

**Swindon Borough Council
Community Infrastructure Levy (CIL)**

**Annual CIL Rate Summary
&
Time of Issue of CIL Liability Notices**

This document has been produced primarily to provide guidance on how indexation will affect CIL rates for CIL liable developments in Swindon Borough Council's administrative area to show how the adopted Charging Schedule rates change on an annual basis. The adopted Charging schedule rate only applied for calendar year 2015 CIL permissions linked specifically to when indexation is fixed for CIL purposes. This may not always be the year of the Decision.

CIL Liability Notices issued by the Council from 1st January 2016 onward are most likely to include indexation in the calculation of the chargeable amount. The calculation of the CIL chargeable amount is defined by the CIL Regulations 2010 (as amended). In standard cases the calculation is:

<u>R x A x Iy (or Ip)</u> Ic
R – the CIL rate for that use
A – the deemed net area chargeable at rate R
Iy (or Ip) – the index figure for the given calendar year in which planning permission was granted (for CIL purposes subject to application of Schedule 1 (5) of CIL amendment Regulations SI 2019 No.1103)
Ic – the index figure for the year in which the (<i>relevant</i>) charging schedule took effect

The index that must be used is set by the CIL Regulations and from 2020 and will be fixed published by BCIS and known as the 'RICS Community Infrastructure Levy Index'. Prior to this the BCIS All-in Tender Price Index was used. The index figure for any given year up to and including 2019 was set on 1st January and is the index figure for the previous 1st November. From 2020 onward the set figure to be used will be published by BCIS in November for the following year. The index figures that will be used to calculate indexation for Swindon's current adopted Charging Schedule are:

Year in which permission first permitted development for CIL purposes	Index Figure (Ip) (for year 1st January to 31st December)
2015 (year in which Charging Schedule took effect)	255 (fixed baseline for Ic)
2021	333
2020	334
2019	318
2018	313
2017	286
2016	275

Example Calculation only

In 2021, a full planning application is approved for a residential dwelling that results in a net increase in floorspace of 100sq/m. The proposal is located in SBC adopted Charging Schedule area Residential Zone 2, where the base rate is set at £55 per sq/m. In this example, indexation would affect the chargeable amount as follows:

$$\frac{£55 \times 100\text{sq/m} \times 333}{255} = \underline{\underline{£7,182.35}}$$

Background

This document is relevant to all CIL Liability Notices issued since the Council started charging CIL, identifying the Index value relevant to each CIL indexation year. This document will be updated annually in December when a new index figure for the forthcoming year is known.

For any further information or advice in respect of CIL indexation please direct your enquiries to the SBC CIL Team in the first instance. Contact information is available on the Council's CIL webpages.

Deduction of existing floorspace under demolition or retained re-use

The above basic information is based on the net chargeable area once understood. Thus the impact of deductions for existing floorspace is hidden, and a far more complex calculation is set out in the regulations to consider the impact of this. The September 2019 CIL Amendment Regulations (Statutory Instrument SI 2019 1103 introduced a wholesale replacement to CIL Regulation 40 Chargeable amount calculations with the introduction of Schedule 1 that separated out approach to calculation of the chargeable amount under multiple different scenarios.

There is only one limited circumstance where deduction of existing floorspace is automatic. This is related to a circumstance where existing floorspace is retained and following the issue of a CIL liable permission, that floorspace it is capable of being used for its lawful purpose without requiring further or subsequent planning permission.

Deduction for Demolished and/or Existing Retained floorspace subject to a change of use (where relevant)

To effect any consideration of deduction on an issued CIL liability Notice as a consequence of either:

- a) Demolished floorspace; and/or
- b) Existing retained floorspace to be changed in use

Evidence would need to be submitted to allow the CIL Charging Authority to consider whether that evidence is sufficient in quantity, and of sufficient quality to effect deduction of that existing floorspace from the chargeable amount calculation. This evidence can often be required in 2 stages:

1. The submission of floorplans as part of the submitted application documents, that are drawn to scale and measurable, for each building for which demolition and/or

existing retained deduction is being sought, (the floorspace of which should match within information contained on the CIL Additional Information Form; and

2. Complementary evidence to demonstrate that the in-use building contains a part of (each building considered separately) that has been in continuous lawful use of a period of a least 6 months within 3 years starting on the day planning permission first permits the chargeable development for CIL purposes. This is likely to have to comprise a mix of:
 - ✓ Statutory Declarations from occupiers under ownership, or individual companies that have leased floorspace, setting out timeframe of continuous use and operations of the business in terms of their use and it's lawfulness;
 - ✓ Plans annotated to identify the buildings/or areas of relevant buildings being referred to in other documentation
 - ✓ Lease Agreements to complement those other declarations / letters.
 - ✓ Council Tax Bills or Business Rates documents for the relevant period and/or utility bills complementary to that (although none of these can be accepted without additional complementary evidence as they don't prove occupation)
 - ✓ Written statements on heard paper from the owners / occupiers quoting the dates between which that specific company continually ran their business, and/or leased the premises and/or some floorspace in each relevant building.

