

Agents/Architects CPD

Borough Council of
King's Lynn &
West Norfolk



COMMUNITY INFRASTRUCTURE LEVY (CIL)

TRAINING SESSION - 03 NOVEMBER 2022

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Training Agenda

Borough Council of
King's Lynn &
West Norfolk



- Overview
- CIL Forms
- Exemptions
- Surcharges
- Commencement of development
- Phased Developments
- S73 Applications
- Appeals
- Future changes
- Questions


So, what is CIL? - The Community Infrastructure Levy (also known as the CIL or 'the Levy') is the Government's chosen approach to set a mandatory tariff on development. Basically, CIL is a tax on the uplift in floorspace. CIL receipts will contribute toward funding improvement to infrastructure, facilities and services, that are required, to support the development and growth planned, for this Borough. Although CIL has some similarities with Planning, the CIL regime is very different.

- In planning, you are able to consult and negotiate.
- **BUT**, the CIL Regulations give no provision for negotiation, and there is no discretion, to waive statutory non-compliance surcharges.
- In addition, under the regulations, the role of the Collecting Authority is **ONLY to administer and serve notices**, including taking enforcement action for non-compliance.
- CIL Officers are under no obligation, under the CIL regulations, to enter into correspondence with interested parties.
- **However, within this borough**, we try to assist agents and applicants, as much as possible.
- We provide information and advice, and even send out the relevant forms.

It is really important, as an agent, to read our emails, **provide information if it is requested**, and also pass it onto your clients.

CIL Calculations

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$$\frac{R \times A \times I_p}{I_c}$$

Chargeable Rate

$$G_R - K_R - \left(\frac{G_R \times E}{G} \right)$$

Chargeable Development

$$E_p - (G_p - K_{PR})$$

Aggregated Phased Calculation

$$(X - Y) + Z$$

$$(Rx - Ry) + Rz$$

Variation of Condition (S73) Apps

Statutory Obligations CIL Reg 121C –

All charging schedules are index linked, to the BCIS CIL Index. The current index, is published on our CIL webpage.

The new BCIS index, is published on the fourth Monday in October each year, and must be placed on our webpage in December.

Next years rate, has been set at 355, which is a 6.48% increase:

Adopted Rate m2 (286)	2022 Rate (332)	2023 Rate (355)
£100	£166.08	124.1259 (£124.13)
£60	£69.65	74.4755 (£74.48)
£40	£46.43	49.6503 (£49.65)

Residential Development	CIL rate
North East and East areas of the Borough (East of the Great Ouse and north of A1122/A134)	£60/m ²
South and West of the Borough (West of the Great Ouse and south of A1122/A134, including Downham Market)	£40/m ²
King's Lynn unparished area	£0/m ²
Sheltered / Retirement Housing (C3) - All areas	£0/m ²
Strategic sites ⁽¹⁾ at:	£0/m ²
<ul style="list-style-type: none"> o Boal Quay, King's Lynn (<i>Links too pdf maps</i>) o South of Parkway, King's Lynn o Bankside – West Lynn, o West Winch, strategic growth area o East of Lynn Rd, Downham Market o Wisbech Fringe, Walsoken 	
(all others should have the rate that applies to the area in which they lie)	
Retail Development	CIL rate
Supermarkets (including discount supermarkets) and Retail warehouses	£100/m ²
All other Development	CIL rate
All other Development	£0/m ²
<i>(1) Strategic sites are considered to be those of 150+ units</i>	

https://www.west-norfolk.gov.uk/info/20201/cil_charges_and_payments/543/charging_schedule
<https://bcis.co.uk/news/community-infrastructure-levy-cil-index-bcis/>

Based on the adopted Charging Schedule, the indexed rate, £m2, used for each application is shown in this table.

Our charging schedule came into effect on **15 February 2017**, and applies to planning decisions made from that date. The relevant zero rated strategic sites, over 150 units, are where viability could not be shown, as part of the Local Plan Viability Study & CIL Examination. Retail developments will be charged, **anywhere in the Borough, including in KL.**

Minor Development Exemptions – CIL Reg 42 Only Apply, where the gross internal area, of the new build is less than 100m2, for retail warehouses, supermarkets and residential extensions (to existing properties). **BUT, does not apply** to new residential dwellings, including annexes – **this includes additional garages, to unbuilt houses.**

However, since 2017, we have not administered 'self build' residential extensions over 100m2, due to a heavy admin burden with no clawback.

But, CIL WILL be charged, for residential extensions over 100m2 and retrospective - where an exemption would not be granted.

Also, in accordance with **CIL Reg 40** - Where a CIL fee would be, less than £50, it is deemed as zero.

CIL Forms

Borough Council of
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- Additional Information Form - Form 1
- Assumption of Liability - Form 2
- Withdrawal of Assumption - Form 3
- Transfer of Liability - Form 4
- Notice of Chargeable Development - Form 5
- Commencement Notice - Form 6
- House Exemption Application - Form 7
- Annex Exemption Application - Form 8
- Charitable & Social Housing Relief – Form 10
- Further Exemption (S73's) – Form 13

<https://www.planningportal.co.uk/planning/policy-and-legislation/CIL/download-the-forms>

CIL Statutory Forms, are published by the Secretary of State, and are available to download on our CIL webpages and on the planning portal.

These forms **must** be used for all relevant applications – dwellings, annexes, retails warehouses and supermarkets, where there is an uplift in floorspace

CIL Additional Information Form (Form 1)

Our Local Planning Checklist requires submission of this document, and without it, planning applications will be made invalid - for most application types.

- Please ensure that you are using the most up to date Form – **we are still receiving the old Form 0 and also the Assumption of Liability previously numbered as Form 1**, both of which went out of circulation in 2019!

If the development is CIL, we will email an estimate of the CIL calculations, based on the information provided within the form. Therefore, **it is important to understand what information is required:**

- **Section 1** – site details
- **Section 6** Proposed GIA - **MUST** include Existing, Demolition & Proposed.
- **Section 7** Existing GIA - **MUST** include details, of all existing building to be offset, **AND** the last 2 columns relating to 'in legal use'. If these fields are not completed, any existing building will **NOT be taken into consideration**, and we will request evidence of use.
- **Section 8 Declaration** – It is an offence to supply false or misleading information

Please Note – a **“relevant building”** - means a building, which is situated on the relevant land, on the day planning permission, first permits the chargeable development;

Existing Buildings/floorspace, to be offset

- In legal use for at least 6 months within the last 3 years – The building cannot be derelict which means it would not be capable of use, after the application is granted without a further application. It must have a roof to be a building.

a **“building” does not include—** (i) One into which, people do not normally go; (ii) people go only intermittently, for the purpose of maintaining or inspecting machinery; or (iii) for which planning permission, was granted for a limited period;

Other exclusions are: demolished buildings are not offset, as they don't exist anymore, Caravans/mobile homes, Greenhouses, garden stores, fuel stores and Barns not used for agricultural purposes

Very Important to know: CIL Reg 40(9)

Where the collecting authority, does not have sufficient information, or, information of sufficient quality, to enable it to establish, if any existing structures fall within the definition of a relevant building,, **it may deem the gross internal area to be zero.**

Form 2 Assumption of Liability (Reg 31) - must be submitted prior to commencement of development, and is valid from the day we receive the form.

We will not grant any relief/exemption, without receiving this form.

- **NEVER** assume liability on behalf of a client/ or put c/o Agent
- The liability may run for many years, especially if an exemption is granted.
- As this is a land charge, the ultimate responsibility falls to the liable party and, by default, to the current land owner. You do not want to fall foul of the CIL Regs, and risk possible litigation.
- **Please do not use the site address**, for the liable party, especially if it is a new build, unless they are living onsite.
 - we need the address, they are using, whilst the house is being built – to ensure that your client receives the Demand Notice, sent Recorded Delivery, once work commences.
- **Always include an email address** – explain to the client, that we wish to communicate with them directly, to avoid non-compliance of the Regs.
- we are only obliged to issue notices and acknowledge the CIL Forms, we will not send additional correspondence in the post, but will send email advice, and reminders.
- If you submit this form for your client, **ensure they understand that this is a legal agreement.**
- If the land is sold, we would, by law, still pursue the person who has assumed liability – not the new land owner.

Form 3 - Withdrawal of Assumption (Reg 31 (6)) – can be submitted up to day of commencement

- BUT, if a withdrawal is received, the new land/property owner will then be liable, which may involve surcharges for apportionment of liability. (£500 per person with an interest in the land).

We prefer that you use, **Form 4 - Transfer of Liability (Reg 32) – which can be transferred, up to date of last CIL payment. If works have not started**, the new land owner may apply for the relief. **BUT**, if an exemption has been granted, **and works have started**, they **cannot transfer liability**, AND, any relief/exemption applied, must be withdrawn, within 14 days, of the sale completion AND, full payment would be due

immediately.

On receipt of Form 4, we will formally transfer the liability and issue new notices.

Form 5 Notice of Chargeable Development (Reg 64) – We use Form 1, for PACU's, to avoid confusion

- This form is used for **Development permitted under general consent**, which may not require a planning application, but may still be liable to pay CIL.
- Form 5, **Must** be submitted, prior to commencement.

Exemptions and Reliefs

- Are, **not automatically assigned**, and must be applied for. Exemptions, are NOT transferred, to the new land owner. Where an exemption, **may be claimed - NEVER** tell your client, that they aren't liable for CIL,.

Form 7 (Reg 54) – Self Build Exemption (House) 2 parts

- **Form 7 Part 1** prior to commencement
- **Form 7 Part 2** up to 6 months following completion of development. If Form 7 Part 2 is not submitted, it is deemed a disqualifying event **and** the exemption is withdrawn **and** full payment is due immediately + surcharges will apply.
- **Form 8 (Reg 42)**– Self Build Residential Annex – Prior to commencement. On completion, we must be notified, of the date that the Building Control Completion Notice is issued.
- **Form 10** –Charitable Relief (Reg 43) and Social Housing Relief (Reg 49). - For Affordable Housing, when the land is disposed, before occupation – We require Notification of the Registered Provider. Liability for the Social Housing, will be transferred to the RP, with a 7 year clawback.
- **Form 13** – Introduced in 2019 - This is to be used, where a S73 has been approved, with an uplift in GIA, but works have not started.

Form 6 Commencement Notice (Reg 67) –

- Is a Statutory requirement
- we will NOT accept, a Building Control Notice
- This form, **MUST** be submitted, at least 1 day before works starts.
- It will be invalid, if the declaration is the same day, as the date of commencement.
- There **MUST** be a specific start date of proposed commencement
- It is recommended that works do not start, until we have acknowledged receipt.
- If we do not receive the Form e.g due to postal delays, before the proposed start date, it will be invalid, **AND** the site will be 'deemed commenced'.
- Non-compliance, **will** incur a statutory surcharge, up to £2,500.

If form 6 is not submitted, prior to commencement - for apps with Exemption

- **For Apps Approved before 1st Sept 2019**- it is deemed to be a disqualifying event **AND** the CIL exemption/relief, **will be withdrawn** **AND** payment will be due immediately, including any outstanding instalment payments **AND**; a surcharge will be incurred.
- **If granted after 1st Sept 2019** – The exemption will not be withdrawn, **BUT**, a

surcharge will be incurred for payment immediately.

There are some forms we don't use:

Form 9 – Residential Extension Application – since July 2017 Delegated Report

Form 11 – Exceptional Circumstances Relief Application – not adopted Policy, so cannot accept applications

Form 14 – Phased Credit Form. At present, we automatically aggregate, the GIA of existing, so this form is not required.

Clawback

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- Self Build House Exemption– 3 Years from Completion
- Residential Annex Exemption - 3 years from Completion
- Social Housing Relief/Charitable Relief – 7 years from commencement

All exemptions and reliefs have clawback periods. Completion, is specified, **as the date on the Building Control Compliance Certificate.**

All CIL liabilities are recorded as Land Charges (Reg 66).

If a relief or exemption has been granted, it will be registered as a Land Charge. After the clawback period, the CIL is removed.

However, if a disqualifying event occurs within the Clawback period, we will withdraw the relief/exemption, and all outstanding payments will be required in full immediately.

Disqualifying events include: self-build house is sold, or let, within the clawback period, or residential annex, is sold, or let separately to the main residential property and social/affordable housing dwelling, (having received relief), is sold as an open market house

Owners/applicants, must notify us within 14 days of a disqualifying event. If we are not notified, a surcharge will be incurred, of up to £2,500.

