

## 1.0 Introduction to SDC's CIL Enforcement Procedure

The purpose of this procedure is to set out how Stroud District Council (SDC) as Charging and Collecting Authority for the Community Infrastructure Levy (CIL), as adopted on 9/02/2017 and implemented on 01/04/2017, deals with breaches of the Community Infrastructure Regulations 2010 (as amended). These breaches can only occur where planning permission by the Local Planning Authority (LPA), or by way of general consent i.e. permitted development, has been granted.

Part 9 – Enforcement of The CIL Regulations 2010 (as amended) sets out the processes and enforcement powers of the Charging Authority, to ensure a smooth collection of the levy. These enforcement procedures can be triggered by the following:

- Failure to complete and submit the relevant CIL form(s).
- Failure to inform of a disqualifying event
- Late Payment
- Failure to comply with an information notice from the Charging Authority

The CIL regulations give the Charging Authority the ability, in the circumstances mentioned above, to impose surcharges and interest on the levy. Persistent failure in payment of the levy can result in a CIL Stop Notice being issued, preventing any further development on site. Furthermore legal action can be sought to recover the debt due, for example, if a contravention of a CIL stop notice occurs.

This Enforcement Policy covers the following subjects as part of the CIL Regulations 2010 (as amended), specifically regulations 80 -111:

- 2.0 Surcharges
- 3.0 Late Payment Interest
- 4.0 CIL Stop Notices
- 5.0 Recovery of CIL
- 6.0 Other Enforcement Provisions

The surcharges and interest applied to CIL are solely for situations where the correct paperwork has not been submitted to the Charging Authority and / or that payment has not been received, meaning that the regulations' procedures have not been followed.

If the correct forms have not been submitted and the chargeable development has commenced then this will mean the loss of any granted exemption or relief as well as the loss of the benefit of paying by way of instalments, as set out in SDC's Instalment Policy: <https://www.stroud.gov.uk/media/241174/instalment-policy-09022017.pdf> .

If as the liable party you do not agree with the CIL calculation on the issued liability notice, email [CIL@stroud.gov.uk](mailto:CIL@stroud.gov.uk) asking for a review of the chargeable amount under Section 113 of the CIL Regulations, within 28 days of the liability notice being issued. There is a separate guidance document available '**CIL Review and Appeal Guidance**' which explains the eligibility criteria required to submit a request for a CIL Review or CIL Appeal, the procedure for doing so and the process that is then triggered.

CIL Team: E - [cil@stroud.gov.uk](mailto:cil@stroud.gov.uk) T – 01453 754836

## 2.0 Surcharges - Enforcement Chapter 1 Regulations 80 – 86

The table below has been included to give an overview of the level of surcharges that could be imposed, and the circumstances in which each specific regulation would come into force. The full wording and process can be found within the CIL Regulations 2010 (as amended):

<http://www.legislation.gov.uk/ukdsi/2010/9780111492390/contents>

Regulation	Type of Surcharge	Amount of Surcharge	Applicable if;
80.	Failure to assume liability (Form 1)	£50 on each person liable to pay CIL  In addition, loss of payment by instalments	A) Nobody has assumed liability via submission of Form 1 B) The chargeable development has been commenced (Please note that there is also a surcharge for not submitting commencement notice, Form 6)
81.	Apportionment of Liability (meaning failure to assume liability where there is more than one material interest)	£500 on each material interest  In addition, loss of payment by instalments  If this surcharge is applied and apportionment of the surcharge is required by the Charging Authority, additional surcharges will not be applied under this regulation.	A) Nobody has assumed liability via submission of Form 1 B) The Charging Authority has to apportion the liability between more than one material interests in the land.
82.	Failure to submit a notice of chargeable development (Form 5)*	20% of the chargeable amount payable or £2500, whichever is the lesser  In addition, loss of payment by instalments	A) Planning permission has been granted for the chargeable development by way of general consent B) The chargeable development has been commenced without the submission of Form 5 to the Charging Authority
83.	Failure to submit a commencement notice (Form 6)	20% of the chargeable amount payable or £2500, whichever is the lesser.  In addition, loss of payment	A) The chargeable development has been commenced before the Collecting Authority has been in

		by instalments and loss of any granted exemption or relief.	receipt of a valid Form 6.
84.	Failure to notify of an disqualifying event **	20% of the chargeable amount payable or £2500, whichever is the lesser.  In addition, loss of payment by instalments and loss of any granted exemption or relief.	A) Where a person who is required to notify the relevant authority of a disqualifying event fails to do so before the end of the period of 14 days beginning with the day on which the disqualifying event occurred.
85.	Late Payment	5% of the overdue amount (A) or £200, whichever is the greater. This can be applied on 3 occasions; 30 days 6 months, and 12 months	A) Where the levy amount due (A) is not received in full after the end of the 30 day period beginning with the day on which payment of A is due. (Also applicable at 6 and 12 months).
86.	Failure to comply with an information notice	20% of the relevant amount or £1000, whichever is the lesser.	A) Where a person fails to comply with any requirement of an information notice before the end of the period of 14 days beginning with the day on which the notice is served.

**\*Notice of a Chargeable Development** - CIL is not only applicable to planning permissions granted by the Local Planning Authority. Permitted development / permission by way of general consent can still be liable for CIL, and it is the responsibility of the land owner (liable party) to inform the Charging Authority of development via Form 5 (Notice of Chargeable Development) , if the development falls into the adopted charging schedule parameters and if development is;

- Creating a dwelling
- Increasing the floor area by 100 sqm
- Converting a building that is not in use ^

^ The definition of lawful use is contained in Regulation 40 (11) of the CIL Regulations 2010 as (amended). This states that an "in use building" is a building which "contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development".

**\*\*Disqualifying Event** – If you were to commence development without the submission of Form 6- Commencement of Development, then this would constitute a disqualifying event. For applications that have had relief or exemption granted, a disqualifying event would be triggered by a change in circumstances impacting on the chargeable development and is in breach of the claw back period or declaration statement signed by the liable party. If the chargeable development has not commenced then the surcharge is payable on commencement of that chargeable development. However, if the development has commenced then the surcharge will be payable on the day it is imposed.

### Additional information

Regulation 88 (1) informs that a Surcharge or interest payable by a person under this must be collected by treating it as if it were part of the CIL that person is liable to pay.

Regulation (2) informs a surcharge or interest paid to a collecting authority under this Chapter (1) must be treated for the purposes of Part 7 as if it were CIL.

### 3.0 Late Payment Interest- Enforcement Chapter 1 Regulation 87

Regulation	Amount of Surcharge	Applicable where;
87.	2.5 percentage points above the Bank of England base rate.	<p>A) Payment is not received on the date it is due.</p> <p>B) Interests are calculated for the period starting on the day after the day payment was due and ending on the day the unpaid amount is received.</p>

### 4.0 CIL Stop Notices - Enforcement Chapter 2 Regulations 89- 94

Regulation	Process	Applicable where:
89. Preliminary steps	<ul style="list-style-type: none"> <li>The charging authority may issue a warning notice of its intention to impose a CIL stop notice on the chargeable development.</li> <li>This notice must be in writing and must also display a copy of the warning notice on the relevant land.</li> </ul>	<p>A) An amount which has become payable in respect of the chargeable development has not been paid; and</p> <p>B) The collecting authority considers it expedient that</p>

		development should stop until the amount has been paid.
90. Service of CIL stop notice	<ul style="list-style-type: none"> <li>• The Charging Authority must have issued a warning notice.</li> <li>• The amount specified in the warning notice must not have been paid in whole or in part at the end of the specified period.</li> <li>• The Collecting Authority must display a copy of the CIL stop notice on the relevant land, and it has effect from the date specified in the notice until the date it is withdrawn by the Collecting Authority.</li> <li>• A CIL stop notice does not prohibit any works on the relevant land which are necessary in the interests of health and safety.</li> </ul>	<p>A) The collecting authority has issued a warning notice in respect of the chargeable development</p> <p>B) The amount specified in the warning notice is unpaid (in whole or in part) at the end of the period specified in the notice.</p>
91. Withdrawal of a CIL stop notice	<ul style="list-style-type: none"> <li>• A Collecting Authority may withdraw a CIL stop notice at any time by serving a written notice to that effect to the persons served with a CIL stop notice.</li> <li>• A collecting Authority must withdraw a CIL stop notice when the unpaid amount stated in the notice is paid in full</li> <li>• A Collecting Authority which withdraws a CIL stop notice must display a notice of withdrawal on the relevant land in place of the CIL stop notice.</li> <li>• A stop notice ceases to have effect on the day the collecting authority serves notice of its withdrawal.</li> </ul>	<p>A) The unpaid amount stated in the notice is paid in full to the collecting authority</p> <p>B) The collecting authority withdraws a CIL stop notice (without prejudice to its power to issue another) by serving written notice to that effect on the persons served with the CIL stop notice.</p>
93. Offence	<ul style="list-style-type: none"> <li>• There is a potential fine of up to £20,000 (or more on indictment – the formal charge or accusation of a serious crime)</li> <li>• An offence may be charged by reference to a day or a longer period of time.</li> <li>• A person may be convicted of more than one such offence in relation to the same CIL stop notice by reference to different days or period of time.</li> </ul>	<p>A) A person contravenes the CIL stop notice that has been served upon them; where</p> <p>B) A copy of which has been displayed in accordance with regulation 90(6).</p>

	<ul style="list-style-type: none"> <li>• It is a defence for a person charged with an offence if;             <ol style="list-style-type: none"> <li>1. The CIL stop notice was not served on that person</li> <li>2. The person did not know, and could not reasonably have been expected to know, of its existence.</li> </ol> </li> <li>• In determining the amount of the fine the court must have regard in particular to any financial benefit which was accrued or has appeared to accrue to the person convicted in consequence of the offence.</li> </ul>	
<p>94. Injunctions</p>	<ul style="list-style-type: none"> <li>• In this regulation 'the court' means the High Court or a county court.</li> </ul>	<p>A) The collecting authority may apply to the court for an injunction if it considers it necessary or expedient for any actual apprehended breach of a CIL stop notice to be restrained by injunction.</p> <p>B) On an application under this regulation the court may grant such an injunction as the court thinks fit for the purpose of restraining the breach.</p>

### Additional Information

As Charging Authority we must keep a register of all CIL Stop Notices issued. The CIL Regulations 2010 (as amended) inform that they should be logged on the Local Planning Authorities enforcement and stop notices register, in which SDC'S Enforcement Team update under section 188 of the Town and Country Planning Act 1990. All entries to this register must be removed from the register if the notice is withdrawn or quashed.

### 5.0 Recovery of CIL - Chapter 3, Regulations 95-107.

Collecting authorities have powers to recover unpaid charges that are due using the mechanisms provided in regulations 95-107 that can be used alongside CIL Stop Notices. In cases where the development has been completed, recovery of CIL can still take place independently of a CIL stop notice:

CIL Team: E - [cil@stroud.gov.uk](mailto:cil@stroud.gov.uk) T – 01453 754836

- **Reminder Notice Regulation 96** - Prior to putting into action the mechanisms below, the Collecting Authority must serve a reminder notice that states every amount in respect of which the Authority is to make the application. The reminder notice may be served in respect of any amount at any time after it has become due.
- **Liability Order Regulation 97**- Following the reminder notice, if the amount is still wholly or partly unpaid the Authority can apply to the Magistrates Court for a Liability Order. This can include if requested, recovering the cost of the application in the same order. The Court must make the liability order if it is satisfied that the amount has become payable by the defendant and has not been paid.
- **Distress Regulation 98** – Where a Liability Order has been made the Authority may levy the appropriate amount by distress and sale of goods of the debtor. No person making a distress may seize any clothing, bedding, furniture, household equipment or provisions which are necessary for satisfying the basic needs of the debtor and his family. If, before any goods are seized the outstanding amount is paid or tendered to the Authority, the Authority must accept the amount and proceed with the levy.
- **Commitment to prison Regulation 100 and 101** – Where an Authority is unable to recover debts due by way of the charging order or distress the Authority may ask to commit the debtor to prison. This is a very unlikely scenario; however the regulations do offer this mechanism to recover the unpaid levy.
- **Charging Orders Regulation 103 -104** – As an alternative to recovering the debt via distress and where the outstanding debt is greater than £2000 the Authority can ask the Court to serve a charging order to recover the amount of debt owed.
- **Enforcement of local land charges Regulation 107**- As an alternative to recovering debt via distress and Charging Orders the Authority can enforce a local land charge if the outstanding amount of CIL due in respect of that development is less than £2000.

## 6.0 Other Enforcement Provisions - Chapter 4, Regulations 108-111.

The CIL Regulations lay out additional guidance for the recovery of CIL in certain scenarios. They also give guidance on the mechanisms for the Collecting Authority to have the power to enter the relevant land relating to the chargeable development through regulations 108 – 111.

- **108 Outstanding liabilities on death** – Where the person liable for CIL is deceased with the chargeable development commenced and CIL liability still outstanding, the deceased's executor or administrator is liable to pay the unpaid amount and any interest, surcharges and costs applied to the unpaid amount.
- **109 Powers of entry** – A person authorised in writing by a Collecting Authority may at any reasonable hour enter the relevant land to verify:
  - A chargeable development has commenced

- Compliance for an imposed requirement of the Charging Authority has taken place
- The calculation for chargeable amount payable in relation to the chargeable development where Form 5 – Notice of Chargeable Development has been submitted.

CIL can be a complex process and each development site can have its own complications and or nuances which may give rise to instances where the Charging Authority will request a site visit from a Council CIL Officer at a mutually agreeable time.

A site meeting request, even if initially agreed over the phone, will be confirmed in writing to the relevant person. If not agreed over the phone, and there is no response from a request in writing after 14 days, a date and time of a site visit will be put in writing to the relevant person.

Site visits will normally only be requested if it is not possible for the Charging Authority to issue the relevant notices with the information supplied to them, making a confirmation via site visit a necessity.

If officers are unable to gain access, following the requests and process above, the Charging Authority will undertake such further legal action as is necessary to gain access. This will only be enforced if it not possible for the Charging Authority to enforce CIL without a warrant from a justice of peace.

- **110 Offence for supplying false information** – It is an offence for a person, knowingly or recklessly, to supply information which is false or misleading in a material respect to a Collecting Authority in response to a requirement of the CIL regulations. A person guilty of an offence under the CIL regulations is liable on summary conviction to a fine not exceeding £2000 or on conviction or indictment, to imprisonment for a term not exceeding two years or to a fine, or both.
- **111 Prosecution of CIL offences** – A Collecting Authority may prosecute proceedings for any offence under the CIL regulations.

It is possible to appeal against the calculation of CIL and if you believe that the process has not been followed correctly by the Charging Authority. The appeal process is set out in greater detail within the '**CIL Review and Appeal Guidance**' document.

Please contact the CIL Team for any queries arising from this CIL enforcement policy.