

## COMMUNITY INFRASTRUCTURE LEVY - PAPER ON OPTIONAL POLICY DECISIONS

1. When introducing a CIL there are a number of optional policy decisions relating to introducing relief and approaches to payment for the charging (collecting) authority to make. These are in addition to the statutory reliefs. These options are discussed below. It should be noted that these policies can be introduced or withdrawn at any stage subject to the statutory notice periods being observed.

### 2. Charity Relief (Regulation 44)

2.1 There is already a charity exemption under Regulation 43. A charitable institution which owns a material interest in the land (a charity landowner) will get full relief from their share of the liability where the chargeable development will be used 'wholly, or mainly, for charitable purposes' and they meet the requirements of Regulation 43.

2.2 Regulation 44 offers an additional relief for charity investments. This is relief for development where the whole or majority of the development is held by the charitable institution where the profits are applied for charitable purposes. This doesn't apply to trading activities (gift shops, but most of these would be below 100sq m anyway. Charity shops (donated goods) can have relief).

2.3 If the Council, as the Charging Authority, decides to implement Charitable relief it needs to give notice when relief is available, publish this on the web and have office copies available for inspection. If the Council alters or withdraws charitable relief there are notification requirements (14 days). There are claim forms for charitable relief, these must be received before commencement or the relief is lost. The Council will need to notify a claimant as soon as possible of the decision, its reasons and amount of relief given (or not). The owner needs to inform the Council within 14 days if a disqualifying event occurs. If the Council withdraw charitable relief 14 days' notice must be given and publicised.

2.4 **Recommendation:** the recommendation is to **NOT** introduce charitable relief – it reduces the amount of CIL levied and more importantly it introduces cost, greater bureaucracy and complexity.

### 3. Discretionary Social Housing Relief (Regulation 49A)

3.1 Social housing relief is a mandatory discount that applies to most social rent, affordable rent, intermediate rent provided by a local authority or Private Registered Provider, and shared ownership dwellings. Subject to meeting specific conditions social housing relief can also apply to discounted rental properties provided by bodies which are neither a local authority nor a private registered provider. Regulation 49 (as amended by the 2015 Regulations) defines where social housing relief applies.

3.2 The Council may make available an additional policy of 'Discretionary Social Housing Relief' under Regulation 49A, which is a relief for dwellings that are 80% of market value according with a policy that the Council will need to will publish regarding allocation. This housing allocation policy is required to be published under Regulation 49B – 1 (a) iii - setting out how the housing will be allocated in the local authority area. National planning policy guidance on CIL states

*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 purchasers at a maximum of 80% of market price. (CIL PPG para 123).*

3.3 If the Council decides to give this additional discretionary housing relief it will need to issue a document giving notice of this, publish the document on the website and have a copy of the document in the office. There are publicity measures for revising or withdrawing this relief (14-day notice required).

3.4 In making social housing relief available this gives relief for associated communal development (shared space e.g. laundry, residents lounge) which must be made at the same time as a claim for relief in respect of qualifying dwelling to which the qualifying communal development in question relates (or the phase). The social housing relief is calculated by deducting the qualifying amount from what would otherwise be the amount of liability to CIL.

3.5 **Recommendation:** The introduction of this additional social housing relief will reduce the CIL income and available money for infrastructure. It should be borne in mind that this form of "social housing" is a great deal more viable than other types of affordable housing. The recommendation is to **NOT** introduce this relief as the developments still have an impact on infrastructure and if the Council give this relief you will have to use other development or infrastructure funding pots to cross subsidise these dwellings.

#### 4. Exceptional Circumstances Relief (Regulation 55 and PPG 129-134)

4.1 This is relief for development that cannot afford to pay the CIL. For the Council to offer exceptional circumstances relief the following conditions must be met: a section 106 agreement must exist on the planning permission permitting the chargeable development, the claimant must provide proof that there will be unacceptable impact on economic viability grounds, and the relief must not be state aid notifiable.

4.2 If the Council decides to offer exceptional circumstances relief it will need to issue a statement (web & office) with the date of commencement. The Council can then consider claims for relief on chargeable developments from landowners on a case by case basis. Even if the Council make exceptional circumstances relief available, each case can be considered individually and it is at the authority's discretion whether they wish it to apply in that case or not.

