Planning Obligations Appendix B

Department for Communities and Local Government – Community Infrastructure Levy Guidance

Introduction

Guidance on the Community Infrastructure Levy was added to this website on 12 June 2014. This replaced the standalone guidance that was published in February 2014. Read more about the changes to the guidance.

Paragraph: 001 Reference ID: 25-001-20140612

What is the Community Infrastructure Levy, and who has to pay it

The Community Infrastructure Levy (the levy) is a tool for local authorities in England and Wales to help deliver infrastructure to support the development of the area.

Revision date: 12 06 2014

Paragraph: 002 Reference ID: 25-002-20140612

What kind of development is liable for the levy?

The levy may be payable on development which creates net additional floor space, where the gross internal area of new build exceeds 100 square metres (the 'Rates' section explains how this is calculated). That limit does not apply to new houses or flats, and a charge can be levied on a single house or flat of any size, unless it is built by a 'self builder' (see 'Self Build Exemption' and Regulation 54A and 54B).

Revision date: 12 06 2014

Paragraph: 003 Reference ID: 25-003-20140612

What kind of development does not pay the levy?

The following do not pay the levy:

- development of less than 100 square metres (see Regulation 42 on Minor Development Exemptions) – unless this is a whole house, in which case the levy is payable

- houses, flats, residential annexes and residential extensions which are built by ‘self builders’ (see Regulations 42A, 42B, 54A and 54B, inserted by the 2014 Regulations)
- social housing that meets the relief criteria set out in Regulation 49 or 49A (as amended by the 2014 Regulations)
- charitable development that meets the relief criteria set out in Regulations 43 to 48
- buildings into which people do not normally go (see Regulation 6(2))
- buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery (see Regulation 6(2))
- structures which are not buildings, such as pylons and wind turbines
- specified types of development which local authorities have decided should be subject to a ‘zero’ rate and specified as such in their charging schedules
- vacant buildings brought back into the same use (see Regulation 40 as amended by the 2014 Regulations)

Where the levy liability is calculated to be less than £50, the chargeable amount is deemed to be zero so no levy is due.

Mezzanine floors of less than 200 square metres, inserted into an existing building, are not liable for the levy unless they form part of a wider planning permission that seeks to provide other works as well.

Revision date: 12 06 2014 See revisions

Paragraph: 004 Reference ID: 25-004-20140612

Who can charge and collect the levy?

In England, levy charging authorities are district and metropolitan district councils, London borough councils, unitary authorities, national park authorities, The Broads Authority, Mayoral Development Corporations and the Mayor of London. In Wales, the county and county borough councils and the national park authorities have the power to charge the levy. These bodies all prepare relevant Plans (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London) for their areas, which include assessments of the infrastructure needs for which the levy may be collected.

The levy is collected by the ‘collecting authority’ (as defined by Regulation 10). In most cases this is the charging authority but, in London, the boroughs collect the

levy on behalf of the Mayor. County councils collect the levy charged by district councils on developments for which the county gives consent. The Homes and Communities Agency, urban development corporations and enterprise zone authorities can also be collecting authorities for development, with the agreement of the relevant charging authority, where they grant permission.

Revision date: 12 06 2014

Paragraph: 005 Reference ID: 25-005-20140612

Who is liable to pay?

Landowners are ultimately liable for the levy, but anyone involved in a development may take on the liability to pay. In order to benefit from payment windows and instalments, someone must assume liability in this way. Where no one has assumed liability to pay the levy, the liability will automatically default to the landowners and payment becomes due as soon as development commences (see Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development'). Liability to pay the levy can also default to the landowners where the collecting authority has been unable to recover the levy from the party that assumed liability for the levy, despite making all reasonable efforts.

For further information see 'How does someone assume liability for the levy?'.

Revision date: 12 06 2014

Paragraph: 006 Reference ID: 25-006-20140612

How does the levy relate to planning permission?

The levy is charged on new development. Normally, this requires planning permission from the local planning authority, the Planning Inspectorate, or the Secretary of State on appeal.

Planning permission can also be granted through local planning orders. Examples are simplified planning zones and local development orders (see related National Planning Policy Guidance on Local Development Orders). Development can also be granted consent by Neighbourhood Development Orders (see related guidance here), including Community Right to Build Orders. Some Acts of Parliament, such as the Crossrail Act 2008, also grant planning permission for new buildings.

The levy applies to all these types of planning consent.

The levy may also be payable on permitted development (see related guidance on the General Permitted Development Order here).

Development which is the subject of a Lawful Development Certificate may be liable for the levy, depending on the circumstances. A lawful development certificate (granted under section 191 or 192 of the Town and Country Planning Act 1990) is often sought to confirm permitted development rights. It does not by itself trigger a levy payment because it is not a planning permission as defined in Regulation 5. It simply confirms that no further application for planning permission is needed for the development described in the certificate. So where a certificate is sought to confirm permitted development rights, the normal levy provisions in respect of permitted development rights apply, and the grant of such a certificate is not relevant to whether or not, or when, the levy may be payable.

Where a planning permission is phased, each phase of the development is treated as if it were a separate chargeable development for levy purposes (see Regulation 8(3A) as amended by 2014 Regulations). This may apply to schemes which have full planning permission as well as to outline permissions. For further details, see 'When does a charging schedule come into effect?' and 'Is there another way to allow phased payments'.

Revision date: 12 06 2014

Paragraph: 007 Reference ID: 25-007-20140612

What is the impact of a section 73 application to amend a planning condition?

Developers can amend a condition attached to a planning consent, under section 73 of the Town and Country Planning Act 1990.

If the section 73 permission does not change the liability to the levy, only the original consent will be liable.

If the section 73 permission does change the levy liability, the most recently commenced scheme is liable for the levy. In these circumstances, levy payments made in relation to the previous planning permission are offset against the new liability, and a refund is payable if the previous payment was greater than the new liability.

There may be transitional cases, where the original planning permission was granted before a levy charge came into force in the area, and a section 73 permission is granted after the charge comes into force. In these circumstances, regulation 128A (as amended by the 2014 Regulations) provides for the section 73 consent to only trigger levy liability for any additional liability it introduces to the development. The Government's intention is that the provisions set out in regulation 128A should apply to all subsequent section 73 permissions granted in respect of such a development where these transitional circumstances have arisen.

Revision date: 12 06 2014