

Southampton City Council
Infrastructure Delivery Planning
Community Infrastructure Levy
Charge Schedule

212172-00

Draft 1 | 13 June 2012

Draft

This report takes into account the particular instructions and requirements of our client.

It is not intended for and should not be relied upon by any third party and no responsibility is undertaken to any third party.

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Ove Arup & Partners Ltd

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Document Verification

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Contents

	Page
1	
Community Infrastructure Levy – Charging Schedule	2

Draft

1 Community Infrastructure Levy – Charging Schedule

The Charging Authority

The Charging Authority is Southampton City Council.

Date of Approval

This Charging Schedule was approved by the Council on (DATE) 2012.

Date of Effect

This Charging Schedule will become effective on (DATE) 2012.

The CIL Rate

CIL is charged on gross internal floorspace of any new building or an extension to an existing building in Southampton City administrative area if it has at least 100m² of gross internal floorspace or involves the creation of a dwelling even when that is below 100m².

Use Class	Maximum CIL (psm)
Retail (A1-A5)	£43
Hotels (C1)	£0
Residential Institutions (C2) ¹	£0
Residential (C3) ²	£90
Community Uses (D1)	£0
Business (B1, B2, B8 and other commercial uses not specified above)	£0

Table 1 Charge Rate

However, buildings into which people do not normally go, or go only intermittently for the purposes of inspecting or maintaining fixed plant or machinery are not liable to pay³.

Affordable housing and buildings owned by charities and used for charitable purposes are exempt from the charge⁴.

¹ This applies to student accommodation which includes individual bedrooms with shared communal facilities and where residents do not live as a single-family.

² This could include self-contained student flats or cluster flats

³ Regulation 6(2) of the Community Infrastructure Levy Regulations 2010

⁴ Regulations 43 and 49 of the Community Infrastructure Levy Regulations 2010

CIL will be charged for the net additional floorspace, that is, after the area of demolished buildings has been deducted.

The rates shown in Table 1 will apply uniformly to all land uses across the whole geographic extent of the City.

The rate will be updated annually for inflation in accordance with the Royal Institute of Chartered Surveyors "All In Tender Price Index".

Statutory Compliance

This draft Charging Schedule has been approved and published in accordance with the Community Infrastructure Levy Regulations 2010 and Part 11 of the Planning Act 2008.

In setting the rates, the Council has struck an appropriate balance between:

- the desirability of funding from CIL in whole or part the estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and
- the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.

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Contents

	Page
1 Introduction	1
1.1 What Is CIL?	1
1.2 Why use CIL?	1
1.3 How is the charge calculated?	1
1.4 Is any building exempt from paying CIL?	2
1.5 An evidence base for CIL	2
1.6 When must CIL be paid?	3
1.7 Exceptional Circumstances Relief	3
2 CIL Process	5
2.1 Stage 1: When an application comes in, determine if the development is eligible to pay CIL.	6
2.2 Stage 2 – Informing people on liability to pay	7
2.3 Stage 3: Commencement and Demand Notices	9
2.4 Development which doesn't require planning permission	9
3 Determining who is liable to pay CIL when the Demand Notice is issued	11
3.1 Assumption of Liability	11
3.2 Transfer of Liability	11
3.3 Failure to Assume Liability	11
4 Applying for Relief from CIL	12
4.1 Applications for Charitable Relief or for Social Housing Relief	12
4.2 Request for Additional Information for Social Housing Relief	12
5 Reviews and Appeals	14
5.1 Chargeable amount review	14
5.2 Chargeable Amount Appeal	14
5.3 Apportionment of Liability Appeal	15
5.4 Charitable Relief Appeal	15
5.5 Surcharge Appeal	15
5.6 Deemed Commencement Appeal	15
5.7 CIL Stop Notice Appeal	15
6 Payments and Surcharges	17
6.1 When payment is due	17
6.2 Surcharges and Late Interest	17

7	Enforcement and Payment Recovery	19
7.1	The Stop Notice	20
7.2	The Liability Order	20
7.3	The Charging Order	20
7.4	Enforcing the Local Land Charge	20
7.5	Court of Competent Jurisdiction	20
8	Local Land Charges	21
9	Reporting	22
10	Transition Arrangements	23
10.1	Planning Applications Awaiting Approval when CIL Commences	23
10.2	Unsigned S106 Agreements	23

Appendices

Appendix A

Glossary of Notice Definitions

2 Introduction

This manual has been prepared by Southampton City Council to explain the implementation of a new policy within the City administrative area for the collection of payments towards the costs of vital infrastructure.

2.1 What Is CIL?

The Community Infrastructure Levy (CIL) is a charge levied on new buildings and extensions to buildings according to their floor area. In this way money is raised from development to help the Council pay for schools, leisure centres, aged care accommodation, roads and other facilities to ensure the city grows sustainably.

CIL replaces the strategic infrastructure requirements previously sought through the section 106 process. The infrastructure requirements of section 106 agreements will be scaled back to address site specific impacts and affordable housing.

Unlike section 106, CIL is non-negotiable, so applying and collecting it is purely an administrative process. CIL revenue from a particular scheme can be spent by the City Council on any community infrastructure required to support growth– it is not tied to a particular project. In virtually all cases the CIL liability will be calculated when planning permission is issued. The trigger for payment is the commencement of development, although payments can be made by instalment if the City Council has a policy allowing this.

2.2 Why use CIL?

Local Authorities don't have to use CIL, but from 6 April 2014 they will be prevented by CIL Regulation 123 from using planning obligations to leverage general contributions from new development for community infrastructure. All section 106 "tariff" style approaches will become unlawful. Consequently, local Authorities which don't have CIL up and running will be losing money.

