

Ignorance is No Defence!

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This essential view of the law can be traced back to the Bible (Leviticus 5:17) with Roman and Greek philosophers, learned Judges and Politicians all chipping in over the years. The current legislation on Community Infrastructure Levy (CIL) is perhaps a fine example where more knowledge is essential to the preservation of project funds and reduction in the



anxiety levels of thousands of home owners grappling with these complex and convoluted rules. CIL was introduced by the 2008 Planning Act and initiated in April 2010 through secondary legislation and has been regularly tinkered with, almost annually, by Statutory Instruments - creating further complexity and changes upon changes. One of the key issues is the lack of a consolidated version of the legislation, making the legal framework particularly torturous and opaque.

Too late to help

Over 70% of the enquiries we receive on CIL we are too late to be able to help. In nearly all of these situations it is because the owner/developer has begun work on their project - meaning that no further challenge or mitigation can be achieved! Commencement of work triggers the CIL payment - normally due within 60 days, unless the local Planning Authority has an instalment policy in place. Late payment or failure to follow the requisite legislative stages - typically as a minimum; Form 1 (Additional Information); Form 2 (Assumption of Liability) and Form 6 (Commencement Notice) - will result in surcharges, penalties and possibly interest too. One recent example of an enquiry where we could not help was a South Coast home owner that had bought a redundant farm and out-buildings. They wanted to develop their 'dream' family home, only to end up with a £110,000 CIL Liability by 'inadvertently' triggering the CIL Liability on an earlier planning permission - carrying out some demolition of the out-buildings, primarily from a safety perspective, whilst seeking a further planning permission (and self build exemption) on their subsequent family home.

Ill-advised

Too many cases we see are a result of one of two issues:

1. Failing to take timely specialist advice.
2. Relying upon poor and inaccurate advice.

Timely advice is essential - as above - once the project works commence, the owner loses the right to Review or Appeal the numbers, as well as prohibiting the various exemptions or reliefs that may have been available. These cannot be dealt with retrospectively. Hence, the minute

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you are aware of a potential CIL Liability on a forthcoming project - get in touch with us - as the sooner the project situation is reviewed, the more options you may have to reduce your costs and manage the timing of any payments.

Poor advice is perhaps the biggest concern for projects where CIL may be an issue. We have seen planning consultants, architects and even Local Planning Authorities advise home owners to do various things - mostly with good intent - but contrary to the realities of the CIL Regulations and ultimately landing the owners a significant CIL Liability. Get any advice in writing! If you wish to rely upon the advice then ensure you have a written note (even if you send an email to confirm back to them a recent conversation) to evidence *contemporaneously* the advice given. Any subsequent CIL Liability that is borne may then be potentially recovered through legal action for negligent advice or in contravention of Local Government rules on good governance. Albeit, sometimes the level of CIL at stake might make legal recovery financially unviable.

Get it right

Some of the CIL penalties are mandatory, but others are discretionary. We have had considerable success in challenging CIL Liabilities, Demand Notices and Surcharges, including Reviews and Appeals under Regs.113 and 114. But again, to do these they must be done **BEFORE** work commences on site.

The best defence to CIL is to be forewarned and ensure that you are taking appropriate advice:

- in writing;
- as early as possible;
- from those that truly understand the rules; and,
- from those that are familiar with dealing with these projects and the Local Authorities.

Sign up to our webinar to understand how we can help and the latest changes including Covid-19 payment deferrals and First Homes.

If have any property tax issues please do get in touch for a no obligation discussion. You can phone the team on 0345 230 6450 or email healthcheck@e3consulting.co.uk.

ALUN K OLIVER DipM MBA FRICS is Managing Director of E³ Consulting. He has specialised in property taxation since 1994 and advises property developers, investors and occupiers on all aspects of capital allowances, repairs & maintenance, land remediation tax relief and Community Infrastructure Levy for clients throughout the UK. Alun is also a CEDR accredited Mediator and regularly supports clients in negotiation, resolution of tax claims and defending HMRC enquiries, investigations and challenges.

Please see our website or twitter to keep up to date with views and technical updates on property tax matters.

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