4.3 To claim exceptional circumstances the claimant must submit the form before commencement of the development, accompanied by a viability assessment by an independent person, with explanation by the claimant of why it has an unacceptable impact on viability, apportionment assessment and a declaration that the claimant has informed other owners, told them about and shown them the viability assessment. To remove the offer of exceptional circumstances relief 14 days notice must be given and publicised.

4.4 **Recommendation:** To **NOT** offer exceptional circumstances relief. The Council has proposed a conservative level of CIL. It will not harm the overall delivery of the growth strategy in the Local Plan. To offer exceptional circumstances relief will mean that administratively the Council will have to deal with applications and reviewing viability studies – this will add to cost and delay. If the Council finds that circumstances change and some key developments become affected, it can 'turn-on' the exceptional circumstances policy at a later date.

#### 5. Payments in Kind (Regulation 73, PPG 61-64)

5.1 The Council can accept land as payment from a person who would be liable to CIL. The amount is equal to the value of the land (subject to independent open market valuation). Land should be used for the relevant purposes and agreement must be made before development commences – An agreement in writing (not part of s106) is required and the

date paid is the date acquired. Payment in kind can also enable developers, users and authorities to have more certainty about the timescale over which certain infrastructure items will be delivered.

5.2 **Recommendation:** The recommendation is that the Council should accept land as 'payment in kind' where there is a benefit to do so on a case by case basis.

## 6. Infrastructure Payments (Regulation 73A, PPG 61-64)

6.1 The Council can accept infrastructure as payment for CIL. The value of the infrastructure must be equal to the CIL payable (and subject to valuation by an 'independent person'). It must be to support the development in the local authority area, but it can be provided outside the Council's area. The infrastructure needs to have the relevant consents and permissions or it cannot be used in payment. This policy is very limited and the infrastructure provided must be relevant infrastructure and 'not necessary to make the development granted permission by the relevant permission acceptable in planning terms'. It is the latter condition that makes this provision ineffective. If it is allowed agreement must be made in writing before commencement. It must state the value of infrastructure, date of provision; make provision of cash amount and interest if it is not provided by the date.

6.2 **Recommendation:** the recommendation it to **NOT** allow infrastructure payments. The mechanism doesn't work and on larger sites provision of infrastructure onsite through s106 agreements is more appropriate. Again it is complex to operate and if the Council decides at a later time that it is required it (or the Regulations are amended to make it more user friendly) the Council can 'switch it on'.

## 7. Instalments Policy allowing phased payments (Regulation 69B PPG 55)

7.1 It is at the Council's discretion whether or not to allow payment by instalments. CIL payment without an instalments policy is required within 60 days of commencement. An advantage of this is the ability to receive and use funds early in the development. However, for large schemes particularly the requirement to pay in 60 days can be very difficult - in the early stages there is only money going out in costs and no sales or money coming in. Indeed, few if any developments generate value until they are complete either in whole or in phases. An instalments policy does positively impact on viability of development and deliverability of development.

The guidance says

*'Willingness to allow an instalments policy can be a material consideration in assessing the viability of proposed levy rates. The authority has freedom to decide the number of payments, the amount and the time due. The authority may revise or withdraw the policy when appropriate.'*

The Regulations state:

- (2) The instalment policy must state -
  - (a) the date on which it takes effect, which must be no earlier than the day after the instalment policy is published on the website;
  - (b) the number of instalment payments;
  - (c) the amount or proportion of CIL payable in any instalment;
  - (d) the time (to be calculated from the date the development is commenced) that the first instalment payment is due, and the time that any subsequent instalment payments are due; and
  - (e) any minimum amount of CIL below which CIL may not be paid by instalment.

7.2 The Cotswold District Council Whole Plan Viability Assessment April 2016 recommended that the Council introduces an Instalment Policy and stated that not to do so could put the delivery of the Development Plan at serious risk (para 13.47-48 & table 13.1). An appropriate instalments policy was proposed in the document.

7.3 As with other policy decisions the Council must decide whether to introduce an instalments policy and whether or not to change (replace) it or withdraw it. Unlike other policy changes the Council needs to allow 28 days notice if it is to be changed or withdrawn.

7.4 **Recommendation:** that the Council introduce an instalments policy to aid cash flow, viability and deliverability of developments. The Council should consult upon the Instalments Policy presented within the Whole Plan Viability Study.

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