2.3 How is the charge calculated?

CIL is calculated on the net increase in gross internal floor area (GIA). That is, a credit is allowed for any existing GIA which is demolished. Gross internal floor area includes everything within the external walls of the buildings and so includes things like lifts, stairwells and internal circulation areas. It does not include things like external balconies or the thickness of the external walls themselves.

Note that a minimum threshold applies to non-residential development. If the

GIA of new build is less than 100m² it does not pay CIL. This threshold does not apply to new dwellings. If a new dwelling is being created, it will pay CIL for any net increase in GIA. CIL will not be charged when the calculated amount of CIL is £50 or less.

This means that applicants for planning permission must supply details of:

- GIA of all buildings on the site prior to development (if any).
- GIA of buildings to be demolished (if any).
- Proposed GIA of all buildings on the site once the development has been completed.

Using this information the Council calculates the net increase in GIA. Multiply the result by the rate of CIL in £/m² and that's the CIL liability. An adjustment may need to be made for inflation.

2.4 Is any building exempt from paying CIL?

Three types of buildings don't pay any CIL:

1. Buildings into which people don't normally go, or only go into to perform maintenance. This covers things like water pump stations or electrical substations. They won't crop up often.
2. Affordable housing is exempt subject to an application by a landowner for "relief".
3. Development by charities for charitable purposes is exempt e.g. the Charity's office is exempt, but the charity shop is not because it is a money making venture.

2.5 An evidence base for CIL

The levy takes effect through a Charging Schedule which sets out the rate (or rates) of the charge. The Charging Schedule itself is a simple document but it relies on two important pieces of evidence –infrastructure planning and a viability assessment of the impact of the proposed rate of CIL on development in the Local Authority's area.

An infrastructure delivery plan which assesses the amount, type and cost of community infrastructure needed to support growth and the Council's ability to fund that infrastructure is critical.

The City Council needs to find about £253 million (net) in capital funding for community infrastructure to support planned growth shown in the adopted core strategy for the city. CIL is not intended to raise all this money – the Council will need to rely on other revenue sources as well - but it will make an important "top-up" contribution. Those wishing to read the Infrastructure Delivery Plan can find this on the Council's website.

The viability assessment must show that the proposed rate of CIL can be borne by most development without making the project commercially unviable and undermining the growth CIL is meant to support.

2.6 When must CIL be paid?

Regulation 70 (7) of the Community Infrastructure Levy (Amendment) Regulations 2011 sets a default of full payment of the levy within 60 days of the commencement of development. The Regulations also enable a Charging Authority to set an Instalment Policy that allows payments to be spread over longer periods.

In accordance with regulation 69b of the aforementioned regulations, the Council will apply the following Instalment Policy to all development on which CIL is liable:

Level of CIL Charge	Number and amount of Instalments	Timing of Instalments
Less than £50,000	1 Full payment	Full payment within 60 days of commencement
£50,000 – £250,000	3 Equal Instalments	1st payment within 60 days of commencement
		2nd payment within 6 months of commencement
		3rd payment within 9 months of commencement
£250,000 or more	4 Equal Instalments	1st payment within 60 days of commencement
		2nd payment within 6 months of commencement
		3rd payment within 9 months of commencement
		4th payment within 18 months of commencement

2.7 Exceptional Circumstances Relief

This statement is made in line with Regulation 56 of The Community Infrastructure Levy Regulations 2010.

Southampton City Council hereby gives notice that relief for exceptional circumstances is available in its area.

Relief for exceptional circumstances will be available from the day the Southampton City Council's CIL Charging Schedule comes into effect, which is (DATE) 2012.

Anyone wishing to claim relief for exceptional circumstances must follow the procedure set down in Regulation 57 of The Community Infrastructure Levy Regulations 2010.

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3 CIL Process

The CIL administrative system is triggered by the exchange of a series of formal notices (most of which are associated with a parallel appeal process). The flow process is shown below:

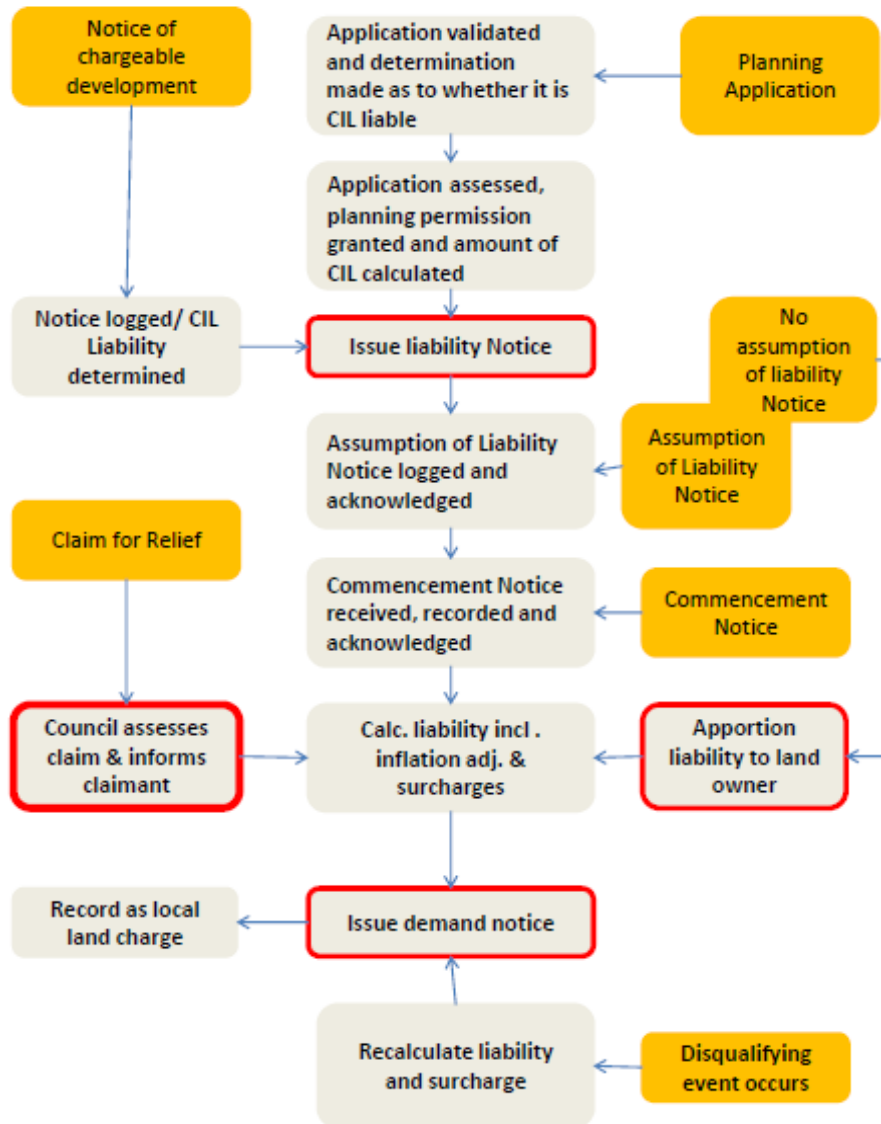


Figure 2 Stepwise Flow Process

(Source: Applying CIL – the Redbridge Case Study, PAS)

The “grey” boxes signify actions undertaken by the local planning authority; grey boxes with a red outline signify local authority actions that are subject to appeal processes and amber coloured boxes refer to third party actions principally those of a developer or land owner.

Actions are triggered through the issue of formal notices from third parties and most developments there will be just four of these:

- The **Liability Notice** is issued by the Council along with the planning permission Decision Notice. It says how much CIL is payable.
- The person(s) who will pay the CIL provides the Council with an **Assumption of Liability Notice**.
- Before the development starts, the owner/developer provides the Council with a **Commencement Notice** giving a date to start works.

A CIL liable development may not require planning permission, e.g. permitted development over 100sq m will become CIL liable in April 2013 (as signified by the trigger box shown on the left hand side of the flow diagram). In such cases the landowner must serve a **Notice of Chargeable Development** on the Council. There are also formal notices which the landowner must use if applying for relief from CIL for charities or for affordable housing.

There are three basis stages involved in dealing with CIL:

- Stage 1: When an application comes in, determine if the development is eligible to pay CIL.
- Stage 2: When a CIL eligible application is approved, the Council needs to inform the people who will pay CIL and how much is liable.
- Stage 3: When the development is about to commence the Council needs to send the bill (Demand Notice) with the amount adjusted for inflation

3.1 **Stage 1: When an application comes in, determine if the development is eligible to pay CIL.**

The flow diagram shows the sequence of decisions that need to be processed prior to establishing whether a development is liable for CIL.

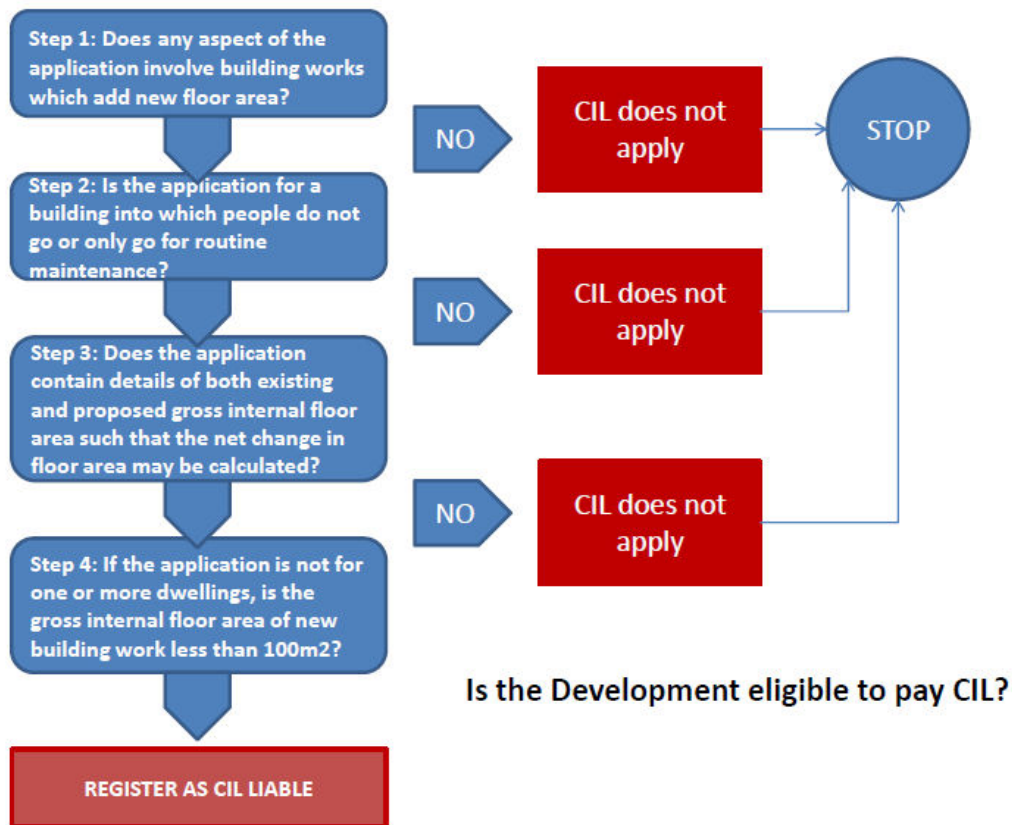


Figure 3 Decision Flow

3.2 Stage 2 – Informing people on liability to pay

When planning permission is issued for a CIL liable development, a CIL Liability Notice must be issued. This will normally occur at the same time as the Decision Notice is issued or as soon as possible thereafter. The Liability Notice needs to be registered/ recorded. The notice must be sent to:

1. The applicant.
2. Anyone who has already assumed liability to pay CIL.
3. Each person known to be an owner of the land. (“Owner” includes anyone with a leasehold interest with more than 7 years left to run.)