Surcharges		
Surcharge for	Amount	CIL Regulation
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 Council is required to apportion liability for CIL between those with a material interest in the land	£500 on each person liable to pay CIL	81
Failure to submit Notice of Chargeable Development	20% of the chargeable amount or £2500 , whichever is lower	82
Failure to submit a Commencement Notice	20% of the chargeable amount or £2500 , whichever is lower	83
Failure to notify the Council of a disqualifying events	20% of the chargeable amount or £2500 , whichever is lower	84
Late payment	5% of the outstanding chargeable amount or £200 , whichever is greater	85
Failure to comply with an Information Notice	20% of the relevant amount or £1000 , whichever is lower	86

There are surcharges for failure to follow each step of the CIL process

Assumption of Liability (Reg 31) and Apportionment of Liability (Reg 34)–

If no one has assumed liability, and works starts - the responsibility to pay CIL, will ultimately fall to anyone with a material interest in the land.

To avoid these surcharges, ensure that the applicant/owner, completes and submits, the Assumption of Liability Form 2.

Notice of Chargeable Development (Reg 64) – If we are notified of a development under ‘general consent,’ we will serve a Form 5. If the development has commenced, they will not be able to apply for exemption or relief.

Deemed Commencement–

- as well as a surcharge for not submitting a Commencement Notice,
- the developer/liable party, will lose the right to pay in instalments
- And, payment will be due in full immediately - We generally allow 7 days to ensure an invoice is raised and issued.

Failure to comply with the CIL requirements, may also trigger enforcement action by the Council. **This can include:** the use of warning notices, stop notices, court action (Liability Orders), fines and prosecution.

Commencement of Development

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'relevant land'

'time at which development is permitted'

'chargeable development'

"material operation" has the same meaning as in section 56(4) of TCPA 199021

Although CIL may run alongside planning, there are some factors which directly contradict the Planning rules. There are 4 main factors which need to be taken into consideration for CIL. It is important to understand the meaning of - "**relevant land**". This is the land where planning permission is granted, for that development. You need to consider the 'relevant land': when looking at existing buildings to be taken into consideration and when submitting new and revised applications

The Time at which development is permitted – CIL Reg 8 is on the day that planning permission is granted, for that development – same as planning!

BUT - Although planning may set pre-commencement conditions, these are not considered, when looking at CIL (apart from for phased developments).

Starting any unauthorised work, prior to the approval of an application, may breach the planning application, **BUT** will trigger the CIL, as this is based on **material operations on the 'relevant land'**.

The chargeable development (CIL Reg 9),

- is the development, for which planning permission is granted.

Even if work starts, on any other part of the development, on the relevant land, which is not chargeable, CIL will still be triggered.

Finally CIL Reg 7 - Commencement of Development

So what constitutes commencement, for CIL?

- Development is to be treated as commencing, on the earliest date, on which **ANY**

material operation, begins to be carried out, on ‘the relevant land’

which includes: - demolition of a building - digging of a trench - laying of underground pipes or mains - any change in the use of land that is classed as material development.

- **BUT, does not include;** making the site safe - site clearance e.g removal of debris/rubbish etc., safety fencing or pre-comm conditions e.g asbestos removal, tree protection.

However, any demolition, even if required for pre-comm/pre-ground works conditions, is commencement.

- The payment of CIL, is triggered on the day works start onsite.
- Not understanding the CIL Regulations, may have serious consequences, for applicants/land owners

If any material operations, **start on the land, prior to approval of the application, the development will be ‘deemed commenced’**, on the day the application is granted.

The implications of this are: No exemption can be granted, No instalment payments can be agreed, Statutory Non-compliance surcharges will be incurred – could be up to £2,500 and full payment will be due immediately

If works have **NOT started** – Under Reg 69A, the Liable Party is able to suspend the Demand Notice

We require a formal written request to suspend a Demand Notice, if no works have commenced.

This may occur where a Form 6 has been submitted, for a self build exemption, then there is a delay, and works do not start, and they decide to sell the land, or if payment is required, but works have been delayed.

No need to suspend a Demand Notice, if there is an exemption, and the land is unlikely to be sold.

Phased Development

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Phased planning permission CIL Reg 2(1) - “a planning permission which expressly provides for development to be carried out in phases.

Phased Development

CIL Reg 8 – Time at which planning permission 1st permits development. Para 3A, provides details of phasing requirements.

