Community Infrastructure Levy – Frequently Asked Questions

What is CIL?
The Community Infrastructure Levy (CIL) allows local authorities to raise funds from developers to pay for the infrastructure that is needed as a result of development.

How does CIL work?
CIL takes the form of a tariff per square metre \((m^2)\) of additional floorspace (gross internal floor area). The level of the tariff is set by the local authority based on the need for infrastructure identified through infrastructure planning, but it is also tested to ensure that it will not affect the viability of developments. The local levy rate(s) will be set out in a CIL Charging Schedule. Charges are index linked. Payments are collected into a fund to pay for infrastructure. CIL will be spent by the Council on infrastructure to support development in Cornwall.

What is infrastructure?
The Planning Act 2008 provides a broad definition of infrastructure and states that it can include:

- Roads and other transport facilities
- Flood defences
- Schools and other educational facilities
- Medical facilities
- Sport and recreational facilities
- Open spaces

The detailed Infrastructure Needs Assessment schedules that were produced by the Council (updated in 2016) set out the infrastructure that is needed to support development over the twenty year period 2010 to 2030.

Why should development contribute towards infrastructure?
Most developments have an impact on infrastructure due to their need to use it. Gaining planning permission will generally increase the value of land, and developer contributions allow some of this financial gain to benefit the community by being used towards providing new or improved infrastructure. This results in reducing any adverse impact that the new development may have on the existing infrastructure.

Why adopt CIL?
Once adopted the CIL will:

- provide flexibility and freedom to set priorities for infrastructure funding
- give a predictable funding stream that allows the Council to plan ahead more effectively
- provide developers with certainty ‘up front’ about how much money they are expected to contribute towards infrastructure
- ensure greater transparency about how much money is collected and how it is spent
enable a share of the levy to go towards local communities that receive development

Moreover, since April 2015, CIL provides the only means of pooling contributions, as it is no longer possible to pool more than five Section 106 agreements to pay for a single infrastructure project.

**How are the CIL rates arrived at?**
The CIL rates are determined by:

- the level and cost of infrastructure needed to support planned growth in Cornwall
- the gap between the cost of infrastructure and amount expected to be raised from other sources of funding
- the impact of the charge on the economic viability of the area

The anticipated infrastructure needs, costs and known funding streams are set out in the Council’s Infrastructure Needs Assessment. The impact on economic viability of the area has been assessed in Strategic Viability Assessments. These assessments establish development viability for all types of development across Cornwall, and assess the level of CIL different types of development in different parts of Cornwall could bear. Development viability is the only real driver for the height of the CIL charges; CIL regulations do not allow the CIL charges to be politically influenced to direct development to, or away from, particular areas.

**What developments will be liable to pay CIL?**
Development will be liable to pay CIL if:

- it is a building which people go into to use, and
- the gross internal area of new build will be more than 100m² (this includes extensions to existing buildings), or
- one or more new dwellings is created even where the new build floorspace is less than 100m²

Development will not be liable to pay CIL if it:

- is a structure or building into which people do not usually go, e.g., wind turbines
- is a change of use with no additional floorspace (if no new dwellings are created)
- is a change of use from a single dwelling house to two or more separate dwellings
- is social housing
- will be used for charitable purposes
- is a self-build

**Will CIL money be spent where it is collected?**
The CIL regulations do not require a direct link between where the money is raised and where the money is spent on infrastructure schemes. The CIL regulations leave it to individual authorities to decide how to redistribute CIL income. However, the CIL regulations stipulate that a proportion of the levy
should be passed to the local communities in which the development takes place – see Proportion of CIL for local communities.

**What will CIL be spent on?**

At this stage there is no decision on what infrastructure projects the CIL will be spent on. The Council will consider this based on local and strategic priorities, the Infrastructure Needs Assessment and the gap in funding for infrastructure in Cornwall. CIL may be spent on strategic infrastructure or local infrastructure, or a combination of the two. Once an appropriate approach has been determined, the Council will publish a ‘Regulation 123 list’ which will distinguish what CIL may be spent on against what S106 contributions will be sought for – also see ‘What will happen to Section 106?’.  