The Liability Notice will include a calculation of the exact CIL liability at that time. This is done by multiplying the rate of the charge by the net increase in gross internal floor area after allowing for any demolition and adjusting for inflation. The formula is found in Regulation 40(5) and goes as follows:

$$\frac{R \times A \times I_p}{I_c}$$

Where:

- R is the CIL rate
- A is the net increase in gross internal floor area.
- Ip is the All-in Tender Price Index for the year in which planning permission was granted.
- Ic is the All-in Tender Price Index for the year in which the charging schedule started operation.

Note 1: The All-in Tender Price Index is available by subscription from RICS, but check with your Property Department first. They may already subscribe. When CIL first commences Ip and Ic will be the same, so the amount is just R x A.

Note 2: With outline planning permissions, planning permission first permits development on the day of the final approval of the last reserved matter.

Note 3: Where the outline planning permission permits development to be implemented in phases, planning permission first permits a phase of the development on the day of the final approval of the last reserved matter associated with that phase.

Note 4: Where outline planning permission is granted prior to adopting a CIL, there is no CIL liability.

3.2.1 Calculating CIL when there is more than one rate involved

Development could straddle two charge rates in for example a mixed use development. Regulation 40 (6) (as amended in 2011) deals with this by saying that the value of “A” in the formula above must, in turn, be calculated by applying this formula:

$$\frac{Cr \times (C - E)}{C}$$

Where:—

Cr = the gross internal area of the part of the chargeable development chargeable at rate R, less an amount equal to the aggregate of the gross internal area of all buildings (excluding any new build) on completion of the chargeable development which:

- on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use;
- will be part of the chargeable development upon completion; and
- will be chargeable at rate R.

C = the gross internal area of the chargeable development; and

E = an amount equal to the aggregate of the gross internal areas of all buildings which:

- (a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use; and
- (b) are to be demolished before completion of the chargeable development.

The formula deals with the issue of any existing floor area which is demolished by allowing it to be deducted on a “pro rata” basis from the CIL liability for each land use.

The Regulations do not allow existing floor space to be treated on the same “pro rata” basis as demolished floor space. If there is existing floorspace which is incorporated into the final development, you have to know the rate(s) at which CIL applies to that floorspace in order to properly allow the discount. If it's already a mixed-use building then the existing floorspace may have to be discounted at different rates.

3.3 **Stage 3: Commencement and Demand Notices**

Before a CIL eligible development is commenced a Commencement Notice must be submitted to the Council. The notice needs to be scanned and registered/recorded. It will nominate a date for the development to commence.

This notice is the trigger to issue a Demand Notice to each person liable to pay CIL. The Demand Notice is based on the details shown in the Liability Notice.

If the development is by a charity or if it includes some social housing, the amount of CIL may be reduced and the Demand Notice will show this.

3.4 **Development which doesn't require planning permission**

The Regulations say that development under a “general consent” may still be liable for CIL (although transitional Regulation 128 says that this does not apply to planning permission issued before 6 April 2013). This includes things like Local Development Orders and development in Enterprise Zones.

It also includes permitted development. Permitted development doesn't allow new build dwellings and it will be a rare thing when residential permitted development exceeds the 100m² floor space threshold for extensions.

However, it is possible that extensions to industrial and warehouse buildings under Schedule 2 of the General Permitted Development Order 1995 could exceed the threshold.

If this happens a Notice of Chargeable Development must be served on the Council and the notice must include the relevant floor area details. The Council treats this in exactly the same way as if planning permission had been granted. The notice is registered and acknowledged, the CIL liability is calculated and a Liability Notice is issued. The Council would then expect to receive a Commencement Notice and to issue a Demand Notice in the usual way.

Where a developer fails to issue a Notice of Chargeable Development but the Council nevertheless believes a CIL liable development has commenced under a general consent, the Council itself issues the Notice of Chargeable Development and serves it on all the landowners, along with a Liability Notice.

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4 Determining who is liable to pay CIL when the Demand Notice is issued

4.1 Assumption of Liability

Anyone wishing to assume liability to pay CIL for a development must provide the Council with an Assumption of Liability Notice. The notice can be provided at any time up to the point where the development commences. If a Notice is received the Council must acknowledge it. It also needs to be registered/ recorded.

4.2 Transfer of Liability

Liability can be transferred to another person before or after development commences but this must occur before the final payment of CIL is due. If a Transfer of Liability Notice is received the Council must acknowledge it. The acknowledgment must be sent to both the person who formerly had liability and the person who liability is being transferred to. It also needs to be registered/ recorded.

4.3 Failure to Assume Liability

If no-one has assumed liability to pay CIL before the Demand Notice is issued the liability defaults to the owner(s) of the land and the Council can apply a surcharge to each owner. If there are two or more owners who hold the land in distinct shares, the amount of CIL will need to be apportioned to each owner according to their share of the total value of the land. This can become complicated and is a job for an appropriately trained officer. (Regulation 35 provides for an Information Notice to be sent to the owners if more information is needed to do the apportionment.)

Where the Council has to apportion liability a surcharge of £500 may be applied to each owner. This surcharge is then shown on the Demand Notice. The Council does not have to apply a surcharge or may apply a lesser amount.

5 Applying for Relief from CIL

5.1 Applications for Charitable Relief or for Social Housing Relief

There is provision for relief from CIL for certain activities by charities and for social housing. Claims for relief for charities or social housing cannot be made after the development has commenced and are void if the development commences and no Commencement Notice has been provided.

