

COMMUNITY INFRASTRUCTURE LEVY (CIL)

ENFORCEMENT PROCEDURES

A Guide for Applicants – October 2015



Where the Council's CIL payment procedure is not followed the Community Infrastructure Levy Regulations 2010 (as amended) include a number of provisions that 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 provides an easy to read summary of [Part 9 Enforcement of the Community Infrastructure Levy Regulations 2010 \(as amended\)](#) identifying the penalties and enforcement powers that will be taken by the Council.

Commencing Development

With regards to the references to commencing development throughout this guidance note, development is to be treated as commencing from the date on which any material operations begin 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
- any change in the use of any land which constitutes material development

The right to pay by instalments

The Borough of Poole 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:

CIL liable amount	Instalments
Up to £75,000	1 st Instalment – 25% payable by 60 days from commencement 2 nd Instalment – 75% payable by 360 days from commencement
Greater than £75,000	1 st Instalment – 20% payable by 60 days from commencement 2 nd instalment – 20% payable by 360 days from commencement 3 rd instalment – 30% payable by 540 days from commencement 4 th instalment – 30% payable by 720 days from commencement

The right to pay by instalments will be lost and the total CIL liable amount will become payable within 60 days of the 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.

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

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

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

In addition to losing the right to pay by instalments, the failure to submit [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

This form only needs to be submitted if a CIL liable development is due to commence that 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

The Council accepts relief for social housing, charities and exceptional circumstances, 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.

Failing to comply with an information notice

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

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

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

These surcharges are cumulative and include any late payment interest.

CIL stop notice

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. Continuing to develop in these circumstances is a criminal offence, punishable by potentially unlimited fines.

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. This warning will state that continued non-payment will result in a CIL stop notice being issued. It will also set out the amount overdue and 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 will prohibit development with immediate effect until payment of the outstanding amount is made.

Seizing of assets

The continued failure to pay CIL will result in the Council seeking a court's 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 notice of its intention to do so beforehand.

Committal to prison

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

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.

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](#).

Relief and Exemptions

The Community Infrastructure Levy Regulations make a number of provisions for charging authorities to give relief from the levy. The Borough of Poole offers charitable relief, social housing relief, exceptional circumstances relief and self build housing exemption. All forms of relief and exemption must be applied for before commencement of development and applicants must wait for confirmation from the Borough of Poole before then commencing development. Most forms of relief have a clawback period where the development must still adhere to the criteria it applied under. 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 [Planning Practice Guidance website](#).