- If you know there will be demolition, consider submitting a ‘phased’ application.
- Proposal description must say ‘phased’
- and a phasing plan must be submitted, which may include demolition as the 1st phase.

The demolition will be aggregated across the development phases.

There have been CIL appeals specifically relating to phasing which support this approach including:

Stonewater and Wealden Council

- Refusal of 100% Social Housing Relief
- The S106 stated 35% BUT the application description did not reflect the exact proposal intention.

Always check the wording of S106’s and take into consideration the impact of CIL.

Oval Estates, Bath & North East Somerset - Unphased planning permission

- With a S106 stated ‘to be carried out in phases’.
- There was even a ‘proposed’ phasing plan submitted,
- **BUT, as the description did not specifically say ‘phased development’** the council did not accept that the development was phased.

- The developer submitted an 96A (NMA) to amend the description
- **BUT, as work had already started**, the Council **did not allow a phasing plan** to be put in place.
- This was upheld by the Judge, as the CIL Regs have no provision to take into consideration retrospective NMA's.

Finney and Carmarthenshire County Council –

- **Limitation of S73 applications - Precedent** has been set
- if a proposed change to the description of a development, is not a material one, then an NMA, should be used.
- If it is a material change, a new application should be submitted.
- Amendments of GIA may not be considered a material change, in planning terms, especially if it only relates to the internal layout. **BUT** it does have an impact on the CIL.

Taking into consideration these appeals - remember the importance of the planning proposal description.

Variation of Condition (S73)

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S73 will supercede the original/previous S73 application:

- even if there is no uplift
- if granted **and**
- on commencement

EXCEPT if the development:

- has started **and**
- there is no uplift **and**
- there is no exemption **and**
- full payment has been received

S73 applications: At a minimum we will always require forms 1 and Form 2 Assumption of Liability & if there is a new liable party, transfer of liability Form 4, may be required

Development Not Commenced - liability will be transferred on commencement. But not removed from Land Charge until development is completed as the regs give the ability, to stop and restart revised schemes.

- existing exemptions will be transferred (excluding uplift), on receipt of Form 2 – if it is the same land owner
- uplift – they may apply for additional exemption CIL Form 13
- new applicants may apply for total exemption and Commencement Notices must state correct App No

Development Commenced with Exemption – Form 6 Required to show revised scheme is to be implemented

- **If no uplift**, existing exemption will be transferred, on receipt of Form 2 (if same liable party)
- Commenced with exemption BUT Land Sold – Disqualifying event & CIL payment due immediately
- Any new applicant – cannot transfer exemption AND cannot apply for exemption
- No surcharge for 'deemed commencement', but payment immediately after Form 6 recvd, to show the revised scheme is to be implemented.
- **If uplift** – original exemption transferred – Uplift will be charged at current index rate

Development Commenced - NO Exemption – Form 6 Required

- Cannot apply for exemption

- Uplift will be charged at current index rate
- No surcharge for 'deemed commenced'
- Payment immediately after Form 6 recvd

Retrospective S73A

- No Exemption
- No Commencement Notice required
- Payment due on day application granted

CIL Appeals

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- Reg 113 Review of Chargeable Amount
- Reg 114 Chargeable Amount – Appeal
- Reg 117 Surcharge – Appeal
- Reg 118 Deemed Commencement - Appeal

Recent Appeals

Your client has 28 Days to appeal, from date the notice is issued

Reg 113 Query GIA –

- If you think we have not calculated the GIA correctly, please make an Informal enquiry, in writing on receipt of the Liability Notice.
- You are able to request an internal review using the Reg 113 Form, after Liability Notice issued and prior to commencement.
- We have 14 day to respond
- If you are not happy with our decision you can then submit a Reg 114 appeal

Reg 117 – Surcharge Appeal – used if no breach occurred , no liability notice issued or surcharge calculated incorrectly

Reg 118 – Demand Notice _ Deemed Commencement

There have been many 'deemed commencement' VOA appeals – the majority are dismissed. The appeals generally relate to:

- Financial implications of not understanding what constitutes commencement
- Deemed Commencement under a previous app – on the 'relevant land'
- Poor advice from builders/agents – not taking into consideration CIL implications, which differ from the planning implications - including 'deemed commencement' surcharges & inability to apply for an exemption.
- Submitting new full applications, without understanding the financial implications of CIL
- Starting work, before planning approval
- Forgetting to submit CIL Forms