**Proportion of CIL for local communities**

In accordance with the CIL regulations, a proportion of the CIL income will be passed to the community where the CIL is raised. The Parish or Town Council will receive 15% of the CIL income raised in the parish (capped at £100 per dwelling). Communities that have an adopted Neighbourhood Plan will receive a higher rate of 25% of the CIL income that is raised in their plan area (and is uncapped).

As well as the amount of development in an area, CIL income also depends on the actual CIL charge in the area. The charge will be higher in some areas than in others as rates are set based on development viability, and this varies considerably across Cornwall. The CIL rates across Cornwall have not yet been set.

**When will a CIL be adopted in Cornwall?**

See the ‘Where we are now’ section of the CIL webpage – www.cornwall.gov.uk/cil.

**What will happen to Section 106?**

CIL will be the main source of developer contributions towards infrastructure beyond the immediate needs of the development site. However, the CIL regime does not replace S106 completely. Affordable housing provision or contributions lie outside the remit of CIL and will continue to be secured through S106. S106 will also continue to be used for local infrastructure requirements on development sites, such as local access or connection to services. Some of these requirements may be physically off site, but will be secured under S106 where they are clearly linked to the development site and are needed to make that particular site acceptable.

Many larger developments will be liable to pay both CIL and enter into a S106 agreement. The CIL payment and S106 obligations will cover different things, and developments will not be charged for the same items of infrastructure through both obligations and the levy. The Council will publish a list of infrastructure types and projects that it intends will be, or may be, wholly or partly funded by CIL (the ‘Regulation 123 list’).

**Will a development be liable to pay CIL if planning permission is granted before a CIL Charging Schedule comes in effect but the development commences after CIL comes into effect?**
No. If planning permission has been granted before CIL comes into effect, CIL will not be chargeable on implementation of that planning permission.

**If an application is submitted before but not determined before CIL is introduced, will CIL be payable?**
Yes. Once CIL commences, it will apply to all eligible development where planning decisions have not yet been made, regardless of any prior Section 106 negotiations. This will also apply to developments that have been granted subject to the satisfactory completion of S106 agreements and developments at the appeal stage. This is because the CIL regulations (Regulation 123) prevent S106 being entered into for infrastructure that will be funded by CIL.

**Does CIL apply to applications to amend existing permissions, resubmission and applications to extend the time of existing unimplemented permissions?**
Yes, if the proposal involves a net gain of 100m$^2$ of floorspace, or one or more dwelling units, and the new applications are lodged after CIL comes into effect, then the resultant developments will be liable to pay CIL.

**If a site was cleared before planning permission for redevelopment was granted, will the previous floorspace be taken into account in calculating the CIL charge?**
No. The floorspace will only be taken into account if the existing building is still standing on the day that planning permission is granted, and:

- in the twelve months preceding the grant of planning permission, at least part of the building was in lawful use for a continuous six month period, and
- the existing building is demolished before completion of the development

**What is meant by Exceptional Circumstances?**
The CIL regulations allow for additional relief from CIL in exceptional circumstances, but this is not compulsory. To do so, the Local Planning Authority must first publish its intention for exception circumstances and all of the following conditions must apply:

- a Section 106 must exist on the planning permission for the development
- the Council must agree that the cost of complying with the Section 106 agreement exceeds the CIL charge
- paying the CIL charge would have an unacceptable impact on the development’s economic viability

Any relief given must not constitute a notifiable state aid.

**Do self-build developments have to pay CIL?**
No. This exemption will apply to anybody who is building their own home or has commissioned a home from a contractor, house builder or sub-contractor. However, individuals claiming the exemption must own the property and occupy it as their principal residence for a minimum of three years after the work is completed. Community group self-build projects are also exempt where they meet the necessary criteria.
**Do residential extensions or annexes have to pay CIL?**

People who extend their own homes or erect residential annexes within the grounds of their own homes are exempt from the levy, provided that:

- the main dwelling must be the self-builder’s principal residence (and they must have a freehold, or leasehold of at least seven years beyond the date which planning permission for the development was granted), **and**
- the annex is built within the curtilage of the principal residence and comprises one new dwelling, **or**
- the extension is an enlargement of the principal residence and does not comprise an additional dwelling

There is no requirement for the occupier of the annex to be related to the owner of the main dwelling, or to commit to staying there for a specified period (unlike the self-build new development). Residential extensions of less than 100m² are already exempt from CIL under the minor development exemption.