

*Eastbourne Community Infrastructure Levy*

**GUIDANCE DOCUMENT**

**ON DEFINITIONS AND REGULATIONS**

JUNE 2014

**In support of Eastbourne Borough Council's  
Community Infrastructure Levy Charging Schedule**

## 1 Introduction

- 1.1 The purpose of this document is to summarise all of the processes and definitions used, and Government regulations which control, Eastbourne Borough Council charging a Community Infrastructure Levy (CIL) on liable developments within Eastbourne.
- 1.2 There has been a significant amount of change to the Regulations which control how the Community Infrastructure Levy is implemented. For clarity, this document has pulled together all of the key requirements and links to key information and forms which should be submitted with planning applications. This guidance document provides specific information related to the implementation of Eastbourne's CIL charging Schedule. The Government has provided its own detailed guidance which can be accessed from the following weblink:
- <https://www.gov.uk/government/publications/community-infrastructure-levy-guidance>
- 1.3 The Council has set its proposed CIL charges within its CIL Charging Schedule. This planning document will be subject to consultation and then Public Examination before the charges can be adopted by the Council.

## 2 The Charging Schedule

### *What type of Development is liable for a CIL charge?*

- 2.1 Eastbourne's CIL Charging Schedule outlines the proposed charges by square metre of development. These charges will be calculated only in relation to the net increase in proposed floorspace. The Council proposes two categories of development which are liable for a CIL charge:
- Residential development (C3 Use Class) – where there is a net gain in residential dwellings and a net gain in floorspace;
  - Retail development (A1 – A5 Use Class) – where there is a net gain in more than 100 sq m of floorspace (Unless the development proposed is just an addition of a mezzanine floor and then the development must be more than 200 sq m).
- 2.2 The definitions above demonstrate that some types of residential and retail development would not be liable for a CIL charge, for instance:
- Conversion or subdivision of larger house into smaller self-contained units (with no new build net increase in floorspace);
  - Extensions to residential properties, including annexes, where there is no net gain in dwellings;
  - Change of use from office (or any other use) to residential (with no new build net increase in floorspace);
  - Small retail development or extensions/additions under 100 sq m (or if a mezzanine floor under 200 sq m unless it is part of an additional wider extension);

- 2.3 All other types of development (all other planning use classes) are not liable for CIL, so that part (or all) of the development would not attract a charge. There are certain other types of developments which are exempt from a CIL charge which are explicitly made exempt through CIL Regulations. These types of development are outlined in the following paragraph 2.6.

#### ***What are the CIL charges?***

- 2.4 The proposed CIL charges are outlined in the Draft CIL Charging Schedule in Table 1. This outlines a proposed charge of £50 per sq. m for residential development (C3 Planning Use Class) and £80 per sq. m for retail development (A1 – A5 Planning Use Classes). Figure 1 shows the CIL Charging area, which contains all areas within the local authority boundary, excluding the South Downs National Park. The South Downs National Park Authority and our neighbouring local authority Wealden District Council will be preparing their own CIL Charging Schedules for their own areas.

#### ***What other type of development is exempt from a CIL charge?***

- 2.5 The CIL Regulations outline certain types of development that are exempt from a CIL charge. This is either termed an 'exemption' or 'relief' in the regulations. All formal claims for exemption and relief should be submitted in support of the proposed planning application. Applicants must fill in the appropriate form for the specific exemption or relief it is applying for. All forms can be accessed from the Planning Portal at the following link:

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

- 2.6 The CIL Regulations (as amended) outline that the following types of development are exempt from a CIL charge:
- **Minor development** of less than 100 sq. m. net additional gross internal floorspace, unless it results in the creation of net additional dwelling(s);
  - Full relief is applied on all those parts of chargeable development that are to be used as **social/affordable housing** (Criteria set out in Regulation 49/49A). Anyone can provide these homes as long as measures are in place to ensure that the homes if sold will continue to be affordable for future purchases at a maximum of 80% of market price;
  - All forms of residential development including annexes and extensions which are built by '**self builders**'. This exemption applies to anyone who is building their own home or has commissioned a home from a contractor, house builder or sub-contractor. Individuals claiming the exemption must own the property and occupy it as their principal residence for a minimum of three years after the work is completed. Within 6 months of the completion of the self-build property, the owners should provide the Council with suitable evidence that it meets this exemption. If the applicant wishes to dispose of the property before the three year occupancy limit expires, they must notify the Council and the levy becomes payable in full. Failure to notify the authority will result in enforcement action and surcharges will become payable;

