



**Lewes District Council**

# **CIL Process Guidance**

**October 2015**

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## Introduction

Following adoption in October 2015, Lewes District Council is bringing the Community Infrastructure (CIL) Levy into effect on 1<sup>st</sup> December 2015.

The aim of this guide is to explain the processes relating to the collection of CIL and signpost where additional information can be found. It is published for information and is not intended to be a definitive interpretation CIL regulations / legislation.

The Charging Schedule, which should be read in conjunction with this document, contains rates for residential and retail development for the area of the District inside the Lewes District Charging Area (the part of the district that lies outside of the National Park). When in place CIL will be the dominant means for securing financial contributions from development in the district charging area but Planning Obligations (despite being scaled back) will continue to play a key role in relation to affordable housing, certain site specific requirements and necessary offsite mitigation.

Regulations specify that the relevant date for CIL collection is the date the planning decision notice is issued, not when the planning application was submitted. Therefore, any development where a planning decision notice is issued from 1st December 2015 could be liable to pay CIL.

## Calculating the Charge

### What is the CIL Charge in the Lewes District Charging Area?

The charge for residential and retail development is set out in the table below. All other uses in the Charging Area will be nil charged.

Development Type		CIL charge (£/m <sup>2</sup> )
Residential	Low Zone (South of SDNP)	£90
	High Zone (North of SDNP)	£150
Residential Institution		£0
Industrial		£0
Office		£0
Retail		£100
Hotel		£0
Standard Charge <sup>1</sup>		£0

<sup>1</sup> The Standard Charge applies to all other types of chargeable development not otherwise specified in Table 1. These types of development may be liable for on-site improvements through S106 or S278 off-site highway improvements, even though the Standard Charge for CIL is proposed to be zero.

There is a simple calculator on our website that allows a quick estimation of your CIL calculation. It will not provide your precise CIL calculation – it does not use the complex, official formula that will be used in our more detailed calculation of your CIL charge.

### **What is included in CIL chargeable floorspace?**

The amount of CIL payable is based on the Gross Internal Area (GIA) of the development. GIA will be measured in accordance with the Royal Institute of Chartered Surveyors (RICS) Code of Measuring Practice.

GIA includes all new build floor space within external walls of a building, including circulation and service space such as corridors, storage, toilets, lifts etc. It includes garages and attic rooms that are useable as rooms but excludes loft space accessed by a pull-down loft ladder. Generally, any structure with three or more walls and a roof is considered to be 'internal' floor space and therefore chargeable.

The latest RICS guidance on measuring floor space is linked below:

<http://www.rics.org/uk/knowledge/bcis/about-bcis/forms-and-documents/gross-internal-floor-area-gifa-and-ipms-for-offices/>

### **What if existing buildings are being demolished or converted?**

The GIA of any existing buildings on the site that are going to be demolished or re-used may be deducted from the calculation of CIL liability. However, deductions are only applied where those buildings have been in lawful use for a continuous period of at least six months within the period of 36 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.

