

ANY ESCAPE ?

WEDNESDAY 10 JUNE 2020 –
“39 FOR 39” EPISODE 4
“CILs ‘n SPILLS”

CELINA COLQUHOUN

EXISTING CIL EXEMPTIONS & RELIEF

- Minor Development exemption -CIL Reg 42
- Residential Annexes or Extensions exemption - CIL Reg 42A and B
- Self-Build Exemption – CIL Reg 54A – D
- Charitable Relief - CIL Reg 42 & 43

EXISTING CIL EXEMPTIONS & RELIEF

- Social Housing Relief – CIL Reg 49 & 49A-C (also see CIL Reg 50-54)
- Exceptional Circumstances Relief – CIL Reg 55 & 56-58
- S.73 Carry Over Relief – CIL Reg 58ZA

NON- CHARGEABLE DEVELOPMENT

- Buildings into which people do not normally go or only go intermittently (CIL REG 6(2));
- Structures which are not buildings eg pylons and wind turbines;
- Zero rated development (as per CAs charging schedules)

C 19 – CIL GUIDANCE

- “*Coronavirus (COVID-19): Community Infrastructure Levy guidance*” 13 MAY 20
<https://www.gov.uk/guidance/coronavirus-covid-19-community-infrastructure-levy-guidance>
- AIM TO EASE BURDEN ON DEVELOPERS
- PART 8 ‘ADMINISTRATION’ & PART 9 ‘ENFORCEMENT’ CIL REGULATIONS (not Part 6 ‘EXEMPTIONS AND RELIEF’)

(1) C19 - New Instalment Policies -

- CIL Reg 69B – Instalment Policies

“must state—

(a) the date on which it takes effect,

(b) the number of instalment payments;

(c) the amount or proportion of CIL payable in any instalment;

(d) the time (to be calculated from the date the development is commenced) that the first instalment payment is due, and the time that any subsequent instalment payments are due; and

(e) any minimum amount of CIL below which CIL may not be paid by instalment.

- CIL Reg 70 - Payment Periods

60 days from commencement unless IP.

(2)C19 Discretion - Payment Penalty Surcharges & Stop Notices

- Surcharge CIL Regs 85 and 88 – late payment discretionary power
- Stop Notices CIL Regs 89-94 - order ongoing development to stop pending CIL due
- Prosecute CIL Reg 93 - criminal sanctions

(3) C19 Interest – Mandatory

- CIL Reg 87 & 88 – Late Payment Interest
- Must be paid
- Must be calculated—
 - (a) for the period starting on the day after the day payment was due and ending on the day the unpaid amount is received; and
 - (b) at an annual rate of 2.5 percentage points above the Bank of England base rate.

(4)C19 - Proposed CIL Reg Amendments

- Discretion to CA to defer payments
- Aimed at interest provisions (ie CIL Reg 87) when exercising discretion
- Only for “*small and medium sized developers*” ie developers with “*an annual turnover of less than £45 million*”

EXCEPTIONAL CIRCUMSTANCES RELIEF

REG 55 –(No mention in C19 Guidance)

- **CIL Reg 55 & 57**

- Where Ex Cs
- Where expedient
- Where available in published ExC Statement
- Where s.106 (NB)
- Where independent VA shows CIL “*would have an unacceptable impact on the economic viability of D*”
- Where not notifiable state aid
- Where material interest
- Pre commencement

VIABILITY

- Matter for CA
- *unacceptable impact on the economic viability of D CIL Reg 55(3)(c) (ii).*
- PPG ref ID: 25-078

“important to ensure that any exceptional circumstances relief is based on an objective assessment of viability as set out in viability guidance [xref to ID 10-001 et seq incl STANDARDISED INPUTS].

“Relief may be granted for all or part of the liability in relation to a chargeable development. This can mean the whole development or a part of a scheme where a development proceeds in phases as separate chargeable developments.”

SECTION 106

- CA may only grant ExC R if “*section 106 of TCPA 1990 has been entered into in respect of the planning permission which permits D” - CIL Reg 55 (3) (b)*
- Not “constitute a reason for granting planning permission” Reg 122(2) .
- Previously CIL Reg 55(3)(c)(i) “*cost of complying with the planning obligation is greater than the chargeable amount payable in respect of D*” + as “unacceptable impact” test



- NB – MCIL 2 Jan 2019 :
- Explanatory Note [5] no Ex C available because *“considers that it would be better to address problems of viability caused by the combined demands of Mayoral CIL and section 106 agreements by making any necessary adjustments to the latter, in accordance with well-understood and applied planning principles. Disputes could be dealt with through the appeals procedures under the Town and Country Planning legislation. This approach would also avoid making administration of Mayoral CIL across London as a whole unduly complex and burdensome.”*

'TAKE AWAY' POINTS:

- CURRENT CLIMES - SOME RELIEF ALREADY AVAILABLE
- GOVT ENCOURAGING CAs - EXERCISE DISCRETION IN FAVOUR OF DEVELOPERS RE SURCHARGING & STOP NOTICES
- NB VIABILITY & EXCEPTIONAL CIRCS
- CIL REG AMENDS DUE ON DEFERRAL & DISAPPLICATION OF INTEREST

THE END

Thanks for Listening

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