- A **registered charity landowner** will receive full relief from their portion of the liability where the chargeable development will be used wholly or mainly for charitable purposes (Regulations 43-48). To qualify for charitable relief the claimant must: be a charitable institution, own a material interest in the land, and not own this interest jointly with a person who is not a charitable institution. A charitable institution is defined in Regulation 41, but in practice there are three main groups: registered charities, exempt charities, and excepted charities. A body which has a 'Her Majesty's Revenue and Customs Charity reference number will normally meet this requirement<sup>1</sup>;
- The **conversion** of or works to a building in lawful use that affects only the interior of the building;
- **Mezzanine floors** of less than 200 sq. m inserted into an existing building, unless they form part of a wider planning permission which seeks to provide other works;
- Development of buildings and **structures into which people do not normally go** into or enter under limited circumstances (for example an electricity sub-station or wind turbine) (Regulation 5(2));
- **Vacant buildings brought back into the same use** (Regulation 40) – buildings must have been in use for six continuous months out of the last three years for the levy to apply only to the net additional floorspace;
- Development granted planning permission before the date that CIL is formally adopted and built out before the expiry of the planning consent;
- When the resulting CIL is calculated as £50 or less, then a CIL payment will not be charged by the Council.

### ***Who charges the levy?***

- 2.7 The Charging authority is Eastbourne Borough Council. As the levy is charged on new development, this normally requires planning permission, although in some instances permitted development may be liable.

### ***Who is liable to pay the levy?***

- 2.8 Landowners are ultimately liable to pay the levy, but anyone involved in a development may take on the liability to pay. The liable party(ies) should submit an 'Assumption of Liability' form to the Council with the planning application. Where no one has assumed liability, this will automatically default to the landowner(s) and payment becomes due as soon as development commences. Liability to pay the levy can also default to the landowner(s) when the Council has been unable to recover the levy from the assumed liable party, despite making all reasonable efforts.

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<sup>1</sup> More detailed information on charitable purposes can be found on the Charity Commission website (<http://www.charitycommission.gov.uk>)

### ***When is CIL paid?***

- 2.9 Payment of CIL is due from the date of commencement of the liable development. The definition of commencement is covered in planning legislation and has occurred when there are 'material operations on the site'. The default position is that the whole amount must be paid within 60 days of commencement, unless the development falls under the criteria for the Council's phasing policy (Policy CCS2), under which payment can be made in instalments. This must have been previously agreed by the applicant and the Council, and the specific wording of phases will be detailed in the accompanying conditions to the planning approval and any relevant Section 106 agreement. If planning permission is granted after development has commenced then the development is deemed liable on the date that permission is granted.
- 2.10 There may be circumstances where the Council and/or the liable party wish land and/or infrastructure to be provided instead of money. Subject to relevant conditions, the Council may choose to enter into an agreement for a land payment to discharge part or all of its levy liability. An agreement may also be entered into to receive infrastructure as payment. These circumstances are covered by detailed criteria, and are explained in more detail in the Government's Community Infrastructure Levy Guidance Document (February 2014).

### ***What information is required with the planning application?***

- 2.11 The Council are entitled to ask for relevant information when the planning application is submitted. In order to calculate CIL payments due it is necessary for the following details to be supplied with the planning application:
- The gross internal area of all buildings and their uses on the site prior to development (if any);
  - The gross internal area of buildings to be demolished and their uses (if any); and
  - The proposed gross internal area of all buildings and their uses on the site once the development has been completed.
- 2.12 It is recommended that applicants submit the '**Additional CIL information form**' alongside their planning application to ensure the Council have all the relevant information and to speed up the validation process. The form can be accessed from: [http://www.planningportal.gov.uk/uploads/1app/forms/cil\\_questions.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/cil_questions.pdf). Applicants should also refer to the associated guidance notes when completing this form, which can be found at: [http://www.planningportal.gov.uk/uploads/1app/cil\\_guidance.pdf](http://www.planningportal.gov.uk/uploads/1app/cil_guidance.pdf)

