

Worthing Borough Council

Community Infrastructure Levy (CIL)

FAQs

September 2019

What is the Community Infrastructure Levy (CIL)?

CIL is a levy that local authorities can choose to charge on new developments in their area. The money can be used to fund a wide range of infrastructure that is needed to support growth. The levy applies to new buildings and charges are based on the size and type of the new development. (See the [Worthing Charging Schedule](#) for more information).

When did Worthing Borough Council adopt the CIL?

The Council adopted its CIL Charging Schedule in February 2015. The charge was implemented on 1st October 2015.

Is there still a role for S106?

Yes, Planning Obligations (despite being scaled back) will continue to play a key role in relation to affordable housing and certain site specific requirements.

What are the benefits of CIL?

For the following reasons the Government has decided that a tariff-based approach provides the best framework to fund new infrastructure:

- The Levy is a fixed non-negotiable charge relative to the size and type of the chargeable development
- CIL is considered to be fairer, faster and more transparent than previous systems
- Local communities will have a clearer understanding of how new development contributes to infrastructure
- Levy rates are set in consultation with local communities and developers and provide developers with much more certainty 'up front' about how much money they will be expected to contribute

Why should development pay for infrastructure?

Almost all development has some impact on the need for infrastructure, services and amenities so it is only fair that such development pays a share of the cost. It is also right that those who benefit financially when planning permission is given should share some of that gain with the community.

What is infrastructure?

Infrastructure which can be funded by the levy includes transport, flood defences, schools, hospitals, and other health and social care facilities. The Levy can be spent on 'the provision, improvement, replacement, operation or maintenance of infrastructure'. This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks, cultural and sports facilities. It should be noted

that some key elements of infrastructure (e.g. affordable housing and some site specific requirements) will not be covered by the Levy. CIL cannot be used to fund solution to existing problems, such as traffic calming.

Do Councils have to implement CIL?

Local authorities in England and Wales are empowered, but not required, to levy on development in their areas. It should be noted that in April 2015, limitations to Section 106 planning obligations came into force and Councils are only able to raise money for most infrastructure through the new levy.

How was CIL Set for Worthing?

In setting the rates, the Council was required to strike an appropriate balance between the desirability of funding infrastructure to support development and the potential effects of imposing a charge on the economic viability of development as a whole.

To demonstrate this balance the Council's evidence firstly demonstrated that there was an infrastructure deficit. To establish if CIL could be charged, and at what level, a series of viability appraisals were then undertaken on a wide range of scenarios to calculate viability by subtracting development costs from development value.

The Council's evidence and conclusions reached was then the subject of consultation and examination - all relevant documents are available to view on the Council's website: <http://www.adur-worthing.gov.uk/worthing-cil-examination/>

How is CIL calculated?

CIL is charged in £ per square metre and is levied on the gross internal area (GIA) of the liable development, plus any indexing for inflation. Where buildings are demolished to make way for new buildings, the charge will be based on the floorspace of the new buildings less the floorspace of the demolished buildings.

Schedule 1 of the 2019 amended CIL Regulations requires collecting authorities to apply an index of inflation to keep the levy responsive to market conditions. The formula used to calculate the CIL chargeable amount is as follows:

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

Where;

R = CIL Levy rate

A = the deemed net area chargeable at rate R

I_p = the index figure for the calendar year in which planning permission was granted

I_c = the index figure for the calendar year in which the charging schedule containing rate R took effect

What are the CIL Rates for Worthing?

Worthing Borough Council adopted the CIL Charging Schedule CIL in February 2015, which established the following rates. These rates are subject to annual changes to keep it in line with inflation, known as indexation. Each of the following rates take effect for relevant applications approved from 1st January in that year:

Year	Residential (C3) Zone 1*	Residential (C3) Zone 2**	Retail (A1-A5)***	All other uses
2015 Charging Schedule Levy (£/m ²)	£100	£0	£150	£0
2016 Indexed Levy (£/m ²)	£104.63	£0	£156.94	£0
2017 Indexed Levy (£/m ²)	£109.26	£0	£163.89	£0
2018 Indexed Levy (£/m ²)	£126.25	£0	£189.38	£0
2019 Indexed Levy (£/m ²)	£128.57	£0	£192.85	£0

*All wards, excluding the four in Zone 2

**The following four wards; Selden, Castle, Gaisford, Broadwater

***Excluding ancillary parking

Where does the indexation figure come from?

The index figure for a given calendar year before 2020 is the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published by the Royal Institution of Chartered Surveyors (RICS). The index figure for a given calendar year 2020 and after is the RICS CIL Index published in November of the preceding calendar year.

Is VAT applied to CIL?

No, CIL is outside the scope of VAT.

What types of development are liable for CIL?

Development types that are liable for CIL are listed below:

- Development comprising 100 m² or more of new build floorspace
- Development of less than 100 m² of new build floorspace that results in the creation of one or more dwellings
- The conversion of a building that is no longer in 'lawful use'

This includes development permitted by a 'general consent' (including permitted development).

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:

- Areas occupied by internal walls, partitions, columns, chimney breasts, corridors, stairwells, lift-wells, and the like
- Communal areas within blocks of flats, including entrance halls
- Internal open-sided balconies, walkways, and the like
- Parts of a room where the plans show built-in or walk-in cupboards

- Stepped floors – which should be treated as a level floor measured horizontally
- Horizontal floors, with permanent access, below structural, raked or stepped floors
- Basements, including gyms and swimming pools
- Mezzanine floor areas with permanent access - where forming part of a wider planning permission that seeks to provide other works as well
- Attics accessed via a fixed, permanent stairway
- Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature
- Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms, and the like
- Voids over stairwells and lift shafts on upper floors
- Garages and car ports
- Conservatories
- Areas with headroom of less than 1.5m

GIA excludes:

- Perimeter wall thickness and external projections
- External open-sided balconies, covered ways and fire escapes
- Loft space accessed by a pull-down loft ladder
- Canopies
- Buildings into which people would not normally be entered
- Greenhouses and garden stores

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 three years ending on the day planning permission first permits the chargeable development. The “day planning permission first permits development” is defined in the CIL Regulations as the date at which development may commence. In this context, “in use” means that at least part of the building has been in use.

So, for example, a replacement dwelling would be able to deduct the demolished floorspace from the new floorspace, providing it has been in lawful use for six months in the previous three years. You will pay CIL on any remaining floorspace.

Note that if you are seeking to include existing buildings (in current lawful use) in the calculation of CIL liability, please submit a scaled plan of all of the floorspace you would like to be taken into consideration.

When is a building in ‘lawful use’?

Firstly, the building must be a ‘relevant building’ – it must exist on the land shown within the red line site plan of your planning permission on the day permission first permits your development. Previously demolished buildings are not relevant buildings. AND Secondly, the building, or part of the building, must have been used for the use for which it is lawfully meant to, for at least six months, without a break, in the three years ending on the day planning permission first permits your development.

It will be for the applicant or their agent to demonstrate that a building has been in use by providing appropriate evidence such as;

- Time-stamped photographs showing the use of the building as claimed
- Sworn statements made by people who are able to confirm the use claimed, witnessed by a solicitor
- Utility or other bills (e.g. Council Tax, Business Rate) relating to the use claimed (for the six month period)
- Copies of leases

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

My proposal is bigger than 100sqm. Is the CIL chargeable on the entire new build area or just the area above the threshold (≥100sqm)?

The CIL is chargeable for the entire area of the build.

For example, if the new floorspace for a retail development equated to 99sqm there would be no CIL charge. However, if the new floor area equated to 101sqm the CIL charge would be for the entire 101sqm. Once the threshold is breached the entire development becomes chargeable.

Are there any exemptions from CIL?

In some circumstances there will be exemptions or relief from paying CIL. This would be applicable for the following:

- Changes of use that do not increase floorspace
- Development by charitable institutions on land owned by that charity where the development is to be used for the charitable purpose, subject to prescribed criteria
- Social (affordable) housing relief
- New build development of less than 100m² of gross internal floorspace, provided that it does not result in the creation of one or more dwellings
- Self-build housing and residential extensions and annexes
- Changes of use from a single dwelling into two or more separate dwellings
- Buildings for which planning permission was granted for a limited period
- A building into which people do not normally go, or go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery
- Mezzanine floors of less than 200m², inserted into an existing building (unless they form part of a wider planning permission that seeks to provide other works as well)

Do I have to apply for relief from CIL?

CIL exemption / relief 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 / exemption the applicant must have assumed liability to pay CIL on the chargeable development and this application must be made before development commences. For more information see our [CIL Process Guide \(V3\)](#).

Worthing Borough Council has produced two flowcharts to guide developers who wish to apply for either self-build exemption or social housing relief, both of which are available on the [Council's website](#):

- CIL Self Build Exemption Flowchart
- CIL Social Housing Relief Flowchart

Does Worthing Borough Council have an ‘Exceptional Circumstances Policy’?

