



**Monmouthshire County Council**

**Community Infrastructure Levy (CIL)**

**Guidance Note**

**DRAFT**

**Development Plans Service**

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# Community Infrastructure Levy (CIL) Guidance Note

## 1 INTRODUCTION

- 1.1 The purpose of this document is to provide an overview of the Community Infrastructure Levy (CIL) – a planning charge that came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010 (as amended). CIL is not a devolved issue to Wales and responsibility for the introduction and development of the CIL process rests with the UK Government. This document sets out the key features of the levy, its purpose and how it will function in practice. In addition to this guidance note, the Council has prepared a Preliminary Draft Charging Schedule which sets out the proposed CIL for Monmouthshire.

### **What is the Community Infrastructure Levy (CIL)?**

- 1.2 The Community Infrastructure Levy is a new charge which local authorities in England and Wales can charge on most types of development in their area. It applies to most new buildings with 100 square metres or more of gross internal floorspace and to new dwellings of any size. The CIL Regulations 2010 (as amended) allow charging authorities to set differential rates by the type, size and location of development. The revenue generated from CIL is used to fund infrastructure that is required to support future development in an authority's area. CIL cannot be expected to pay for all of the infrastructure required but it is expected to make a significant contribution. Once introduced the CIL is mandatory and will be charged against all new development that meets the qualifying criteria (see 1.4 below).

### **Why seek to introduce CIL?**

- 1.3 It is anticipated the levy will offer a number of benefits which include:
- Delivering funding for local authorities to provide a range of physical, social and green infrastructure that supports growth and benefits local communities.
  - Providing developers with more certainty 'up front' in respect of development costs to which they will be expected to contribute, which in turn should encourage greater confidence.
  - Ensuring greater transparency in terms of how development contributes to local communities. The levy is beneficial to local communities as communities are able to receive a proportion of the CIL revenue generated in their area to fund local infrastructure.

### **What Types of Development will be charged CIL?**

- 1.4 The following development types are eligible to be charged CIL:
- All new build residential dwellings.
  - New non-residential buildings with a gross internal floorspace of over 100 square metres.
  - New build extensions to existing buildings over 100 square metres.

- 1.5 The levy will apply to all such development regardless of the type of planning consent used to grant permission. CIL will be charged in pounds per square metre on the net additional increase in floorspace.

### **Is any Development Exempt from Paying CIL?**

- 1.6 The CIL Regulations 2010 (as amended) provide for certain types of development to be exempt or eligible for relief from CIL, as set out below.

#### **Development Exempt from CIL:**

- Development with gross internal area of less than 100 sq. m (unless a house).
- Dwellings, residential annexes and residential extensions which are built by 'self-builders'.
- Vacant buildings brought back into the same use.
- Structures which are not buildings (e.g. wind turbines).
- Buildings into which people do not normally go.
- Buildings into which people only go intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

#### **Development Entitled to Mandatory Relief from CIL:**

- Development used for charitable purposes i.e. development by registered charities for the delivery of their charitable purposes, as set out in the CIL Regulations 2010 (as amended).
- Social Housing i.e. those parts of a development which are to be used as social housing, as set out in the CIL Regulations (as amended).

- 1.7 The regulations allow authorities to offer CIL relief in exceptional circumstances where the specific scheme cannot afford to pay the levy, although there are conditions associated with this. The majority of development will not be eligible for exceptional circumstances relief and the fact that a development might be unviable at the time a planning application is submitted is unlikely to constitute an 'exceptional circumstance' in relation to the regulations.
- 1.8 The Council's position on CIL relief and exceptional circumstances in Monmouthshire will be further detailed as the CIL is taken forward.

## **2 CIL RATES**

### **Setting the CIL Rate**

- 2.1 In order to charge CIL, charging authorities (i.e. local authorities in Wales) are required to produce a charging schedule that sets out the rates to be applied to their area which must be based on sound viability evidence. Authorities are able to charge different rates depending on the type, scale and location of development providing this can be justified by an assessment of impact on development viability. Importantly, different rates can only be set on the basis of economic viability – not to support other objectives.
- 2.2 The CIL Regulations 2010 (as amended) require charging authorities to strike an appropriate balance between the desirability of funding infrastructure from

the levy and the potential impact of the levy on the economic viability of development across the area. It is important that CIL rates are not set at the upper limit of viability in order to deal with fluctuations in economic cycles. Charging authorities should be able to demonstrate how their proposed CIL rate will contribute towards the implementation of their local development plans and support development across their area.

### **What will the CIL Rates be in Monmouthshire?**

- 2.3 The Council's Preliminary Draft Charging Schedule sets out the proposed CIL charges for Monmouthshire. This has been informed by a comprehensive viability assessment which provides detailed evidence on development viability across a range of sites and uses in the County<sup>1</sup>. On the basis of this evidence and in accordance with the regulations, the Council has sought to set its CIL rates within the levels of what could be charged by allowing a 30% buffer in order to ensure that the rates do not put the overall viability of development at risk.

## **3 COLLECTING CIL**

### **How will CIL be Collected?**

- 3.1 CIL will be collected by the 'collecting authority' (i.e. local authorities in Wales). The collecting authority calculates individual payments and is responsible for ensuring that payment is made.