In each case, the claim for relief must be made on the appropriate form and the person making the claim must have assumed liability to pay CIL and be an owner of the land. Claims can be made at any time up to the point where development commences. If no claim has been made, the Council should just issue the Liability and Demand Notices showing the full CIL liability in the usual way.

As soon as possible after receiving the claim, the Council must assess it and notify the claimant of its decision and reasons and the amount of relief they qualify for. This is a job for an appropriately skilled officer. CLG has published guidance *CIL Relief Information Document* to assist. Both the application for relief and the Council's decision and reasons need to be registered/ recorded. When the Demand Notice is issued, the amount of relief is shown on the notice

If relief is granted and a reduced CIL paid, but within 7 years the development ceases to be used for affordable housing or charitable purposes, the relief is disqualified and the outstanding CIL must be paid. Therefore, whenever relief is granted, the full CIL payment will need to remain on the register of local land charges until the end of the 7 year "clawback" period, in case this occurs.

5.2 Request for Additional Information for Social Housing Relief

If the Council requires more information in order to determine a claim for social housing relief, it may serve an Information Notice. The notice must tell the person on whom it is served of the possible consequences of not supplying the information and the Notice must be complied with in 14 days.

The consequence of not supplying the information sought by the Information Notice is that a surcharge equal to 20% of the total CIL charge

up to a maximum of £1000 may be imposed. If this occurs the surcharge would be added to the Demand Notice.

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6 Reviews and Appeals

The Regulations provide for several different avenues of appeal and each of these is described below. However, CIL should generally be much more robust in withstanding appeal than the section 106 system. This is because, once the Charging Schedule is adopted, the rate of the levy is non-negotiable and the Council is not required to justify its application on a case-by-case basis. Appeals under the CIL Regulations are overwhelmingly about matters of fact (e.g. mistakes in calculating the liability or disputed commencement dates). Appeals follow the written representations procedure.

6.1 Chargeable amount review

A person may ask the Council to review the calculation of the chargeable amount of CIL shown on the Liability Notice. The request must be in writing and made no more than 28 days after the Liability Notice was issued. It may be accompanied by representations.

The review must be carried out by a person who is senior to the person who did the original calculation and who had no involvement in the original calculation. Within 14 days the Council must notify the person requesting the review of its decision and the reasons for the decision and either confirm the original charge or calculate a revised charge.

A person can't request a review of a decision that has already been reviewed. Neither can they request a review if the development has been commenced (or commences during the review), or if a claim for relief has been submitted and not withdrawn.

Any request for a review and the Council's decision and the reasons for the decision need to be registered/ recorded.

6.2 Chargeable Amount Appeal

An interested person who is not satisfied with the outcome of their request for a review of the chargeable amount (see above), or who has not received a reply from the Council within 14 days may appeal. The appeal has to be made no more than 60 days after the Liability Notice was issued and an appeal cannot be made if the development has commenced (or commences during the appeal).

The person appointed to hear this sort of appeal is a valuer and if they allow the appeal, they must calculate the revised amount of charge. Only one such appeal is allowed.

6.3 Apportionment of Liability Appeal

A person who is an owner of the land may appeal against the apportionment of liability within 28 days of the Demand Notice being issued. This type of appeal is also heard by a valuer and if they allow the appeal they may quash a surcharge and/or reapportion liability between the owners of the land.

6.4 Charitable Relief Appeal

A person may appeal the Council's decision to grant charitable relief on the ground that it incorrectly determined the value of the interest in land in respect of which the claim was allowed. This sort of appeal is also heard by a valuer and must be made no more than 28 days after the Council has made its decision to grant charitable relief. It will lapse if the development is commenced before the appeal is decided. If the appeal is allowed the valuer can amend the amount of charitable relief granted.

6.5 Surcharge Appeal

A person may appeal against a surcharge imposed by the Council on any of the following grounds:

1. That the claimed breach which led to the imposition of the surcharge did not occur;
2. That the Council did not serve a Liability Notice in respect of the chargeable development to which the surcharge relates; or
3. That the surcharge has been calculated incorrectly.

The appeal must be made no more than 28 days after the surcharge is imposed. This type of appeal will likely be heard by a planning inspector. If the appeal is allowed the inspector may quash or recalculate the surcharge.

6.6 Deemed Commencement Appeal

A person who is served with a Demand Notice that states a "deemed commencement" date may appeal on the ground that the date is wrong. The appeal must be made no later than 28 days after the Demand Notice is issued and will likely be heard by a planning inspector. If the appeal is allowed the inspector may revise the deemed commencement date and quash any surcharge.

6.7 CIL Stop Notice Appeal

A person may appeal against a CIL Stop Notice on the grounds that the

Council did not serve a warning notice or that the development has not commenced. The appeal must be made no more than 60 days after the Stop

Notice takes effect. The person who hears this type of appeal will likely be a planning inspector and the Stop Notice continues to have effect while the appeal is outstanding. The inspector may correct, vary or quash the Stop Notice. The use of Stop Notices and other methods of enforcement are set out in section.

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7 Payments and Surcharges

7.1 When payment is due

The Demand Notice will need to state when payment becomes due. Normally, this will be in accordance with the instalment policy, or if the Council does not have such a policy, payment will be due within 60 days of development commencing. However:

1. Where no-one has assumed liability but a Commencement Notice has been received, payment is due immediately upon commencement.
2. Where the Council has determined a “deemed commencement” date (because no valid Commencement Notice was provided), payment is due on the deemed commencement date.
3. There are also special provisions under Regulation 71 where the Council has to transfer liability to the land owners or where charitable or social housing relief has been granted and a “disqualifying event” has taken place. These will be unusual events and can be dealt with as they arise.

