



COMMUNITY INFRASTRUCTURE LEVY

Frequently Asked Questions

V.2

Implemented in Chorley September 2013

The Charging Authority

The Charging Authority is Chorley Council.

Date Charging Schedule Took Effect

The Charging Schedule came into effect on 1 September 2013.

Version and Date

Version 2: Implemented 01 September 2019

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Abbreviations

CIL	Community Infrastructure Levy
LPA	Local Planning Authority
GIA	Gross Internal Area
IFS	Infrastructure Funding Statement
Sqm	Square Meters

Definition: Commencement

With regards to the references to commencing development throughout this guidance note:

Under the CIL Regulations, development is to be treated as commencing from the date on which any material operations begin to be carried out on site.

In accordance with [section 56 \(4\) of the Town and Country Planning Act 1990 \(as amended\)](#) a material operation is:

- any work of construction in the course of the erection of a building
- any work of demolition of a building
- the digging of a trench which is to contain the foundations, or part of the foundations, of a building
- the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned above
- any operation in the course of laying out or constructing a road or part of a road
- any change in the use of any land which constitutes material development

Please Note: The only notification of commencement acceptable for CIL Purposes is the submission of CIL Form 6 – Commencement Notice.

DISCLAIMER: Please Note

The information relating to CIL contained in this guide is intended to assist developers and land owners to understand and determine their CIL liability. It should, however, not be regarded as definitive advice.

It is not intended to replace the need to read and understand the CIL Regulations and Governmental Advice on CIL. If in doubt, developers and land owners are advised to seek their own professional advice.

What is the Community Infrastructure Levy (CIL)?

The Community Infrastructure Levy (CIL) is a tariff-style planning charge that was introduced by the government under the Planning Act 2008 on 6th April 2010 to provide local authorities a more flexible and transparent means of funding infrastructure projects.

CIL is a non-negotiable legislation that is charged per square metre of additional floor space (GIA) and varies according to location, size and development type.

CIL has the potential to support growth in wider strategic areas, as it can be pooled to create a large funding pot that can be used entirely on one infrastructure project or on multiple smaller projects.

What is the difference between CIL and S106 Planning Obligations?

S106 Planning Obligations are a form of planning legislation that enable planning applications to be made acceptable when they would otherwise be unacceptable in planning terms.

S106 Planning Obligations are a way of providing site-specific funding for infrastructure to directly mitigate the impacts of new development. However, government regulations establish that S106 Planning Obligations will only grant planning permission if they comply with all three tests below:

- 1) the obligation is necessary to make the development acceptable in planning terms
- 2) the obligation is directly related to the development
- 3) the obligation is fairly and reasonably related in scale and kind to the development

Following amendments to the Community Infrastructure Levy Regulations 2010 in September 2019, S106 pooling limitations have been lifted.

Certain developments may be liable to pay both CIL and S106 Planning Obligations. However, whilst CIL and S106 funds have the potential to be combined to fund an infrastructure project, the S106 Obligation will still need to meet the three tests above, and the projects be specifically named within the S106, whereas the CIL charge can be used on any approved infrastructure project within the Borough. Currently, approved infrastructure projects are listed in the Regulation 123 document on the Chorley Borough Council website. This will be transposed in future into an IFS (Infrastructure Funding Statement).

Please note: Anyone applying for planning permission are required to provide the Council with additional information in order to establish whether or not a development is liable to a CIL charge; this is called Form 1: CIL Additional Information (see [CIL Process](#) for more details).

What do you mean by infrastructure? What is CIL Spent on?

Infrastructure which can be part funded by the levy can include schools, transport, flood defenses, hospitals, community facilities and other health and social care facilities. The Levy can be spent on 'the provision, improvement, replacement, operation or maintenance of infrastructure'.

The infrastructure works allocated for CIL funding are outlined in our Regulation 123 List. Any items of infrastructure on our Regulation 123 List have been approved for CIL funding, but may not yet have been granted funding. The projects must be ready to progress in order to apply to draw down CIL funding. Due to the changes to the CIL Regulations on 1st September 2019, the Regulation 123 list will be replaced by an IFS.

View [CIL Annual Financial Reports](#). They set out the total amount of CIL received and spent in any financial year together with summary details of the items of infrastructure to which CIL has been applied, how has been spent on each item, details of the amount spent on administrative expenses and the total amount of CIL retained at the end of the year.

