

# GUIDANCE NOTE 3

## Community Infrastructure Levy

### Social Housing Relief

#### Introduction

The Council resolved to adopt and implement the Community Infrastructure Levy Charging Schedule on 24 February 2014. The report and associated supporting documents can be seen at

<http://www.south-norfolk.gov.uk/democracy/default.aspx?id=13835.xml>. From 1 May 2014, South Norfolk Council implemented the Community Infrastructure Levy (CIL). CIL will apply to any planning decision that qualify from and including that date.

Development that incorporates social housing is entitled to mandatory relief from CIL on the social housing element of the development.

#### Definition of Social Housing

Regulation 49 states; social housing relief applies where at least one of the following four conditions is met:

##### Condition 1

The dwelling is let by a local housing authority on one of the following:

- a) A demoted tenancy;
- b) An introductory tenancy;
- c) A secure tenancy;
- d) An arrangement that would be a secure tenancy but for paragraph 4ZA or 12 of Schedule 1 to the Housing Act 1985 (a).

Condition 2 is that all the following criteria are met:

- a) The dwelling is occupied in accordance with shared ownership arrangements within the meaning of section 70(4) of the Housing and Regeneration Act 2008(b);
- b) The percentage of the value of the dwelling paid as a premium on the day on which a lease is granted under the shared ownership arrangement does not exceed 75 per cent of the market value (where the market value at any time is the price which the dwelling might reasonably be expected to fetch if sold at that time on the open market);
- c) On the day on which a lease is granted under the shared ownership arrangements, the annual rent payable is not more than three per cent of the value of the unsold interest; and
- d) In any given year the annual rent payable does not increase by more than the percentage increase in the retail price index for the year to September immediately preceding the anniversary of the day on which the lease was granted plus 0.5 per cent.

Condition 3 is that:

- a) The dwelling is let by a private registered provider of social housing on one of the following:
  - i) An assured tenancy (including an assured shorthold tenancy);
  - ii) An assured agricultural occupancy;
  - iii) An arrangement that would be an assured tenancy or an assured agricultural occupancy but for paragraph 12(1)(h) or 12ZA of Schedule 1 to the Housing Act 1988(c);

- iv) A demoted tenancy; and
- b) One of the criteria described below is met

The criteria:

- a) The rent is-
  - i) Subject to the national rent regime, and
  - ii) Regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008;
- b) The rent is-
  - i) Not subject to the national rent regime;
  - ii) Not regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008; and
  - iii) No more than 80 per cent of market rent;
- c) The rent is-
  - i) Not subject to the national rent regime; and
  - ii) Regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008 which requires the initial rent to be no more than 80 per cent of the market rent of the property (including service charges).

Condition 4 only applies to development in Wales.

A claimant for social housing relief must provide evidence that the development qualifies for social housing relief. The Regulations provide that where dwellings are no longer meeting these requirements the levy must be paid.

### **Process for claiming Social Housing Relief**

Regulation 51 of the Community Infrastructure Levy Regulations (2010) sets out the procedures for claiming social housing relief. It is important to note that unless these procedures are rigorously followed, development will cease to be eligible for social housing relief and/or claims for social housing relief will lapse.

In order to benefit from social housing relief, the person/organisation claiming social housing relief must:

1. have assumed liability to pay CIL, through the submission to the Council of a CIL **Assumption of Liability** form prior to the commencement of the chargeable development; and
2. be an owner of the relevant land.

The claim must:

1. be submitted to the Council on a CIL form - **Claiming Exemption or Relief**, prior to commencement of the chargeable development; and
2. include a relief assessment that identifies on a map the location of the dwellings to which social housing relief applies, sets out the gross internal area of each of the dwellings, and includes a calculation of the amount of social housing relief claimed.

If the chargeable development is commenced before the Council has notified the person/organisation claiming social housing relief of its decision, then the claim for social housing relief will lapse.

In addition, development will cease to be eligible for social housing relief if any of the following apply:

1. The Council has not received a CIL Commencement Notice prior to commencement of the chargeable development;
2. The Council has received a Withdrawal of Assumption of Liability form from the claimant prior to commencement of the chargeable development; or
3. The Council has received a Transfer of Assumed Liability form prior to and determined prior to commencement of the chargeable development.

### In summary

To benefit from social housing relief the relevant person / organisation must be an owner of the land, must have assumed liability to pay CIL and must have submitted their claim for relief by returning a CIL **Assumption of Liability** form and received the Council's determination, prior to commencing the chargeable development.

They must also have submitted a CIL **Commencement Notice** to the Council and not withdrawn or transferred liability to pay CIL, prior to commencement of the chargeable development.

### **Disposal of land before occupation**

The beneficiary of all relief on a chargeable development is the claimant regardless of whether the claimant owns the land on which the social housing will be situated.

However the relief attached to each qualifying dwelling will transfer whenever the land on which the dwelling(s) sit is sold before they are ready for occupation. In this event the relief applicable will be recalculated and transferred to the new beneficiary.

If the development is sold the beneficiary must;

- Notify the collecting authority in writing of the sale and copy this to the previous beneficiary.
- The gross internal area of the qualifying dwellings
- A plan showing the location of those dwellings
- The name and address of the seller the buyer and former beneficiary

On receipt of the new details, the relief will be recalculated and a revised liability notice will be served on the new beneficiaries as to what relief they will receive.

Once a qualifying dwelling is made available for occupation the beneficiary remains the beneficiary regardless of future ownership arrangements.

