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District Council  
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## **COMMUNITY INFRASTRUCTURE LEVY (CIL)** **LAWFUL IN-USE BUILDINGS GUIDANCE**

### **Can existing buildings be taken into account when calculating a new levy charge?**

In certain circumstances the floor space of an existing building can be taken into account in calculating the chargeable amount. Each case is a matter for the collecting authority to judge.

Where part of an existing building has been in lawful use for a continuous period of 6 months within the past 3 years, parts of that building that are to be demolished or retained can be taken into account. The way those parts are taken into account is set out in the formula in [regulation 40\(7\) \(as amended by the 2014 Regulations\)](#).

Where an existing building does not meet the 6-month lawful use requirement, its demolition (or partial demolition) is not taken into account. However, parts of that building that are to be retained as part of the chargeable development can still be taken into account if the intended use matches a use that could have lawfully been carried out without requiring a new planning permission. The detailed requirements are set out in [regulation 40 \(as amended by the 2014 Regulations\)](#). Because there must be a lawful use, parts of that building where the use has been abandoned cannot be taken into account here.

### **What is a CIL lawful in-use building?**

Firstly, the building must be a 'relevant building' – it must exist on the land shown within the red line site plan of the planning permission on the day permission first permits the development (for reserved matters applications this is the final approval of the last reserved matter). Previously demolished buildings are not relevant buildings.

AND

Secondly, the building, or part of the building must have been used for a lawful use for at least six months, without a break, in the three years ending on the day planning permission first permits the development.

### **When is the day planning permission first permits development?**

For reserved matters applications this is the final approval of the last reserved matter;

In the case of a phased planning permission, this is when planning permission first permits a phase of the development;

Where there are no pre-commencement conditions associated with that phase, on the day planning permission is granted;

For all other permissions (not outline, reserved matters or phased development) on the day planning permission is granted, or allowed following an appeal.

### **What is lawful use?**

To be lawful a use must be one of the following:

- Permitted by the Council or the Planning Inspectorate after you have submitted a planning application / appeal (express permission).
- Permitted automatically by legislation without the need for an application (deemed permission). Examples include Permitted Development, a Local Development Order or a Neighbourhood Development Order.
- A use that is not development and so does not need planning permission, for example agricultural use.
- A use that was being carried out on 1st July 1947 and has been continued without a break since then and with no later change or permanent stopping of the use (abandonment).
- A use that you have a Certificate of Lawfulness for, issued by the Council or the Planning Inspectorate after you have submitted an application or appeal.

### **When is a building in use?**

A building is in use for CIL purposes when the lawful use is being actively carried on.

This follows the High Court judgement of, R (Hourhope Ltd) v Shropshire Council [2015] EWHC 818 Admin, which said that the building must actually be used for its lawful use not just that the building has a lawful use which could be carried on.

Whether a building is in use at any time depends on all the information and evidence of what activities take place and what the intentions of the persons using the building are.

### **How is lawful in-use demonstrated?**

It is the applicant's responsibility to provide evidence to the Council that a building is in lawful use and that the building, or part of the building, has been in use for at least six months, without a break, in the three years ending on the day planning permission first permits the development.

Evidence which could be submitted may include:

1. Copies of leases
2. Electricity/gas bills for the six month period
3. Business rate/council tax bills and payments. Note: the District Council does not have access to this information as it is data protected
4. Where an informal arrangement exists, redacted bank statements should be submitted to show the rent has been paid
5. Confirmation from a letting agent/solicitor advising of the period of occupancy
6. An affidavit/statutory declaration

### **What if the use is unclear?**

The Council may ask for more evidence of the use if this is not clear. If there is not enough information to prove the building(s) are lawful in-use buildings we may not count the floor space of the building(s) as a deduction from the CIL charge.

### **When is a use considered to have been abandoned?**

The courts have held that, in deciding whether a use has been abandoned, account should be taken of all relevant circumstances, such as:

- the condition of the property
- the period of non-use
- whether there is an intervening use; and
- Any evidence regarding the owner's intention.

Please contact the Community Infrastructure Levy team if you have any queries on (01353) 665555