

*North Warwickshire Borough
Council*

*Community
Infrastructure Levy*

*Draft Detailed
Guidance for Applicants*

February 2015

1. What development is affected by the Community Infrastructure Levy (CIL)?

- 1.1 The CIL applies to most development, although some uses have a zero charge. Development involving less than 100 square metres floorspace (1,076 square feet) of new build is exempt, *unless* one or more dwellings is created (in which case the exemption does not apply). If more than 100 sqm of floorspace is developed then CIL is liable on the whole amount.
- 1.2 CIL is chargeable on the “gross internal area” of the “development for which planning permission is granted” (Regulations 40 and 9 of the Community Infrastructure Levy Regulations 2010 (as amended)¹). The floorspace is measured as the gross internal floorspace (i.e. the internal area of the building, including circulation and service space such as corridors, storage, toilets, lifts, etc). It includes attic rooms that are useable as rooms, but excludes loft storage space accessed by a pull-down loft ladder. Garages and other ancillary buildings are CIL-liable. Only buildings “into which people do not normally go”, such as buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery, are not CIL-liable.
- 1.3 Variations of conditions applications (VAR applications), also known as ‘s73 applications’ (Section 73 Town and Country Planning Act 1990) are not exempt from CIL liability.
- 1.4 Development commenced under general consent is liable to pay CIL. However, where development is commenced before 6th April 2013, liability will not arise as part of the transitional provisions in the Community Infrastructure Regulations 2010 (as amended). ‘General consent’ includes permitted development rights granted under the General Permitted Development Order 1995.
- 1.5 Qualifying conversions of existing buildings (see point 7 below), mezzanine floor developments (inserting a new floor in an existing building), subdivision of a dwelling into two or more dwellings, qualifying changes of use that do not involve additional new build floorspace (see point 7 below) and the creation of or carrying out of any work on a building into which people do not normally go or do so only intermittently for the purpose of inspecting or maintaining fixed plant or machinery are not liable for the Levy, as clarified by Regulations 6 and 40 in the CIL Regulations.
- 1.6 The current levy rates can be found in the Charging schedule, which can be viewed on the Council’s website at <http://www.northwarks.gov.uk>. Other contributions may also be required for development specific matters, such as through a Section 106 Town and Country Planning Act 1990 Legal Agreement. All permissions granted from May 2016 will be liable to pay CIL, in accordance with the CIL Regulations. This also applies to planning consents issued by a Planning Inspector as a result of an appeal from May 2016.

¹ Unless stated otherwise, all reference to regulations in this guidance, are references to the Community Infrastructure Levy Regulations 2010 as amended by the Community Infrastructure Levy (Amendment) Regulation 2011.

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Current site	Completed Development	CIL Liabile	Chargeable area
Cleared building site	92 sq m new residential dwelling	✓	92 sq m
Single dwelling – in use	Single dwelling with a 25 sq m extension	✗	Not liable as under 100 sq m new build and does not create a new dwelling
Single dwelling – in use	Single dwelling (currently 100 sq m) with a 125 sq m extension	✓	125 sq m
Cleared building site	2000 sq m residential, including 40% affordable housing (800 sq m)	✓	1200 sq m NB: the affordable housing relief (800 sq m) must be applied for and meet certain criteria to be granted
Single dwelling – in use but to be demolished	125 sq m new development 90 sq m original dwelling demolished	✓	35 sq m NB: not exempt as development comprises of one or more dwellings but charge reduced due to original building to be demolished being in use (see point 7 below)
Single dwelling – not in use and to be demolished	125 sq m new development 90 sq m original dwelling demolished	✓	125 sq m NB: not exempt as development comprises of one or more dwellings and no reduction in charge as original building not in use (see point 7 below)
Single dwelling – not in use but to be retained	35 sq m new development 90 sq m original retained	✗	Not liable as under 100 sq m new build and does not create a new dwelling (but extends an existing one). NB: Original building not included in calculation as not change of use or to be demolished so does not need permission.
Shop unit – not in use	98 sq m conversion/change of use of unit to residential	✓	98 sq m NB: No exemption even though under 100 sq m as creating new dwelling. As the unit has not been in use, the floorspace is chargeable.
Shop unit – in use	98 sq m conversion/change of use of unit to residential	✓	0 sq m so no charge NB: No exemption even though under 100 sq m as creating new dwelling. However, as the unit has been in use, the floorspace

			is deductible and so there is no charge in this scenario.
Single dwelling – not in use	98 sq m conversion/change of use of unit to retail unit	X	Not liable as change of use to non-residential and under 100 sq m new development so minor exemption applies. The fact it has