### **Withdrawal of social housing relief**

Social housing relief can be withdrawn for any qualifying dwelling where a disqualifying event occurs up to seven years from the commencement of development (the "clawback period"). The relief for that dwelling must be repaid by the beneficiary of relief.

The occupant of the dwelling will never pay clawback – liability falls on the owner of the land immediately prior to the dwelling being made available for occupation.

Where a disqualifying event occurs prior to the commencement of development, social housing relief will cease to apply.

A disqualifying event is any change to a qualifying dwelling causing it to no longer qualify for social housing relief. However the sale of a qualifying dwelling is not a disqualifying event if the proceeds of sale are spent on a qualifying dwelling. Transferring the sale proceeds to the Secretary of State, a local housing authority or the Homes and Communities Agency are also not disqualifying events. Disqualifying events do not include the purchase of social housing by the Regulator of Social Housing.

Where a disqualifying event occurs, the beneficiary of relief on the dwelling concerned must inform the Council in writing within 14 days. Where this is not done, a surcharge equal to the lesser amount of 20 per cent of the chargeable amount or £2,500 may be applied. The notification must include the area of floorspace which is no longer eligible and a map locating its position in the chargeable development.

The Council will calculate what clawback is payable, and notify the beneficiary in writing of the withdrawn amount and how this has been calculated. Alongside this, a new liability notice will be issued and a demand notice will be served to collect the clawed back relief. This will be done even if the development is complete.

### **Examples of how Social Housing Relief is calculated**

The following examples show how Social Housing Relief will be calculated. Scenario 2 deals with how existing floor space is taken account of in calculating Social Housing Relief.

#### **Scenario 1**

A social housing residential development of 2,000m<sup>2</sup> GIA on a cleared site in Zone A (the Inner Zone) is granted planning permission. The developer is a housing association. The residential CIL rate for zone A is £75m<sup>2</sup>; therefore the CIL liability is £150,000.

Prior to the commencement of the development, the Council receives a claim for 2,000m<sup>2</sup> of Social Housing Relief, as the whole of the development will be social housing. Consequently Social Housing Relief is granted on the whole development and the CIL liability is reduced to £0.

#### **Scenario 2**

A residential development of 4,000m<sup>2</sup> Gross Internal Area (GIA) on a cleared site in the Zone B (the Outer Zone) is granted planning permission. The residential CIL rate in Zone B is £50 per m<sup>2</sup>; therefore the CIL liability is £200,000.

Prior to the commencement of the development, the Council receives a claim for 950m<sup>2</sup> of Social Housing Relief.

The calculation of the revised CIL liability is as follows:

Process 1 – Deduct the GIA eligible for relief from the total GIA

The total GIA (4,000m<sup>2</sup>) – the GIA eligible for relief (950m<sup>2</sup>) = 3,050m<sup>2</sup>

Process 2 – Recalculate the CIL liability

3,050m<sup>2</sup> x £50 = **Revised CIL liability of £152,500**

#### **Scenario 3**

A residential development of 4,000m<sup>2</sup> GIA in Zone B (the Outer Zone) is granted planning permission. It is on a site currently occupied by a house in lawful use comprising 125m<sup>2</sup> GIA, which is to be demolished. The residential CIL rate in Zone B is £50m<sup>2</sup>. The existing floor-space is deducted from the CIL liability because it is in lawful use, giving a CIL chargeable area of 3,875m<sup>2</sup>, and a CIL liability of £193,750.

Prior to the commencement of the development, the Council receives a claim for 950m<sup>2</sup> of Social Housing Relief.

It is tempting to multiply the floor area of the social housing units (950m<sup>2</sup>) by the rate of the CIL charge (£50m<sup>2</sup>) to determine the amount of relief and then deduct this from the total CIL liability calculated before relief was considered, to obtain the final liability, as was the case in Scenario 1. However, that would be wrong because there is demolition to consider and just as the demolished floor area reduced the total CIL liability, it also produces a pro rata reduction in the amount of Social Housing Relief.

The calculation of the revised CIL liability is as follows:

**Process 1** – Calculate what percentage of the total GIA the discounted GIA comprises

Discounted GIA (125m<sup>2</sup>)/total GIA (4,000m<sup>2</sup>) x 100 = 3.125%

**Process 2** – Calculate 3.125% of the GIA claim for Social Housing Relief to ascertain the level of GIA to be deducted from the relief claim

GIA claim for Social Housing Relief (950m<sup>2</sup>) / 100 x 3.125 = 30m<sup>2</sup>

**Note:** the above figure of 30m<sup>2</sup> has been rounded to the nearest square metre.

**Process 3** – Calculate the revised GIA of the relief claim

Relief claim (950m<sup>2</sup>) – pro rata deduction (30m<sup>2</sup>) = 920m<sup>2</sup>

**Process 4** – Deduct the GIA eligible for relief from the total chargeable area

Total chargeable area (3,875m<sup>2</sup>) – GIA eligible for relief (920m<sup>2</sup>) = 2,955m<sup>2</sup>

**Process 5** – Recalculate the CIL liability

2,955m<sup>2</sup> x £50 per m<sup>2</sup> = **Revised CIL liability of £147,750**

### **Further assistance**

- Please refer to [www.gov.uk](http://www.gov.uk) Publications – Community Infrastructure Levy Relief.
- To further assist claimants the Planning Advisory Service has published a social housing relief calculator on its web site. [www.pas.gov.uk](http://www.pas.gov.uk)