As the time at which planning permission first permits development for CIL purposes varies - it may not always be possible to submit the complementary evidence of lawful use with the planning application as there is a risk it could fall outside of the 3-yr timeframe if it takes a long time to determine that application.

Furthermore for 'General consents' e.g. works permitted by the T&CP General Permitted Development Order (England) 2015 as amended) the 3-yrs timeframe is fixed primarily by submission of the government CIL document Form Notice of Chargeable Development to the Council. For more information on this see the table at the end of this document. If this is not submitted, the service of this form by the CIL Charging Authority fixes that timeframe instead.

This entire section only represent an high level informal interpretation of the regulations as informal guidance and therefore it is imperative that any person reverts directly to the CIL Regulations as amended form a clear understanding of process.

Year in which permission first permits development for CIL purposes

The time at which planning permission first permits development for CIL purposes varies dependent on the type of decision being sought from the Council. The timing is set out under CIL Regulation 8 and will vary for e.g.

- Outline Permissions;
- Reserved Matters following outline;
- Discharge of conditions on phased permissions;
- Full planning application;
- Certificate of Lawful Development Proposed; most often associated with household extensions but not explicitly;

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- S73 application to vary or remove conditions depending on what is being varied/removed and how that affects the floorspace in the development proposal and whether the original or most recent previous permission was commenced or not.
- Submissions for decisions on other permitted development proposals that require the decision of the Council such as Permitted Development changes of use (COU) to dwelling(s) from any other use class as set out under the Town & Country Planning (General Permitted Development) (England) Order 2015 as amended.

For the reason above it is not automatic to assume that the indexation value that is used to calculate the CIL chargeable amount, will be the rate in the year in which a Decision Notice (e.g. RM Approval Notice; Prior Approval Notice) is issued by the Council.

In calculating the CIL Chargeable amount for Reserved Matters applications the index figure to be used for Ip is the year in which planning permission was granted. Swindon Borough Council fix this as the year in which the Outline Permission was granted, not the year the Reserved Matters approval was issued. This will get re-assessed in the event that s73 variation of condition applications are made and granted, as this could change the date of the relevant planning permission.

Undertaking Permitted Development works without the benefit of a Certificate of lawful development proposed

If a decision is made to proceed with works as permitted development, without submitting a certificate of lawful development application to seek the formal decision of the Council as to whether permitted development works are lawful and compliant with the legislative and regulatory controls placed upon them, CIL is still relevant to any proposal that generates a net gain in floorspace.

CIL needs to be assessed for the works being carried out. In some cases the scale of the development may result in the works being considered as CIL Minor Development Exempt under CIL Regulation 42. In other case CIL may continue to apply and remain a mandatory charge on other proposals such as large household extensions. In this instance a CIL Notice of Chargeable Development Form would need to be submitted, and if necessary a CIL exemption may be capable of being applied for.

Lack of knowledge or understanding of Community Infrastructure Levy (CIL) regulations is no defence, and if CIL is capable of being applied after the event if the CIL Charging authority becomes aware of development that has been carried out that is CIL liable, it will be.

Direct contact should be made with the CIL Team to establish the CIL status linked to the works proposed.

Time at which a CIL Liability Notice is generated

Until such time as planning permission first permits development for CIL purposes, no CIL Liability Notice will be generated by the Council. For this reason it is possible that the relevance of CIL to a development proposal will not appear on the Local Land Charges Register, as it is only once a CIL chargeable amount can be calculated that the chargeable amount will appear as a Local Land Charge.

To assist a table of potential circumstances and points in time that a CIL Liability Notice is attached to this Guidance Note.

In some circumstances the CIL process to issue a CIL liability Notice should properly start with the landowner/developer intending to undertake the works through the submission of a CIL Form 5 Notice of Chargeable Development for any development that falls under the CIL definition of planning permission granted by 'general consent'

Impact of indexation on Swindon Borough Council adopted CIL Charging Rates

There is information contained on the next page that provides an overview of the impact of indexation on value of the adopted CIL Charge Rates. The actual calculation will be subject to the use of the relevant formula as set out in CIL regulation 40 or Schedule 1 of the CIL Amendment Regulations 2019 2 (SI 2019 1103) as amended (as appropriate).

