



# **Hertsmere Borough Council**

## **Community Infrastructure Levy (CIL)**

### **Guidance for applicants and developers**

October 2023 – Version 3

## 1. Introduction

1.1 Hertsmere Borough Council adopted the Community Infrastructure Levy (CIL) on 17 September 2014, with CIL coming into effect from 1 December 2014.

1.2 This means that applications determined on or after 1 December 2014 may be liable to pay CIL, in accordance with the council's charging schedule below.

<https://www.hertsmere.gov.uk/Planning--Building-Control/Planning-Policy/Developer-Contributions-Framework/040-Hertsmere-CIL-Charging-Schedule-and-Infrastructure-Funding-Statement.aspx>

1.3 This guidance provides useful information to applicants/developers on CIL, including what developments will be liable or exempt, how payment will be calculated and when and how it will be collected. It should be noted that this guidance is not an exhaustive list. Information has been based on the CIL Regulations 2010 (as amended). Please also refer to the webpages below:

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

CIL on the Planning Portal - [https://www.planningportal.co.uk/info/200126/applications/70/community\\_infrastructure\\_levy](https://www.planningportal.co.uk/info/200126/applications/70/community_infrastructure_levy)

1.4 If you have any questions or queries related to CIL, please email [cil.monitoring@hertsmere.gov.uk](mailto:cil.monitoring@hertsmere.gov.uk)

## 2. What is CIL?

2.1 The Community Infrastructure Levy is a levy that local authorities can choose to charge on new development in their area. The money raised can be used to fund the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area.

## 3. What type of development is liable?

3.1 Development will potentially be liable for CIL if it:

- contains at least 100 square metres of extra floor space (new build);
- is less than 100 square metres but results in the creation of a new dwelling;
- involves change of use to residential where floorspace has not been in use for six months of the previous three years;

- includes development permitted by a 'general consent' (including permitted development) commenced on or after CIL is implemented.

3.2 Development will potentially not be liable for CIL or not be charged if it:

- is for a use which has a zero or nil charge (£0/sq m) set out in the CIL Charging Schedule;
- involves only conversion or change of use with no additional floorspace;
- involves Mezzanine floors inserted into an existing building, unless they form part of a wider development (e.g. external alterations, changes of use etc.);
- involves the subdivision of a dwelling which has been in lawful use;
- is for a building into which people do not normally go, or go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery;
- the chargeable amount is less than £50

3.3 **Relief and exemptions** can be sought in certain circumstances, but are not automatically applied. Instead, relief and exemptions must be applied for, and this must be accepted by the council before development commences, using the relevant application forms. To apply for relief and exemptions you must also have assumed liability. There are a number of other conditions which also apply dependent on the type of relief or exemption (please see section 12). Relief and exemptions can be obtained for:

- social / affordable housing
- charitable developments
- self build - whole houses
- self build - residential extensions / annexes

3.4 **Important note for Householder Applications** for residential extensions of a private home (with the postscript HSE).

A decision was taken by the Council's Executive on the 13 January 2016 that we would adopt an approach not to apply CIL to planning applications for householder extensions i.e. those with an 'HSE' postscript.

Substantial extensions involving the demolition of much of the original house have the potential to be treated as a new dwelling and may not be treated as a HSE application.

## 4. What is 'continued lawful use'?

4.1 Floorspace subject to demolition or resulting from change of use can only be deducted from the CIL charge where it has been in continuous lawful use for at least six months in the three years prior to a development being permitted. It will be for the applicant or their agent to demonstrate lawful use by providing appropriate evidence. Information that could be submitted to demonstrate this can include a combination of the following:

- Copies of leases
- Electricity/gas bills for the 6 month period
- Business rate/council tax bills and payments. Note: The Local Planning Authority does not have access to this information as it is data protected.
- Where an informal arrangement exists redacted bank statements to show rent/rates have been paid
- Confirmation from a letting agent/solicitor advising of the period of occupancy

4.2 If it is not evident from the information supplied we will not consider the existing floor space as deductible floor space.

## **5. What is included as CIL chargeable floorspace?**

5.1 All new build floor space within the external walls of the building, including circulation and service space such as corridors, storage, toilets, lift etc. and the existing floor space of a building if a change of use is proposed to create a new dwelling. It also includes garages. CIL is charged on the 'gross internal area' of the development for which planning permission is granted. Generally, any structure with three or more walls and a roof is considered to be 'internal' floor space and therefore chargeable.

5.2 Guidance on measuring gross internal floorspace is available in the Royal Institution of Chartered Surveyors (RICS) Code of Measuring Practice.

<https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/sector-standards/valuation/code-of-measuring-practice-6th-edition-rics.pdf>

5.3 Detailed information is provided in Appendix 1.

## **6. How much will I have to pay?**

6.1 Eligible developments that receive planning permission from 1 December 2014 will be charged in accordance with the rates set out in the CIL Charging Schedule. The amount payable is calculated when planning permission is granted.