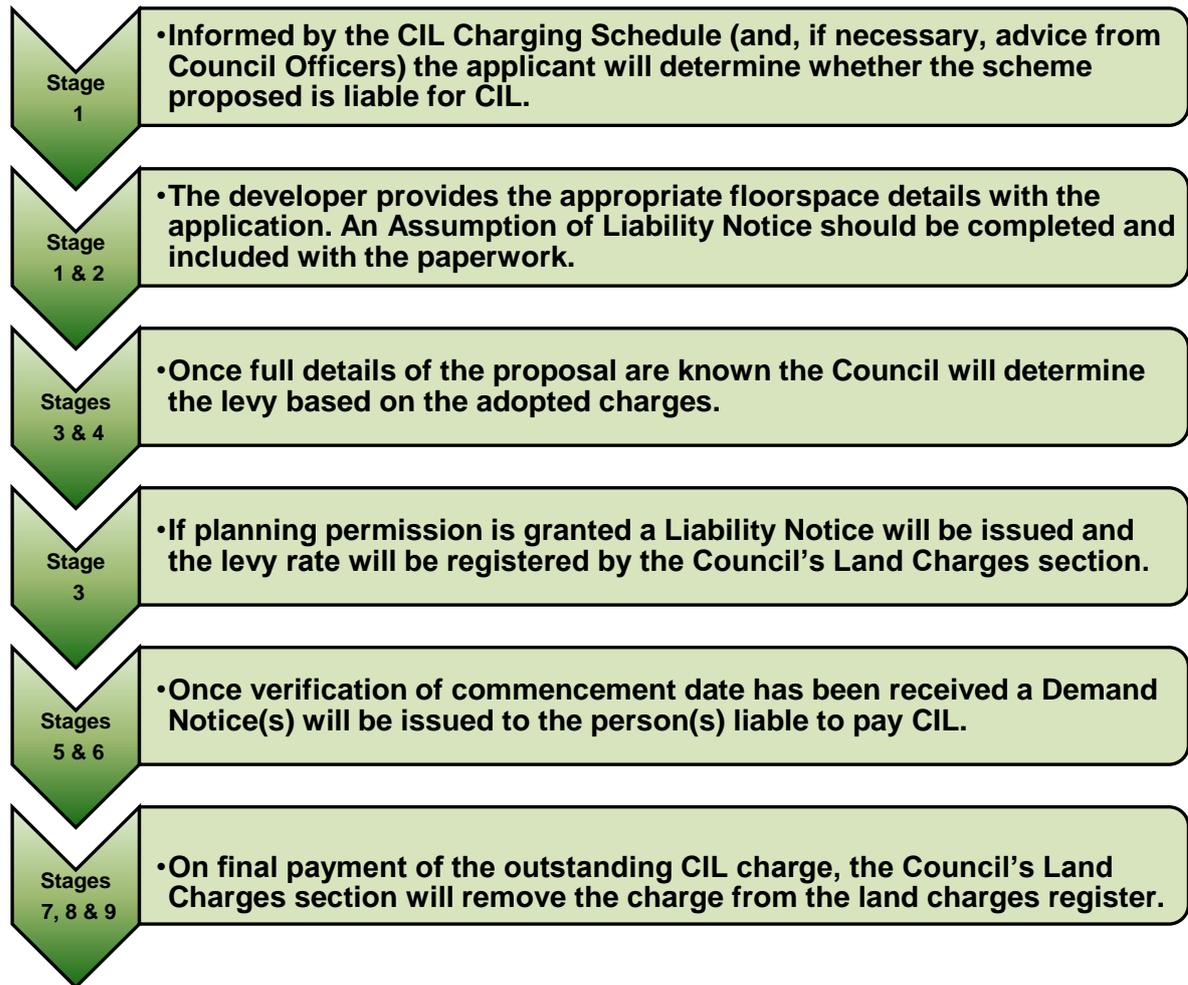
It will be for the applicant or their agent to demonstrate that a building has been in use by providing appropriate evidence such as Council Tax records or business rates documentation.

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.

In relation to outline applications, subject to any phasing arrangements that may apply, development will only be permitted when the last of the Reserved Matters is approved.

## **The CIL Process**

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## Stage 1 – Planning Application & Additional Questions Form

A CIL Additional Information Form must be submitted alongside all other application forms and supporting information for applications for any development that will trigger a CIL liability involving creation or conversion of 100sqm floorspace or more (or the creation of a new dwelling). The CIL Additional Information Form is linked below:

[http://www.planningportal.gov.uk/uploads/1app/forms/cil\\_questions.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/cil_questions.pdf)

The information on this form will enable the Council, as charging authority, to determine whether or not CIL is payable and to calculate the chargeable amount. Failure to supply this information could invalidate the application and lead to delays.

Any applicant that thinks existing floorspace (to be used or demolished) should be deducted as part of the CIL calculations, should be able to demonstrate that those buildings have been in lawful 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.

If no information is received, under Regulation 40, the Council can deem any existing floorspace to be zero when the chargeable rate is calculated.

## **Stage 2 Assumption of Liability**

The responsibility to pay CIL runs with the ownership of land on which the liable development will be situated. However, CIL Regulations recognise that other parties involved in a development may wish to assume liability for the payment. The Assumption of Liability Form (linked below) informs the Council who will be responsible for paying the CIL charge relating to the development:

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_1\\_assumption\\_of\\_liability.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_1_assumption_of_liability.pdf)

If no-one assumes liability then payment will default automatically to the owners of the land. Ultimately, if no payment is received, payment can also default to the owners of the land. If the Council has to identify the owners of the land, or identify the apportionment then a surcharge can be applied.

