

KING'S COLLEGE LONDON

LONDON BOROUGH OF LAMBETH CIL EXAMINATION

STUDENT ACCOMMODATION CIL RATES

Paragraphs 1 -16 below are extracts from 'Community Infrastructure Levy Guidance" published by the Department for Communities and Local Government yesterday (24 February 2014).

1. *"The Community Infrastructure Levy Regulations make a number of provisions for charging authorities to give relief from the levy. 'Community Infrastructure Levy relief' means any exemption or reduction in liability to pay the levy.*
2. *Depending on the circumstances, the following forms of relief may be available:*
 - *mandatory charitable relief;*
 - *discretionary charitable relief; and*
 - *exceptional circumstances relief.*
3. *A charitable institution which owns a material interest in the land (a charity landowner) will get full relief from their share of the liability where the chargeable development will be used 'wholly, or mainly, for charitable purposes' and they meet the requirements of Regulation 43.*
4. *A charging authority can also choose to offer discretionary relief to a charity landowner where the greater part of the chargeable development will be held as an investment, from which the profits are applied for charitable purposes (see Regulation 44 for details). The charging authority must publish its policy for giving relief in such circumstances.*
5. *To qualify for a mandatory charitable exemption under Regulation 43 the following criteria must be met:*
 - *a material interest in the land must be owned by a charitable institution;*
 - *the chargeable development will be used wholly or mainly for charitable purposes (whether of the claimant or of the claimant and other charitable institutions)*
 - *that part of the chargeable development to be used for charitable purposes will be occupied by, or under the control of, a charitable institution;*
 - *the material interest cannot be owned jointly with a person who is not a charitable institution; and*
 - *the exemption must not constitute a state aid.*
6. *A charging authority may give discretionary relief from the levy where:*
 - *a charitable institution will claim the relief, and the whole or greater part of that institution's share of the chargeable development will be held as a charitable investment, or*
 - *a charitable institution has been refused a mandatory charitable exemption on state aid grounds, but granting relief for the institution's share of the chargeable development would not constitute a notifiable state aid (Regulation 45 sets out the qualifying criteria in more detail).*
7. *A charging authority may decide to operate a policy for giving discretionary charitable investment relief, under Regulation 44.*
8. *Only charitable investment activities are eligible for this relief. Regulation 44 specifies that relief cannot apply where a charity intends to occupy the greater part of the chargeable development and use it for any trading activity, other than to sell donated goods to use the proceeds for its charitable purposes.*
9. *A charging authority may choose to further narrow the scope of this relief through its relief policy.*
10. *A charging authority that decides to introduce or revise a discretionary charitable relief policy must publish a document setting out that policy. The document is not part of the charging schedule.*

11. *It is at the discretion of the charging authority to decide what percentage of relief from the levy it will provide. The charging authority also has the flexibility to develop the criteria it considers suitable to assess eligibility for discretionary relief. Examples could include:*
 - *the benefit the charitable institution gives to the local community*
 - *the annual income of the charitable institution*
 - *the annual rent payable on the charitable investment (a minimum threshold may protect against abuse).*
12. *Charging authorities may offer relief from the levy in exceptional circumstances where a specific scheme cannot afford to pay the levy.*
13. *A charging authority wishing to offer exceptional circumstances relief in its area must first publish a notice of its intention to do so. A charging authority can then consider claims for relief on chargeable developments from landowners on a case by case basis, provided the conditions set out in Regulation 55 (as amended) are met:*
 - *a section 106 agreement must exist on the planning permission permitting the chargeable development and*
 - *the charging authority must consider that paying the full levy would have an unacceptable impact on the development's economic viability and*
 - *the relief must not constitute a notifiable state aid.*
14. *The powers to offer relief can be activated and deactivated at any point after the charging schedule (see section 2:2:1) is approved.*
15. *Exceptional circumstances relief can be considered where a Section 106 agreement is in place as well as a levy charging schedule. A charging authority can give relief from the levy if it deems that the levy would have an unacceptable impact on the economic viability of a development. There is no statutory definition of what constitutes the economic viability of a development. The charging authority has the discretion to make judgements about the viability of the scheme in economic terms.*
16. *Even if exceptional circumstances relief is available in a charging authority area, each case is considered individually by the authority and it is at their discretion whether they wish it to apply in that case or not. "*

Observations

- A It will be seen that all three potential forms of relief might be available to King's in relation to student accommodation subject to a number of notable vulnerabilities.
- B As to mandatory and discretionary charitable relief such relief will only apply where the chargeable development will be used wholly or mainly for charitable purposes. This exemption will be removed where a charity enters into structured commercial arrangements to operate student accommodation – a situation which is likely to arise in order to ensure such accommodation can be delivered.
- C As to exceptional circumstances relief the Council has stated that "the use of exceptional circumstances CIL relief is a flexible and workable solution to the issue of CIL affecting the viability of 'nominated' student accommodation". This relief is only discretionary and therefore there can be no certainty that the Council will enable, and continue, such relief.
- D: To deliver certainty around student accommodation King's request that the Charging Schedule be adjusted as follows:
 - 1) to exclude student housing schemes at sub-market levels; and
 - 2) a CIL charge of £100 psm for all other student accommodation.