For the 2019/20 financial year and onwards, the 2019 Regulations amendments inserted Regulation 121A in replacement of Regulation 62. The annual report will thereon in be referred to as the IFS and is required to be produced by 31st December following the end of each financial year.

CIL Liability - General

What types of development will be liable to pay CIL?

Most types of development are liable for CIL.

Development WILL be liable for CIL if it:

- Involves the creation of one or more dwellings; or
- Creates 100sqm or more of new build gross internal floor space, (before making deductions for existing floor space that is to be demolished/converted).

If planning permission has been granted for the development by way of general consent, you need to submit a [CIL Form 5 - Notice of Chargeable Development](#) to the Council. This also applies to developments that do not require planning permission, being allowed by means of 'general consent', permitted development, or, in certain cases, permitted by Local or Neighbourhood Development Orders, as they may also be liable to CIL.

NOTE: CIL is not charged nor calculated on an Outline Permission. In such instances, the CIL is calculated and charged upon approval of the relevant Reserved Matters Application.

Development WILL NOT be liable for CIL if it is:

- Conversion of one dwelling to two or more dwellings (with no uplift in existing usable floorspace); or
- Creation of less than 100sqm of gross internal floor space (providing it doesn't create a new dwelling); or
- Creation of a mezzanine floor, inserted into an existing building, unless the mezzanine forms part of a wider planning permission that seeks to provide other works as well; or
- Development of a building into which people do not normally go, or go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery; or
- Development of a structure which is not a building, such as pylons or wind turbines; or
- A building for which planning permission was granted for a limited period.

If I want to make changes to an existing permission will it be CIL liable?

This depends on several factors e.g.:

- If the amendments change the GIA
- If works have already commenced on the existing permission

If you want to make changes to an existing permission you are advised to contact us because it could become CIL liable, even if the principle permission was not. Furthermore, if the existing permission has been granted a CIL exemption / relief, you may be subject to a mandatory surcharge if the correct CIL forms are not submitted.

Who is liable for the payment of CIL?

Anyone involved in the development can take on the liability for paying the CIL for the development by submitting [CIL Form 2 - Assumption of Liability Notice](#).

However, if no-one assumes liability for CIL via CIL Form 2, then the charge defaults to the landowner, with penalties applied – even if the applicant / developer is not the land owner.

Determining CIL Liability

What counts as chargeable floorspace?

Gross Internal Floor Area is the area of a building measured to the internal face of the perimeter walls at each floor level, which includes:

- Areas occupied by internal walls and partitions
- Columns, piers chimney breasts, stairwells, lift-wells, 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 treated as a level floor measured horizontally
- Horizontal floors with permanent access below structural, raked or stepped floors
- Corridors of a permanent essential nature (eg fire corridors, smoke lobbies, etc)
- Areas in the roof space intended for use with permanent access (BCIS)
- Mezzanine areas intended for use with permanent access
- Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above main roof level
- Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like
- Projection rooms
- Voids over stairwells and lift shafts on upper floors
- Loading bays
- Areas with a headroom of less than 1.5m
- Pavement vaults
- Garages
- Conservatories (BCIS)

And excludes:

- Perimeter wall thickness 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 property
- Open ground floors and the like (BCIS)

Notes

Separate buildings – GIFA excludes the thickness of external walls but includes the thickness of all internal walls. A residential garage attached to a house, regardless of access point, is NOT a separate building.

Terraced/Semi-Detached/Mews: CIL Appeal decision - Date Published – 26/02/2019 “Summary: Necessary to identify what constitutes a separate building.” The VOA’s opinion points to ‘calculating the GIA of the whole development’, therefore, an attached block of dwellings (i.e. mews terrace) is one building under a development, and thus measurements must treat the party walls between the dwellings as internal partitions to be measured through for GIA purposes.

Internal face – means the finished surface provided by the initial builder, e.g. brick/block work or plaster coat applied to the external walls, not the surface of internal linings or skirtings installed by occupier.

Lift rooms etc. – should be included if housed in a permanent, enclosed structure.

Are residential garages included in gross internal floorspace?

Yes.

What if my site involves multiple use classes, some of which are non-residential & under 100sqm?

CIL liability is ascertained based on the GIA of the total new development created within a single planning application (contained within the principle red edge), not the total GIA of each use class within the development.

Calculating the CIL Liability

How have the CIL rates been set?

The charge has been set at an amount that will support the level of development planned for Chorley in our Core Strategy, without undermining the delivery of new development. This has been subject to an independent assessment by the Planning Inspectorate who determined that the charges are appropriate.

Are they subject to inflation?