### ***What other forms need to be submitted or issued by the Council?***

- 2.13 CIL operates on the exchange of formal notices:
- The person(s) who have assumed liability to pay CIL provide the Council with an **Assumption of Liability Notice**, required with the planning application;
  - A **Liability Notice** is issued by the Council following receipt of an assumption of liability form, stating how much CIL is payable. The responsibility to pay the levy lies with the liable party(ies) and is a local land charge;

- Before the development starts the developer provides the Council with a **Commencement Notice**, giving the start date. If the Council know that development has commenced but has not yet received a commencement notice – or has received a notice, but considers that the development began earlier – it must determine when the development commenced. This known as the ‘deemed commencement date’ (Regulation 68), and the Council will use this date as the basis for subsequent demand notices;
- The Council will then issue a **Demand Notice** (the bill) to ensure that payment is received within 60 days of commencement. The liable party should then follow the correct payment procedure
- The Council will then send a receipt for each CIL payment received;

2.14 Other forms may be submitted to or from the Council to assist:

- A **withdrawal or transfer of liability Form** can be submitted to the Council, identifying the party(ies) that are withdrawing liability or the new party(ies) assuming liability. This could be the result of land changing ownership during the planning application process.
- A **Notice of Chargeable Development Form** should be submitted to the Council when work is about to commence on a CIL liable development that does not require planning permission.
- A **Default of Liability Notice** is sent by the Council to all those having a material interest in a particular development site when the Council have been unable to recover CIL money for the development.

***What can the CIL money, collected by the Council, be spent on?***

2.15 The levy can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities (for further details, see Section 216(2) of the Planning Act 2008, and Regulation 59). This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, academies and free schools, district heating schemes and police stations and other community safety facilities. The Council must spend the levy on infrastructure needed to support the development of their area, and they will decide what infrastructure is needed. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development. The types of infrastructure that the Council intend to use CIL money to fund, are listed in its Regulation 123 list – an accompanying document to the CIL Charge Schedule.

2.16 Eastbourne Borough Council does not consist of parish, town or Community Councils. It therefore retains all levy receipts, but will engage with local communities where development has taken place. Where Neighbourhood Plans exist, the Council will work with local communities to ensure spending on neighbourhood priorities. The Council will use existing community consultation and engagement techniques to work with local communities to discuss where and when money will be spent on local infrastructure to support development. The Council may wish to pass money to external bodies, for instance East Sussex County Council and the Environment Agency.

### ***How does the Council report on the levy income and spending?***

- 2.17 To ensure that the levy is open and transparent, the Council must prepare short reports on the levy. The Council must publish a report on their website by 31 December each year, for the previous financial year. The Council may prepare a bespoke report or use an existing reporting mechanism, such as the annual monitoring report which reports on our Development Plan.

### ***How is the effectiveness of CIL and the charges monitored?***

- 2.18 The Council will monitor the effectiveness of CIL through the Local Monitoring Report (normally published each year in December). This will take account of the economic climate and any change to the economic viability within the local area. Any future review of CIL charges will need to be implemented through a full review of the CIL Charging schedule and supporting viability evidence. A full review will be undertaken when necessary in future years.

## **3 Further Guidance and Regulations**

- 3.1 It is appreciated that the Community Infrastructure Levy process is technical and complex, being covered by Regulations which have benefited from a series of amendments over time. Whilst the Government's 'Community Infrastructure Levy Guidance' is a useful document, other summaries of the process can be found on both the Planning Portal and Planning Advisory Service website at:

### **Planning Portal**

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

### **Planning Advisory Service**

<http://www.pas.gov.uk/3-community-infrastructure-levy-cil>

- 3.2 Government have issued the Community Infrastructure Regulations (2010 as amended) to govern the CIL process. The 2010 Regulations and all their amendments can be downloaded from the following link:

<https://www.gov.uk/government/policies/giving-communities-more-power-in-planning-local-development/supporting-pages/community-infrastructure-levy>