2. Who is liable to pay the levy?

- 2.1 Responsibility to pay the levy runs with the ownership of the land and the levy is registered as a local land charge. Liability to pay the levy may be assumed by the land owner or another party or parties, unless an application for social housing relief has been made (see note 3 below), by completing and submitting an Assumption of Liability (Form 1), which is available to download from the Planning Forms section on the Council’s website at www.northwarks.gov.uk. The liability must be assumed by submission of a completed form before the development commences. Failure to submit prior to commencement of the development will result in the liable party/land owner losing any right to pay the levy in instalments, as set out in the Council’s Instalment Policy, and may incur a surcharge.
- 2.2 Liability may be transferred at any time before commencement of the development, unless an application for social housing relief has been made (see note 3 below), by submitting form 1 Assumption of Liability, Form 3 Withdrawal of Liability, or Form 4 Transfer of Liability as appropriate. If the Council is unable to recover CIL from a party that has assumed liability, the liability defaults to the owner/s of the land.
- 2.3 The CIL Liability Notice will be issued to the party/s that has assumed liability and/or to the landowner as well as to the planning applicant. CIL does not need to be paid until after the development has commenced.

3. Are there any exemptions from paying a levy?

- 3.1 An owner of land is exempt from liability to pay CIL if that owner is a **charitable institution** and the chargeable development will be used wholly, or mainly, for charitable purposes. However, this does not apply where:
- that part of the chargeable development to be used for charitable purposes will not be occupied or under the control of the charitable institution;
 - where the material interest is owned by the charitable institution jointly with a person who is not a charitable institution;
 - where exemption of the owner from liability to pay CIL would constitute State aid.

- 3.2 The CIL Regulations also provide 100% relief from the levy on those parts of a chargeable development which are intended to be used as **social housing**.
- 3.3 Any person wishing to benefit from social housing relief must be an owner of the relevant land, assume liability to pay CIL, submit a claim in accordance with regulations to the Council and receive approval of the claim **all** before commencing development.

4. How much is the Levy?

- 4.1 The chargeable amount will be calculated in accordance with the CIL Regulations. This is most simply stated as the chargeable amount based on the floorspace (in square metres) multiplied by the levy rate (£ per sqm):

Levy = Chargeable Development (A) x Levy rate (R) x inflation measure (I)

A = the net area of floorspace chargeable in square metres after deducting any existing floorspace and any demolitions, where appropriate.

R = the levy rate as set in the Charging Schedule (see below).

Use Class	Recommended CIL rate (£ per square metre)
All Residential C3/C4 development types unless stated otherwise in this table or exempted by CIL Regulations	£40 (standard rate)
Office – B1a	£0 (zero charge)
Industrial – B1b/B1c and B2	£0 (zero charge)
Warehousing , Storage and Distribution - B8 under 9,290m ²	£0 (zero charge)
Warehousing , Storage and Distribution - B8 at 9,290m ² and above	£20
Retail - A Class Uses All categories A1 to A5	£60
Hotel – C1	£60
All other forms of Development – including C2, C2a and Uses within D1 and D2, Agricultural and Sui Generis uses (or any of the above uses where the cumulative combined CIL amount of any development proposal amounts to less than £50. See note 1.9 below)	£0 (zero charge)

5. What information do I have to supply when making a planning application?

- 5.1 When submitting a planning application for CIL-liable development you should submit a 'CIL Additional Questions' form, to ensure that your CIL liability is calculated accurately. CIL will be liable on the landowner, unless another party completes a CIL 'Form 1: Assumption of Liability'.
- 5.2 If you are submitting an outline application for a major development, the CIL Regulations permit each phase of the development to be a separate chargeable development (Regulation 9(4)) if the outline permission granted permits

development to be implemented in phases. If you wish for your application to be considered in phases, this must be requested and discussed with the Council immediately.