Here are some inspector comments extracted from Appeals for 'deemed commencement':

- **Appeal against works commenced under a previous application' Inspector States:** *The fact that there are elements of the permission **that are not retrospective**, does not have a bearing on the determination of the deemed commencement date in cases such as this. where some works have been carried out before permission was granted'.*
- **Appeal Demolition prior to approval – Inspector States** *'The **demolition works that were carried out amount to a material operation** and consequently development has commenced. I conclude that the alleged breach of failing to submit a CN before starting works on the chargeable development occurred.'*

There have also been a number of High Court Appeals & Judicial Reviews:

Heronlea and Secretary of State for Housing – 'Deemed Commencement & Removal of AH Exemption.

- Mainly based on the Collecting Authorities admin errors – delays in serving notices, incorrect wording on documents – all dismissed
- But the Judge supported 'deemed commencement of development' including 'works that changed the physical appearance of the Site'
- AND even though the Demand Notice was delayed, **the deemed commencement date was the date upon which payment became due, not the date on which the demand notice was issued'**.

Gardiner and Hertsmere Borough Council

- 1st appeal related to 'deemed commencement and the refusal of 'self build' exemption under 73A.
- 2nd appeal Judicial Review – both dismissed.

This particular appeal, is an example where the applicant undertook extensive demolition, beyond what was approved and needed to submit a S73A application. As works had commenced, the exemption was refused.

- **This appeal has set the precedent** for both 'deemed commencement' and the refusal of exemptions, where the correct process has not been followed.
- Also, it is **good sense, where an application is retrospective, to submit the CIL Form 2 Assumption of Liability**, when the application is submitted, to avoid the surcharge under Reg 80 and Apportionment of £500 under Reg 81.

So in summary, Issues to be aware of:

- **Application Type** – More leniency if S73 submitted, rather than a new full revised app.
- **Relevant Land** – When submitting an application, consider the 'relevant land' - has any works commenced which may relate to your application?
- **Deemed Commencement** – Please ensure that you understand what constitutes commencement, in relation to CIL.
- **Description of Development** – it is important to understand that CIL is based on the description of the application, 'as approved'. It is important that the proposal reflects the intent of the application.

- **Make sure that if phased** - this is included in the description.
- **Avoid using the word annex** - if it is an additional building, which cannot be used as a separate dwelling.
- **Don't include unnecessary text-** to describe the development, as this can affect the CIL.

Agent submitting the Assumption of Liability Form 2

- This is a legal agreement, to pay the CIL, and this overrides any land sale documents.
- We would prefer that it is submitted, as we need to identify the liable party for the Liability Notice, especially when not declared by the agent.
- **BUT**, if you do submit it, please ensure that your clients are aware – if the land is sold after the app is granted **The Liable party will still be pursued for CIL, unless they transfer liability.**



White Paper Levelling up Bill - May 2022 – Proposals: A levy on developers, is not going away. Within the white paper, there is actually proposed to be more responsibility on agents:

It will be a Statutory Levy, unlike CIL where Councils can choose to adopt.

- New Charging Schedule with Viability & Examination – not 1 flat rate. Timescale to be set by Secretary of State – phased in. Affordable housing to be provided through the Levy

Possibility of **non-compliance surcharges raised to 40% or up to £50k** - Currently 20% & £2,500 max Deemed Commencement, Notice of Chargeable Development & Disqualifying Event. Development permitted under the pre-existing system of developer contributions, will continue until clawback expiry.

It is intended that the new levy, will be charged: **based on the final gross development value of development**, on completion. **BUT land values required at approval**, with the issuing of Liability Notices. The new proposed levy is:

- A more complex process, but deemed to be fairer for developers, Independent valuations will be required – no clarity on who or how this will be done.
- RTP1 claim the process is too complex & it is strongly opposed by CIL Officers, as it will be more difficult to enforce on completion (private land sales etc...), without increased site visits and monitoring.

New Sections to the Town & Country Planning Act 1990

93G Commencement Notices: Each development will need to submit a commencement notice, which will be placed on a public record. Non- submission will be an offence. The Notice is likely to state: proposed start date, proposed delivery rate & expected completion times.

