

**The Community Infrastructure Levy
(England and Wales)
Community Infrastructure Levy Regulations 2010 (as amended)**

**CIL and Parish Councils:
An Overview to Understanding the
principles of CIL
for
CIL Charging Authority Elected Members
and
Parish Councillors**

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1 Document Purpose:

1.1 To provide a brief overview for Parish Councils on how the Community Infrastructure Levy 'CIL' is relevant to the Parish. The document will cover:

- Overview of development that is CIL liable
- When CIL liability is calculated
- When CIL Liability is paid
- CIL Receipts - The Neighbourhood Proportion of CIL Receipts for Local Councils
- What can the Neighbourhood Proportion be spent on?
- Local Councils: Receipt, use and financial reporting in relation to the Neighbourhood Proportion

1.2 This information is an interpretation of the complex detail lifted from the Town & Country Planning Community Infrastructure Levy (England and Wales) Community Infrastructure Levy Regulations 2010 (as amended) 'The CIL Regulations' including amendments at 1st April 2015.

1.3 This document should be read in the context of the CIL Regulations themselves for accuracy and cross-reference purposes, as it is based on officer translation and, where appropriate, partial extracts from the Regulations.

2 Overview of development that is CIL liable:

2.1 The scope of CIL is set out in the adopted Community Infrastructure Levy Charging Schedule for the relevant CIL Charging Authority. For Swindon Borough this is located on the Council's website www.gov.uk/cil.

2.2 In very general terms the following development types may be liable to pay CIL:

- Development comprising 100m² or more of new build floorspace (*this will include household extensions that meet the floorspace criteria*);
- Development of new build floorspace that results in the
- creation of one or more dwellings irrespective of the floorspace created
- The Change of Use of a building or part of a building to residential dwelling(s).
- Change of Use to any use other than dwellings where that proposal is combined with an extension comprising 100sqm or more of proposed new build floorspace.

2.3 Where planning permission is granted for development that involves the extension or demolition of a building in lawful use, the level of CIL payable will be calculated based on the net increase in floorspace only, provided that lawful use* can be established at the time the CIL liability is to be calculated (this is not necessarily the date on which an initial Decision Notice that grants the principle of development is dated). Only in such circumstances would the existing floorspace be deducted from the total floorspace.

* The definition of a building in lawful use is contained in Regulation 40(11) of the Community Infrastructure Levy Regulations 2010 (as amended) which as currently written means '*a building that contains a part that has 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.*' It must also

be a relevant building, thus a building that is situated in the relevant land on the day that planning permission first permits the development. The timescale for calculating this three-year period will change depending on several factors. These are:

- What permission is being granted e.g. it would be different for development proposed under what is known as 'permitted development' compared to development for which planning permission is required; *or*
- Where planning permission is required it varies dependent on whether that permission is granted in outline, subject to reserved matters for the detail of layout and design etc. at a later date; *or*
- The planning permission is a phased permission under a full planning permission.

2.3 The type of land uses and the rates at which they are to be charged and where relevant differ by geographical area are set out in the adopted Charging Schedule. At the time of publication this was the Charging Schedule dated 6th April 2015. On an annual basis this base charges will be subject to indexation. Information on how this is calculated is available on the Council's [website](#). The Chargeable rate that appears in the adopted Charging Schedule will not change as indexation is applied at the time of calculating the CIL liability owing.

2.4 In order to establish what uses of land will be CIL chargeable and at what rates, the Council was required to undertake testing of the ability of those different uses of land (that support the delivery of the Local Plan) for their economic viability, to understand their ability to absorb a CIL charge in addition to all the other adopted Local Plan policy requirements. This approach to viability testing is taken broadly across the Council's area. The viability of the land use is tested under sample schemes in different geographical locations e.g. employment uses (B1, B2, B8 of the Use Classes Order), Retail (A1, A2, A3, A4, A5), Residential (C1, C2, C3), Agricultural, Community Uses (e.g. community centres, schools, emergency services facilities, healthcare premises like GP surgeries). Where the output of the testing demonstrates that a use either cannot support a CIL in addition to all other costs, or the viability varies by location, a reduced or £nil rate can be applied either across the whole Borough or geographically by zone on a OS Map that reflects that viability zoning. In addition there is now an ability to set the differential rates by thresholds (e.g. above and below AH thresholds), although this was not possible at the time the Council undertook its viability testing, and has been introduced through a regulatory change.

2.5 Where CIL is charged at £0 this does not make the development exempt from CIL. The development is still CIL liable, but simply put, any floorspace calculation would generate a £0 value for payment as it is multiplied by 0. Under such circumstances the matter of CIL still needs to be considered by any owner/applicant/developer.

2.6 Where a £0 CIL liability arises, there would be no neighbourhood of CIL Receipts as the Council will receive no CIL payment.