The person liable for paying CIL is also required to serve the Council with a Commencement Notice (see stage 5) stating the date that development will commence. If the Council is not notified, a penalty may be added and payment may be due immediately.

The form below should be used where any party wish to relinquish liability for the levy in relation to a specified development:

[http://planningportal.gov.uk/uploads/1app/forms/form\\_3\\_withdrawal\\_of\\_assumption\\_of\\_liability.pdf](http://planningportal.gov.uk/uploads/1app/forms/form_3_withdrawal_of_assumption_of_liability.pdf)

The form below should be used by parties wishing to transfer liability for the levy in relation to a specified development, and by the parties willing to assume the liability:

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_4\\_transfer\\_of\\_assumed\\_liability.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_4_transfer_of_assumed_liability.pdf)

The Council will record and acknowledge in writing the receipt of assumptions, transferrals and withdrawals of liability.

## **Stage 3 – Issuing the Liability Notice**

When planning permission is granted for a CIL liable development, the District Council will issue a Liability Notice. This will set out how much CIL is to be paid and when it is to be paid.

Liability is calculated on the gross internal area (GIA) of the buildings (see guidance on page 3).

However, as explained in stage 8, CIL will only become payable upon commencement of development. CIL will need to be paid within 60 days of development commencing, unless a major development is proposed that is covered by the District's instalment policy.

Once the Local Authority has issued a liability notice the CIL Land Charge will be added to the register (see Stage 9 for further information).

#### **Stage 4 – Exceptions and Relief**

Some developments may be eligible for relief or exemption from CIL. This is not automatically applied by the Council and an application meeting relevant conditions must be made using the relevant forms and by submitting supporting information / evidence where required. To apply for relief and exemption the applicant must have assumed liability to pay CIL on the chargeable development and this application must be made before development commences. The following links provide further information on the types of relief and exemption available:

Minor Development Exemption -

[http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/relief/#paragraph\\_109](http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/relief/#paragraph_109)

Mandatory Charitable Relief -

<http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/relief/charities/>

Discretionary Charitable Relief -

[http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/relief/charities/#paragraph\\_115](http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/relief/charities/#paragraph_115)

Mandatory Social Housing Relief -

<http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/relief/social-housing/>

Discretionary Social Housing Relief -

[http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/relief/social-housing/#paragraph\\_123](http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/relief/social-housing/#paragraph_123)

Claiming an Exemption and Relief -

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_2\\_claiming\\_exemption\\_and\\_or\\_relief.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf)

Self-Build Exemption -

<http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/>

Self-Build Exemption for Residential Annexe or Extension -

[http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/#paragraph\\_149](http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/#paragraph_149)

Self-Build Exemption Claim Form 1 -

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_sb1-1\\_exemption\\_claim.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_sb1-1_exemption_claim.pdf)

Self-Build Exemption Claim Form 2 -

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_7\\_self\\_build\\_part\\_2\\_exemption\\_claim.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_7_self_build_part_2_exemption_claim.pdf)

### **Exceptional Circumstances**

At this stage Lewes District Council does not intend to adopt an Exceptional Circumstances policy. However, it should be noted that discretionary relief in exceptional circumstances can be activated or deactivated at any time.

If, in the future, the Council decides to adopt an exceptional circumstances policy it could allow relief where a specific scheme cannot afford to pay CIL. These can only be considered on a site-by-site basis, provided that the following conditions are met:

- A S106 agreement must exist on the planning permission permitting the development;
- The cost of complying with the S106 must be greater than the CIL charge on the development;
- Paying the CIL charge would have an unacceptable impact on the developments economic viability;
- The relief afforded must not constitute a notifiable state aid.

To ensure that the CIL relief system is not used to avoid proper liability, any scheme benefiting from CIL relief would need to repay the relief in the event that the use changes and the development no longer qualified for CIL relief within 7 years from the commencement of the chargeable development. This is called 'clawback'.

### **Stage 5 – Commencement Notice**

CIL becomes payable on commencement of development. The CIL Regulations require that a liable person submits a Commencement Notice to the Council stating the day that they intend to commence development. The Commencement Notice, linked below, must be submitted to the Council at least a day before the development commences:

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_6\\_commencement\\_notice.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_6_commencement_notice.pdf)

The Council will acknowledge receipt of a Commencement Notice in writing. As defined in the Planning Act, commencement is classed as any material operation that is carried out on the relevant land. This can include erection of

a building, demolition of a building, laying of underground pipes or mains, any operations to construct a road / access, digging foundations or any change in the use of the land that is classed as material development.

If works are intended under general consent it will be necessary to notify the local authority before development is commenced. The only exception to this requirement is if the development in question is less than 100m<sup>2</sup> of new floorspace and the development does not compromise one or more new dwellings.

### **Stage 6 – Demand Notice**

The Council will issue a Demand Notice to the liable persons following receipt of the Commencement Notice.

The Demand Notice will set out precise details of payment arrangements including any relevant instalment options (see Stage 8) which will be payable from the date upon which development commences.

If payment is not made by the due date, the Council can impose penalty surcharges and interest. Payment of CIL is enforceable through the planning process and the courts.

### **Stage 7 – Completion (Self-Build Developments)**

Exemption from CIL can be given to genuine self-build developments or self-build residential annexes and extension. However, in these instances, there are criteria that the applicant must adhere to.

Within 6 months of completion of self-build housing, the liable person must submit a 'Self Build Exemption Claim Form: Part 2' (please see page 8) together with the following appropriate supporting evidence:

- Proof of completion (Building control compliance/completion certificate)
- Proof of ownership (title and deeds)
- Proof of occupation of the dwelling (Council tax certificate, and two further proofs of evidence e.g. utility bill, electoral roll, bank statement)

And one of the following:

- An approved claim for a VAT refund for DIY house builders
- A self-build warranty
- An approved self-build mortgage

Failure to submit the appropriate form and evidence within six months of completion of the development will result in the withdrawal of the exemption and the need for payment in full of the liable amount.

### **Stage 8 – Payment of CIL**

Lewes District Council will acknowledge all payments received.

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It is considered reasonable that payment instalments are scheduled in proportion to the scale of development that is proposed. Therefore, in accordance with Regulation 69B of the CIL Amendment Regulations, Lewes District Council will apply the following Instalment Policy to all development on which CIL is liable. The Instalment Policy will come into effect on 1st October 2015 and will be linked to the amount payable as recorded on the demand notice. The Instalments Policy can be found on our CIL webpage.

If a large scheme has outline permission each phase is a separate chargeable development and each phase is regarded as having permission which 'first permits' when the last Reserved Matter is approved from that phase. The payments will therefore relate to individual phases.

There could also be cases where it is more appropriate and desirable for the authority to receive land instead of monies to satisfy a charge. The regulations do allow for transfers of land as payment in kind but only when there is the intention of using that land to provide, or facilitate, the provision of infrastructure. The same timescale for the transfer of land as paying CIL monies will also apply.

### **Stage 9 – Notification to Land Charges**

Once the Council has received the CIL payment, the CIL charge will be removed from the Land Charges Register.

However, if relief has been granted then the CIL charge will remain on the Land Charges Register for 3 or 7 years, depending on whether exemption of relief has been granted, even if a disqualifying event occurs. The CIL charge will be removed when the time period lapses.

In the event permission is not built out, the CIL charge will be removed from the Land Charges Register upon expiry of the planning permission.

### **Stage 10 – Notification of Any Disqualifying Event**

Where relief has been granted and then a disqualifying event occurs the Council must be notified in writing, giving 14 days advance notice. Failure to do so will incur a penalty surcharge.

The Council will then issue a Liability Notice and Demand Notice for payment. The Council will give the relevant person 28 days before taking action in the event that the Council has not been notified of a disqualifying event.

## **Reviews and Appeals**

Appeals against the rate of a Community Infrastructure Levy cannot be made. The charging schedule, once adopted, is for fixed amounts and cannot be negotiated.

There are opportunities, however, for appeal in connection with decisions made relating to CIL (although the appeal process does not apply to social housing relief or exceptional circumstances relief). If a developer wants to review the CIL charge or feel there has been an error in calculating the charge the following steps can be taken:

### First Stage

In the first instance a request for a review should be made in writing to the District Council within 28 days of the issue of the liability notice. No work should be commenced on site prior to this review being carried out.

The Council will review the liability notice and appeal grounds, with the review being carried out by a senior officer who has had no involvement in the original calculation. A decision will be issued within 14 days.

### Second Stage

If the applicant disagrees with the review decision they can appeal within 60 days of the issue of the liability notice. A CIL appeals form available on the Government's planning portal should be used and appeals should be directed as follows:

- To the Valuation Office Agency (VOA) against a calculation of the levy chargeable amount in a liability notice, or against the apportionment of liability for the levy.
- To the Planning Inspectorate concerning enforcement actions such as stop notices.

Further information and the appropriate forms can be found at:

<https://www.gov.uk/community-infrastructure-levy-how-to-make-an-appeal>

## **Enforcement**

CIL is a legal, non-negotiable charge and must be paid by the developer at the agreed stages. Should the Council not receive payment on time it will correspond with the developer to try and ensure that the payment is made as soon as possible.

Where the payment continues to remain unpaid the Council would be within its rights to take action. This could involve the issuing of a stop notice on the current development; court action; charging fines; or seizing and selling

assets. Ultimately developers could face time in prison should the payment not be made.

## Monitoring / Reporting

Regular monitoring and reporting will be undertaken to ensure that the benefits and / or impacts of CIL are understood. The following information will be presented on the Council's website and will be reported in the Annual Monitoring Report:

- Amount collected from CIL
- Receipts for the year
- Expenditure for the year
- Infrastructure to which CIL has been applied
- Amount of CIL applied to administrative expenses

## Illustrative Examples of CIL Chargeable and Non-Chargeable Development

Current site	Completed development	CIL Liable	Chargeable area
Cleared building site	92 sqm new residential development	Yes	92 sqm
Single dwelling – in use	Single dwelling with a 25sqm extension	No	Not liable as under 100 sqm new build and does not create a new dwelling
Single dwelling – in use	Single dwelling (currently 100 sqm) with a 125 sqm extension	Yes	125 sqm
Cleared building site	2,000 sqm residential, including 40% affordable housing (800 sqm)	Yes	1200 sqm NB the affordable housing relief (800 sqm) must be applied for and meet certain criteria to be granted)
Single dwelling – in use but to be demolished	125 sqm new development 90 sqm original dwelling demolished	Yes	35 sqm NB not exempt as development comprises of one or more dwellings but charge reduced due to original building to be demolished being in use
Single	125 sqm new	Yes	125 sqm

dwelling – not in use and to be demolished	development 90 sqm original dwelling demolished		NB not exempt as development comprises of one or more dwellings and no reduction in charge as original dwelling not in use
Single dwelling – not in use but to be retained	35 sqm new development 90 sqm original retained	No	Not liable as under 100 sqm 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 sqm conversion/change of use of unit to residential	Yes	98 sqm NB no exemption even though under 100 sqm as creating a new dwelling. As the unit has not been in use, the floorspace is chargeable
Shop unit – in use	98 sqm conversion/change of use of unit to residential	Yes	0 sqm of new floorspace so nil charge NB No exemption even though under 100 sqm as creating a 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 sqm conversion/change of use of unit to retail unit	No	Not liable as change of use to non-residential and under 100 sqm new floorspace so minor exemption applies. The fact it has not been in use is not relevant in this scenario.
4,000 sqm offices – in use	4,000 sqm conversion of offices to flats	Yes	0 sqm of additional space so no charge. NB No exemption even though under 100 sqm of new floorspace as creating new dwellings. However, as the unit has been in use, the floorspace is deductible and so there is no charge in this scenario.
3,500 sqm	15,000 sqm new	Yes	12375 sqm residential

business development in use but to be demolished	residential 5,000 sqm new business 3,500 sqm original business demolished		4125 sqm business but as zero rate no charge. NB The demolished amount is apportioned across the whole development e.g. 0.75 development residential, 0.25 business; therefore, of the 3,500 sqm demolished floorspace, 2625 sqm is deducted from residential floorspace and 875 sqm from business.
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## Further Information

Information from the government website:

<https://www.gov.uk/>

Information via the Planning Portal:

[http://www.planningportal.gov.uk/uploads/cil\\_summary.pdf](http://www.planningportal.gov.uk/uploads/cil_summary.pdf)

Information from the Planning Advisory Service:

[http://www.pas.gov.uk/3-community-infrastructure-levy-cil/-/journal\\_content/56/332612/15149/ARTICLE](http://www.pas.gov.uk/3-community-infrastructure-levy-cil/-/journal_content/56/332612/15149/ARTICLE)

Planning Practice Guidance:

<http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/cil-introduction/>

Forms and templates:

<http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/forms-and-templates/>