Yes. See our [CIL Charging Schedule](#) for more information.

When is CIL liability calculated?

In the case of a full planning permission the CIL charge is calculated at the date of the planning permission.

In the case of an outline planning permission the CIL charge is calculated on final approval of the last reserved matter associated with the permission or, if the outline permission permits development in phases, when the last reserved matter associated with that phase is approved.

In the case of a General Consent, the CIL charge is calculated at the date on which the collecting authority sends an acknowledgement of receipt of [CIL Form 5 - Notice of Chargeable Development](#).

How is the CIL liability calculated?

Once the total floorspace of a new build is determined, the liability charge is then calculated using Reg.40 and Schedule 1 – It is at this point that demolished / converted floorspace is deducted from the CIL 'liable' floorspace (see 'are any deductions to the GIA available' below), leaving the CIL 'chargeable' floorspace.

Please see our [CIL Charging Schedule](#) for information on the different charge rates applied, and how the liability is calculated.

Is VAT applied to CIL Charges?

No, CIL payments are not subject to VAT.

Are any deductions to the GIA available?

The gross internal area (GIA) of existing buildings within the chargeable development that are going to be either converted or demolished may be deducted from the total CIL liable GIA if:

- The building is permanent and substantial; AND
- The building going to be demolished has been in continuous lawful use (meaning its lawful purpose) for six months or more in the last three years on the date of approval of the permission; OR
- The existing building will continue to be used for its lawful purpose without a change of use.

Please note:

Floorspace due to be demolished/converted must be standing on the day that planning permission is approved. Proposed converted/demolished floorspace will not be considered as eligible for deduction unless substantial evidence is submitted confirming its in-use status.

If the site has a mixture of use classes contained within its proposed development, any eligible demolished floorspace will be deducted from any new floorspace via apportionment.

Can I negotiate CIL based on viability?

No. CIL is non-negotiable and cannot be reduced / removed / negotiated due to viability.

CIL – Payments, Collection, Appeals, and Penalties

Can I negotiate or appeal a CIL charge?

CIL is not negotiable and is payable at the rate set out within the Charging Schedule. You may only appeal a perceived miscalculation of the charge, not the charge itself.

All types of [CIL appeals](#) are explained in our “CIL Guidance Notes - Appeals” document available on the Chorley Council Website, and also on the Gov.uk site.

How is the Levy paid?

It will normally be collected as a monetary payment, although there is also provision for it to be paid/part paid by transfer of land, or provision of infrastructure if certain criteria are met.

Please see our [Land and Infrastructure Payment Policy](#).

Can I pay CIL by instalments?

Ordinarily, the CIL is due within 60 days of works commencing. For developments where the CIL is £10,000 or greater, payment can be made by instalments. See our [CIL Instalments Policy](#).

However, if the CIL process is not followed correctly or a disqualifying event occurs, CIL becomes due in full immediately.

How is CIL collected?

The levy's charges become due from the date of commencement of a chargeable development. When planning permission is granted, the Council will issue a liability notice setting out the amount of the levy and the payment procedure.

Unlike contributions collected through S106 agreements there is no time or location constraint for the spending of monies collected through CIL.

What are the penalties for not complying with the CIL regime?

The levy's charges are intended to be easily understood and easy to comply with. Most of those liable to pay the levy are expected to pay their liabilities without problem or delay. However, where there are problems in collecting the levy charging authorities have the means to penalise late payment.

In cases of persistent non-compliance, the regulations also enable collecting authorities to consider more direct action such as the issuing of a CIL Stop Notice or applying to the courts for seizure of assets to pay the outstanding monies or for custodial sentences.

As a broad overview (but not exhaustive), penalties / enforcement could include any or all of the following:

- Payment benefits (such as instalments, exemptions, relief) are forfeited.
- Late Payment Interest is applied (mandatory)
- A stop notice can be issued until payment received
- Surcharges can be applied
- Enforcement by taking control of goods
- A court order can be sought to recover payment

CIL Relief and Exemptions

Is there any Relief or Exemptions from CIL?

There are various forms of relief from CIL that can be applied for. Please be aware that the only automatic exemption / relief is “Minor Development Exemption”. All other types of relief and exemption MUST be applied for, and granted, PRIOR to commencement.

As such, retrospective applications are automatically ineligible for exemptions and relief.

Further information on [Relief and Exemptions](#) can be found on the planning portal.

Discretionary Relief - Chorley Council does not offer discretionary relief

The Regulations have the following discretionary relief categories:

- Discretionary charitable relief – investment activities
- Other discretionary charitable relief
- Discretionary relief for exceptional circumstances
- Discretionary social housing relief for discount market sale housing.

Subject to a regulatory procedure, each Charging Authority is granted the authority to determine whether they will offer Discretionary Relief from CIL.

Chorley Council does not offer discretionary relief.

Minor Development Exemption

Minor development, with a GIA of less than 100 sqm, is generally exempt from the levy. However, where minor development will result in a whole new dwelling (Inc. Annexes), it is liable for the levy REGARDLESS of size.

Minor development exemption is the ONLY automatic exemption type.

Mandatory Charitable Relief

A charitable institution which owns a material interest in the land (a charity landowner) will get relief from their share of the liability where the chargeable development will be used ‘wholly, or mainly, for charitable purposes’ and they meet the requirements of Reg. 43.

Only the part to be used for charitable purposes will be eligible for this relief.

Mandatory Social Housing Relief

Social housing relief is a mandatory discount that applies to most social rent, affordable rent, intermediate rent provided by a local authority or Private Registered Provider, and shared ownership dwellings.

Subject to meeting specific conditions, social housing relief can also apply to discounted rental properties provided by bodies which are neither a local authority nor a private registered provider.

Reg. 49 defines where social housing relief applies.

Self Build Exemption – [Whole New Dwelling]

This exemption will apply to anybody who is building their own home or has commissioned a home from a contractor, house builder or sub-contractor.

The ability to request this exemption is available to homes built or commissioned by individuals for their own use. Community group self build projects also qualify for the exemption where they meet the required criteria.

The self build exemption does not apply retrospectively.

Self Build Exemption – [Extensions and Residential Annexes]

Extensions to your own home or erection of residential annexes within the grounds of your own home are eligible for an exemption request from the levy, provided they meet the criteria laid down in Regs.42A & 42B. Under CIL, development is considered as an extension or an annex, based upon which criteria below they fulfil, not the wording of the planning permission:

- the main dwelling must be currently occupied by the self-build exemption claimant as their principal residence, and they must have a material interest in it (as defined in Reg.4(2));
- residential annexes arebuilt within the curtilage of the principal residence and comprise one new dwelling [even if they connect to the main dwelling]; and
- residential extensionsenlarge the principal residence and do not comprise an additional dwelling.

If the main dwelling is not substantially completed, then an extension application will be considered as an uplift to the new dwelling – not as an extension.

Always check with the Planning Obligations Team how your planning application will be considered under CIL.

What is clawback on CIL relief / exemptions?

Any form of Relief or Exemption is subject to a ‘clawback’ period. Put simply, if a disqualifying event occurs during the clawback period, you fall liable for the CIL Charge (or ‘Relief Value’) in full and may also incur further financial penalties / legal proceedings.

What constitutes a disqualifying event?

Mandatory Charitable Relief:

- change of purpose: the owner of the interest in the land in which relief was given ceases to be eligible for charitable relief (i.e. the owner ceases to be a charitable institution or uses the building for an ineligible use),
- change of ownership: the whole of the interest in the land in which relief was given is transferred to a person who is not eligible for charitable relief, or
- change of leasehold: the lease under which the interest in the land is held is terminated, and the owner of the reversion is not eligible for charitable relief

Mandatory Social Housing Relief:

- Sale of a qualifying dwelling
- The sale of a qualifying dwelling is not a disqualifying event if the proceeds of sale are spent on another dwelling that qualifies for the relief.

Self Build Exemption – [Whole New Dwelling]:

- any change in relation to the self build housing or self build communal development such that it ceases to meet the criteria set out in regulations;
- failure to comply with the evidence requirements on completion;
- the letting out of a whole dwelling or building that is self-build housing or self build communal development; or
- the sale of the self-build housing or self-build communal development

Self Build Exemption – [Extensions and Residential Annexes]:

- the main house is used for any purpose other than as a single dwelling,
- the annex is let, or
- either the main residence, or the annex, is sold separately from the other

When does the clawback period expire?

- Charitable Relief Clawback Expiration –
 - Seven years from the date of commencement.

- Social Housing Relief Clawback Expiration –
 - Seven years from date of first let (for Social Rented Units), or
 - Seven years from commencement for all other types of Social Housing.

- Self Build Exemption Clawback Expiration –
 - Three years from completion of development.

Completion for the purposes of all Self-Build Exemptions is defined as the issuing of a compliance / completion certificate for the development under either Regulation 17 of the Building Regulations 2010 or Section 51 of the Building Act 1984.

THIS SECTION IS INTENTIONALLY BLANK.

Where Can I Find the CIL Forms I Require?

The forms are situated on the [Planning Portal](#) Website. Please do not save the forms for future use as they are subject to amendments. Always use the most recent version available to ensure you do not delay your CIL process.

APPENDIX 1

Glossary

CIL	Community Infrastructure Levy – a planning charge that allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their area.
General Consent	Permitted development rights granted under the General Permitted Development Order 1995 and developments permitted through a Local Development Order or Neighbourhood Development Order.
In-Use	For any existing floorspace to be deducted from new build floorspace, it must have been in lawful use for 6 continuous months of the previous 3 years on the date of planning approval. The Charging Authority reserve the right to refuse a claim that existing floorspace has been “in-use” if the evidence submitted is insubstantial, or if the use is not considered its lawful purpose.
Lawful Purpose / Lawful Use	<p>For the purposes of CIL, a VOA appeal has clarified that;</p> <p><i>“.....in order to apply the CIL credit, requires the building to actually be used for its lawful purpose. It is not sufficient that the building has a lawful use to which it could be put.”</i></p> <p>Therefore, for example; a stable must be in use as a stable, not storage. A Cow Shed, must be in use as a cow shed. A Public House must be in use as a Public House.</p>
Material operation	Any work of construction in the course of the erection of a building including demolition, digging of foundations and any operation in the course of laying out or construction of a road.
Mandatory Relief	Mandatory Relief / Exemption from CIL refers to the process required for requesting Mandatory Relief / Exemption from CIL. If an applicant follows the regulatory process and procedure for requesting Exemption/Relief correctly, then the Charging Authority must grant the Mandatory Relief / Exemption requested. It does not mean that the Relief/Exemption is automatically granted. Development must not commence until a Liability Notice has been issued stating that the Exemption / Relief has been granted.
Section 106 Agreement	Section 106 (S106) of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally binding agreement or planning obligation, with a land developer over a related issue. The obligation is sometimes termed as a 'Section 106 Agreement'. Such agreements can cover almost any relevant issue and can include sums of money.

Example CIL Scenarios

Any development, where a planning decision notice is issued from 1 September 2013 is liable to pay CIL. The CIL Regulations specify that the relevant date is the date of the issuing of the planning permission notice, not when the planning application was submitted.

The following information seeks to clarify the situation in relation to schemes that already have planning permission. However, the Council realises that it is a complex matter and advises applicants to contact the Council for information regarding a specific planning application:

- If a scheme was granted outline planning permission before 1 September 2013, the subsequent approval of reserved matters does not trigger a liability to pay CIL.
- If a scheme was granted full planning permission before 1 September 2013, the subsequent approval of pre-commencement conditions does not trigger a liability to pay CIL.
- If there was a refusal of planning permission before 1 September, but planning permission is granted on appeal after 1 September, the development will be liable to pay CIL.

Site Description	Proposed Development	CIL Liable?	Chargeable Floorspace**
Cleared building site	90m ² residential development (not self-build)	Yes	90m ² CIL chargeable because although under 100m, a new dwelling is being created
Cleared building site	90m ² residential development (self-build)	Yes	90m ² CIL liable, however this may be reduced to 0m ² chargeable if a self-build exemption is applied for and granted prior to commencement.
Cleared building site	1,000m ² new residential including 400m ² social housing	Yes	600m ² – provided the social housing relief is applied for & granted prior to commencement.
Single dwelling of 90m ² in use	125m ² extension to dwelling	Yes	125m ² CIL liable, however this can be reduced to 0m ² chargeable if a self-build exemption is applied for & granted prior to commencement.
Single dwelling of 90m ² not in use	90m ² conversion to a retail unit	No	0m ² – not liable as it is below 100m ² and does not create a new dwelling.
Single dwelling of 90m ² in use but to be demolished	125m ² new residential dwelling (not self-build)	Yes	35m ² – the floor space of the existing dwelling may be deducted from the proposed dwelling.
Old Factory of 1000m ² in use but to be demolished	900m ² residential, 500m ² retail and 100m ² apartments	Yes	300m ² residential, 166.67m ² retail and 33.33m ² apartments because the existing floor space is in use and can be deducted from the proposed floor space. This demolished floor space is deducted via apportionment

across the different uses.

**See Regulation 40 and Schedule 1 to see the formula for calculating the chargeable area and the chargeable amount.