

GUIDANCE NOTE 4

Community Infrastructure Levy

Charitable Development 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.

Certain types of charitable development are entitled to an exemption from the community Infrastructure Levy (CIL). This note details those types of development and provides information about the process for claiming charitable relief, and shows examples of how it is calculated.

Charitable Development entitled to Mandatory relief

Regulation 43 sets out the conditions that must be met for a charitable development to be entitled to mandatory relief from CIL.

In practice there are three main types of charity to which relief is applicable..

- registered charities: charities which are registered with the Charity Commission
- exempt charities: charities which cannot register under the Charities Act 2006 and are not subject to the Charity Commission's supervisory powers. They are listed in Schedule 2 of the 1993 Charities Act and include some educational institutions, and most universities and national museums.
- excepted charities: charities excepted from the need to register but which are still supervised by the Charity Commission. Excepted charities with an income over £100,000 will have a duty to register when the relevant part of the Charities Act 2006 comes into force.

Other bodies that may be eligible for relief where they are established for charitable purposes only

- A body which has a Her Majesty's Revenue and Customs charity reference number will usually meet this requirement.
- Charging and collecting authorities must treat EU charities in the same way as UK charities for the purposes of charitable relief or be in breach of European law. The Regulations do not preclude non-UK charities from the definition so any decision on the eligibility of a non-UK charity must be made on the merit of the charitable purpose.

Charitable relief may also apply to trusts or unit trusts whose only beneficiaries or unit holders are charities. The most usual arrangements of

this type are collective investment schemes – for example, unit trusts and common investment funds.

In summary

1. The claimant must be a charitable institution (i.e. a charity, or a trust of which all the beneficiaries are charities, or a unit trust scheme in which all the unit holders are charities).
2. The chargeable development must be used wholly or mainly for charitable purposes and it must be occupied by or under the control of a charitable institution.
3. The claimant must own a material interest in the relevant land. The claimant must not own the interest jointly with a person who is not a charitable institution.
4. The granting of mandatory relief would not constitute a state aid.

Where a development is owned jointly by a charitable institution and a private institution relief will be given to the proportion owned by the charity.

Relief is not limited to only one charitable institution, where relief conditions are met every charitable institution owning a material interest in the relevant land can benefit from relief for their portion of the charge.

Discretionary charitable relief

Discretionary charitable relief for investment activities (Regulation 44 of the CILR 2010) and other charitable relief (Regulation 45 of the CILR 2010) are not available.

The process for claiming mandatory charitable relief

Regulation 47 of the CIL Regulations 2010 sets out the procedures for claiming charitable relief. These procedures must be rigorously followed or the development will cease to be eligible for charitable relief and/or claims for charitable relief will lapse.

- The claim for relief must be submitted by the charitable institution claiming relief on the CIL form - **Claiming Exemption or Relief** prior to commencement of the chargeable development.
- If there is more than one material interest in the land each claimant must submit an apportionment assessment alongside its claim. This applies even if all the interests are charities.
- The Council will decide on the accuracy of the apportionment assessment(s) made by the claimant. If the assessment is found to be incorrect it will be revised.
- The claimant must inform the council if a disqualifying event occurs prior to commencement of the chargeable development. e.g the interest is transferred to a person(s) who is not eligible for charitable relief (see regulation 48)(1)
- Upon determining a claim for relief the Council will inform the claimant(s) in writing of its decision and the reasons for its decision and include the amount of relief granted.
- If the chargeable development is commenced before the Council has notified the charitable institution of its decision, the claim for relief will lapse. The development will also cease to be eligible for charitable relief if the Council has not received a CIL Commencement Notice prior to commencement of the chargeable development.

Withdrawal and clawback of charitable relief

A charitable relief claimant must inform the collecting authority where an event happens that disqualifies them from eligibility for relief up to seven years after commencement of development (the “clawback period”). This must be done within 14 days of the day on which the disqualifying event occurred. Where this is not done, a surcharge equal to 20 per cent of the chargeable amount or £2,500, whichever is the lesser, may be applied. A disqualifying event occurs where one or more of the following events has occurred:

- change of purpose: the owner of the interest in the land in which relief was given ceases to be eligible for charitable relief i.e. the owner ceases to be a charitable institution or uses the building for an ineligible use
- change of ownership: The whole of the interest in the land in which relief was given is transferred to a person who is not eligible for charitable relief or
- change of leasehold: The interest in the land in which relief was given is a lease and is terminated before the end of its term and the owner of the reversion is not eligible for charitable relief.

Where a disqualifying event happens before commencement, the relief is cancelled and the full charge once more applies, unless a new claim by the charitable institution relief is submitted. If the disqualifying event occurs after commencement, the claimant’s share of the charge becomes due. In either instance, a revised liability notice must be issued showing what is payable and a demand notice must be served to collect the clawed back relief.