7.2 Surcharges and Late Interest

Surcharges and interest may be imposed as follows:

- If the development has commenced and no Commencement Notice has been received – £50 on each liable person.
- Where the Council has to apportion liability between different owners - £500 on each owner.
- For failure to submit a Notice of Chargeable Development – 20% of the chargeable amount up to a maximum of £2,500.
- For failure to submit a Commencement Notice – 20% of the chargeable amount up to a maximum of £2,500.
- For failure to notify the Council of a disqualifying event within 14 days - 20% of the chargeable amount up to a maximum of £2,500.
- For late payment – 5% of the chargeable amount or £200 (whichever is greater) may be imposed after 30 days and again after 6 months and then after 12 months on any outstanding amount.
- Failure to comply with an information notice within 14 days - 20% of the chargeable amount up to a maximum of £1,000.

- Late payment interest must be paid starting on the day payment was due at a rate 2.5 percentage points above the Bank of England base rate.

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8 Enforcement and Payment Recovery

The Regulations provide a wide range of options for enforcing and recovering CIL which is not paid by the due date. These include the ability to stop the development until CIL is paid, to seize and sell the debtor’s assets, to sell the development itself and even to send the debtor to prison.

The options are shown below:

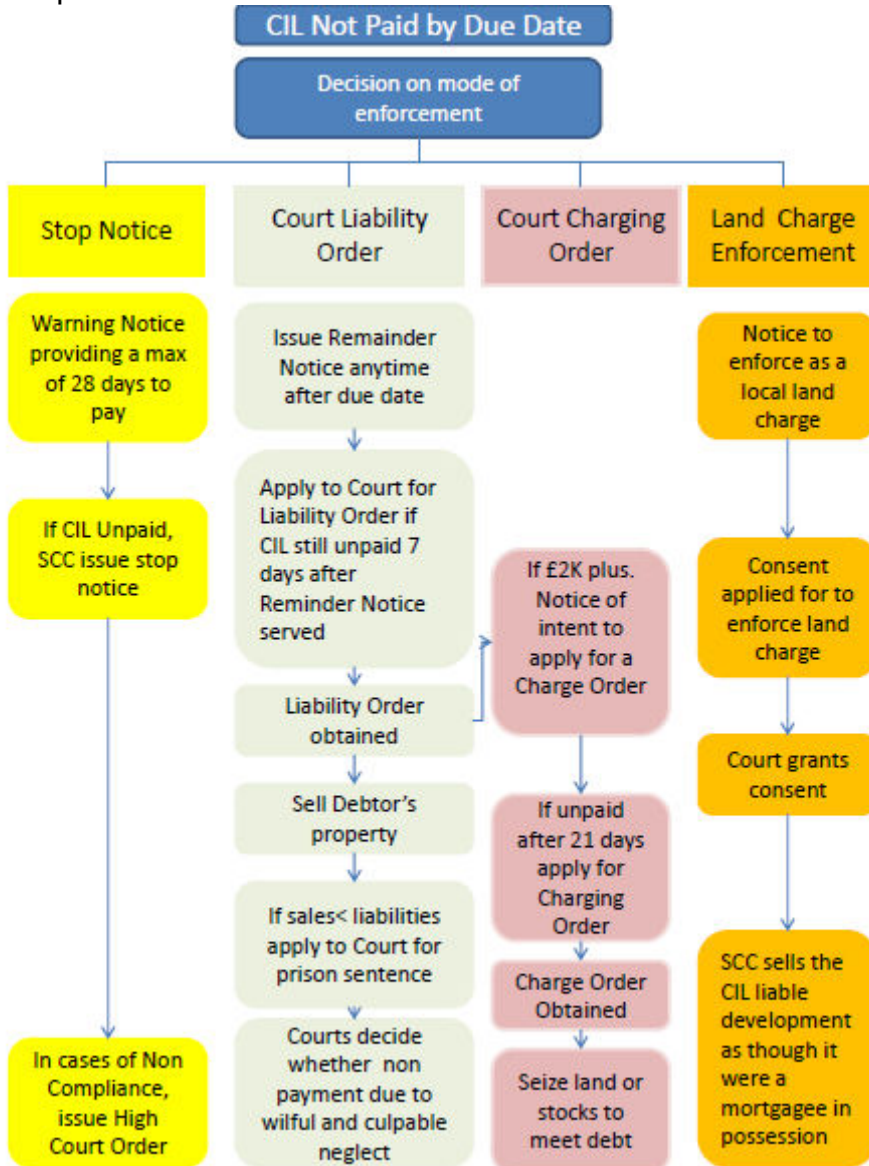


Figure 4 Enforcement Options

However, it is stressed that this is an area where legal advice may need to be sought about the best option to pursue in the circumstances.

8.1 The Stop Notice

The Stop Notice literally stops the construction work, but a Warning Notice must be issued first. Although stopping the work does not directly recover the CIL, it is likely to be highly effective in forcing payment because of the cost to the developer of having the project brought to a halt. However, if the development has been completed then there would be no work to stop and one of the options below would need to be pursued.

8.2 The Liability Order

The Council applies to the Court for a Liability Order. Once the Liability Order is obtained the Council may use a bailiff to recover and sell the debtor's goods, but the Council can't seize clothing, furniture etc that satisfy basic domestic needs of the debtor and his family.

If the amount realized in this way does not cover the full CIL liability the Council may apply to the Court to have the debtor sent to prison. The Court may have the debtor imprisoned only if it considers non-payment is due to wilful and culpable neglect. Presumably if it is simply due to inability to pay, the Court cannot send the debtor to prison. The threat of having goods confiscated and of a prison sentence may cause the debtor to pay up, but if he does not and has no substantial goods then the Council will not recover the outstanding CIL.

8.3 The Charging Order

The Council may apply to the Court for a Charging Order, but only if it has first obtained a Liability Order and if the amount of CIL outstanding exceeds £2,000 in value. If the Court grants an application for a Charging Order, it has effect over other assets the debtor may hold and which are mentioned in section 2(2) of the Charging Orders Act 1979. This includes land and securities such as stock and unit trusts. If the debtor has no such assets this mode would be ineffective.

