Land of confusion? Making sense of Community Infrastructure Levy

A lack of understanding about the Community Infrastructure Levy (CIL) is costing developers, self–builders and small builders time and money unnecessarily. Alun Oliver, managing director of property tax specialists E3 Consulting, explains how the company's own research has illustrated the importance of acting early

The saying "a stitch in time saves nine" has never been more appropriate when it comes to the Community Infrastructure Levy (CIL).

This much-misunderstood charge was first introduced through the Planning Act 2008 to replace Section 106 agreements in planning permissions in England and Wales – funding vital infrastructure such as roads, parks and GP surgeries.

Now, CIL and S106 obligations run side-by-side in the planning system, potentially knocking developers for six with their infrastructure funding obligations.

Coming into force in April 2010, more than 180 local planning authorities have since adopted CIL.

However, unlike Section 106 agreements, CIL is non-negotiable with applicants facing a formulaic levy depending on the local authority's published CIL Schedule – rates often differing for varying locations and planning use.

Homeowners

The most common development type affected by CIL is residential, but many councils also apply it for other forms of property, including halls of residence, hotels, shops and offices.

It is calculated per square metre of floorspace and applies to new developments exceeding 100 sq m or creating one or more new dwellings.

There are reliefs and exemptions available to homeowners building or extending their main residence, or "granny annexes" – as well as some other relief for charitable, social housing and exceptional circumstances.

Crucially – and this cannot be stressed enough – any exemptions or reliefs are not automatic and need to be gained prior to work starting.

Developers, homeowners and self-builders must be proactive from the very start with CIL or they may rue the day they chose to put off dealing with it.

Unfortunately, the CIL regulations are highly procedural and confusing, which is probably the reason why many do procrastinate and push it down the "to do" list.

It can be an absolute minefield for experienced developers, let alone SME builders or homeowners unfamiliar with planning law.

In many cases, homeowners building an annex or granny flat and even someone building or extending their own home should be exempt from CIL but instead, they end up with large bills landing unexpectedly on the doormat.

Planning appeals

This lack of understanding can then lead to time-consuming and costly appeals. Often, appeals are made as an emotional, knee-jerk response to the perceived unfairness of CIL, as it is seemingly a heavy price to pay for relatively small administrative form-filling errors.

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This response is common, however not useful as retrospective action in CIL is mostly fruitless and time consuming.

E3 Consulting's own independent research has discovered that appeals to the Planning Inspectorate about CIL charges fail in seven out of 10 cases.

The company analysed every Planning Inspectorate (PINS) appeal on the Gov.uk website between January 2020 and April 2021 (last update) and found that the vast majority were upheld in favour of the local authority – with less than a 30% success rate.

Some 38% of cases involved disputes over the start date of works.

Overall, the majority of appeals – 60% – were made on the basis that a breach did not occur (under CIL Regulation 117(1)(a)), yet few had material grounds or evidence to support their case.

Failure at appeal will leave the appellant with a CIL surcharge of up to £2,500 and professional fee costs, as well as the original CIL liability with interest on top – even though they could have been exempt from any charges.

Without expert knowledge it is easy to get lost in the procedural maze of the CIL regulations and miss out on key deadlines and documents.

Acting early, taking appropriate advice and keeping evidence to show that procedures have been complied with are key to CIL exemptions or reliefs – and to give the best chance of success should a case go to appeal.

Due to the highly procedural and complex nature of CIL, acting at an early stage to get the right advice will typically cost a fraction of the cost of a CIL liability – saving money as well as time, energy and stress.

Key advice includes:
Be sure to keep material evidence during a development. Keep proof of postage as evidence for the submission of documents so as not to be caught out if they get lost. Keep photographic evidence to use if there is a dispute over the date works began. CIL is extremely procedural, especially regarding dates. The more evidence to support a developer's claim (including retaining copies of emails and read receipts), the more likely they will be to avoid surcharges further down the line.

It is solely the Charging Authority's (the council's) responsibility to submit a Liability Notice as it acts as a trigger for further documents, including the Commencement Notice for work starting. This means that they should be held responsible for sending documents in a timely manner.

Retrospective planning permission is something to avoid as a Commencement Notice cannot be submitted retrospectively and thus will more often than not trigger an automatic CIL liability.

The developer must be clear on what constitutes material works – demolition counts for works beginning on the chargeable development. There is, however, a difference between preliminary organisation and material works. This could include works such as testing soil and clearing vegetation.

It is not unknown to win at appeal. E3 Consulting has secured successes for clients. The company recently overturned a CIL Liability Notice for £22,089 issued by a local council in Surrey to a farmer owner for her property in 2021.


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It related to planning applications for change of use of an ancillary outbuilding into a new independent property for letting and a separate retrospective permission for repair works to fix storm damage.

A Valuation Office Agency (VOA) surveyor agreed with E3 Consulting's submissions and ruled that no CIL was payable in the case.

Although the client saved more than £22,000 thanks to E3, she counted the cost in time and stress – which could have been avoided had advice been taken earlier and the council been more open to dialogue.

In another win, just before Christmas, Waverley Borough Council accepted E3's representations and withdrew the CIL liability for another development in Surrey – saving the developer £30,000 – without an appeal being required.

The earlier action is taken, the greater chance of success!

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