A development comprising social housing (in whole or in part) is eligible for mandatory relief from CIL on the social housing element of the development. It benefits most social rented, affordable rented, intermediate rented dwellings provided by a local authority, private registered provider or non-registered provider. It also benefits shared ownership dwellings.

Applicants will be expected to enter into a planning obligation (Section 106) for the affordable housing provision.

Discretionary social housing relief is not available in the Borough.

This guidance notice does NOT set out the CIL Regulations in detail and is intended as a summary of the relevant provisions. For detailed guidance, you should always refer to the CIL Regulations. You should seek your own advice if you are in any doubt as regards how CIL operates or affects your own position.

**Definition of social housing**

Regulation 49 of the CIL Regulations 2010 (as amended) sets out the conditions that must be met for a dwelling to be considered as social housing. For a dwelling to qualify as social housing for CIL relief, it must satisfy at least one of the following five conditions:

**Condition 1**

Regulation 49(3) - 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 of 12 of Schedule 1 to the Housing Act 1985

**Condition 2**

Regulation 49(4) - 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 value of the shared ownership arrangement does not exceed 75% of the market value

c) Under the shared ownership agreement, the annual rent payable is not more than 3% of the value of the unsold interest

d) The annual rent payable does not increase by more than the RPI percentage increase, plus 0.5%

**Condition 3**

Regulation 49(5) - Condition 3 is that, in England -

a) The dwelling is let by a private RP for 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 in paragraph (6) is met

(6)

a) The rent is
   i) Subject to the national rent regime
   ii) Regulated under a standard controlling rents set by the Regulation 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 Regulation of Social Housing under Section 194 of the Housing and Regeneration Act 2008
   iii) No more than 80% 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 rent to be no more than 80% of the market rent of the property (including service charges)

**Condition 4**

Regulation 49(7) - Applies in Wales only
Condition 5

Regulation 49(7A) – Condition 5 is that -

a) The dwelling is let by a person who is not a local housing authority, or 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 tenancy but for paragraph 12(1)(h) of Schedule 1 of the Housing Act 1998

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% of market rent (including service changes); and

c) A planning obligation under S106 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

Social Housing Communal development

Qualifying communal development is defined as the amount of communal development which is for the benefit of the occupants of more than one qualifying dwelling.

Development is not communal development if it is –

a) Wholly or partly made up of one or more dwellings
b) Wholly or mainly for use by the general public
c) Wholly or mainly for the benefit of occupants of development which is not relevant development; or
d) To be used wholly or mainly for commercial purposes

Homes that do not fall under the definition of affordable housing set by Regulation 49, for example low cost market housing, cannot be considered as affordable housing for the purposes of CIL relief.

In the event that a dwelling which qualifies for social housing relief changes in tenure or type, so as to cease qualifying for social housing relief, clawback may apply. Please ensure you understand the process for the notification of disqualifying events (explained later in this guidance note).
How to claim for Social Housing Relief

Regulation 51 of the CIL Regulations 2010 (as amended) sets out the procedures for claiming social housing relief. It is important that these requirements are adhered to otherwise development will cease to be eligible for social housing relief.

In order to claim for social housing relief, the person/organisation claiming must:

i) have assumed liability to pay CIL, through submission of Form 1: Assumption of Liability; AND

ii) be an owner of the relevant land

Please note that if you are not a relevant landowner, and have not assumed liability for the whole chargeable development, then you will not be able to claim relief.

The Council check ownership against Certificate A and B of the planning application. If ownership has changed since the Certificate(s) was submitted, then you must notify the Council, in writing, of the change in ownership.

The claim for social housing relief must

i) be submitted using Form 2: Claiming Exemption of Relief, prior to commencement

ii) include a relief assessment that identifies on a plan the location of the dwellings to which social housing relief applies, sets out the gross internal area of each of those dwellings, and includes a calculation of the chargeable amount

iii) provide evidence that the chargeable development qualifies for social housing relief (by reference to the conditions in Reg 49 (or 49C)

Evidence should be in the form of a signed letter confirming the tenure and type of affordable housing provision to be provided, including direct reference to which condition of Regulation 49 each tenure type meets.

Note that within the Council’s Charging Schedule apartments have a nil charging rate, and so will not incur a CIL charge. Subsequently, it will not be necessary to apply for relief on apartments to be used for social housing. This should be considered in your relief claim.

A claim for relief will lapse if the development is commenced before the Council has notified the claimant of its decision on relief. In addition, development will cease to be eligible for social housing relief if any of the following apply:

i) The claimants assumption of liability is withdrawn or ceases to have effect

ii) The claimant transfers liability to another person

Before commencement, relief cannot be transferred from one party to another. Where liability is transferred or withdrawn, the new liable persons can make a new claim for social housing relief but this must be made and determined prior to commencement of the development.