8.4 Enforcing the Local Land Charge

To enforce CIL as a local land charge the Council must obtain the consent of the Court. If the Court gives its consent, the Council may move in as if it was a mortgagee and force the sale of the CIL liable land to recover the outstanding amount.

8.5 Court of Competent Jurisdiction

As an alternative to the Liability Order/Charging Order route, the Regulations allow the Council to seek to recover the outstanding CIL through a Court of competent jurisdiction which would cover things like debt recovery through small claims in the County Court.

Note: In all cases where Courts grant Orders for the recovery of CIL, the amount includes the Council's reasonable costs in obtaining the Order.

9 Local Land Charges

Imposing a local land charge is a two step process.

- Part 1 involves the registration of a “general financial charge” which warns of the impending charge.
- Part 2 involves the registration of a “specific financial charge” which is where the actual charge occurs.

In terms of administering CIL, planning needs to send Land Charges a copy of the Liability Notice when it is issued and this will trigger Part 1 of the process. At this stage the charge is only impending because until the planning permission is implemented, CIL payment is not required. Part 2 would occur when the Council issues the Demand Notice.

10 Reporting

Regulation 62 requires the Council to publish a report on its web site each financial year recording:

- a) total CIL receipts for the reported year;
- b) total CIL expenditure for the reported year;
- c) summary details of CIL expenditure during the reported year including:—
 - the items of infrastructure to which CIL (including land payments) has been applied,
 - the amount of CIL expenditure on each item,
 - the amount of CIL applied to repay money borrowed, including any interest, with details of the infrastructure items which that money was used to provide (wholly or in part),
 - the amount of CIL applied to administrative expenses pursuant to regulation 61, and that amount expressed as a percentage of CIL collected in that year in accordance with that regulation; and
 - the total amount of CIL receipts retained at the end of the reported year.

The report is required to be published no later than 31 December in the year following the financial year being reported on. The Council is not required to report on monies collected on behalf of the Mayor, but it would be desirable to report the figure so people understand that the Council isn't getting the lot.

The public report itself will be part of the Authority's Monitoring Report (LDF Annual Monitoring Report) prepared by the Planning Department, but in this case using records kept by Finance.

11 Transition Arrangements

11.1 Planning Applications Awaiting Approval when CIL Commences

CIL applies to planning permissions issued on or after the day it commences. This means there will be some undecided applications which were submitted before CIL commences for which floor area information may not have been provided unless the Council has started to require the information well in advance of the start date. In these cases the Council will need to seek this information retrospectively.

Regulation 40(9) provides for situations where the Council is unable to establish the gross internal floor area of buildings on the site, it may deem them to be zero. So if a developer was reluctant to disclose how much floor area was to be demolished, the Council could deem it to be none at all.

11.2 Unsigned S106 Agreements

Regulation 123 prevents section 106 agreements being entered into for infrastructure being funded by CIL after the Charging Schedule takes effect. Consequently, permissions granted subject to signing a satisfactory section 106 agreement and continuing section 106 negotiations on undetermined applications will be overtaken by CIL if they are not concluded and the planning permission issued before the CIL start date. Once CIL commences it will apply to all eligible development which gains planning permission regardless of any prior section 106 negotiations.

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Appendix A

Glossary of Notice Definitions

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A1 Glossary of Terminology

Liability Notice (Regulation 65)

The Liability Notice is sent out with the planning permission Decision Notice or as soon as possible thereafter. It must:

- a) be issued on a form published by the Secretary of State (or a form to substantially the same effect);
- b) include a description of the chargeable development;
- c) state the date on which it was issued;
- d) state the chargeable amount;
- e) state the amount of any charitable relief or relief for exceptional circumstances granted in respect of the chargeable development;
- f) where social housing relief has been granted in respect of the chargeable development, state—
 - i. the particulars of each person benefiting from the relief, and
 - ii. for each of those persons, the amount of relief from which the person benefits; and
 - iii. contain the other information specified in the form.

The Liability Notice must be served on the applicant, any person who has assumed liability to pay CIL (if known at this stage) and each person who is an owner.

Assumption of Liability Notice (Regulation 31)

This notice must be issued by anyone intending to assume liability for the CIL payment identified in the Council's Liability Notice and must:

- a) be submitted in writing on a form published by the Secretary of State (or a form to substantially the same effect); and
- b) include the particulars specified or referred to in the form.

If this notice is not served, then the Council can apply surcharges for its efforts in identifying the relevant owners and apportioning liability for CIL between them.

Commencement Notice (Regulation 67)

This is a notice the developer serves on the Council to let it know that the development is about to start (and hence the CIL liability is about to come into play).

The Commencement Notice must:

- a) be submitted in writing on a form published by the Secretary of State (or a form to substantially the same effect);
- b) identify the liability notice issued in respect of the chargeable development;
- c) state the intended commencement date of the chargeable development; and

- d) include the other particulars specified or referred to in the form.

If this notice is not served and the development commences, the Council then determines the “deemed commencement” date and can apply significant penalty surcharges.

Demand Notice (Regulation 69)

The Demand Notice is served by the Council on the applicant once the Commencement Notice has been received or – if the development has started but no such notice was provided to the Council – after the date on which the Council has deemed the development to have commenced. The Demand Notice must:

- a) be issued on a form published by the Secretary of State (or a form to substantially the same effect);
- b) state the date on which it was issued;
- c) identify the liability notice to which it relates;
- d) state the intended commencement date or, where the collecting authority has determined a deemed commencement date, the deemed commencement date;
- e) state the amount payable by the person on whom the notice is served (including any surcharges imposed in respect of or interest applied to the amount) and the day on which payment of the amount is due;
- f) where the amount payable is to be paid by way of instalments, the amount of each instalment and the day on which payment of the instalment is due; and
- g) include the other information specified in the form.

