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Commencement and avoidable liability

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Commencement and avoidable liability

CIL is provided for in Part 11 of the Planning Act 2008 (ss 205-225).

CIL is charged for 'chargeable development'.

'Chargeable development' is development of a type liable to CIL which is permitted by a grant of planning permission (r9(1)).

If there are alternative planning permissions for a single site there is a danger of having to pay CIL twice.

s208 provides that CIL is payable on the 'commencement of development'.

Commencement and avoidable liability

It makes no difference that the permitted development is not completed, nor if there is subsequently a material departure from the approved plans.

Abatement under r74B and the exemptions/reliefs are not available if the required steps are not completed before the commencement of development.

When retrospective planning permission is granted development is treated as commenced on the day of the permission: there is an immediate liability to pay any CIL and there is no question of abatement or an exemption.

A collecting authority has no discretion not to seek to recover CIL.

Commencement and avoidable liability

Commencement of development

S208 ('liability')

'(1) Where liability ... would arise in respect of proposed **development** ... a person may assume liability to pay ...

'(3) A person who assumes liability ... becomes liable when **development** is commenced ...

'(4) Regulations must make provision ... where **development** is commenced ... if nobody has assumed liability ...'

(5) [Joint and several liability]

(6) [Amount of levy calculated from date of planning permission first permits the **development**]

(7) [Regulations may deal with liability where **development** is commenced without planning permission]

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S209 ('development')

'(1) **In section 208** "development" means –

- (a) anything done by way of or for the purpose of the creation of a new building; or
- (b) anything done to or in respect of an existing building.'

'(2) Regulations can provide that works or changes of use of specified kinds are not to be treated as development.'

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R6

‘(1) The following works are not to be treated as development for **the purposes of section 208** of the PA 2008 (liability) –

(a) anything done by way of or for the purpose of the creation of a building of a kind mentioned in ... (2); ...

(d) the change of use of any building previously used as a single dwellinghouse to use as two or more separate dwellinghouses.’

(2) [Covers buildings into which people do not normally go and buildings into which people go intermittently for the purposes of inspecting fixed plant and machinery.]

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R7

‘(1) This Regulation has effect for determining when **development** is to be treated as commencing for **the purposes of Part 11 of the PA 2008.**’

‘(2) Development is to be treated as commencing on the earliest date on which any **material operation** begins to be carried out on the relevant land’ [The relevant land is the land to which the planning permission relates.]

‘(6) In this regulation “material operation” has the same meaning as in s56(4) of the TCPA 1990 (time when development begun).’

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The extreme example

A bungalow on a large sloping site. Owner wants to extend the bungalow, but to get the residential extension exemption for this. Behind the bungalow he wants a patio cut into the slope, and a retaining wall. Owner builds the retaining wall and then gets planning permission for a retaining wall, patio and the extension to the bungalow.

Is he liable to pay CIL for an extension?

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Commencement of development vs implementation

Another example

Planning permission for a house. Condition 1 says the development must be begun in 3 years; condition 2 says that before development is commenced landscaping must be approved.

A house is built in y1; no landscaping is ever approved

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Multiple permissions and abatement

R74B – two planning permissions for alternative forms of development

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R74A - s73 planning permissions

R9

(6) 'Where a planning permission is granted under s73 ... the chargeable development is the most recently commenced or **recommenced** development'.

(9) 'For the purposes of [paragraph (6)], chargeable development is **re-commenced** where — (a) the chargeable development ("the earlier development") was commenced; (b) work on the earlier development was halted and a different chargeable development ("the later development") that was granted planning permission under section 73 of TCPA 1990 was commenced on the relevant land; and (c) the later development was subsequently halted and the earlier development is continued.'

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Phased planning permission

R9(4) 'In the case of a grant of phased planning permission, each phase of the development is a separate chargeable development'.

R2 'Phased planning permission' means a planning permission which 'expressly provides for development to be carried out in phases'.

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NPPG 25 Paragraph 129

Where the planning authority is willing to accept it, a planning permission for a development can be subdivided into 'phases' **for the purposes of the levy** This is expected to be especially useful for large scale development, which is an essential element of increasing housing supply.

...

The principle of phased delivery must be **expressly set out** in the planning permission. Local authorities should work positively with developers to allow such developments to be delivered in phases.

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NPPG 25 paragraph 91

For multi-unit schemes (for example, where a builder sells serviced plots, or a community group works with a developer), applicants should consider applying for a phased planning permission, to allow each plot to be a separate chargeable development. This will prevent the charge being triggered for all plots within the wider development as soon as development commences on the first dwelling. This will also ensure that if a disqualifying event occurs affecting one unit, it does not trigger a requirement for all to repay the exemption.

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What about s92(5) TCPA 1990?

For outline planning permissions this allows for different periods for the application for approval of reserved matters for 'separate **parts** of the development'.

Thank you for listening

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