

## **CIL Payment Policies (Nov 2019)**

### **Introduction**

The CIL regulations (2010) as amended allow charging authorities to take payments via instalments and / or 'in kind'. The regulations also set out a number of discretionary reliefs under certain circumstances, i.e. relief from paying the charge at the discretion of the charging authority. To do so Charging Authorities must set out their policy in respect of each of these items.

1. **Instalments** (Regulation 69B)
2. **Payments in Kind** (Regulation 73 & 74 as amended)
3. **Charities Investment Activities** (Regulation 44) & **Exceptional Circumstances** (Regulation 55)
4. **Discretionary Social Housing Relief** (Regulation 49A)

**These policies came into effect on the 1<sup>st</sup> August 2015 and may be amended from time to time at the discretion of the charging authority subject to the requisite notice period.**

## **1. Instalments Policy**

In accordance with Regulation 70 the Council will accept instalments in accordance with the following policy.

The ability to pay CIL contributions in instalments will be offered in all cases. CIL payments (as cleared funds) will be accepted by instalments as follows:

- **Instalment 1** - 20% of CIL liability payable no later than 60 calendar days after the date on which the development commences.
- **Instalment 2** - 20% of CIL liability payable on the date that is six calendar months after the date on which the development commences
- **Instalment 3** - 30% of CIL liability payable on the date that is one year after the date on which the development commences
- **Instalment 4** - 30% of CIL liability payable on the date that is 18 months after the date on which the development commences

Residential<sup>1</sup> and mixed-use sites or phases (or sub-phases) of development with over 60 dwellings and non-residential development of over 10,000sqm (gross internal):

- **Instalment 1** - 20% of CIL liability payable on the date that is six calendar months after the date on which the development commences
- **Instalment 2** - 20% of CIL liability payable on the date that is one year after the date on which the development commences
- **Instalment 3** - 30% of CIL liability payable on the date that is 18 months after the date on which the development commences
- **Instalment 4** - 30% of CIL liability payable on the date that is two years after the date on which the development commences

Failure to comply with the instalment policy at any stage will result in the total unpaid balance becoming payable immediately. In the case of the grant of full or outline planning permission which permits development to be implemented in phases, each phase or sub phase/tranche of the development is treated as a separate chargeable development. Each phase of development will be subject to the charging schedule applicable at the time of commencement. Phasing should be agreed and conditioned appropriately through the planning application process.

Self Build sites may (via agreement with the Council) treat individual dwelling plots as the chargeable development. (Plots should be subject to an appropriate planning condition). On such sites liability for the CIL charge may be transferred to the individual plot owners. Depending upon the nature of the construction, the Self Build CIL exemption (Regulation 54A) may apply.

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<sup>1</sup> Class C3 of Use Class Order.

Reason

The Council recognises that development often relies on finance to fund construction before returns can be achieved. 'Cash flow' is thus an important factor in development viability. The policy is therefore designed to assist viability of development projects.

## **2. Payments in kind (PiK) Policy**

In accordance with regulation 73, 73A, 73B & 74, the Council will accept Payments in Kind. Payment may be made through land and or infrastructure subject to the follow conditions:

- 1. The PiK cannot be land or infrastructure considered necessary to make the application acceptable in planning terms. Such ‘necessary’ land or infrastructure should be provided through the respective planning application / S106 agreement or Unilateral Undertaking.**
- 2. The PiK must be land and/or infrastructure that would otherwise be delivered by CIL payments, i.e. as identified on the Council’s emerging Infrastructure Funding Statement.**
- 3. The PiK must comprise land and or infrastructure considered necessary to mitigate the impacts of growth as set out in the Local Plan.**
- 4. The PiK must save the Council time and money as compared to receipt of a cash payment and provision of the works by the Council.**
- 5. The offer of land and or infrastructure must be agreed with the Council and secured via a legal agreement, prior to commencement of development. Agreement is by discretion of the Council.**
- 6. Land, subject to transfer, must be free from any third party interest and any encumbrance to the land, buildings or structures.**
- 7. The value of the land and or infrastructure must be agreed by an independent assessor and will generally be broadly equivalent to the CIL liability minus the ‘local’ contribution<sup>2</sup> which must be paid in money. Any unpaid balance must be paid in money.**
- 8. The timescales for delivery of the land and or infrastructure must be agreed in the legal agreement. These will generally accord with the timescales that would otherwise be adhered to through the instalments policy ([link](#)), unless otherwise agreed.**
- 9. Should the PiK not be provided in accordance with the legal agreement the full CIL charge will become immediately liable with any late payment surcharges, unless otherwise agreed.**
- 10. All costs in respect of designing the infrastructure, valuation of land and or infrastructure by an independent assessor, drafting the legal agreement, inspection and transfer of the land and or infrastructure etc, including any reasonable costs incurred by the Council will be borne by the developer, including 5% CIL administration charge. These costs will be taken into account in respect of points 4 & 6 above.**

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<sup>2</sup> 15% (capped at £100 per existing ‘council tax’ property per year) where there is no Neighbourhood Plan in place or 25% of receipts (uncapped) where a locality has a Neighbourhood Plan.

