

Community Infrastructure Levy A Guide to Mandatory Charitable Relief

Introduction

East Cambridgeshire District Council introduced the Community Infrastructure Levy ('CIL') on 1 February 2013. CIL is a levy that is charged on most new development in the District. The money raised through this levy will be used to fund strategic infrastructure required to support development in the District. The Community Infrastructure Levy Regulations 2010 (as amended) ('the Regulations') provides that certain types of charitable development are entitled to an exemption from CIL. This note details those types of development and provides the process for claiming mandatory charitable relief.

Charitable Development Entitled to Mandatory Relief

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

There are three main types of charities that may apply for relief:

1. Registered charities: registered with the Charity Commission
2. Exempt charities: charities which cannot register under the Charities Act 2006 and are not subject to the Charity Commission's supervisory powers. These charities are listed in Schedule 2 of the Charities Act 1993 and include some educational institutions, and most universities and national museums
3. 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

Mandatory 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.

To qualify for mandatory charitable relief, the following must be satisfied:

1. The claimant must be a charitable institution (as defined above);
2. The 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;
4. The claimant must not own the interest jointly with a person who is not a charitable institution; and
5. The granting of mandatory charitable relief must not constitute a state aid

Process for Claiming Mandatory Charitable Relief

Regulation 47 sets out the procedure for claiming mandatory charitable relief. Unless these procedures are followed, a development will cease to become eligible for charitable relief.

The claimant must:

- Assume liability to pay CIL by submitting Form 1: Assumption of Liability (available on the Council's website) **prior to the commencement of development**; and
- Have a material interest in the relevant land- 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 claim for mandatory charitable relief must:

- Be submitted to the Council on Form 2: Claiming Exemption or Relief (available on the Council's website) **prior to the commencement of development**; and
- Include the evidence requested in Form 2

Development will cease to be eligible for mandatory charitable relief if:

1. The Council has not received Form 6: Commencement Notice (available on the Council's website) **prior to the commencement of development**; or
2. If the development commences prior to the Council notifying the claimant of their decision

Withdrawal and Clawback of Mandatory Charitable Relief

Mandatory charitable relief can be withdrawn where a disqualifying event occurs up to seven years from the commencement of development ('clawback period'). The relief must be repaid by the beneficiary of the relief.

Where a disqualifying event occurs, the beneficiary of relief 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 plan locating its position in the development.

A disqualifying event occurs where one or more of the following events have occurred:

- Change of purpose: the owners of the interest in the land in which relief was given ceases to be eligible for mandatory 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 is given is transferred to a person who is not eligible for mandatory 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 mandatory charitable relief

Where a disqualifying event occurs prior to commencement of development, the relief is withdrawn and the full charge will apply, unless a new claim by the charitable institution 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 will be issued to show what will be payable and a demand notice will be served to collect the clawback relief.

What is State Aid?

Extract taken from Communities and Local Government “Community Infrastructure Levy Relief: Information Document” May 2011.

State aid is a member state’s support to undertakings which meets all the criteria in Article 107(1) of the Treaty on the Functioning of the European Union (Lisbon Treaty 2009). Article 107(1) declares that state aid, in whatever form, which could distort competition and affect trade by favouring certain undertakings or the production of certain goods, is incompatible with the common market, unless the Treaty allows otherwise. A copy of the most recent advice on state aid can be found at: www.bis.gov.uk/policies/business-law/state-aid

Four criteria must all be satisfied for aid to constitute state aid:

Criterion 1: It is granted by the state or through state resources. State resources include public funds administered by the Member State through central, regional, local authorities or other public or private bodies designated or controlled by the State. It includes indirect benefits such as tax exemptions that affect the public budget.

Criterion 2: It favours certain undertakings or production of certain goods. In other words it provides a selective aid to certain entities in an economic activity (an “undertaking”). Economic activity is the putting of goods or services on a given market. It can include voluntary and non profit-making public or private bodies such as charities or universities when they engage in activities on a market. It includes self-employed/sole traders, but generally not employees as long as the aid does not benefit the employers, private individuals or households.

Criterion 3: It distorts or threatens to distort competition. It potentially or actually strengthens the position of the recipient in relation to competitors. Almost all selective aid will have potential to distort competition- regardless of the scale of potential distortion or market share of the aid recipient.

Criterion 4: It affects trade between Member States. This includes potential effects. Most products and services are traded between Member States and therefore aid for almost any selected business or economic activity is capable of affecting trade between Member States. The only likely exceptions are single businesses. For example, hairdressers or dry cleaners with a purely local market not close to a Member State border. The case law also demonstrates that even very small amounts of aid can affect trade.

Further details

More information about CIL and links to the Regulations and guidance documents can be found on the East Cambridgeshire District Council website:

<http://www.eastcambs.gov.uk/planning/community-infrastructure-levy>

Please contact Emma Grima, Infrastructure Programme Manager, if there are any queries- emma.grima@eastcambs.gov.uk or 01353 665555.