- 5.3 The CIL forms required with your planning application are available to download from the Planning consultations section on the Council's website, at <http://www.northwarks.gov.uk> or from the Planning Portal website, at <http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>.

6. What happens after planning permission is granted?

- 6.1 When planning permission is granted, North Warwickshire District Council as the Charging Authority will issue a Liability Notice that sets out the Levy that will be due for payment when the development is commenced.
- 6.2 Before development starts, the developer must inform the Council and all owners of the relevant land of the intended commencement date of the development by sending a 'Form 6: Commencement Notice'. This can be downloaded from the Planning consultations section on the Council's website, at <http://www.northwarks.gov.uk/> or from the Planning Portal website, at <http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil> . Please note that failure to submit a Commencement Notice may result in a **surcharge of up to £2,500** and immediate payment of the CIL liability may be required.
- 6.3 The collecting authority will then send a CIL Demand Notice (an invoice) to the person or persons who have assumed liability, or the landowner if no-one has assumed liability.
- 6.4 The timing of payments will normally be in accordance with North Warwickshire District Council's CIL Instalment Policy, available on our website, and will in any event be identified on the Demand Notice.
- 6.5 Where an outline planning permission permits development to be implemented in phases, each phase of the development is a separate chargeable development (Regulation 9(4)).

7. What existing buildings can be deducted from the chargeable area?

- 7.1 Buildings to be demolished or converted as part of the development will be eligible to be deducted from the chargeable area *provided* they have been *in use* for a continuous period of at least six months within the period of 12 months ending on the day planning permission first permits the chargeable development. In this context, "in use" means that at least part of the building has been in use. An indication that a building is "in use" is entirely unrelated to any discussion in the planning application as to whether the building is "redundant" (ie. no longer needed). In other words, a building can be both "redundant" for planning purposes and "in use" for CIL purposes.
- 7.2 The "day planning permission first permits development" is defined in the CIL Regulations as the date at which development may commence. If there are pre-commencement conditions attached to the planning permission, this date is the date at which the final pre-commencement condition is discharged. If there are no such conditions, then the date is the date of the planning permission.
- 7.3 Applicants must complete CIL Questions Form to provide the necessary declaration that existing buildings on the site are "in use" and therefore eligible to be deducted from their liability. Please note if we do not receive a completed form, under CIL Regulation 40(9) we will assume that any existing buildings on the site have zero floorspace.
- 7.4 Where there are eligible existing buildings, the Chargeable Development (A) is calculated using the CIL formula (Regulation 40). This formula apportions the floorspace that is being demolished between the different levy rates.
- 7.5 Buildings that have not been in continuous use for at least six months in the twelve months prior to the date the planning permission first permits the chargeable development *cannot* be taken into account.

- 7.6 Where there are **existing buildings**, the Chargeable Development (A) is calculated using the following formula:

$$A = \frac{C_R \times (C - E)}{C}$$

Where:

C_R = 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 —

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

C = the gross internal area of the chargeable development

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.

8. What if the Levy makes development unviable?

- 8.1 In very limited circumstances, exceptional circumstances relief may be available from CIL. Discretionary Relief for Exceptional Circumstances may only happen if a planning obligation of greater value than the chargeable amount has been entered into in respect of the planning permission which permits the chargeable development and the Council considers that payment of the levy would have an unacceptable impact on the economic viability of the development, as required by the Community Infrastructure Levy Regulations 2010 (as amended).

- 8.2 It should be noted that the Council has undertaken viability assessments to carefully consider the level at which the proposed CIL charges have been set, taking into account the provision of affordable housing at 40% and development specific S106 obligations. In view of this, it is important to note that the consideration for relief will be rare and any relief given must be done in accordance with the procedure stated above and state aid rules.

- 8.3 The Council's policy on exceptional circumstances relief is available on our website. A guide to CIL relief is available on the Planning Portal website at <http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil> . If you consider that a combination of CIL and the S106 contribution will render your development unviable, you should discuss this matter immediately with the Council.

9. Can I pay CIL in other forms?

- 9.1 The regulations only permit CIL to be paid in monetary forms (eg BACs) or land.

