

# Guidance Note 3

# Social Housing Relief

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## 1.0 Introduction

The Council resolved to adopt and implement the Community Infrastructure Levy Charging Schedule on 13th November 2017. The report and associated supporting documents can be seen at [Agenda for Council on Monday, 13 November 2017, 7.00 pm | West Lindsey District Council](#).

From 22nd January 2018, West Lindsey Council implemented the Community Infrastructure Levy (CIL). CIL will apply to any planning decision that qualify from and including that date.

The Community Infrastructure Levy Regulations 2010 (as amended) ('the Regulations') provides development that incorporates social housing is entitled to mandatory relief from CIL on the social housing element of the development.

This guidance note is intended to summarise the requirements of the process for claiming social housing relief from CIL, but ultimately the council must follow the CIL regulations and you are advised to consult these regulations for full details of the requirements and process.

## 2.0 Definition of Social Housing

Regulation 49 states; A chargeable development which comprises or is to comprise qualifying dwellings or qualifying communal development (in whole or in part) is eligible for relief from liability to CIL.

For the purposes of this regulation a qualifying dwelling is a dwelling which satisfies at least one of the following six conditions (Condition 4 does not apply in England)

### 2.1 Condition 1

Condition 1 is that the dwelling is let by a local housing authority on one of the following—

- (a) a demoted tenancy;
- (b) an introductory tenancy;
- (c) a secure tenancy;
- (d) an arrangement that would be a secure tenancy but for paragraph 4ZA or 12 of Schedule 1 to the Housing Act 1985.

### 2.2 Condition 2

Condition 2 is that **all** of the following criteria are met—

- (a) the dwelling is occupied in accordance with shared ownership arrangements within the meaning of section 70(4) of the Housing and Regeneration Act 2008;
- (b) the percentage of the value of the dwelling paid as a premium on the day on which a lease is granted under the shared ownership arrangement does not exceed 75 per cent of the market value (where the market value at any time is the price which the dwelling might reasonably be expected to fetch if sold at that time on the open market);
- (c) on the day on which a lease is granted under the shared ownership arrangements, the annual rent payable is not more than three per cent of the value of the unsold interest; and
- (d) in any given year the annual rent payable does not increase by more than the percentage increase in the retail prices index for the year to September immediately preceding the anniversary of the day on which the lease was granted plus 0.5 per cent.

## 2.3 Condition 3

Condition 3 is that, in England—

(a) the dwelling is let by a private registered provider of social housing on one of the following—

(i) an assured tenancy (including an assured shorthold tenancy);

(ii) an assured agricultural occupancy;

(iii) an arrangement that would be an assured tenancy or an assured agricultural occupancy but for paragraph 12(1)(h) or 12ZA of Schedule 1 to the Housing Act 1988;

(iv) a demoted tenancy; and

(b) one of the criteria described in paragraph (6) is met.

(6) The criteria are—

(a) the rent is—

(i) subject to the national rent regime, and

(ii) regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008;

(b) the rent is—

(i) not subject to the national rent regime;

(ii) not regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008; and

(iii) no more than 80 per cent of market rent;

(c) the rent is—

(i) not subject to the national rent regime; and

(ii) regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008 which requires the initial rent to be no more than 80 per cent of the market rent of the property (including service charges).

## 2.4 Condition 4

### **Only applies to development in Wales.**

Condition 4 is that, in Wales—

(a) the dwelling is let by a registered social landlord (within the meaning of Part 1 of the Housing Act 1996) on one of the following—

- (i) an assured tenancy (including an assured shorthold tenancy);
- (ii) an assured agricultural occupancy;
- (iii) a demoted tenancy;
- (iv) an arrangement that would be an assured tenancy or an assured agricultural occupancy but for paragraph 12(1)(h) or 12ZA of Schedule 1 to the Housing Act 1988; and

(b) the rent is no more than 80 per cent of market rent.