2.6 It is not the purpose of this document to explain what types of land use are chargeable and at what rates and in what locations, because that is the purpose of the adopted Charging Schedule.

3 When is CIL Liability Calculated?

3.1 CIL liability is calculated at the time '*planning permission first permits development*' as defined by CIL Regulation 8. This time changes depending on the type of planning application submitted. **Table 1 at Appendix 1 (page 8)** reflects the likely scenarios for development proposals in Swindon. (This is not comprehensive).

4 When is CIL Liability to be paid?

4.1 CIL is paid in accordance with the payments set out in a CIL Demand Notice. A CIL Demand Notice is issued by the Council as CIL Charging Authority, when the Council received a CIL Commencement Notice, notifying the date on which development is to commence. Where no Demand Notice is received, the Council has discretion to determine the Commencement Date in order to issue the Demand Notice.

4.2 In circumstances where a CIL Payment by Instalment Policy is adopted locally, subject to the value of the CIL liability, the payee/owner can benefit from payment by Instalment (providing they comply with the relevant requirements of the CIL Regulations and both Assume Liability to pay CIL in advance of commencement and submit a Commencement Notice in time). All payment is to be made from a time period from commencement. An instalment policy can therefore divide the total contribution by a percentage of the total amount to be payable at differing dates from commencement.

4.3 For find out whether Swindon Borough Council is operating a Payment by Instalment Policy visit www.swindon.gov.uk/cil.

5 CIL Receipts: The Neighbourhood Proportion of CIL Receipts for Local Councils

5.1 On payment CIL receipts will be divided up as follows:

- The percentage for administration of CIL (5%)
- The Neighbourhood Proportion (15% or 25% if appropriate)
- The CIL General Fund (the remainder)

5.2 For the purposes of CIL the Neighbourhood Proportion is passed to what is known for CIL purposes as 'Local Councils'

5.3 Where CIL is paid by instalment the Neighbourhood Proportion will be calculated against each instalment paid. The Neighbourhood proportion will not be disproportionately calculated early as this would skew distribution of the receipts.

5.4 The neighbourhood proportion from development paying CIL within a Local Council's area is to be kept and transferred to that Local Council at specific times of the year unless an alternative payment timescale is agreed between the parties. For detail on the standard regulatory timescales see **section 7** below.

5.5 The total amount of CIL receipts passed to a local council shall not exceed £100 per dwelling index linked in that local council's area in each financial year. Thus if the receipts from the 15% exceed this maximum they would be capped so as not to breach this restriction.

5.6 Where the amount passed is 25% this capping restriction does not apply.

5.7 The local council has 5 years from receipt to spend the Neighbourhood Proportion, however if it has been applied not in accordance with the use restriction, or not applied to support development of its area within 5 years from receipt the Charging Authority can service notice on the local council requiring it to repay some or all of the those relevant receipts.

6 What can the Neighbourhood Proportion be spent on by Local Councils?

6.1 Regulation 59C of the CIL Regulations sets out information on what the Neighbourhood proportion can be applied to.

6.2 A local council must use CIL receipts passed to it to *'support the development of local council's area, or any part of that area by funding:*

- a) *The provision, improvement, replacement, operation or maintenance of infrastructure: or*
- b) *anything else that is concerned with addressing the demands that development places on an area'*

6.3 This definition of use is different to that of the main CIL General Fund supported by the contents of the adopted CIL Regulation 123 List. That said, the Neighbourhood proportion, should a Local Council wish to do so, can be passed back to the CIL Charging Authority to support the delivery of infrastructure projects and/or maintenance of infrastructure that the local council does not have jurisdiction or responsibility for e.g. extensions to schools.

6.4 Elected Members of the CIL Charging Authority have no direct decision-making responsibility in how a Parish Council chooses to invest the CIL receipts it receives.

7 Local Councils: Receipt, use and financial reporting in relation to the Neighbourhood Proportion

7.1 The Charging Authority is required to pay local councils receipts as follows:
Either

- a) In accordance with the timetable agreed between the Charging Authority and the local council

Or

- b) i. Payment of CIL it receives from 1st April to 30th September in any financial year to the local council by 28th October of that financial year; and
- ii. Payment of CIL receipts it receives from 1st October to 31st March in any financial year to the local council by 28th April of the following financial year.

7.2 Local council must prepare a report for any financial year in which it receives CIL receipts. Regulation 62A sets out the detail of what needs to be contained within that report.

7.3 In addition, the report must be published on the local council's website, or on the charging authority's website if the local council does not have a website of its own and the local council must send a copy of that report to the Charging Authority from which it received the CIL receipts by no later than 31st December following the reported year.