93H,I & J Completion Notices: LPAs will have the power to serve ‘completion notices’, which have not been completed in a reasonable period. Notices must have a deadline of at least 12 months.

New planning enforcement powers, which will also affect CIL incl: Time Limits for Enforcement - Increased from 4 to 10 years – possibility of more retrospective applications. **New subsection in S106** - to include the levy regulations, to determine planning obligations. Consideration of CIL Funding when negotiating S106’s. This change is more in line with the previous CIL Reg123 list dropped in Sept 2019.

In addition Council will be required to produce an **Infrastructure Delivery Strategy & Strategic Spending Plan**- To set out strategic plans for the use of the levy funds, likely that the Secretary of State will provide guidance on the production of infrastructure delivery strategies and will replace the CIL Governance Document & politically led funding , which is currently used.

Summary & Recommendations

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- **CIL is not negotiable**
- CIL applications are **not** exempt, however relief/exemptions can be applied for
- The CIL processes **must** be followed or surcharges will be incurred
- No previous applications are considered when calculating CIL (except S73)
- **Be aware of 'deemed commencement' on 'relevant land'**

CIL is NOT like planning, there is no discretion to waive the consequences of non-compliance or negotiate a different outcome.

The Regulations are very specific, so it is important that the correct forms are submitted at the right time.

Please consider CIL, when submitting a planning application

- does your client understand the financial implications of CIL?
- If amendments are made to plans, does the client know there may be changes in the CIL calculation?
- does the proposal reflect the intention of the development – is it phased?
- has works started, even if under a previous application?
- is a S73 app possible?

It is also important to remember:

- only S73 applications, will take into consideration previous GIA
- any new full application will be treated as stand-alone and any other pre-approved application, will not be taken into consideration
- If 'deemed commenced' :
 - a surcharge will be applied automatically (20% up to £2,500) for non-compliance if granted
 - no exemption can be applied
 - full payment will be due immediately

At validation: Additional Information Form1 –You are signing the declaration to confirm the details are correct, so please ensure that the existing and proposed GIA's

are as accurate as possible. Are Sections 6 & 7 completed?

The approved plans will be measured if granted, and will be used to calculate the CIL – which may differ from Form 1, due to amendments and indexation

Form 2 – Assumption of Liability – Preferably at validation although required prior to commencement, to ensure that we know details of the land owner/developer.

- Please don't use the development site address, if your client is not living onsite.
- Include an email address.

Do not assume an application for relief will be granted, as it depends on the site history. For Social Housing, also check wording on S106.

- The only sites CIL exempt are in £0 rated zones, or under £50.
- If acting for your client, ensure all information is sent to them – **the responsibility for CIL lies with the Land Owner or Liable Party.**
- Always provide details of the Liable Party, as soon as possible, so that we can contact them directly.

To ensure that Agents are not responsible for CIL, after an application has been granted as: Non-Compliance **will** incur surcharges and inaccurate advice provided by agents, which leads to unnecessary CIL payments/surcharges, **may lead to professional negligence cases**

Please notify us on any changes – land sale/new developer etc..during the life of the application, to ensure that the correct parties receive the Liability Notice, if granted.

Our website <https://www.west-norfolk.gov.uk/CIL> has a clear step by step guide of the CIL processes.

If you have any questions, or disagree with any calculations or surcharges, please contact me, prior to making an appeal.



Questions?

Just some questions, I have previous been asked by agents:

Are Outline permissions granted prior to the adoption of CIL liable to pay CIL at the Reserved Matters stage.

- If an Outline is granted permission prior to the adoption of CIL it **will not** be liable to pay CIL at the Reserved Matters Stage (Reg 128). However, any Outlines granted after the adoption of CIL will trigger CIL liability at the Reserved Matters stage (CIL Reg 8).

Section 73 of TCPA Applications

- S73 applications will run concurrently until completion, as the applicant has the ability to stop and restart the development
- On completion of the development, not implemented applications will be removed from the Land Charge Register as appropriate.

Gross Internal Area Calculations: The Planning Portal recommend the RIC property measurement guide.

Is CIL payable on garages: Garages and carports that are an integral part of the planning application for new houses will count as 'residential floorspace' and are liable for CIL.