

Community Infrastructure Levy – Changes Published

The Government has published draft regulations containing a number of welcome reforms to the Community Infrastructure Levy. The principal changes are as follows:

CIL and S73 permissions (permissions based on applications under Section 73 to remove or vary planning conditions)

The basic position is that S73 permissions will not attract CIL irrespective of whether CIL was in force in the area when the original permission was granted. However, there are some subtleties worth mentioning:

- Where CIL was chargeable on the original permission: If a higher amount of CIL would apply to the S73 permission than on the original permission (e.g. through changes to the distribution of uses attracting a higher CIL payment), CIL will be chargeable on the S73 permission as well but developers will be eligible for a credit against the initial payment of CIL.
- Where the original permission is granted before CIL came into force: If a higher amount of CIL would apply to the S73 permission than if CIL had, in fact, applied to the original permission (e.g. for the same reasons as above), CIL is chargeable on the balance. This also applies to permissions which have been extended under the recently introduced powers in respect of pre-2 October 2010 permissions.

Other Changes

- Corrections have been made to an error in the general CIL calculation formula which previously did not properly account for excluding retained land floorspace from CIL (an issue we raised with the Department last year). Similar amendments have been made to the social housing relief formula as well as clarifying that relief should continue to apply to S73 permissions.
- Planning permission arising from neighbourhood development orders will now be subject to CIL.
- Clarification is given that S106 Agreements for S73 Permissions will not be subject to the more restrictive requirements for S106 Agreements that now apply. This will allow all pre-CIL S106 Agreements to be restated when a S73 Permission is granted.
- Confirmation is given that CIL can be applied to the "provision, improvement, replacement, operation or maintenance" of infrastructure (and not just initial capital expenditure).
- Clarification that the Mayor of London can apply a policy for payment of CIL by instalments where a London Borough has not adopted a CIL.

The changes only apply in respect of permissions granted after the regulations come into force which will happen once they have gone through the Parliamentary approval process.

Whilst these changes are helpful, it is disappointing that they did not include a clearer prohibition on double-charging as between S106 Agreements and CIL.

The government has been considering wider changes to CIL, e.g. allowing CIL to be used for affordable housing, passing the benefits of CIL on to neighbourhoods. Final proposals are expected to be published later in the year. Meanwhile, the wider debate on the impact of CIL on the development industry will continue - demands that the restrictive conditions on crediting retained floorspace be eased; widening the exclusions from payment of CIL charge-setting etc.

Authors



Nigel Howorth
Partner

T: +44 20 7006 4076
E: nigel.howorth@cliffordchance.com



Elizabeth Hardacre
Associate

T: +44 20 7006 1356
E: elizabeth.hardacre@cliffordchance.com



Michael Coxall
Senior Professional Support Lawyer

T: +44 20 7006 4315
E: michael.coxall@cliffordchance.com

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www.cliffordchance.com

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