SBC CIL Adopted Charging Schedule Rates 2015 - Indexation impact on CIL Rates annually

	CIL Charging Schedule Development type				
	Residential Zone 1: Swindon's New Communities	Residential Zone 2: Rest of Borough (excluding Swindon's New Communities)	Retail Zone 1: Town Centre and Swindon's New Communities	Retail Zone 2: Rest of Borough (excluding Town Centre and Swindon's New Communities)	All other uses
Charging Schedule rate @ April 2015 (per sq.m)	£0.00	£55.00	£0.00	£100.00	£0.00
Index linked rate @ 1st Jan 2016 (per sq.m)	£0.00	£59.31	£0.00	£107.84	£0.00
Index linked rate @ 1st Jan 2017 (per sq.m)	£0.00	£61.69	£0.00	£112.16	£0.00
Index linked rate @ 1st Jan 2018 (per sq.m)	£0.00	£67.51	£0.00	£122.75	£0.00
Index linked rate @ 1st Jan 2019 (per sq.m)	£0.00	£68.59	£0.00	£124.71	£0.00
Index linked rate @ 1st Jan 2020 (per sq.m)	£0.00	£72.04	£0.00	£130.98	£0.00
Index linked rate @ 1st Jan 2021 (per sq.m)	£0.00	£71.82	£0.00	£130.59	£0.00

Note: The indexed rates above are as close as possible to the figure that will be generated, subject to the formulae used in the actual calculation undertaken by the CIL Charging Authority which works to 10 decimal places during the calculation.

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Overview of impact of Indexation as a % increase of the adopted CIL base rates

Year	Index figure	Indexation	% Increase from 2015 base figure
2015	255	-	-
2016	275	1.078431373	7.84%
2017	286	1.121568627	12.16%
2018	313	1.22745098	22.75%
2019	318	1.247058824	24.71%
2020	334	1.309803922	30.98%
2021	333	1.305882353	30.59%

The Index Figure for 2015-2019 is the BCIS All In TPI for 1st November of the preceding year. From 2020 onward it is the published RICS CIL Index Rate ([RICS Community Infrastructure Levy \(CIL\) Index](#))

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v.6 02 Dec 2020 - 2021 Indexation information added



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

Type of application	Time planning permission first permits development for CIL purposes	Will a CIL Liability Notice be issued to accompany the Decision?
Full: Detailed planning application (not phased) and phased permission with no pre-commencement conditions	The day the Decision Notice to GRANT planning permission is dated or Allow on Appeal	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 <i>(See Discharge of Conditions below)</i>
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 <i>(See Discharge of Conditions below)</i>
Outline Application (not phased)	The day the final approval of the Last Reserved Matters is dated	NO <i>(Issued to accompany last Reserved Matters Approval)</i>
Outline Application (phased)	Day the final approval of the last Reserved Matters associated with each Phase is dated or if earlier and agreed in writing the day final approval is given under any pre-commencement conditions associated with that phase	NO <i>(Issued at either Reserved Matters Approval or Discharge of Conditions if agreed as alternative)</i>
Discharge of Conditions for full phased permission (relating to all or the final pre-commencement condition)	The day the Letter of Discharge is dated	YES <i>(LN issued as soon as practical after the Letter of Discharge)</i>
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) or If Allowed by Appeal	YES
General Consents <i>(See Regulation 5 for comprehensive definition)</i> 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 (as amended) (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. CIL LN issue triggered by Council's receipt of a Notice of Chargeable Development or the Council issues an NCD with a Deemed Commencement date

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Type of application	Time planning permission first permits development for CIL purposes	Will a CIL Liability Notice be issued to accompany the Decision?
Retrospective Applications	The day on which the Decision Notice to GRANT is dated.	<p style="text-align: center;">YES</p> <p>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 or Claims for exemption or relief (in many circumstances)</i></p>
Planning Permission in Principle	Date Technical Approval is Given for the detailed development	<p style="text-align: center;">NO</p> <p>Not alongside the PiP Decision but once detailed technical approval is given</p>
PIP Technical Approval	Date Technical Approval is Given for the detailed development	<p style="text-align: center;">YES</p>

(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.
3. Any General Consent issued prior to the implementation of CIL Charging on 6th April 2015 commenced after this date is CIL liable even though the original Notice issued pre-dated this e.g. Prior approvals under the GPDA or Permitted Development works

Caveat to content

The information contained within this document in relation to interpretation of the CIL Regulations represents the informal understanding of the CIL Manager and does not constitute formal legal interpretation or advice by the Council as to the application of the regulations in any way.

All persons should revert to the wording of the regulations themselves for certainty of application in each specific case and seek their own formal legal advice in this respect.

Created By: CIL Manager, Swindon Borough Council
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- Document END -