Notice of Chargeable Development (Regulation 64)

This notice must be used to inform the Council of any development occurring under a general consent which includes development under Local Development Orders and Enterprise Zones (there aren't many of these) and permitted development. The only permitted development which is at all likely to give rise to an increase of floor area of 100m² or more is extensions to industrial and warehouse buildings and various types of agricultural building under Schedule 2 of the General Permitted Development Order 1995. The Notice must:

- a) be submitted in writing on a form published by the Secretary of State (or a form to substantially the same effect); and
- b) include the particulars specified or referred to in the form.

The notice must be accompanied by—

- a) a plan which identifies the land to which the notice relates and any buildings in use on that land which are to be demolished;
- b) a plan which identifies the development which is the subject of the notice; and any other plans, drawings, and information necessary to describe the development which is the subject of the notice. Any plans or drawings required must be drawn to an identified scale and, in the case of plans, must show the direction of North.

Transfer of Liability Notice (Regulation 32)

A person who has assumed liability for CIL may transfer that liability to another person. The Transfer of Liability Notice must:

- a) be submitted in writing on a form published by the Secretary of State (or a form to substantially the same effect); and
- b) include the particulars specified or referred to in the form.

Default of Liability Notice (Regulation 36)

Where someone has assumed liability for CIL but (despite all reasonable efforts) the Council has not been able to make them pay, then the Council can issue this notice which defaults the liability to the owners of the land. This assumes that the owners of the land are different people to the person who originally undertook to pay the CIL. The notice must:

- a) be issued on a form published by the Secretary of State (or a form to substantially the same effect);
- b) state the outstanding amount of CIL payable in respect of the chargeable development;
- c) include the other information specified in the form; and
- d) be served on the owner of each material interest in the relevant land.

Apportionment of Liability Information Notice (Regulation 35)

Where no-one has assumed liability for CIL the Council can apportion liability to the different land owners, but it may need information from them in order to do this. It seeks this information by issuing an Information Notice. The Regulations do not specify any particular form for this notice and it is likely that all that is required is a letter headed "Regulation 35 Information Notice" or some such.

Charitable Development Relief Claim (Regulation 47)

A person wishing to claim relief from CIL for charitable development must make a claim which must:

- a) be received by the collecting authority before the commencement of the chargeable development to which it relates;
- b) be submitted in writing on a form published by the Secretary of State (or a form to substantially the same effect);
- c) include the particulars specified or referred to in the form; and
- d) where there is more than one material interest in the relevant land, be accompanied by an apportionment assessment.

Social Housing Relief Claim (Regulation 51)

A person wishing to claim relief from CIL for social housing must make a claim which must:

- a) be submitted to the collecting authority in writing on a form published by the Secretary of State (or a form to substantially the same effect);
- b) be received by the collecting authority before commencement of the chargeable development;

- c) include the particulars specified or referred to in the form; and
- d) be accompanied by—
 - i. a relief assessment, and
 - ii. evidence that the chargeable development qualifies for social housing relief (by reference to the conditions mentioned in regulation 49).

Social Housing Relief Information Notice (Regulation 54)

If the Council wants more information about a claim for social housing relief it may serve an information notice. There is no particular form specified for this notice and it is likely that a letter headed with reference to Regulation 54 would suffice.

Liability Reminder Notice (Regulation 96)

If a person who is liable to pay CIL has not done so the Council may apply to a Magistrate's Court for a Liability Order against them, but before it can do this it needs to send the person a Reminder Notice. The Regulations do not specify any particular form for this notice and it is likely that a letter headed with reference to Regulation 96 would suffice.

Notification of Charging Order (Regulation 103)

In the event that a person does not comply with a Liability Order made against them in a Magistrate's Court the Council may apply to the Court for a Charging Order. Before doing so the Council must notify the debtor. The notification must:

- a) set out the authority's reasons for seeking a charging order;
- b) specify the effect of a charging order; and
- c) state the due amount and the steps the authority concerned will take if payment of the due amount is not forthcoming.

The form of notification is not further specified and it is likely that a letter drafted by the Legal Department and referring to Regulation 103 would be required here.

Warning Notice (Regulation 89)

If the Council is considering issuing a Stop Notice because CIL remains unpaid, it must first issue a Warning Notice. This Notice must:

- a) state the date of the notice;
- b) set out the authority's reasons for issuing the warning notice;
- c) state the unpaid amount;
- d) state that payment of the unpaid amount is due in full immediately;
- e) state the period after which a CIL stop notice may be issued if the unpaid amount is not paid (which must not be less than three days or more than 28 days after the warning notice is issued); and
- f) specify the effect of, and possible consequences of failure to comply with, a CIL stop notice.

It is likely that this type of notice would be drafted by the Legal Department.

Stop Notice (Regulation 90)

If a Warning Notice is not complied with the Council may issue a Stop Notice.
This Notice must:

- a) state the date on which it is to take effect;
- b) set out the authority's reasons for issuing the notice;
- c) state the unpaid amount;
- d) state that payment of the unpaid amount is due in full immediately;
- e) specify the relevant activity which must cease; and
- f) specify the possible consequences of failure to comply with the notice.

It is likely that this type of notice would be drafted by the Legal Department.

Notice of Enforcement of Local Land Charge (Regulation 107)

The Council may want to have the land sold to recover unpaid CIL. To do so it first has to give notification which must:

- a) be in writing;
- b) be displayed on the relevant land;
- c) set out the collecting authority's reasons for seeking to enforce the charge; and
- d) state the outstanding amount of CIL due in respect of the chargeable development and the steps the collecting authority will take if payment of that amount is not forthcoming.

It is likely that this type of notice would be drafted by the Legal Department.