

Community Infrastructure Levy

What is CIL?

The Community Infrastructure Levy (CIL) is a new discretionary planning charge introduced by the Planning Act 2008. *The Community Infrastructure Levy Regulations 2010 (SI 2010/948)* (CIL Regulations) came into force on 6 April 2010.

The aim is to help the Local Planning Authority (LPA) fund local or semi local infrastructure.

The charge will be on new *buildings* above a certain size and will be payable mainly by the owners of land to be developed or developers.

The charge is discretionary and may intentionally or unintentionally run in tandem with existing Section 106 arrangements.

Who is the charging authority?

That depends on where the building is located. It could be the Mayor of London, the London Boroughs, District or Unitary Authorities or other similar bodies.

How much is payable?

Each charging authority has to set its rates for the area. The rates will be expressed at £ per square meter of development and are charged according to the net internal area of the development.

The charging authorities can set different rates to each other but each rate will be



index linked from the date the charging schedule takes effect to the year in which the planning permission is granted.

When deciding on its rate, a charging authority has to look at *all* of the following:

- The total cost of infrastructure that needs to be funded by CIL.
- Whether there is any other funding available.
- The potential effect of CIL on the viability of development of the area.

CIL cannot be charged unless the charging authority has set its charging schedule and until that time, the existing planning regime will apply e.g. s106 Agreements.

If you are considering demolition as part of your development, timing may be crucial as it could impact on the level of CIL payable.

PROPERTY

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What development is liable to CIL?

The definition under the Planning Act 2008 is very wide and includes:

- Anything done by creating or for the purpose of creating a building. This includes demolition.
- Anything done to or in respect of an existing building.

Note that if you were to construct tennis courts for example, the courts themselves would not be liable but any ancillary buildings such as a club house may be.

Who is liable to pay CIL?

The person who “assumes liability” by submitting an “assumption of liability notice” is the person liable to pay. There can be more than one party liable and in which case they will be jointly and severally liable. Assumed liability can be withdrawn or transferred if certain criteria are met. If no-one assumes liability, then the collecting authority will apportion liability between those who have a material interest. That is either a freehold or a leasehold interest with over 7 years left to run after the date of the planning permission. If there is more than one party with a material interest, the collecting authority (who may not be the charging authority) will apportion the CIL liability.

Once liability has been established, if the CIL is not paid, the owner of the land will be liable or if the land changes hands, then the new owner is liable.

When is CIL payable?

The collecting authorities need to be



notified of the anticipated date when the development is to be commenced and the liability to pay arises when the development is commenced. The normal payment period is 60 days from the anticipated date of commencement but stage payments may be permitted under certain circumstances.

What can CIL be spent on?

CIL can only be spent on local and sub-regional infrastructure. This can include:

- Roads or other transport facilities. In London, it includes Crossrail.
- Schools and other educational facilities.
- Open spaces.
- Flood defences.

Affordable housing is no longer included in CIL, the provision of which is still governed by planning obligations such as s.106 Agreements.

Reliefs

The CIL Regulations set out exemptions from the liability to pay and these include:

- Minor developments.
- Charitable relief under certain circumstances.
- Social housing relief.
- Exceptional circumstances.

Points to be aware of

- It may be some time before charging authorities set their CIL rates so it may be prudent to accelerate any planning applications.
- Be careful of the timing of any demolition as this may impact on the level of CIL payable.
- Watch out for double charging. The CIL Regulations try to stop an LPA from charging for infrastructure under a s.106 Agreement once there is a CIL in force in that area, but there is still a risk that double charging could occur.
- CIL obligations are registered as land charges with the local authority so be aware of this when purchasing as you could inherit any liability.
- Check with the local to see if a CIL charging schedule has been adopted and if not, when it is anticipated.

AST Rent Threshold Raised to £100,000

On 1 October 2010 the Assured Tenancies (Amendment) (England) Order 2010 (the Order) comes into force, which means that the rent threshold below which any tenancy will be an assured tenancy (including an Assured Shorthold Tenancy (AST)) will be raised from the current level of £25,000 to £100,000.

This is an important development for investor clients buying high value properties which generate a rent of up to £100,000 per annum.

Until now, a tenancy could not be an assured tenancy if the rent was more than £25,000. Such tenancies are known as common law tenancies, which provide less protection for tenants.

Landlords should note that although the change is not retrospective, common law tenancies that were granted before 1 October 2010 with annual rents between £25,000 and £100,000 that would otherwise have been ASTs (i.e. tenancies that meet all the other requirements for being an AST), will become AST's on 1 October 2010. Landlords will need to comply with special rules that apply to ASTs, particularly:-

- (a) The duty to protect rent deposits.
- (b) The procedures for gaining possession of the property.

Implementation of the Order is being delayed until 1 October 2010 in order to allow landlords of tenancies that



will become ASTs on that date time to protect rent deposits and landlords should make appropriate arrangements to protect any rent deposits before 1 October 2010. There are, however, some commentators who believe that only deposits made at the start of an AST need to be protected and no doubt the issue will be settled by the courts after 1 October 2010. Magrath LLP will be keeping an eye on future developments.

Landlords of properties that were originally let on common law tenancies and which will become ASTs from 1 October 2010 should be particularly careful to follow the correct procedure for gaining possession, regardless of the contractual terms of the tenancy.

By way of background, when the annual rent threshold was set at £25,000 in 1990, the legislation was intended to exclude tenants of luxury properties from the protection given by assured tenancies (including ASTs). At that time, only a very small number of tenancies fell outside the regime, but in the 21st century, many properties that cannot be categorised

as "luxury lets" command an annual rent in excess of £25,000, for example, students sharing a house and each paying a rent of £500 could quite easily take the rent above the £25,000 threshold.

Another consequence of the new threshold relates to the sale of the freehold (or long leasehold) interest in a property which is subject to short residential tenancies.

As matters stand, tenants under assured tenancies are not qualifying tenants for the purposes of the Landlord and Tenant Act 1987 (the Act) and therefore do not have a right of first refusal on the sale of the freehold/long leasehold interest. This has meant that short residential tenancies with a rent in excess of £25,000 per annum have resulted in those tenants, in certain circumstances, having to be served with section 5 notices under the Act and offered the opportunity to purchase the reversion. From 1 October 2010, such tenancies will not be common law tenancies and accordingly, unless the rent exceeds £100,000 per annum, will not be qualifying tenants for the purposes of the Act. The Act will then not apply and the landlord will be free to sell the reversion free from the provisions of Part 1 of the Act.

In future, therefore, when acting for landlords, Magrath LLP will be taking care to review the terms of a tenancy to check whether it has become an AST as a result of the Order.

If you would like any further advice on these issues, please contact the property team at Magrath LLP.

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