The claimant must submit Form 6: Commencement Notice to the Council before commencement. The commencement notice sets out the date on which development will commence. This fixes the
commencement of the development for the clawback period (see below). Where a commencement notice is not submitted before the development commences, a penalty surcharge of 20% of the chargeable amount or £2500, whichever is lower, will be applied and be due for immediate payment.

**Council decision**

Where a claim for relief is submitted, the Council will, as soon as is practicable, notify the claimant in writing of its decision, the reasons for the decision and where relief is granted the qualifying amount. Where relief is granted a new liability notice will then be issued.

A claim for relief will lapse if the development is commenced before the Council has notified the claimant of its decision on relief.

**Steps for claiming social housing relief**

To benefit from social housing relief, the person/organisation claiming social housing relief must be the owner of the relevant land.

**Prior to commencement**

1. Assume liability to pay CIL using **CIL Form 1: Assumption of Liability**
2. Submit **CIL Form 2: Claiming Exemption or Relief** with accompanying plan and required information.
3. Council assess claim and issues a decision. Where relief is granted, a revised liability notice will also be issued.
4. Submit **CIL Form 6: Commencement Notice**, at least one day prior to work commencing on the development
5. Council acknowledge receipt of commencement notice

Work can then commence.

Claims for relief will lapse where the development commences before a relief decision is made. Claims will also lapse where the liability is withdrawn or transferred to another party.
Disposal of land before occupation

Regulation 52 of the CIL Regulations 2010 (as amended) allows for the relief attached to each qualifying dwelling to be transferred whenever the land on which the dwellings sit, or will sit, is sold before they are ready for occupation.

Such disposal relates to a material disposal of land, defined in Regulation 41, as:

a) Transfer of a legal estate, or
b) The grant of a lease for a term of more than seven years from the date of the grant

For example, this will allow a landowner who claims social housing relief, and commences the development, to then materially dispose of the land/dwellings to a Registered Provider.

If the development is sold, the beneficiary must:

1. Provide a notification, in writing, to the Council that:
   a. Notifies the Council of the sale
   b. States the gross internal areas of the qualifying dwellings which will be situated on the land which has been disposed of
   c. Provide a plan identifying the location of those dwellings, or development
   d. States the name and address of the seller, the buyer and any other former beneficiary of the relief (if not the seller)

On receipt of the notification, the Council will acknowledge receipt, recalculate the relief and issue a revised liability notice to the new beneficiaries as to what relief they will receive.

Withdrawal of social housing relief

Regulation 53 of the CIL Regulations 2010 (as amended) sets out the withdrawal of social housing relief.

Following the grant of social housing relief, the chargeable amount (ie the levy that would have been payable if the exemption had not been granted) will be registered as a land charge. Should a disqualifying event occur within 7 years of commencement, or in the case of condition 5 (Reg 49) 7 years from the date the qualifying dwellings is first let, then the Council can withdraw the social housing relief and clawback the chargeable amount.

A disqualifying event is where a dwelling ceases to be qualifying dwelling for social housing.

The material disposal of a qualifying dwelling does not cause it to cease being a qualifying dwelling if:

a) The proceeds of sale are spent on a qualifying dwelling, or qualifying communal development
b) The proceeds of sale are transferred to the Secretary of State, a local housing authority or the HCA
c) The disposal is made to the Welsh Ministers under paragraph 15 or 27 of Schedule 1 to the Housing Act 1996; or
d) The disposal is made to the Regulator of Social Housing under S167 or S253 of the Housing and Regeneration Act 1996

Clawback payment must be paid by the relevant person – this is the person who benefitted from social housing relief. The occupant of the dwelling will never pay clawback – liability falls on the owner of the land immediately prior to the dwelling being made available for occupation.

Where a disqualifying event occurs, the relevant person must notify the Council in writing of the event within 14 days of it occurring. The notification must state the gross internal area of the dwelling, or communal development, which has ceased to be social housing and be accompanied by a plan which identifies the location of the dwelling.

The Council will then notify the relevant person of the withdrawn amount and how it was calculated. A new liability notice will be issued and a demand notice served to collect the clawed back relief. This will be done even if the development is complete as the clawback period lasts for 7 years from commencement.

**Information Notices**

Under Regulation 54, the Council can serve an Information Notice on

a) A person claiming social housing relief
b) A person who has made a material disposal of land in accordance with Reg 52
c) A person who has notified the Council of a disqualifying event

The information notice may require the person to give information, documents or materials to assist the Council in determining the extent a development is eligible for social housing relief and to calculate the qualifying amount of relief. This information must be provided within 14 days of the notice being served.

Failure to comply with the notice will result in surcharges being imposed in accordance with Regulation 86, up to the value of £1000.