- 9.2 If you are interested in paying CIL in the form of land, and have not commenced development on the site in question, you should discuss this possibility with the Council immediately. In order for the request to go ahead, the following conditions must be met:

- The charging authority must agree to the transfer;

- The charging authority must have the intention of using the land to help provide infrastructure to support the development of its area;
- The person transferring the land to the charging authority as payment must have assumed liability to pay CIL beforehand (using Form 1);
- The land to be transferred must have been valued by a suitably qualified and experienced independent person. This charging authority must give their approval to the valuation of the land by this person. The valuation must represent the fair market price for the land on the day it is valued;
- Development on the site must not have commenced before a written agreement with the charging authority to pay some or the entire CIL amount in land has been made. This agreement must state the value of the land being transferred.

It should be noted that the agreement to pay in land may not form part of a planning obligation entered into under section 106 of the Town and Country Planning Act 1990. The agreement may however allow the transfer of land in instalments as long as it is in line with the payment proportions and due dates set out in your demand notice.

CIL cannot be paid in the form of a piece of infrastructure.

10. What are the consequences if I don't follow the CIL payment procedure?

- 10.1 The following notes are reproduced from a Government publication, available at <http://www.planningportal.gov.uk/planning/infocforlpas/cil>.

Possible consequences of failing to follow the CIL payment procedure

This note sets out the possible consequences of not following the CIL payment procedure.

Surcharge for failing to assume liability before commencement

Failure to assume liability before the commencement of development may result in the CIL collecting authority imposing a surcharge of £50 per landowner subsequently discovered. This surcharge ensures that the costs of establishing the identities of landowners are borne by the liable parties.

Surcharge where apportionment is necessary

Further, where CIL collecting authorities have to apportion liability between one or more owners of the land, they may also impose a surcharge of £500 per owner. This is to ensure the costs of this apportionment are borne by the owners in question. Both these surcharges are in addition to the loss of payment rights that result from failing to assume liability before the commencement of development.

What happens if a valid commencement notice is not submitted before development commences?

Failure to submit a valid commencement notice before development commences may result in the CIL collecting authority imposing a surcharge of 20% of the CIL amount due, up to a maximum of £2,500.

Surcharge for failing to comply with an information notice

Failure to comply with the any requirement of an information notice within 14 days of the notice being served, may result in a CIL collecting authority imposing a surcharge. This would be of 20% of the CIL amount due, up to a maximum of £2,500.

Late or non-payment

Late payment interest

Failure to pay CIL on time will result in the imposition of late payment interest by the CIL collecting authority at 2.5 percentage points above the Bank of England base rate.

Late payment surcharge

Continued failure to pay CIL may result in the CIL collecting authority imposing one or more late payment surcharge. Such surcharges will be imposed in the following manner:

- Five per cent of the outstanding amount where payment is still overdue after 30 days, subject to a £200 minimum
- Five per cent of the outstanding amount where payment is still overdue after six months, subject to a £200 minimum
- Five per cent of the outstanding amount where payment is still overdue after 12 months, subject to a £200 minimum.

The CIL stop notice

Sometimes collecting authorities may believe that interest and late payment surcharges will be ineffective in securing payment of the overdue CIL. In such circumstances, collecting authorities may decide to serve a CIL stop notice on the development in question. A CIL stop notice prohibits development from continuing until payment is made. Continuing to develop in the presence of such a notice is a criminal offence, punishable by potentially unlimited fines.

Before serving a CIL stop notice however, a collecting authority will first issue a warning to the person liable to pay the amount, the land's owners, occupiers and all those who the collecting authority will be affected by the notice. It will also post a warning on the site itself. This warning will state that continued non-payment may 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 may be served if payment continues not to be made. If payment is not made by the end of this period, a collecting authority may serve a stop notice which will prohibit development with immediate effect immediately until payment of the outstanding amount is made.

Distraint on goods (asset seizure)

When you fail to pay CIL a collecting authority may seek a court's consent to seize and sell your assets to recover the money due. These assets may include any land you hold. The collecting authority must send you notice of its intention to do so beforehand.

Committal to prison

If you continue to evade paying CIL, the collecting authority can ask a magistrates' court to commit you to prison for no more than three months. To do this, the collecting authority 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.

Further questions email: