

SURCHARGES AND ENFORCEMENT GUIDANCE

Community Infrastructure Levy (CIL)



This note sets out the possible consequences of not following the CIL payment procedure, and of late and non-payment of CIL as set out in the CIL Regulations 2010 (as amended).

Surcharge for failing to assume liability before commencement

Failure to assume liability to pay CIL before the commencement of development may result in the Council 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. In addition the liable person will not be able to benefit from the instalment policy. (Reg 80)

Surcharge for failing to notify the council of a disqualifying event for CIL relief or exemption within 14 days of occurrence of the event

If a Disqualifying Event occurs to your Exemption it will become invalid and you must report this event to the Council within 14 days. Failure to notify the Council may result in a surcharge of 20 per cent of the chargeable CIL amount or £2,500 whichever is the lower amount. If development has not commenced on site when the disqualifying event occurs, which has not been reported within 14 days, the surcharge is paid on the commencement of the development.

Surcharge where apportionment of liability is necessary

Further, where the Council has to apportion liability between one or more owners of the land, we 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. (Reg 81)

Failure to submit a valid Commencement Notice before development commences.

Failure to submit a valid Commencement Notice or a Notice of Chargeable Development or to failure to notify the council of a disqualifying event before development commences will result in the Council imposing a surcharge of 20 per cent of the assessed CIL charge due, up to a maximum of £2,500. In addition the liable person will not be able to benefit from the council's phased payment policy for paying by instalments. (Reg 82-83)

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 the Council imposing a surcharge. This would be of 20 per cent of the CIL amount due or £1000 whichever is the lower. (Reg 86)

Late or non-payment interest

Failure to pay CIL on time will result in the imposition of late payment interest by the Council at 2.5 percentage points above the Bank of England base rate starting on the day payment was due and ending on the day the unpaid amount is received. (Reg 87)

Late payment surcharge

Continued failure to pay CIL by the specified date, may result in the Council imposing one or more late payment surcharges. Such surcharges will be imposed in the following manner: (Reg 85)

- 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

In some cases the Council may believe that interest and late payment surcharges will be ineffective in securing payment of the overdue CIL. In such circumstances, the Council may decide to serve a CIL stop notice on the development in question. A CIL Stop Notice prohibits development from continuing until the full CIL payment is made. Continuing to develop in the presence of such a notice is a criminal offence, punishable by potentially unlimited fines. (Reg 89)

Before serving a CIL Stop Notice however, the Council will first issue a warning to the person liable to pay the amount, the land's owners, occupiers and all those who 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 to be unpaid. If payment is not made by the end of this period, the Council may serve a Stop Notice, which will prohibit development with immediate effect immediately until payment of the outstanding amount has been received by the council.

Distrain on goods (asset seizure)

When you fail to pay CIL the Council may apply for a Liability Order and 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. (Reg 96-98)

Committal to prison

If you continue to evade paying CIL, the Council can ask a Magistrates' Court to commit you to prison for no more than three 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. (Reg 100-101)

Enforcement of land charge

CIL is registered as a local land charge and the charge can be enforced if payment is not received. (Reg 107)