

Community Infrastructure Levy (CIL) – Enforcement Policy

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For implementation from 25 June 2018



Basingstoke
and Deane

Community Infrastructure Levy (CIL) – Enforcement Policy

Where Basingstoke and Deane Borough Council’s Community Infrastructure Levy (CIL) payment procedure is not followed, the CIL Regulations 2010 (as amended) include a number of provisions to enable the application of surcharges and ensure the effective enforcement to recover CIL monies where there is a delay within the collecting process. This policy note sets out the penalties and enforcement powers that will be taken by the Borough Council. A table in Appendix 1 summarises the penalties.

Commencing Development

Commencing Development, as referred to in this note, is considered to be defined as development which commences from the earliest date on which any material operations begin to be carried out on the site. In accordance with section 56 (4) of the Town and Country Planning Act 1990 (as amended), a material operation includes:

- 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 parts 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

Basingstoke and Deane Borough Council has an Adopted Instalments Policy, as summarised below.

Amount of CIL Liability	Category 1	Number of Instalments	Payment Periods and Amounts			
			1 st Instalment	2 nd Instalment	3 rd Instalment	4 th Instalment
Any amount less than £10,000.00		1	Total amount within 60 days of commencement			
£10,000.00 to £49,999.99	2	2	50% within 60 days	50% within 180 days		
£50,000.00 to £249,999.99	3	3	25% within 60 days	25% within 180 days	50% within 365 days	
£250,000.00 to £999,999.99	4	4	25% within 60 days	25% within 180 days	25% within 270 days	25% within 365 days
£1million +	5	4	25% within 60 days	25% within 180 days	25% within 365 days	25% within 545 days

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 Instalments 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 by that date 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 Borough 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 be submitted.

The Borough Council is not notified of a Disqualifying Event

The Borough Council has an Adopted Discretionary Relief Housing Policy, as well as recognising self-build housing exemptions from CIL, see Appendix 2. Disqualifying events can occur in relation to these different forms of relief and exemption. If the Borough Council is not notified of a disqualifying event within 14 days of it occurring, the Borough 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

In some instances, the Borough 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 Borough Council within 14 days of it being served will result in the Borough 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 and in accordance with the Council's Adopted 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 the CIL liability will result in the Borough Council imposing late payment surcharges as follows:

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

These surcharges are cumulative and late payment interest may be payable in addition.

CIL Stop Notice

If the Borough Council believe that interest and late payment surcharges will be ineffective in securing payment of the overdue CIL then a 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 Borough Council will issue a warning notice to the person liable to pay CIL, the landowners, occupiers and all those who the Borough 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 Borough Council will serve a CIL 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 Borough Council seeking a court order to seize and sell your assets to recover the money due. These assets may include any land held by the debtor. It is a legal requirement for the Borough Council to send you notice of its intention to do so beforehand.

Committal to Prison

Where the Borough Council is unable to recover the amounts due, it may ask a magistrates' court to commit the debtor to prison for up to three months. This is likely to be a very rare situation, but provides a useful last option for an authority who has exhausted all other options.

Abatement

CIL 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.

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. No refund is payable under the abatement provisions if a later scheme has a lower CIL liability than the one which was first paid for the site.

Relief and Exemptions

The CIL Regulations make a number of provisions for charging authorities to give relief from the levy. Basingstoke and Deane Borough Council offers Discretionary Social Housing 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 Council before them commencing development. Most forms of relief have a clawback period where the development must adhere to the criteria it applied under, as set out in the Regulations. If circumstances change within the defined clawback period, then the full CIL Payment will become payable immediately. More information regarding relief and exemptions can be found on the Planning Practice Guidance website.

Appendix One – Summary of Penalty Charges

Surcharge for:	Amount:	CIL Reg	Form No
Failure to assume liability, where no one has assumed liability and chargeable development has commenced	£50 on each person liable to pay CIL	80	
Apportionment of liability. Where the Borough Council is required to apportion liability for CIL between those with a material interest in the land, the Borough Council may impose a surcharge in respect of each of these interests.	£500	81	
Failure to submit notice of chargeable development (i.e. development has taken place under general consent)	20% of the chargeable amount to a maximum of £2,500.	82	5
Failure to submit a commencement notice (prior to development starting)	20% of the chargeable amount to a maximum of £2,500.	83	6
Disqualifying events (where a person fails to notify the Borough Council of a disqualifying event before the end of 14 days with the day being the date on which the disqualifying event occurs)	20% of the chargeable amount to a maximum of £2,500.	84	
Late payment	5% of the outstanding chargeable amount (minimum £200). Payment not received within 30 days of due date. If the sum is not paid in full within 6 months a further surcharge of 5% of the unpaid amount (minimum £200), with the same surcharge applied at 12 months.	85	
Failure to comply with an Information Notice	20% of the relevant amount to a maximum of £1,000.	86	
Late Payment Interest	When the CIL liability is not received (in whole or in part) on the day payment is due, late payment interest will become payable on the unpaid amount. Late payment interest is calculated for the period starting on the day after the day payment was due and ending on the day the unpaid amount is received at an annual rate of 2.5 percentage points above the Bank of England base rate.	87	

Appendix Two – Disqualifying Events - Self Build Exemptions

A self-build exemption is revoked if a disqualifying event occurs during the 3 year occupancy period.

A disqualifying event for self-build exemption is:

- any change in relation to the self-build housing or self-build communal development such that it ceases to meet the criteria set out in regulations;
- failure to Self-Build Exemption Claim Form: Part 2 and provide evidence within six months of the date of the completion certificate;
- the letting out of a whole dwelling or building that is self-build housing or self-build communal development; or
- the sale of the self-build housing or self-build communal development.

Where a disqualifying event occurs, the beneficiary of the relief is liable to pay an amount of CIL equal to the amount of CIL that would have been payable on commencement of development had relief not been granted.

Where a disqualifying event occurs, the beneficiary of relief must notify the Council, in writing, within 14 days of the disqualifying event. Where this is not done, a surcharge equal to the lesser amount of 20 per cent of the chargeable amount or £2,500 may be applied.

www.basingstoke.gov.uk/planning-obligations

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