### **How will CIL be calculated?**

- 3.2 The rate will be based on the area of development liable and the level of charge identified for the use proposed in the location of the development. The chargeable rate will be index linked.
- 3.3 The chargeable amount will be calculated at the time planning permission first permits the chargeable development in accordance with the formula set out below:

$$\frac{R \times A \times Ip}{Ic}$$

R = the CIL rate set out in tables 1 and 2  
A = the deemed net area chargeable at rate R  
Ip = the index<sup>2</sup> figure for the year in which  
planning permission was granted  
Ic = the index figure for the year in which the  
charging schedule took effect

<sup>1</sup> MCC CIL Viability Assessment – Viability Evidence for Development of a CIL Charging Schedule (Three Dragons with Peter Brett Associates, July 2014)

<sup>2</sup> The index is the national All-in Tender Price Index of construction costs published by the Building Cost Information Service of the RICS and the figure is for 1<sup>st</sup> November of the preceding year

- 3.4 CIL will be charged on the net additional gross internal floor area of a development. Where buildings are demolished, the total demolished floorspace will be off-set against the floorspace of the new buildings, providing the buildings were in lawful use for a continuous period of 6 months within the past three years<sup>3</sup>. Where the chargeable amount is less than £50 it is deemed to be zero.
- 3.5 In instances where there is more than one use class in a development, the chargeable development in each use class is calculated separately and then added together to provide the total chargeable amount.
- 3.6 Where an outline planning permission allows development to be implemented in phases, each phase of the development is a separate chargeable development. In the case of outline planning applications where the floorspace is not specified the amount will be calculated at the submission of reserved matters.

#### **Who will be Liable for Paying CIL?**

- 3.7 The responsibility to pay CIL runs with the ownership of the land (although anyone involved in a development may assume the liability for CIL) and is transferred when ownership is transferred. The person liable for CIL must submit a commencement notice to the authority prior to commencement of development. The authority will then serve a demand notice on the liable party in respect of the chargeable development.
- 3.8 Where a development has a party who has assumed liability, the development will be entitled to a payment window and possibly payment through instalments provided other CIL procedures are followed. Where no-one assumes liability to pay CIL, the liability will automatically default to the landowner and payment becomes due as soon as development commences.

#### **When will CIL be Paid?**

- 3.9 CIL payments are due from the date that a chargeable development is commenced. When planning permission is granted the authority will issue a liability notice which sets out the amount that will be due for payment, the payment procedure and the possible consequences of failure to comply with the requirements.
- 3.10 Where planning permission is granted retrospectively for development that has already been carried out, the commencement date for the purposes of CIL will be day on which planning permission is granted.
- 3.11 Payments can be made in instalments subject to the authority publishing an instalments policy. The Council's position on operating an instalment policy in Monmouthshire will be further detailed as the CIL is taken forward.

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<sup>3</sup> Regulation 40 (as amended by the 2014 Regulations) provides detail on how this should be taken into account

## **Can CIL be Paid ‘in kind’?**

- 3.12 The CIL Regulations 2010 (as amended) recognise that there may be circumstances where the authority and person liable for CIL may wish land and /or infrastructure to be provided instead of money to satisfy a charge. Accordingly, subject to relevant conditions an authority may enter into an agreement to receive land / infrastructure as payment.

## **4 SPENDING CIL**

### **What can CIL money be spent on?**

- 4.1 CIL is intended to fund 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 the new development. It can also be used to increase the capacity of existing infrastructure or to repair failing infrastructure if that is necessary to support development.

- 4.2 The levy can be used to fund a wide range of infrastructure including:

- Transport
- Education
- Flood defences
- Parks and green spaces
- Cultural and sports facilities

It is for the authority to determine what infrastructure will be funded through CIL and to prioritise infrastructure delivery. Of note, CIL cannot be used to fund affordable housing – this will continue to be provided through planning obligations.

- 4.3 The Government wish to ensure that communities that experience new development directly share the benefits. The regulations therefore require authorities to allocate 15% of CIL receipts to spend on infrastructure priorities that should be agreed with the local community in areas where development is taking place i.e. passed to community councils in Wales. In areas without community councils the authority will retain CIL receipts but must engage with the communities where development has taken place and agree with them how best to spend the levy.

- 4.4 Authorities are able to spend CIL on infrastructure projects outside of their area and may also pool contributions to provide infrastructure that would facilitate development in their areas.

### **Regulation 123 List**

- 4.5 Regulation 123 of the Community Infrastructure Levy provides for authorities to publish a list of infrastructure that will be eligible to be funded, wholly or partly, by CIL – i.e. the Regulation 123 List. The infrastructure included in the list should draw heavily from the infrastructure requirements set out in local

development plans and can include generic and/or more project specific types of infrastructure.