### Reason

The Council recognises that there may be instances where 'in kind' payments may provide developers a more preferable mechanism to meet their liabilities, in particular where a developer may wish to ensure infrastructure from the emerging Infrastructure Funding Statement list is secured in a timely way to benefit the respective development. The Council also recognises that it may also benefit from delivery of land or infrastructure by another party so saving Council time and resources.

The Land and or infrastructure should normally be identified and offered during the pre-planning and or planning application process, so that the views of local ward councillors (in respect of the application site and location of the proposed land and or infrastructure) and appropriate development management committee members can be sought. Subject to the nature and scale of the offer the views of Policy & Resources Lead Members may also be sought. Subject to no reasonable objection from the respective members the offer will be agreed at the discretion of the Director of Environmental & Community Services.

## Discretionary Reliefs

The CIL Regulations (41-58) make a number of provisions, some compulsory, others non-compulsory, for charging authorities to give relief from CIL. 'Community Infrastructure Levy relief means any exemption or reduction in liability to pay the levy.

Detailed information regarding CIL relief is contained in the Department for Community & Local Government's May 2011 'Community Infrastructure Delivery relief information document' which is available on their website at

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/19021101.pdf>

Mandatory Relief from CIL (subject to conditions which apply) applies to:

- Development on land owned by a registered charity, and that is used wholly or mainly for charitable purposes (Regulation 43 of the CIL Regulations 2010), so long as the relief does not constitute state aid.
- Those parts of a development which are to be used as social housing (often called affordable housing), as set out in Regulation 49 of the CIL Regulations 2010 & as amended (2014).

Charging Authorities can choose to offer discretionary relief for:

1. Charities investment activities (Regulation 44), and
2. Exceptional Circumstances (Regulation 55)
3. Discretionary Social Housing Relief (Regulation 49B)

### **3. Charities Investment Activities & Exceptional Circumstances Policy**

**The Council does not currently offer relief for Charities Investment Activities & Exceptional Circumstances<sup>3</sup>.**

#### Reason

In both cases relief can only be granted if it would not constitute state aid. State aid can only be given where relief would not need to be notified to, and approved by the European Commission. The current threshold for notifiable state aid is set at €200,000 over a rolling three fiscal year period. The threshold applies cumulatively to all public assistance received by an organisation from all sources and not to individual schemes or projects.

With respect to Exceptional Circumstances (on viability grounds), within South Gloucestershire, most development is proposed in a number of large new development areas. Consequently, given the low threshold whereby relief would be notifiable (approximately £160,000) it is not considered that such relief would be useful in resolving any potential viability problems with these large sites (see footnote 3 below).

With respect to Charities Investment Activities, CIL charges are only charged on net new development (not the conversion or reuse of buildings) nor are charges or significant charge proposed on community, institutional or business type uses whereby a charity is likely to be the primary investor and occupier of the chargeable development.

The administration of discretionary relief is also complex and it is therefore not clear that it would present any significant practical benefit to developers or charities in South Gloucestershire.

South Gloucestershire Council does **NOT** therefore intend to grant discretionary relief for investment activities by charities or for developers in 'Exceptional Circumstances'.

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<sup>3</sup> The Council will consider Exceptional Circumstances in respect of development required to enable the restoration and or reuse of a registered heritage asset(s).

#### **4. Discretionary Social Housing Relief Policy**

**The Council does not currently propose to offer Discretionary Social Housing Relief.**

##### Reason

Where affordable housing is proposed, in accordance with policies CS18 and 19 of the Core Strategy as a tenure which is in accordance with the definition of affordable housing contained in Annex 2 of the NPPF, but is not defined in the CIL regulation 49, the Council has the option to consider granting Discretionary Social Housing relief from CIL.

Affordable housing as defined in Annex 2 of the NPPF comprises the following types:

1. Social rented housing
2. Affordable rented housing
3. Intermediate housing for sale and rent, which may include:
  - 3.1 Shared ownership
  - 3.2 Equity loans
  - 3.3 Low cost homes for sale (e.g. discounted sale)
  - 3.4 Intermediate rent, but not affordable rented housing.

Mandatory social housing relief under CIL regulation 49 extends to nos 1-3.2 above, subject to the conditions and criteria set out in CIL regulation 49. Discretionary social housing relief may be extended to types 3.3 and 3.4 above.

The categories of affordable housing not eligible for mandatory social housing relief under CIL regulation 49 also include shared ownership housing where the rental element is more than 3% of the unsold equity. This is higher than the maximum accepted by the HCA for grant funding and is thus not generally considered affordable.

Discounted sale and other low cost home ownership options, which are sold for no more than 80% of their market value are not usually managed by a Registered Provider so it can prove difficult to retain such properties as affordable housing for future needs.

Taking into account the difficulties of achieving affordability and retention of affordable housing in the long term, it is not the Council's current preference to encourage these types of affordability tenure. The Council, therefore, does not intend to provide Discretionary Social Housing Relief.