities triggered by new development?

Floorspace subject to demolition or resulting from change of use can only be deducted where it has been in continuous lawful use for at least six months in the three years prior to the development being permitted.

28. What are the conditions that make self-build applications exempt from CIL?

Sections 54A to 54D of the CIL Regulations outline the conditions in detail. Self-build housing is a dwelling built by a person (or commissioned to be built by a person) and occupied by that person as their sole or main residence. That person must apply for exemption via a form to the charging authority which must be submitted before development commences. The form must be accompanied by specified documents which prove the occupation of the

home as a sole or main residence and those which prove the self-build status of the property.

29. What are the conditions that make domestic extensions and annexes exempt from CIL?

Sections 42A to 42C of the CIL Regulations outline the conditions in detail. A person is exempt from liability to pay CIL if:

a) The person owns a material interest in a dwelling;
b) The person occupies the main dwelling as their sole or main residence; and
c) The development is a residential annex or a residential extension.

The development is a residential annex if:	**The development is a residential extension if:**
It is wholly within the curtilage of the main dwelling	It is an enlargement to the main dwelling
It comprises one new dwelling	It does not comprise a new dwelling

That person must apply for exemption via a form to the charging authority which must be submitted before development commences.

30. How can a charging authority establish an infrastructure funding gap when many funding streams are in flux and capital plans are under review?

The guidance recognises that there will be uncertainty in pinpointing other infrastructure funding sources, particularly beyond the short-term. Authorities should rely on evidence that is appropriate and available. The focus should be on providing evidence of an aggregate funding gap that simply demonstrates the need to levy CIL.

31. Does the amount a charging authority needs for infrastructure funding (infrastructure evidence) have to match the amount it is seeking to collect from CIL?

No. CIL has always only been one of the funding steams. The aggregate funding gap is likely to be larger than the amount that CIL is intended to raise in the area.

32. Is a charging authority limited to only setting differential rates by type of development in line with the Use Classes Order or can it differentiate further or differently in terms of uses?

No. It is up the charging authority whether to differentiate by type of development provided that the different rates can be justified by comparing the economic viability of those categories of development. For example, for any given development type evidence could show that there are clear differences in viability depending on the scale of development.

This could be reflected in differential rates, as long as decisions on rates are informed by, and consistent with, the viability evidence available.

33. Can a charging authority's instalment policy have different payment deadlines for different uses or types of development?

There is flexibility to vary the payment deadlines only by the size of the CIL payment i.e. a charging authority can extend the CIL payment deadline if the payment is larger. It cannot vary the payment by the use and type of development.

34. Is the local authority's instalment policy part of its charging schedule?

No. It isn't part of the CIL examination. A charging authority can introduce, withdraw or amend an instalment policy at any time during the life of their charging schedule as long as you give at least 28 day notice before the new policy takes effect and / or old policy is withdrawn.

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

The partner Councils have set the CIL charging rates 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.

36. If a development has either a zero rate, is exempt, or receives full relief from CIL – can a charging authority ask for section 106 contributions towards infrastructure?

No. The limitations on planning obligations apply irrespective of whether a development is charged CIL or not. The key trigger is whether the development consists of buildings people normally go into. If it does then the limitations on Section 106 obligations apply.

37. When they introduce CIL will the charging authorities still be able to pool up to five contributions for one infrastructure project?

Yes, for an item of infrastructure that is not intended to be funded by the levy. The limit of five applies as well to types of general infrastructure contributions, such as education and transport. In assessing whether five separate planning obligations have already been entered into for a specific infrastructure project or a type of infrastructure, local planning authorities must look back to all agreements that have been entered into since 6 April 2010 and check that there is no more than five in total.

38. What is year zero? I have heard it being referred to in relation to s106 and CIL.

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Year zero is the date local planning authorities must go back to when assessing whether five separate planning obligations have already been entered into for a specific infrastructure project or a type of infrastructure.

39. What happens if a charging authority grants social housing relief on a portion of that development, but then the developer subsequently turns some of the units into private market housing?

To ensure that any form of relief from the levy is not used to avoid proper liability for the levy, 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.

40. What happens if CIL is not paid?

If CIL remains unpaid after it is due then the council may take any or all of the following actions, in order to recover the debt, as based on the CIL Regulations:

- Removal of the instalment facility
- Impose surcharges and late payment interest
- Issue a CIL Stop Notice
- Seek authorisation from the courts to seize and sell assets to recover the CIL due
- Seek committal to prison.

Ends.