- 4.6 CIL Regulation 123 restricts the use of planning obligations (S106 agreements) for infrastructure that will be funded in whole or part by CIL in order to ensure that there is no double charging towards the same item of infrastructure. This means that a S106 contribution cannot be made towards an infrastructure item included in a Regulation 123 list. This will make certain that individual developments cannot be charged for the same infrastructure items through both planning obligations and CIL.
- 4.7 Regulation 123 Lists should also set out those known site-specific matters where S106 contributions are likely to be the funding mechanism in order to provide transparency on what authorities intend to fund through CIL and those matters where S106 contributions will continue to be sought.

## 5 CIL AND PLANNING OBLIGATIONS

### What is the relationship between CIL and Planning Obligations?

- 5.1 CIL will be used as the mechanism for pooling contributions from a variety of new developments to fund the provision of new infrastructure to support development in an area. CIL offers greater flexibility than planning obligations in terms of how the levy can be used. CIL can be used to fund a wide range of infrastructure that supports the development of the area with no requirement for there to be a direct geographical or functional relationship between the development site and where infrastructure is provided. The levy secured in one part of an authority's area can be used to support delivery of infrastructure in another.
- 5.2 In order to ensure that planning obligations and CIL are able to operate in a complementary way the CIL Regulations scale-back the way planning obligations operate. Limitations are placed on the use of planning obligations in three respects:
- Putting the policy tests on the use of planning obligations (set out in Wales in Circular 13/97, Planning Obligations) on a statutory basis for developments which are capable of being charged CIL;
  - Ensuring the local use of CIL and planning obligations do not overlap;
  - Limiting pooled contributions from planning obligations towards infrastructure which may be funded by CIL.
- 5.3 The CIL Regulations have made the policy tests on the use of planning obligations statutory – this is intended to clarify the purpose of planning obligations in light of CIL. From 6 April 2010 CIL Regulation 122 has made it unlawful for a planning obligation to be taken into account when determining a planning application for a development that is capable of being charged the levy, whether there is a levy in place or not, if the obligation does not meet all of the following tests:
- Necessary to make the development acceptable in planning terms;

- Directly related to the development; and
  - Fairly and reasonably related in scale and kind to the development.
- 5.4 Furthermore, after April 6 2015, or upon implementation of a CIL Charging Schedule (whichever is the earliest), all infrastructure not included in a Regulation 123 List cannot be funded through CIL contributions and may only be funded through S106 agreements which will be subject to rigorous application of the three statutory tests (as noted above).
- 5.5 Accordingly, planning obligations will continue to be secured albeit in a more restricted way. They will continue to play a role in the following areas:
- Affordable housing.
  - Site-specific mitigation (on-site infrastructure is often required to make the development of a site acceptable e.g. access roads, play space provision).
  - Restricting the use of land / buildings (e.g. clauses relating to tourism related occupancy).
- 5.6 It will not be possible to charge twice for the same item of infrastructure through both planning obligations and CIL. As detailed above, Regulation 123 lists set out what infrastructure will be eligible to be funded through CIL. Infrastructure included in these lists will no longer be eligible to be funded through planning obligations. This will ensure that the combined impact of contribution requests does not threaten the viability of sites / scale of development set out in local development plans.

## 6 STAGES IN THE PREPARATION OF CIL

- 6.1 The preparation of the CIL involves a number of stages as set out below:
- **Development of Evidence Base** – this will inform the subsequent stages of the CIL process and should include the following:
    - Identifying the range and scale of infrastructure that is required to deliver the development set out in the local development plan;
    - Establishing that there is a funding gap between the cost of, and the money available to deliver this infrastructure;
    - Establishing the type, scale and location of development and the rate at which CIL can be set in order to fund the necessary infrastructure without compromising the viability of development across the area.
  - **Preliminary Draft Charging Schedule** – authorities are required to prepare and consult on this document which, based on the viability evidence, sets out the proposed CIL rates by the type, scale and location of development in an area.
  - **Draft Charging Schedule** – following consideration of the comments made on the preliminary draft, authorities are required to publish and consult on the Draft Charging Schedule and amend as appropriate.
  - **Examination** – authorities are then required to submit the Draft Charging Schedule together with the evidence base and representations received for independent examination. The examiner will consider whether the

charging schedule meets the requirements of the CIL Regulations and Planning Act, is supported by appropriate evidence and whether the rates would threaten economic viability across the area as a whole.

- **Adoption and Implementation** – the examiner will issue a report to the authority and, subject to this, the charging schedule can be adopted and the CIL implemented.

## 7 MONITORING

### How will CIL be Monitored?

7.1 The rates at which CIL is charged must be monitored as changes in market conditions and construction costs can impact on development viability. Authorities are required to publish an annual report on CIL for the previous financial year (by 31 December each year) which sets out:

- How much CIL monies have been collected;
- How much of that money has been spent;
- Information on how CIL monies have been spent (including specific infrastructure projects and how much has been used to cover administrative costs); and
- The amount of CIL retained at the end of the reporting period.

The Council intend to formally review the Charging Schedule within 5 years of adoption. If, however, economic or development delivery conditions change significantly in the intervening period an earlier review may be necessary. The Regulation 123 List can be reviewed separately from the Charging Schedule. Accordingly, the Council will seek to review the Regulation 123 list on a regular basis as part of monitoring CIL. Any such review would be subject to appropriate consultation in accordance with the CIL Regulations (as amended).