At this stage the Council does not currently intend to adopt an Exceptional Circumstances policy. However, discretionary relief in exceptional circumstances can be activated and deactivated at any time.

What happens regarding an s73 application which is CIL liable?

An s73 application will trigger a liability to pay CIL because it results in a new planning permission. A revised Liability Notice should be sent out taking into account any changes to proposed floorspace under the amended application. Any exemption / relief granted for an application, or the right to pay by instalments, can be carried over to an amended planning application (introduced by 2019 Regulations).

What happens for Outline / Reserved Matters applications?

If a scheme has Outline permission for a number of phases of development, each phase is a separate chargeable development regarded as having permission which ‘first permits’ development when the last Reserved Matter is approved for that phase. CIL liability is calculated at the Reserved Matters stage.

Who is liable to pay the Levy?

The responsibility to pay the levy runs with the ownership of the land on which the liable development will be situated. Although liability rests with the landowner, the regulations recognise that others involved in a development may wish to pay. To allow this, anyone can come forward and assume liability for the development (by submitting the ‘Assumption of Liability’ Form 2).

Where the Council has been unable to recover the Levy from the party that has assumed liability, despite making all reasonable efforts, the liability to pay will default to the owner(s) of the relevant land.

What happens if I have claimed liability but then sold the site?

Liability to pay CIL can be transferred to another person at any point prior to the final payment being due. This must be done by completing the relevant ‘Transfer of Liability’ form ([Form 4](#)) and submitting it to the Council. More information can be found in the [CIL Process Guide \(V3\)](#).

How is the levy paid?

The levy will be collected as a cash contribution, although in some cases it may be more appropriate to transfer land (‘in-kind’) to the charging authority as payment. In such cases the land must be used to provide, or facilitate the provision of, infrastructure to support development in the area.

Payment of the CIL charge is due within 60 days of the commencement of a chargeable development, provided that a valid commencement notice is received by the Council at least one day before commencement of the chargeable development. A demand notice will be issued to all liable parties after receiving a commencement notice, or after the development is deemed to have commenced.

Can I pay in instalments?

Worthing Borough Council has adopted an 'instalment policy' for larger developments to provide greater flexibility and ensure that payments are scheduled in proportion to the scale of development. The instalment policy is available [here](#).

Is there another way to allow phased payments?

Where the planning authority is willing to accept it, a planning permission for a development can be subdivided into 'phases' for the purposes of the levy. Regulation 9(4) provides that each phase of a phased planning permission is a separate chargeable development for CIL purposes and therefore each phase would be liable for separate payments. Also each phase may benefit from any instalment policy that is in force. The principle of phased delivery must be expressly set out in the planning permission.

When is a development classed as having 'commenced'?

As defined in the Planning Acts, 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.

What steps do I need to follow if I am the liable party?

Please see our [CIL Process Guide \(V3\)](#) for all the information regarding the necessary steps that need to be taken regarding CIL liability and avoiding any additional surcharges.

If you think your application is eligible for social housing relief or self-build exemption, please see the following flowcharts to ensure you take the correct steps, both of which are available on the [Council's website](#):

- CIL Self Build Exemption Flowchart
- CIL Social Housing Relief Flowchart

What happens if the commencement date for the development changes?

The Council issues a Demand Notice based on the commencement date of the development, so if this changes you need to let us know. Re-submit a new Commencement Notice with the new date provided, at least one day prior to commencement of the development. Failure to submit a valid commencement notice before development commences will result in the Council imposing a surcharge of 20% of the CIL amount due, up to a maximum of £2,500. This would also remove the ability to pay the CIL charge in instalments.

What happens if I don't pay?

Most of those liable to pay the Levy are expected to pay their liabilities without problem or delay. However, if CIL is not paid, the Council has the power to take any of the following actions in order to recover the debt: Removal of the instalments facility; Surcharges and late payment interest; Issuing a CIL stop notice; Applying to the Courts for a liability order. Failure to pay CIL can also lead to a prison sentence.

What happens if I overpay?

The Council is required to pay back any overpayments of CIL, unless the overpayment is less than the administrative cost of paying it back.

Will CIL appear on the record for the land?

The liability to pay CIL for a chargeable development is held as a local land charge. This will remain as a charge on the land until the final CIL charge is paid, or permission for the development lapses. If CIL has not been paid, it may make selling your land or property difficult.

Can I make an appeal?