## 7. Can I pay in instalments?

7.1 CIL Charging Authorities can choose to allow CIL to be paid in instalments. Our instalment policy sets out when payment of CIL would be due depending on the total amount of CIL payable, should developers wish to phase their CIL payments rather than pay the full costs on commencement of development. This instalment policy takes effect from 1 January 2019 and will only apply to CIL payable as a result of commencement notices served on or after 1 January 2019.

7.2 Please read the council's instalment policy for further guidance:

<https://www.hertsmere.gov.uk/Documents/09-Planning--Building-Control/Planning-Policy/Infrastructure-and-delivery/CIL-Instalment-Plan-1.pdf>

## 8. What happens if I don't pay CIL?

8.1 If CIL remains unpaid the council may take any or all of the following actions, in order to recover the debt, as based on the CIL Regulations.

- Removal of the instalment facility
- Impose surcharges and late payment interest
- Issue a CIL Stop Notice
- Seek authorisation from the courts to seize and sell assets to recover the CIL due
- Seek committal to prison

## 9. How is CIL calculated?

9.1 The calculation involves multiplying the CIL charging rate by the additional (new build) floor space, and factoring in an index figure to allow for changes in building costs over time.

$$\text{CIL Charge} = \text{Net additional new build floor space (A)} \times \text{CIL Rate (R)} \times \text{Inflation index (I)}$$

Where: A = the net area of floor space chargeable in square metres after deducting any existing floor space and any demolitions, where appropriate. R = the levy rate as set in the Charging Schedule, I = All-in tender price index (from January 2020 it is the RICS CIL Index) of construction costs in the year planning permission was granted, divided by the All-in tender price index for the year the Charging Schedule took effect.

Existing floor space that has been in continuous lawful use can be used as deductible floor space from the total CIL charge. The onus is on the applicant to demonstrate this usage.

**9.2 CIL Indexation:**

CIL payments must be index linked from the year that CIL was introduced to the year that planning permissions are granted. The index we must use is the national All-in Tender Price Index published by the Build Cost Information Service (BCIS) but from 2020 onwards it is the RICS CIL Index.

**9.3** If the building is demolished before planning permission for redevelopment is granted, the previous floor space cannot be taken into account for the purpose of calculating the CIL charge.

## **10. Who is liable to pay?**

**10.1** Landowners are ultimately liable for the levy, but anyone involved in a development may take on the liability to pay. In order to benefit from payment in instalments, someone must assume liability (see section 11). Where no one has assumed liability to pay the levy, the liability will automatically default to the landowners and payment becomes due as soon as development commences. Liability to pay the levy can also default to the landowners where we have been unable to recover the levy from the party that assumed liability for the levy, despite making all reasonable efforts.

## **11. Planning application and CIL procedure**

**11.1** CIL involves a number of stages, which are legal processes that must be complied with in order to administer CIL effectively. If the stages are not complied with, there are a range of penalties that the Council can impose.

**11.2** Please refer to the CIL procedure on the following page.

## Community Infrastructure Levy (CIL) Guidance

Development Stage	Developer/Applicant Actions	Councils Actions
3. Assessment and determining of planning		<div>Determine the planning application</div> <div>Determine liability/chargeable amount</div>

12.1 Mandatory relief from CIL is available in a number of specific instances

- A charity landowner will benefit from full relief from their portion of the liability where the chargeable development will be used wholly, or mainly for charitable purposes;
- The development is a self-build new home, extension or residential annexe;
- If the chargeable development comprises or is to comprise qualifying social housing (in whole or in part), the social housing element is eligible for relief from liability to pay CIL subject to conditions.

12.2 Claims for relief cannot be made after the development has commenced.

12.3 In each case, the claim for relief must be made on the appropriate form (which can be found on the planning portal website) and the person making the claim must have assumed liability (CIL Form 2) to pay CIL and be an owner of the land. Claims can be made at any time up to the point where development commences. If no claim has been made, we will issue the Liability and Demand Notices showing the full CIL liability in the usual way.

12.4 As soon as possible after receiving the claim, we will assess it and notify the claimant of our decision and reasons and the amount of relief they qualify for. Both the application for relief and the Council's decision and reasons need to be registered/ recorded. You should not start development until you have received the Council's decision. When the Demand Notice is issued, the amount of relief is shown on the notice.

12.5 Any relief granted is subject to a clawback period, during which the relief can be withdrawn if a disqualifying event occurs. Affordable housing and charitable relief are subject to a 7-year clawback period. If the development ceases to be used for social housing or charitable purposes, the relief is disqualified and the outstanding CIL must be paid. Developments granted self-build relief are subject to a 3-year clawback period. If the property ceases to be used as the principal resident, or is sold or rented during this period, the relief will be disqualified and the CIL will need to be repaid.

