Ministry of Housing, Communities & Local Government

Matthew Pennycook MP
Minister of State for Housing and Planning

Ministry of Housing, Communities & Local Government
2 Marsham Street
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To: Leaders of CIL charging authorities in England
Cc: Chief Executives of CIL charging authorities in England

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Dear Leader,

Community Infrastructure Levy – Household Developer Exemptions

The Community Infrastructure Levy (CIL) was introduced through regulations in 2010, enabling local planning authorities to secure funding which supports development by the delivery of community infrastructure – such as schools, green spaces and health facilities – needed to mitigate the cumulative impacts of development across the local authority's area. The Government remains committed to strengthening and improving the CIL regime, with over half of local planning authorities now charging CIL.

CIL is a set charge on most new development of 100 square metres or more, as well as on new dwellings of any size. It applies only in areas where a local authority has consulted on and approved a charging schedule setting out its levy rates, and has published that schedule on its website. The regulations prescribe clear procedures that must be followed in setting, charging and collecting CIL. Taken together, this provides certainty for local authorities, developers and communities about which development is liable for CIL, how much is due, and when payment is required.

Household Developer Exemptions

The CIL Regulations were amended in 2014 under previous governments to introduce exemptions for individuals who build their own homes, undertake large extensions to their existing homes, or construct residential annexes within the grounds of their own homes. To secure these exemptions, the regulations made at the time were clear that applicants must apply to the CIL charging authority and receive confirmation that the exemption has been granted before development commences. This requirement is intended to ensure that developers have clarity about their CIL liability – or any exemption that applies – prior to the start of the build. This is because CIL is payable on commencement.

While the CIL Regulations provide clarity on the criteria that must be met and procedures that must be followed to secure relief or an exemption, the Government is aware of some historic cases where householders have failed to obtain an exemption due to procedural errors, which may have been inadvertent or unintentional. In some instances, despite meeting the qualifying criteria, householders may not have followed the procedures set out in the regulations, and may not have applied for or received a CIL exemption before commencing development. In others, an exemption may not have been obtained because retrospective planning permission was granted

after further works had already begun on a development that had previously benefitted from an exemption or was otherwise not liable for CIL. The Government recognises that this has, in some cases, resulted in the imposition of significant CIL charges under the regulations.

Given the relevant regulations and procedures have been in place for over a decade under successive governments, there will naturally be a huge variance as to the reasons why procedural errors may have occurred. In some cases, individuals may not have been aware of their CIL liability until works had already commenced. The Government is aware that, beyond the requirement to publish a charging schedule, local authorities may have also taken different approaches to communicating how CIL operates in their area. In other cases, individuals may not have understood that procedural errors could result in the loss of eligibility for an exemption, or that such exemptions could not be secured for retrospective permission. There will also be significant variance between the types of householder developers themselves – some with higher levels of personal resources and access to professional advice, and others less familiar with regulatory and procedural requirements in the planning system. As a result, the circumstances and facts of each case will differ.

Within this context, the current Government is now proceeding to take action on two fronts. First, we are proposing to consult on amendments to be made to the CIL Regulations to ensure that these issues do not arise again in the future – recognising the need to improve the operation of the CIL regime going forwards.

Secondly, in recognition of the significant variance in the facts and circumstances of individual cases that will have occurred across many charging authorities since 2014, we are providing some clarity to local authorities over their existing discretion to take action as they see appropriate in specific cases.

Consultation on CIL Regulation Reforms

The Government is proposing to consult on a proposed package of targeted regulatory changes to make the operation of CIL clearer and more proportionate for householders and self-builders.

We are confident that these proposed changes will ensure that householders and self-builders who would otherwise be eligible for a CIL exemption are not faced with unexpected liability charges as a result of procedural errors in future.

We are working to publish the consultation as soon as possible. We will, of course, welcome views from the sector, particularly Local Planning Authorities and other interested parties to ensure we get these proposals right.

Historic Cases

Given the new regulations will only apply once they come into force, the Government recognises that local authorities may continue to receive concerns from those who will not be able to benefit from the changes – either because they have already received a CIL charge, or because they commenced development before the regulations are effective. There are some options available to local authorities in such circumstances.

First, we strongly recommend all authorities to review their local CIL guidance and communication methods to ensure any household developers in their area are aware of the current exemptions and the necessary procedures to access them.

Second, while charging authorities have a duty to collect CIL that is due, they continue to have a degree of discretion over the steps they take to do so and when. This includes considering what is reasonable and proportionate in any given case and the appropriate timescales for enforcement activity. It has been brought to the Government's attention that escalated enforcement actions, including threats of forced sale or criminal proceedings, have led to serious consequences for some individuals and families. Such action, or similar, is not required by the regulations without regard to local authorities' broader legal obligations – and the precise approach to CIL collection in any individual case will depend on the specific facts and circumstances. Exactly what enforcement steps to take, and when, to collect CIL in each case is a matter for the judgement of the authority concerned.

Third – where an authority feels this is justified – collecting authorities are able to make ex gratia payments of compensation from their general funds in exceptional CIL cases where payment has been made. Such payments would not constitute a waiver or refund of CIL, but rather a discretionary payment made from general funds, outside the CIL regime. These circumstances may arise where a charging authority considers that redress is appropriate because a householder developer would have been entitled to an exemption but, as a result of an administrative error, failed to claim it in accordance with the required procedure and now faces significant hardship as a consequence. There will be a range of considerations for local authorities in making such a decision, and in all cases, they should seek their own legal advice based on the facts and circumstances of individual cases.

Best wishes,



MATTHEW PENNYCOOK MP
Minister of State for Housing and Planning