You cannot appeal against the principle of CIL, however you can appeal against some aspects of the CIL collection and enforcement system. If you think that the Council has miscalculated the CIL charge within the Liability Notice, you can ask for it to be reviewed. Firstly, you should contact the Council to request a review within 28 days of the liability notice being issued. The Council must, within 14 days, notify the person requesting the review of the decision of the review and the reasons for the decision. Secondly, if you are still unhappy with the decision, you can appeal to the Valuation Office Agency within 60 days of receiving your Liability Notice.

For more information on appealing against a CIL notice, see our [Appeals Guidance document](#).

How will the Council spend CIL?

Charging authorities are required to spend the levy's revenue on what they see as the infrastructure needed to support the development of their area. The assessment of 'need' will largely be informed by the Infrastructure Delivery Plans (IDPs) published by each authority alongside their Core Strategies / Local Plans and Regulation 123 list (which set out a list of infrastructure projects that CIL funding may be spent on). This flexibility to mix funding sources at a local level will enable local authorities to be more efficient in delivering the outcomes that local communities want.

The levy is intended to focus on the provision of new or improved infrastructure and should not be used to remedy pre-existing deficiencies, unless those deficiencies will be made more severe by new development. Charging authorities must allocate a meaningful proportion of levy revenues raised in each neighbourhood back to that neighbourhood. This will be 15%, or 25% if a Neighbourhood Plan is in place. This will ensure that where a neighbourhood bears the brunt of a new development, it receives sufficient money to help it manage those impacts.

Charging authorities are able to use revenue from the levy to recover the costs of administering the levy (up to 5% of total revenue).

For more information, see the Council's [CIL Expenditure Strategy](#).

Can infrastructure spending be outside a charging area?

Charging authorities may pass money to bodies outside their area to deliver infrastructure which will benefit the development of their area, such as the Environment Agency for flood defence or, in two tier areas, the County Council, for education infrastructure. Charging authorities will also be able to collaborate and pool

their revenue from their respective levies to support the delivery of 'sub-regional infrastructure'.

How will the Council monitor and report spending of the levy?

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](#). The reports on the levy for the previous financial year must be placed on the website by 31st December each year. These reports will set out how much revenue from the levy has been received, what it has been spent on and how much is left.

The 2019 amendments to the CIL Regulations introduced 'Infrastructure Funding Statements' to replace the reporting in the Annual Monitoring Report. The annual statements will cover both CIL and section 106 receipts, with the first report being published on the Council's website by 31st December 2020. The statements will provide information on which infrastructure projects the Council intends to be wholly or partly funded by CIL. The CIL section of the report will relate to the amount of CIL receipts received in the previous financial year, the amount of CIL expenditure for the reported year and details on which projects the receipts were spent on.

What is the relationship between CIL and Planning Obligations?

Guidance makes it clear that Planning Obligations and CIL need to be complementary contribution mechanisms. To help explain this relationship the Council published a [Developer Contributions Supplementary Planning Document \(SPD\)](#).

The SPD explains that, in general, CIL is intended to provide infrastructure to support the growth of an area rather than to make individual planning applications acceptable in planning terms. As a result, there may still be some site specific impact mitigation requirements without which a development should not be granted planning permission. These requirements (which must be directly related to the development) are more suitably delivered through a Planning Obligation in addition to the CIL charge. Furthermore, the provision of affordable housing lies outside of the remit of CIL and will continue to be secured through Planning Obligations.

Overall, the principle is that all eligible developments must pay towards CIL and, in addition, affordable housing and any (identified) site specific requirements (usually for large scale development sites) will be secured through Planning Obligations where they are necessary to make the development acceptable in planning terms.

Where can I find further information?

Further information / advice on CIL in Worthing can found on the Council's website:

- <https://www.adur-worthing.gov.uk/planning-policy/worthing/worthing-cil/>

Planning Practice Guidance:

- <https://www.gov.uk/guidance/community-infrastructure-levy>

Information via the Planning Portal:

- https://www.planningportal.co.uk/info/200136/policy_and_legislation/70/community_infrastructure_levy

Forms and templates:

- <https://www.gov.uk/guidance/community-infrastructure-levy#forms-and-templates>

How do I contact the Council regarding CIL?

Department	Planning Policy	Planning (Development Monitoring)
Role	Reporting on CIL & implementing governance arrangements	Dealing with planning applications, CIL liability, & calculating the levy charge
Email	planning.policy@adur-worthing.gov.uk	planning@adur-worthing.gov.uk
Phone	01273 263000	01903 221065