## **13. Consequences of failing to follow the CIL payment procedure**



## Surcharges and interest

13.1 The table below summarises the surcharges and/or interest that may be applied in the event of not following the CIL payment procedure or failure to make the correct payment.

Reason for surcharge	Amount	Trigger and details
Failure to assume liability before commencement (Regulation 80)	£50 on each person liable to pay CIL	Chargeable development has started; and nobody has assumed CIL liability.
Apportionment of liability (Regulation 81)	£500 on each material interest and loss of payment rights	Chargeable development has started; and nobody has assumed CIL liability and there is more than one material interest in the land.
Failure to submit a notice of chargeable development (Regulation 82)	20% of chargeable amount payable, up to £2,500 max	Chargeable development starts before the collecting authority has received a valid notice of chargeable development where planning permission is granted by a general consent.
Failure to submit a commencement notice (Regulation 83)	20% of chargeable amount payable, or £2,500 whichever is the lower	Chargeable development starts before the collecting authority has received a valid commencement notice.
Failure to notify a disqualifying event (Regulation 84)	20% of chargeable amount payable, or £2,500 whichever is the lower	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 occurs, e.g. relief-related.
Late payment (Regulation 85)	5% of the outstanding chargeable amount or £200, whichever is greater on the outstanding liability for late payment after the end of 30 days after the liability is due, further increasing after being outstanding after 6 months and 12 months.	<p>When amount 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.</p> <p>When any part of A is not received after 6 months beginning with the day on which payment A is due.</p> <p>When any part of A is not received after 12 months</p>

		beginning with the day on which payment A is due.
Failure to comply with an information notice (Regulation 86)	20% of the relevant amount or £1,000, whichever is lower.	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.
Late payment interest (Regulation 87)	2.5% above the Bank of England base rate	When amount A is not received on the day payment of A is due. Interest is calculated for the period starting on the day after the day payment was due and ending on the day the unpaid amount is received.

### Stop notice and injunctions

13.2 If the council considers that interest and late payment surcharges will be ineffective in securing payment of the overdue CIL, we may decide to serve a CIL stop notice on the development in question. This stop notice prohibits development from continuing until payment is made. Continuing to develop in the presence of such a notice is a criminal offence, punishable by potentially unlimited fines.

13.3 Before serving a CIL stop notice however, we will first issue a warning to the person liable to pay the amount, the land owners, occupiers and all those who we consider will be affected by the notice. We 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 not to be made. If payment is not made by the end of this period, we may serve a stop notice which will prohibit development with immediate effect immediately until payment of the outstanding amount is made.

13.4 The Council may apply to the court for an injunction if it considers it necessary of expedient for any actual or apprehended breach of a CIL Stop notice to be restrained by injunction.

### Liability Order

13.5 The Council may, after issuing a reminder notice to the party liable for the levy, apply to a magistrates' court to make a liability order.

### Distress (asset seizure)

- 13.6 The Council may 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 Council will send you notice of its intention to do so beforehand.

### **Committal to prison**

- 13.7 Where a liable party continues to evade paying CIL, the Council can ask a magistrates' court to commit the relevant person(s) to prison. 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.

### **Applying to Court for a Charging Order following procurement of Liability Order**

- 13.8 Where a Liability Order is made and more than £2000 is still owed, then the Council can ask the court to serve a charging order on relevant person(s). The purpose of this order is to ask the debtor(s) to secure the outstanding amount.

### **Recovery in a court of competent jurisdiction**

- 13.9 As an alternative to recovery where CIL is not paid and a Liability Order has not been made, the Council can recover the amount in a court ('any court which has the relevant power', which could in this case include the 'small claims' route) of competent jurisdiction.

### **Enforcing the Local Land Charge**

- 13.10 The Council can secure payment by way of a charge over the land, especially where development has been stopped, as an alternative to pursuing distress of goods or a charging order against an individual. Collecting authorities can ask the court (County Court) to enforce a local land charge.

## **14. Appeals**

- 14.1 Once a Charging Schedule is adopted, the rate of the levy is non-negotiable and the Council is not required to justify its application on a case-by-case basis. Appeals under the CIL Regulations are overwhelmingly about matters of fact (e.g. did the Council make a mistake in calculating the liability? Did the development actually commence on such and such a date?).
- 14.2 Appeals can be made to the Valuation Office Agency and the Planning Inspectorate, depending on the grounds of the appeal. Information on appeals can be found within the below table.

