



Community Infrastructure Levy (CIL)

Enforcement Guidance Note

December 2016

1. Enforcement Procedures

2. Where the Council's CIL payment procedure is not followed the Community Infrastructure Levy Regulations 2010 (as amended) include a number of provisions. These enable the application of surcharges and ensure the effective enforcement to recover CIL monies once there is a delay within the collection process. This guidance note is intended to provide a summary of the penalties and the enforcement powers that will be taken by the Council in relation to CIL.

Commencing development

3. Development is to be treated as commencing from the date on which any material operation begins to be carried out on site. In accordance with section 56(4) of the Town and Country Planning Act 1990 (as amended) a material operation is:
- any work of construction in the course of the erection of a building;
 - any work of demolition of a building;
 - the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
 - the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned above;
 - any operation in the course of laying out or constructing a road or part of a road; and
 - any change in the use of any land which constitutes material development.

The right to pay by instalments

4. Gedling Borough Council has an adopted Instalment Policy; however, the person who has assumed liability to pay CIL may pay the outstanding CIL (in whole or in part) in advance of the instalment period set out below:

Chargeable Amount	Number of Instalments	Total Timescale for Instalments	Payment Periods and Amounts
Less than £15,000	1	90 days	Full payment within 90 days of development
Between £15,000 and £50,000	3	360 days	1 st Instalment (25%) within 90 days. 2 nd Instalment (50%) within 270 days. 3 rd Instalment (25%) within 360 days.
Between £50,000 and	3	540 days	1 st Instalment (25%) within 90 days. 2 nd Instalment (50%) within 360 days.

£100,000			3 rd Instalment (25%) within 540 days.
Over £100,000	4	720 days	1 st Instalment (25%) within 90 days. 2 nd Instalment (25%) within 270 days. 3 rd Instalment (25%) within 540 days. 4 th Instalment (25%) within 720 days

5. The right to pay by instalments will be lost and the total CIL liable amount will become payable within 60 days of commencement of the chargeable development if CIL Form 1: Assumption of Liability and CIL Form 6: Commencement Notice have not been submitted prior to development commencing.

6. Once the development has commenced, all CIL payments must be made in accordance with the CIL Instalment Policy. Where a payment is not received in full on or before the day on which it is due, the total CIL liable amount becomes payable in full immediately.

Commencing development before submitting CIL Form 1: Assumption of Liability

7. In addition to losing the right to pay by instalments, if development has commenced and nobody has assumed liability to pay CIL by submitting CIL Form 1: Assumption of Liability in respect of the chargeable development then a surcharge of £50 will be imposed on each person liable to pay CIL.

Apportionment of liability between relevant landowners

8. Where the Council has to apportion liability between one or more landowners, it will impose a surcharge of £500 per landowner to ensure the costs of this apportionment are accounted for by the landowners.

Commencing development before the Council receives CIL Form 6: Commencement Notice

9. In addition to losing the right to pay by instalments, the failure to submit a completed CIL Form 6: Commencement Notice before development commences will result in the Council imposing a surcharge of 20% of the CIL amount due, up to a maximum of £2,500.

Commencing development before the Council receives CIL Form 5: Notice of Chargeable Development

10. This form is only required to be submitted if a CIL liable development is due to commence does not need planning permission, for example, a general consent in the form of permitted development. The failure to submit CIL Form 5: Notice of Chargeable Development before development commences will result in the

Council imposing a surcharge of 20% of the CIL amount due, up to a maximum of £2,500. CIL Form 6: Commencement Notice must also still be submitted.

The Council is not notified of a disqualifying event

11. The Council accepts relief for social housing and charities, in addition to the self-build housing exemption. Disqualifying events can occur in relation to these different forms of relief and exemption. If the Council is not notified of a disqualifying event within 14 days of it occurring then the Council will impose a surcharge of 20% of the CIL amount due, up to a maximum of £2,500.

