COMMUNITY INFRASTRUCTURE LEVY (CIL) LAWFUL IN-USE BUILDINGS GUIDANCE

Your CIL charge may be reduced if your development site includes existing buildings that are in lawful use and which are to be demolished or to be re-used as part of your development. This guide explains what a lawful in-use building is and how the floor space of lawful in-use buildings is deducted from your CIL charge.

What is a CIL lawful in-use building?

Firstly, the building must be a ‘relevant building’ – it must exist on the land shown within the red line site plan of your planning permission on the day permission first permits your development. Previously demolished buildings are not relevant buildings.

AND

Secondly, the building, or part of the building must have been used for a lawful use for at least six months, without a break, in the three years ending on the day planning permission first permits your development.

When is the day planning permission first permits development?

This is the date of the planning permission in most cases but may be a later date in the case of outline or phased planning permissions. Please ask if you are unsure.

What is lawful use?

To be lawful a use must be one of the following:

- Permitted by the council or the Planning Inspectorate after you have submitted a planning application / appeal (express permission).
- Permitted automatically by legislation without the need for an application (deemed permission). Examples include Permitted Development, a Local Development Order or a Neighbourhood Development Order.
A use that is not development and so does not need planning permission, for example agricultural use.

A use that was being carried out on 1st July 1947 and has been continued without a break since then and with no later change or permanent stopping of the use (abandonment).

A use that you have a Certificate of Lawfulness for, issued by the council or the Planning Inspectorate after you have submitted an application or appeal.

**When is a building in use?**

A building is in use for CIL purposes when the lawful use is being actively carried on.

This follows the High Court judgement of R(Hourhope Ltd) v Shropshire Council [2015] EWHC 818 Admin which said that the building must actually be used for its lawful use not just that the building has a lawful use which could be carried on.

Whether a building is in use at any time depends on all the information and evidence of what activities take place and what the intentions of the persons using the building are. The amount of activity that you must prove will depend on the type of use and whether the use has stopped depends on the length of time, and reasons for, the break in use and the intentions of the property users.

**How is lawful in-use demonstrated?**

It is your responsibility to provide evidence to the council that building is in a lawful use and that the building, or part of the building, has been in use for at least six months, without a break, in the three years ending on the day planning permission first permits your development.

Evidence may include proof of Business Rates or Council Tax payments, photographs showing the building in the use claimed, sworn statements of people who can confirm the use claimed, utility or other bills relating to the use claimed.

**What if the use is unclear?**

The council may ask for more evidence of the use if this is not clear. If there is not enough information to prove the building(s) are lawful in-use buildings we may not count the floorspace of the building(s) as a deduction from your CIL charge.

**Please contact the Infrastructure team if you have any queries.**