<b>Type of Appeal</b>	<b>Who should appellants contact?</b>	<b>Who may appeal and under what grounds?</b>	<b>What are the time restrictions?</b>
Calculation of chargeable amount (Regulation 113/114)	<p>Contact Hertsmere's CIL Monitoring Team for a review, in accordance with the procedures in Regulation 113.</p> <p>If an owner of a material interest in the land disagrees with the review, then that person may appeal to the Valuation Office Agency.</p>	The Valuation Office Agency can only accept an appeal from the person who asked the collecting authority to review the chargeable amount under Regulation 113. An appeal to the Valuation Office Agency can only be made on the ground that the chargeable amount has been calculated incorrectly.	<p>Development must not have commenced (with the exception of retrospective planning applications).</p> <p>The first review to the charging authority must be made within 28 days.</p> <p>A subsequent appeal to the Valuation Office Agency must be made within 60 days of the date when the original liability notice was issued.</p> <p>An appeal to the Valuation Office Agency cannot be made until at least 14 days after the collecting authority has been asked for a review.</p>
Apportionment of liability (Regulation 115)	Appeal to the Valuation Office Agency.	The appeal can only be made by the 'owner of a material interest' (defined in Regulation 4(2)) in the 'relevant land' (defined in Regulation 2). An appeal to the Valuation Office Agency can only be made against an apportionment of the liability made under Regulation 34.	Within 28 days of the date when the Demand Notice stating the amount payable by the appellant was issued.

Charitable relief (Regulation 116)	Appeal to the Valuation Office Agency.	The appeal can only be made by an 'interested person' (defined in Regulation 112(2)(b)). An appeal can be made to the Valuation Office Agency only if it is considered that the collecting authority has incorrectly determined the value of the interest in land used in an apportionment assessment.	Within 28 days of the collecting authority's decision on the claim for an exemption.  Development must not have commenced (see Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development').
Residential annexe exemption (Regulation 116A)	Appeal to the Valuation Office Agency.	The appeal can only be made by the person who was granted the exemption. An appeal can be made to the Valuation Office Agency only if it is considered that the collecting authority has incorrectly determined that the annexe is not wholly within the grounds of the main dwelling.	Within 28 days of the collecting authority's decision on the claim for an exemption.  Development must not have commenced (see Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of 'commencement of development').
Self-build exemption (Regulation 116B)	Appeal to the Valuation Office Agency.	The appeal can only be made by the person who was granted the exemption for self-build housing, on the grounds that the collecting authority has incorrectly determined the value of the exemption allowed.	Within 28 days of the collecting authority's decision on the claim for an exemption.  Development must not have commenced (see Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for the definition of

			'commencement of development').
Surcharges (Regulation 117)	Appeal to the Planning Inspectorate	The appeal can be made by a person who is aggrieved at a decision of a collecting authority to impose a surcharge.	Within 28 days of the surcharge being imposed.
Commencement of development (Regulation 118)	Appeal to the Planning Inspectorate	The appeal can be made by a person on whom a demand notice is served, on the grounds that the date of commencement has been wrongly determined.	Within 28 days of the date the demand notice was issued.
Issuing a stop notice (Regulation 119)	Appeal to the Planning Inspectorate	The appeal can be made by a person who is aggrieved at a decision of a collecting authority to impose a levy stop notice.	Within 60 days of the date when the stop notice takes effect.

Appeals to the Valuation Office Agency can be made by following this link: <https://www.gov.uk/guidance/community-infrastructure-levy-how-to-make-an-appeal>

Appeals to the Planning Inspectorate can be made by following this link: <https://www.gov.uk/guidance/appeal-a-community-infrastructure-levy-enforcement-notice>

## Appendix 1

### The CIL chargeable area

Floorspace within the chargeable development is measured as gross internal floorspace (GIA) in square metres. This could include:

- Areas occupied by internal walls and partitions (This included the dividing walls between attached and semi-detached dwellings)
- Columns, piers, chimney breasts, stairwells, liftwells, other internal projections, vertical ducts, and the like
- Atria and entrance halls, with clear height above, measured at base level only
- Internal open sided balconies, walkways, and the like
- Structural, raked or stepped floors are property to be treated as a level floor measured horizontally
- Horizontal floors, with permanent access, below structural, raked or stepped floors
- Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
- Mezzanine floor areas with permanent access (subject to exclusion)
- Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level
- Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaner's rooms, and the like
- Voids over stairwells and lift shafts on upper floors
- Loading bays
- Areas with a headroom of less than 1.5m
- Pavement vaults
- Garages and other ancillary buildings
- Conservatories

When measuring the GIA the following is excluded:

- Perimeter wall thicknesses and external projections
- External open sided balconies, covered ways and fire escapes
- Canopies
- Voids over or under structural, raked or stepped floors
- Greenhouses, garden stores, fuel stores, and the like in residential

Guidance on measuring gross internal floorspace is available in the RICS Code of Measuring Practice:

<https://www.rics.org/uk/upholding-professional-standards/sector-standards/real-estate/code-of-measuring-practice/>