## 2.5 Condition 5

Condition 5 is that—

(a) the dwelling is let by a person who is not a local housing authority, a private registered provider of social housing or a registered social landlord (within the meaning of Part 1 of the Housing Act 1996) on one of the following—

- (i) an assured tenancy (including an assured shorthold tenancy);
- (ii) an assured agricultural occupancy;
- (iii) an arrangement that would be an assured tenancy or an assured agricultural occupancy but for paragraph 12(1)(h) of Schedule 1 to the Housing Act 1988; and

(b) the following criteria are both met—

- (i) the dwelling is let to a person whose needs are not adequately served by the commercial housing market; and
- (ii) the rent is no more than 80 per cent of market rent (including service charges); and

(c) a planning obligation under section 106 TCPA 1990 designed to ensure compliance with both criteria at sub-paragraph (b) has been entered into in respect of the planning permission which permits the chargeable development.

## 2.6 Condition 6

Condition six is that, in England, the following criteria are met—

(a) the first sale of the dwelling is for no more than 70 per cent of its market value (where the market value at any time is the price which the dwelling might reasonably be expected to fetch if sold at that time on the open market); and

(b) a planning obligation has been entered into prior to the first sale of the dwelling designed to ensure that any subsequent sale of the dwelling is for no more than 70 per cent of its market value.]

(8) Any claim for relief under this regulation relating to qualifying communal development must be made either—

(a) at the same time as the claim for relief in respect of the qualifying dwellings to which the qualifying communal development in question relates; or

(b) where the qualifying dwellings referred to in sub-paragraph (a) are granted permission through a phased planning permission, in relation to any phase of that permission.

(9) Relief under this regulation, or regulation 49A, is referred to in these Regulations as social housing relief.

(10) Social housing relief is given by deducting the qualifying amount from what would otherwise be the amount of liability to CIL that would arise in respect of the chargeable development.

(11) In this regulation—

“assured agricultural occupancy”, “assured shorthold tenancy” and “assured tenancy” have the same meanings as in Part 1 of the Housing Act 1988;

“demoted tenancy” means a tenancy to which section 20B of the Housing Act 1988 or section 143A of the Housing Act 1996 applies;

“introductory tenancy” has the same meaning as in Chapter 1 of Part 5 of the Housing Act 1996;

“market rent” means the rent which the lease might reasonably be expected to fetch at that time on the open market;

“national rent regime” means the rent policy set out in the Social Rent Guidance within the Rent Standard Guidance as published by the Regulator of Social Housing in January 2015.

“secure tenancy” has the same meaning as in Part 4 of the Housing Act 1985; and

“unsold interest” means the freehold interest or the leasehold interest owned by the person providing the dwelling.

### 3.0 Process for claiming Social Housing Relief

Regulation 51 of the Community Infrastructure Levy Regulations (2010) sets out the procedures for claiming social housing relief. It is important to note that unless these procedures are rigorously followed, development will cease to be eligible for social housing relief and/or claims for social housing relief will lapse.

In order to benefit from social housing relief, the person/organisation claiming social housing relief must:

1. have assumed liability to pay CIL, through the submission to the Council of **CIL Form 2 'Assumption of Liability' prior to the commencement of the chargeable development**; and
2. be an owner of the relevant land.

The claim must:

1. be submitted to the Council on **CIL Form 10 'Charitable and/or Social Housing Relief Claim Form' prior to commencement of the chargeable development**; and
2. include a relief assessment that identifies on a map the location of the dwellings to which social housing relief applies, sets out the gross internal area of each of the dwellings, and includes a calculation of the amount of social housing relief claimed.
3. include evidence that the chargeable development qualifies for social housing relief with reference to the conditions mentioned in regulation 49.

If the chargeable development is commenced before the Council has notified the person/organisation claiming social housing relief of its decision, then the claim for social housing relief will lapse. In addition, development will cease to be eligible for social housing relief if any of the following apply:

1. The Council has received **CIL Form 3 'Withdrawal of Assumption of Liability'** from the claimant prior to commencement of the chargeable development; or
2. The Council has received **CIL Form 4 'Transfer of Assumed Liability'** prior to and determined prior to commencement of the chargeable development.