Despite the threat of surcharge, a minority of claimants may not inform the collecting authority of a disqualifying event within the 14 day period. In such cases the charitable relief along with the surcharge is payable immediately by the claimant.

Charitable relief appeals

A charitable relief claimant, or the assumed liable party for the chargeable development, may appeal to the Valuation Office Agency www.voa.gov.uk that the collecting authority has incorrectly determined the value of the charity’s interest in the land. An appeal must be submitted within 28 days of the date of the collecting authority’s decision on the claim. Any appeal will lapse where the chargeable development is commenced prior to the Valuation Office Agency making its decision. At appeal the Valuation Office Agency may increase or reduce the amount of relief given to the claimant. Where the Valuation Office Agency amends the claimant’s share, the collecting authority must serve a revised liability notice. The liability notice will detail the new value of charitable relief.

There is no right to appeal to an external body on any other grounds for charitable relief. Collecting authorities may decide to allow claimants to request a review of decisions made on their claim by a different official to the official that decided the claim.

State aid

The regulations prohibit the giving of a mandatory charitable exemption where it would constitute a state aid. However, if a mandatory charitable exemption would otherwise have been allowed, and such a policy on discretionary charitable relief under Regulation 45 existed, a charitable institution could benefit from relief which was not a notifiable state aid. Charging authorities may wish to formulate policies which automatically ensure that mandatory charitable exemption claims failing solely on state aid grounds are considered for relief under Regulation 45. Discretionary charitable investment relief can similarly be given where relief is not a notifiable state aid. More detail on this and the de minimis block exemption can be found in the state aid chapter.

Default of liability

Where a party assuming liability fails to pay the full amount of the levy owing, the regulations allow the collecting authority to default liability to the owners of the relevant land within the chargeable development. A collecting authority may only default liability after it has taken all reasonable efforts to recover the outstanding amount, using one or more of the provisions set out within the regulations (please see the Collection and Enforcement Information for further details).

Where the outstanding amount is defaulted, it will be apportioned between the owners of the relevant land according to their material interest in the relevant land. A charity benefiting from discretionary charitable relief may be liable to pay a share of the outstanding amount based on its material interest in the land. Charities are expected to manage the risk of a default of liability by another party. It is expected that they will carefully select development partners and make appropriate contractual arrangements to safeguard their interests.

A charity receiving a mandatory charitable exemption (under Regulation 43) will continue to be exempt from any liability to pay the outstanding charge.

Summary

To benefit from mandatory charitable relief, the charitable institution must be the owner of the land and using the land wholly or mainly for charitable purposes. Prior to commencing the chargeable development, they must have submitted their claim for relief and received the Council's determination, and submitted a CIL Commencement Notice to the Council.

Further assistance

The charity commission web site www.charitycommission.gov.uk and at www.gov.uk Publications page – Community Infrastructure Levy Relief.

Examples of charitable relief

Scenario 1

A charitable institution gains planning permission for a supported housing residential development of 1,315 m² Gross Internal Area (GIA) on a cleared site in Zone A (the inner zone). The residential CIL rate in Zone A is £75m²; therefore the CIL liability is £98,625.

Prior to the commencement of the development, the Council receives a claim for charitable relief. The Council grants mandatory charitable relief because the tests in Regulation 43 are satisfied, and the CIL liability is reduced to £0.

Scenario 2

A charitable institution gains planning permission for a supported housing residential development of 1,315 square metres GIA, and a retail unit (which will be occupied by the charitable institution) of 75m² GIA on a cleared site in Zone B (the Outer Zone).

The residential CIL rate in Zone B is £50m² and the retail CIL rate is £25m², therefore the total CIL liability is £67,625 (i.e. Residential liability of £65,750 + Retail liability of £1,875)

Prior to commencement of the development, the Council receives a claim for charitable relief. The Council grants mandatory charitable relief for the residential element because the tests in Regulation 43 are satisfied, but does not grant charitable relief for the retail element because that is classed as an investment activity and the Council is not offering discretionary charitable relief for investment activity.

Consequently the CIL liability is reduced to £1,875 (i.e. the retail liability)

Scenario 3

A university gains planning permission for 5,000m² GIA of new lecture theatre and science laboratories and 3,000m² GIA of student accommodation. The CIL rate for non-residential institutions is £0m² and the CIL rate for student accommodation in Zone A is £75m², therefore the total CIL liability is £225,000 (i.e. non-residential institutions' liability of £0 + student accommodation liability of £225,000).

Prior to commencement of the development, the Council receives a claim for charitable relief. The Council grants mandatory relief for the lecture theatre and science laboratories because the tests in Regulation 43 are satisfied, and anyway the CIL liability would be £0. However granting CIL relief for the student accommodation element would be considered to constitute a state aid, and therefore no relief would be granted.

Consequently the CIL liability remains at £225,000 (i.e. the student accommodation liability).