7.4 As an overview the report must include:

- Total CIL receipts for the reported year;
- The total CIL expenditure for the reported year;
- Summary of the CIL expenditure during the reported year including
 - The items to which CIL has been applied, and
 - The amount of CIL expenditure on each item; and
 - Details of notices served by the Charging Authority for repayments to be made and how much has actually been repaid;
- The total amount of CIL receipts retained at the end of the reported year; *and*
- The CIL receipts from previous years retained at the end of the reported year.

7.5 The Charging Authority is required to report on CIL receipts annually broadly in the same manner, and this report will contain information on what has been passed to local councils. This must also be published by 31st December following the end of the reported year (thus by 31st December in the following financial year).

8 What can the Neighbourhood Proportion be spent on by Local Councils?

8.1 Where CIL liable development is proposed in an area that is not covered by a local council, the Neighbourhood Proportion is still a relevant calculation. In this instance the Charging Authority (Swindon Borough Council) may use the neighbourhood proportion generated from development in this area to fund:

a) the provision, improvement, replacement, operation or maintenance of infrastructure; or

(b) anything else that is concerned with addressing the demands that development places on an area

providing that it is invested in an area outside of the Parish Council administrative boundaries.

8.2 The Council can make a decision to set a boundary for the allocation of these CIL receipts that geographically covers all of that area not contained within a Parish Council boundary as a single Neighbourhood 'zone' or make a decision to sub-divide this area into smaller geographically located neighbourhood 'zones' accordingly. Information in respect of this matter would be published on the Council's website once any decision in respect of it has been made.

8.3 The Council as CIL Charging Authority would be responsible for publishing the financial monitoring data in respect of how such receipts are being allocated and used.

8.4 Parish Councils have no decision making responsibility in how this Neighbourhood proportion can be spent.

Appendix 1

Table 1

Time that a CIL Liability Notice will be issued relative to a Planning Decision

Type of application	Time planning permission first permits development	Will a CIL Liability Notice be issued alongside the Decision?
Full: Detailed planning application (not phased)	The day the Decision Notice to GRANT planning permission is dated	Yes
Full: Detailed planning application (Phased Development with pre-commencement conditions)	For each Phase on the day on which final approval is given under any – pre-commencement condition associated with that phase	No (See Discharge of Conditions below)
Full: Detailed planning application (Phased Development with pre-commencement conditions for some phases but not others)	a) For each Phase with a pre-commencement condition on the day on which final approval is given under any –pre-commencement condition associated with that phase b) Where there is no pre-commencement condition	a) NO not alongside a Decision to Grant Outline Permission b) NO not alongside a Decision to Grant Outline Permission (See Discharge of Conditions below)
Outline Application (not phased)	The day the final approval of the Last Reserved Matters is dated	NO (See Reserved Matters Below)
Outline Application (phased)	Day the final approval of the last Reserved Matters associated with each Phase is dated or if agreed and earlier and agreed the day final approval is given under any pre-commencement conditions associate with that phase	NO (See Reserved Matters or Discharge of Conditions below)
Discharge of Conditions (relating to all or the final pre-commencement condition)	The day the Letter of Discharge is dated	YES (issued as soon as practical after the Letter of Discharge)
Reserved Matters Application (associated with Outline Permission Granted Post CIL Charging)	The day the Approval of the Reserved Matters is dated (if that relates to all matters)	YES
General Consents (See Regulation 5 for comprehensive definition) For Swindon this includes planning permission granted by: <ul style="list-style-type: none"> Development permitted development under the T&CP General Permitted Development Order 2015 (under s59 of the T&CP Act 1990) Local Development Order (s59 TCPA 1990) Local Development Order adopted under s61A TCPA 1990) Neighbourhood Development Order 	The day on which the Council receives a 'Notice of Chargeable Development' Or If a Notice of Chargeable Development is not submitted this defaults to the day the Charging Authority serves the last person with a Notice of Chargeable Development	NO There is often no Decision issued. In the event that a Certificate of Lawful Development Proposed 'CLPD' is applied for, or a Prior Approval 'Required and Given' or 'Not Required' NO CIL Liability Notice is issued alongside any Decision that the works are permitted. Triggered by Council's receipt of a Notice of Chargeable Development or the Council issues an NCD with a Deemed Commencement date
Retrospective Applications	The day on which the Decision Notice to GRANT is dated.	YES In addition a CIL Demand Notice for payment would be generated as payment is due with immediate effect. <i>It cannot benefit from any adopted Instalment Policy</i>

(The information in this table is by way of example and may not be comprehensive for all development scenarios)

NOTES:

1. Unless a circumstance generates the issue of what equates to a new permission post CIL adoption, CIL will not impact upon the submission of RM applications associated with outline planning permissions issued prior to CIL coming into force.
2. Circumstances may arise where a new planning permission is granted for development within the area of a previous outline permission. In such circumstances the new decision issued after CIL is adopted would trigger CIL liability where relevant (subject to the application of transitional provisions). This would need to be assessed on a case by case basis.