#### 3.1 In Summary

To benefit from social housing relief the relevant person / organisation must be an owner of the land, assumed liability to pay CIL and submitted their claim for relief by returning **CIL Form 10 'Charitable and/or Social Housing Relief Claim Form'**, this must be acknowledged by the Council in writing prior to commencing the chargeable development.

A chargeable development ceases to be eligible for social housing relief if either; the assumption of liability is withdrawn in accordance with regulation 31, or liability has been transferred to another person in accordance with regulation 32.



## 4.0 Disposal of land before occupation

Regulation 52 sets out the process which the owner of land where qualifying dwelling(s) that have been granted relief in accordance with regulation 49 are situated, and intends on selling the land to new a new owner(s) / registered provider.

Where the new owner(s) / registered provider is eligible to retain relief granted on the dwelling(s), then this process must be completed before the qualifying dwelling(s) are made available for occupation, this will allow opportunity to transfer relief.

However, the relief attached to each qualifying dwelling will transfer whenever the land on which the dwelling(s) sit is sold before they are ready for occupation. In this event the relief applicable will be recalculated and transferred to the new beneficiary.

If the qualifying dwelling(s) are sold the seller must;

- Notify the collecting authority in writing of the sale and copy this to the buyer, and to the previous beneficiary of relief for the dwelling(s) (if this is not the seller).
- The notification must include:
  - a) The gross internal area of the qualifying dwelling(s) that will be situated on the land being sold;
  - b) The location of those dwelling(s) through a map or plan; and
  - c) The name and address of the seller, buyer and former beneficiary of relief from those dwelling(s) (if not the seller).

On receipt of the new details, the relief will be recalculated and a revised liability notice will be served on the new beneficiaries as to what relief they will receive.

Once the qualifying dwelling(s) are made available for occupation the beneficiary remains the beneficiary regardless of future ownership arrangements.

Failure to complete this process prior to the dwelling(s) being made available for occupation will void the opportunity for the new owner / registered providers eligibility to benefit from the relief, resulting in relief being rescinded and monies due in full immediately.

## 5.0 Withdrawal of Social Housing Relief

Social housing relief can be withdrawn for any qualifying dwelling where a disqualifying event occurs up to seven years from the commencement of development (the “clawback period”). The relief for that dwelling must be repaid by the beneficiary of relief.

Where a dwelling qualifies under one of the six conditions of regulation 48, the below clawback periods apply:

- Condition 1 – the period of seven years beginning with the day on which a chargeable development is commenced.
- Condition 2 – the period of seven years beginning with the day on which a chargeable development is commenced.
- Condition 3 – the period of seven years beginning with the day on which a chargeable development is commenced.
- Condition 4 – the period of seven years beginning with the day on which a chargeable development is commenced. **(Does not apply in England)**
- Condition 5 – the period of seven years beginning with the date on which the qualifying dwelling is first let.
- Condition 6 – the period beginning with the day on which the chargeable development is commenced and ending with the day on which that qualifying dwelling is first sold in accordance with that condition.

A disqualifying event is any change to a qualifying dwelling causing it to no longer qualify for social housing relief. However, the sale of a qualifying dwelling is not a disqualifying event if the proceeds of sale are spent on a qualifying dwelling. Transferring the sale proceeds to the Secretary of State, a local housing authority or the Homes and Communities Agency are also not disqualifying events. Disqualifying events do not include the purchase of social housing by the Regulator of Social Housing.

Where a disqualifying event occurs prior to the commencement of development, social housing relief will cease to apply.

Where a disqualifying event occurs, the beneficiary of relief on the dwelling concerned 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 map locating its position in the chargeable development.

The occupant of a dwelling will never pay clawback – liability falls on the owner of the land immediately prior to the dwelling being made available for occupation.

The Council will calculate what clawback is payable, and notify the beneficiary in writing of the withdrawn amount and how this has been calculated. Alongside this, a new liability notice will be issued and a demand notice will be served to collect the clawed back relief. This will be done even if the development is complete.

If no disqualifying event occurs before the end of the clawback period, the land charge will be satisfied.



Gainsborough Guildhall, Marshall's Yard, Gainsborough, Lincolnshire, DN21 2NA

Telephone Number: (01427) 676676