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Bite-size law from Clifton Ingram



Welcome to the Commercial Property edition of **e-cite**, the legal news round-up from Clifton Ingram LLP Solicitors. In this edition:

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COMMUNITY INFRASTRUCTURE LEVY ("CIL")

What is it?

A Community Infrastructure Levy is a fee issued by Local Authorities on new buildings or the development of existing buildings. Whilst Local Authorities do not have to charge it, in most cases they will, as unless there is a reprieve, they will not be able to levy infrastructure charges under the existing S 106 Planning Agreement regime after 6 April, 2015. Under the S 106 regime, local authorities have often charged substantial infrastructure payments through S 106 planning agreements before granting a planning consent for a development.

What will CIL monies be used for?

Local authorities can only use CIL money for infrastructure in their area – such as new roads, school, recreational facilities etc.

So does it matter whether the local authority collects infrastructure levies through the existing S 106 planning agreement regime – or through CIL?

Yes because the cost is likely to be more than the existing costs under the S 106 regime. Wokingham Council have announced their CIL rates being £365 per sq metre – but slightly less for their Strategic Development Locations. The rates, once set, will be fixed but subject to an annual inflation linked increase.

I thought that CIL will take over from S 106 Agreements?

Not entirely, in some cases a S 106 Agreement will still have to be entered into but it will only relate to site specific matters including any affordable housing requirement – but not infrastructure.

But are local authorities around mid Berkshire going to be implementing CIL?

We are afraid so. Wokingham, Bracknell and Reading Councils state that they will be bringing it in on the 6 April 2015. Some local authorities have already started charging the levy.

I am a land owner and am thinking of disposing of my land for development – will it adversely affect the value of my land?

Almost certainly! Whilst it will be the developer who will pay the levy when it starts work nevertheless it will impact on the price that you are offered. So this may result in less land coming to the market for development – just when the Government wants to see more houses built! So who knows if that will result in the next Government having to change the law on this subject – again!

About Us

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Our team of more than 35 law professionals, many of whom are members of specialist organisations and legal panels, provide advice covering all key legal areas.

Wokingham Office:

Tel: 0118 978 0099

22-24 Broad Street
Wokingham
Berkshire
RG40 1BA

Reading Office:

Tel: 0118 957 3425

County House
17 Friar Street
Reading
RG1 1DB

Visit our website

Are there any exemptions?

The main exemption is if there is an implementable planning consent granted before CIL takes effect (in most cases the 6 April 2015). There are some other limited exemptions.

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OPTION AND PROMOTION AGREEMENTS

A shortage of new homes being built and a renewed demand for new housing has put pressure on local government to allow applications on land which may not have been deemed suitable for residential development in the past. As a result, more landowners are being approached by developers offering to promote land for development.

Option Agreements

Traditionally, landowners are approached by a developer who offers to seek to obtain planning permission for development of the land in question in return for the right to purchase the land at a discounted purchase price, (usually 10-20% of open market value) once they have obtained the grant of planning permission – this arrangement would be formalised in a document known as an option agreement.

The term of an option agreement is commonly 5-10 years but it can be less or more depending on state of the local authority housing plan and the level of optimism for the opportunity. A non-returnable but deductible option fee is payable to the landowner upon exchange of the agreement and the landowner's legal costs involved are usually met by the developer.

Once the developer has obtained satisfactory planning permission they can choose to exercise their option to purchase the land but there is no obligation on the developer to proceed with the purchase. If they do proceed, the purchase price is usually determined by calculating the open market value of the land and applying the pre-agreed discount percentage. This is the point where the developer and landowner may be at odds as the developer will try to suppress the open market value and the landowner will try to maximise the open market value.

Any dispute may be referred to expert determination but in any event it is essential from the landowner's point of view that a minimum price is agreed and incorporated in the option agreement in order to protect the landowner.

Promotion Agreements

A promotion agreement involves more of a cooperative approach between the landowner and a developer or promoter of the land. The landowner enters into an form of promotion agreement which has similar characteristics to an option agreement in that the promoter agrees to seek a planning permission.

It is important that the landowner deals with a suitable promoter who has the necessary experience and financial strength to obtain a permission – a process which could take many years and involve an expenditure of many hundreds of thousands of pounds. The promoter will be obliged to work to promote the land through the local planning process in accordance with an agreed promotion strategy with a view to obtaining planning permission for development that maximises the development value of the land.

If and when satisfactory planning consent is obtained, the landowner and promoter together implement an agreed marketing strategy which hopefully leads to a satisfactory sale of the land on the open market. Once sold, the net sale proceeds are shared between the landowner and promoter so that the

promoter receives reimbursement of its planning and promotion costs (usually limited to a certain amount) together with an agreed percentage of the sale proceeds.

The principal advantages of a promotion agreement over an option agreement is the element of control that can be retained by the landowner and the reassurance that the landowner and promoter are working together to maximise the value of the land. The promoter's fee is based on the actual sale price and therefore both the promoter and the landowner will be attempting to maximise the value of the land as opposed to the developer being inclined to try to suppress it.

A hybrid agreement may also be appropriate where the promoter is given an opportunity to either sell the land or take its share or to purchase the land itself once a satisfactory planning consent has been obtained. The promoter may also be given an opportunity to purchase in circumstances where the land is not otherwise successfully sold on the open market.

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For more information on these or any other property related topics please contact Tim Read in our Commercial Property Department on:

T: 0118 978 0099

E: timread@cliftoningram.co.uk

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