Failure to comply with an information notice

12. In some instances the Council may need further information regarding the apportionment of CIL liability or on the calculation of social housing relief. The failure to respond to an information notice sent by the Council within 14 days of it being served will result in the Council imposing a surcharge of 20% of the CIL amount due, up to a maximum of £1,000.

Late payment interest

13. The failure to pay CIL on time in accordance with the Council's adopted CIL Instalment Policy will result in interest being applied on the chargeable amount at 2.5 percentage points above the Bank of England base rate.

Late payment surcharge

14. The continued failure to pay CIL will result in the Council imposing late payment surcharges in the following manner:

- 5% (min. £200) of the outstanding amount where payment is overdue after 30 days.
- 5% (min. £200) of the outstanding amount where payment is overdue after 6 months.
- 5% (min. £200) of the outstanding amount where payment is overdue after 12 months.

15. These surcharges are cumulative and include any late payment interest.

CIL stop notice

16. If the Council believe that interest and late payment surcharges will be ineffective in securing payment of the overdue CIL then a CIL stop notice will be served. A CIL stop notice prohibits development from continuing until payment is made or the stop notice is withdrawn. Continuing to develop in these circumstances is a criminal offence, punishable by unlimited fines.

17. Before serving a CIL stop notice the Council will issue a warning notice to the person liable to pay CIL, the landowners, occupiers and all those who the Council believes will be affected by the notice. It will also post a warning on the site itself. The warning notice will be in writing and the Council's reasons for issuing the warning notice, set out the amount overdue and will specify the number of days after which a CIL stop notice will be served if payment continues not to be made. If payment is not made by the end of this period, the Council will serve a stop notice which prohibits development with immediate effect until payment of the outstanding amount is made.

Seizing of assets

18. The continued failure to pay CIL will result in the Council applying to a magistrates' court for consent to seize and sell your assets to recover the money due. These assets may include any land you hold. It is a legal requirement for the Council to send you a reminder notice stating the amount overdue beforehand. If the outstanding amount is not paid within 7 days following service of the reminder notice the Council can apply to the magistrates' court for a liability order.

Committal to prison

19. If you continue to evade paying CIL, the Council will ask a magistrates' court to commit you to prison for up to 3 months. To do this, the Council must be able to demonstrate to the court that it has been unable to recover the CIL amount due by seizing and selling your assets and land.

Abatement

20. Levy payments made in respect of a development that has commenced but has not been completed can be credited against the levy liability for a revised scheme under a new planning permission, on all or part of the same land. This levy credit is known as abatement. This provision is to ensure that the charge is not inappropriately levied twice (or more) as schemes change during the course of development of a site. However, once a development is completed, a developer cannot apply for abatement of levy paid.

21. No refund is payable under the abatement provisions if a later development scheme has a lower levy liability than the one which was first paid on the site. This is to avoid potentially significant and long term financial liabilities to charging authorities on schemes which are not completed. Abatement can apply to both Section 73 variation of conditions applications and the implementation of a different planning permission. More information regarding abatement can be found on the Planning Practice Guidance website.

<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/collecting-the-levy/abatements/>

Relief and Exemptions

- 22.** The Community Infrastructure Levy Regulations make a number of provisions for charging authorities to give relief from the levy. Gedling Borough Council offers charitable relief, social housing and self-build housing exemption.
- 23.** All forms of relief and exemption must be applied for before commencement of development and applicants must wait for confirmation from Gedling Borough Council before then commencing development. Most forms of relief have a clawback period where the development must still adhere to the criteria it applied under.
- 24.** If circumstances change within the defined clawback period then the full CIL payment will become payable immediately. Other disqualifying events are applicable to the respective forms of relief and exemptions which will also result in full CIL payment becoming payable immediately. More information regarding relief and exemptions can be found on the Council's website (www.gedling.gov.uk/cil) or on the Planning Practice Guidance website (<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/relief/>).
- 25.** If you require any further information regarding the Community Infrastructure Levy (CIL) please contact the CIL Officer on 0115 901 3731 or e-mail alan.siviter@gedling.gov.uk.