

**Waverley
Borough Council
CIL Charging
Authority: CIL
Enforcement
Policy**

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CIL Enforcement Action Options as included in the CIL Regulations (2010) (as amended)

1. Introduction

1.1 Waverley Borough Council adopted its Community Infrastructure Levy Charging Schedule on 31 October 2018 at a special meeting of Council. The Council is committed to its implementation. The Community Infrastructure Levy (CIL) is a charge on development, calculated on a £ per square metre (sq.m) basis of development. CIL is intended to be used to help fund infrastructure to support the development of an area. Specific infrastructure that is needed to make an individual development acceptable in planning terms, is secured through a Section 106 Agreements, CIL does not replace Section 106 Agreements.

2. The purpose of this document

2.1 This document sets out the Adopted CIL Enforcement Policy for Waverley Borough Council as agreed by the Executive on 31 October 2018.

3. Background to CIL Enforcement

3.1 The Community Infrastructure Levy Regulations 2010 contain enforcement provisions, aimed at ensuring that the collection process runs smoothly, by giving collecting authorities the power to issue a range of surcharges, stop notices, and if necessary to recover funds by appropriate legal action. Collection and enforcement arrangements are supported by the right to appeal certain decisions. The legal framework around CIL and the legislation was designed from the outset to ensure that the system was non-negotiable and that monies due to the collecting authority are paid. This policy sets out the penalties and enforcement powers that will be used by the Borough. This is reflected in the CIL Regulations themselves: out of 129 sections in the Regulations, 42 (almost 30% of the Regulations) relate to CIL 'enforcement' and the recovery of outstanding liabilities (see Part 9, Regulations 80-122). There is little or no discretion afforded to the authority in waiving, negotiating or reducing CIL charges, and little or no leeway for the applicant who does not comply with the letter of the regulations.

3.2 CIL enforcement procedures are triggered by the following:

- Failure to complete and submit the relevant CIL form(s).
- Failure to inform of a disqualifying event
- Late Payment
- Failure to comply with an information notice from the Charging Authority

3.3 Surcharges and late payment interest applied to CIL are solely for situations where the correct paperwork has not been submitted to the Charging Authority and/or that payment has not been received, meaning that the procedures required by the regulations have not been followed.

4. Background to Waverley Borough Council CIL

4.1 Waverley Borough adopted its [CIL Charging Schedule](#) on 31 October 2018 and it was implemented from 1 March 2019 ([Community Infrastructure Levy – Adoption of Charging Schedule \(waverley.gov.uk\)](#)).

4.2 At the same time, the Council adopted its CIL Instalment Policy which was prepared and published in accordance with Regulation 69B of the Community Infrastructure Levy Regulations 2010 (as amended). This de facto ‘formal’ instalments policy took effect from 1 March 2019:

Amount of CIL Liability	Number of Instalment Payments	Amount or proportion of CIL payable in any instalment/time at which payments are due
Less than £100,000	No instalments	<ul style="list-style-type: none"> Total amount payable within 90 days of commencement of development.
Equal to or greater than £100,000 and less than £500,000	Two	<ul style="list-style-type: none"> The greater of £100,000 or 50% of the value of the total payable amount within 90 days of commencement of development. Balance payable within 360 days of commencement of development.
Equal to or greater than £501,000 and less than £2,000,000	Three	<ul style="list-style-type: none"> 25% of the value of the total amount payable within 90 days of commencement of development Additional 25% of the value of the total amount payable within 360 days of commencement of development Balance payable within 540 days of commencement of development.
Equal to or greater than £2,000,001	Four	<ul style="list-style-type: none"> 25% of the value of the total amount payable within 90 days of commencement of development Additional 25% of the value of the total amount payable within 360 days of

		<p>commencement of development</p> <ul style="list-style-type: none"> • Additional 25% of the value of the total amount payable within 540 days of commencement of development • Balance payable within 720 days of commencement of development.
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4.3 The ability to pay by instalment is subject to:

- a person(s) assuming liability to pay CIL in respect of a chargeable development, prior to the commencement of that chargeable development
- a valid commencement notice (CIL Form 6) being submitted to the Council in respect of a chargeable development, prior to the commencement of that chargeable development.

4.4 Retrospective development will not be eligible to pay by instalment. Where an instalment payment is not received in full on or before the day on which it is due, the unpaid balance of the CIL liability becomes payable in full immediately.

5. Financial Penalties of CIL Enforcement under the CIL Regulations 2010: Surcharges & Late Payment Interest

5.1 The [CIL Regulations 2010 \(as amended\)](#), include seven regulations relating to financial penalties as follows:

5.2 Regulation 80: Failure to assume liability

- Applicable if nobody has assumed liability (by submitting a valid CIL Form 2) and the chargeable development has commenced
- A collecting authority may impose a surcharge of £50 on each person liable to pay CIL
- In addition, loss of ability to pay by instalments.

5.3 Regulation 81: Apportionment of Liability (failure to assume liability where there is more than one material interest in the land)

- Applicable if nobody has assumed liability (by submitting CIL Form 2, and a Charging Authority has to apportion liability between more than one material interests in the land
- A collecting authority may impose a surcharge of £500 on each material interest.
- In addition, loss of ability to pay by instalments

5.4 Regulation 82: Failure to submit a Notice of Chargeable Development (CIL form 5)

- Applicable if planning permission has been granted for the chargeable development by way of general consent, and; the chargeable development has been commenced without the submission of Form 5 to a Charging Authority
- The collecting authority may impose a surcharge of 20% of the chargeable amount payable or £2500; whichever is the lesser
- In addition, loss of ability to pay by instalments.

5.5 Regulation 83: Failure to submit a Commencement Notice (CIL form 6)

- Applicable if the chargeable development has commenced before a Charging Authority has received a valid commencement notice (CIL form 6)
- In general, 20% of the chargeable amount payable or £2,500; whichever is the lesser amount¹.
- In addition, loss of ability to pay by instalments.

5.6 Regulation 84: Failure to notify of a disqualifying event

- Applicable 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 occurred.
- The collecting authority may impose a surcharge of 20% of the chargeable amount payable or £2,500; whichever is the lesser amount.

¹ *Surcharge for failure to submit a commencement notice*

83.—(1) [F1 Subject to paragraph (1A),] where a chargeable development (D) is commenced before the collecting authority has received a valid commencement notice in respect of D, the collecting authority may impose a surcharge equal to 20 per cent of the chargeable amount payable in respect of D or £2500, whichever is the lower amount.

[F2(1A) Subject to paragraph (1B), where a relevant development is commenced before the collecting authority has received a valid commencement notice in respect of the development, then instead of any surcharge which may be imposed under paragraph (1) the collecting authority must impose a surcharge equal to 20 per cent of the notional chargeable amount or £2,500, whichever is the lower amount.

(1B) A collecting authority is not required to impose a surcharge under paragraph (1A) where it is satisfied that the amount of the surcharge is less than any reasonable administrative costs which it would incur in relation to the surcharge.]

(2) Where a person has assumed liability to pay CIL in respect of D, the collecting authority must notify in writing each person known to it as an owner of the relevant land of the imposition of the surcharge.

(3) Where the collecting authority is required to apportion liability between each material interest in the relevant land in respect of D—

(a) the surcharge must be apportioned on the same basis; and

(b) the owner of a material interest must pay the part of the surcharge apportioned to that interest.

(4) In all other cases the surcharge is payable by the person liable to pay CIL in respect of D.

[F3(5) In this regulation—

“notional chargeable amount” means the amount of CIL that would have been payable, calculated in accordance with regulation 40 and Schedule 1, in relation to the development, as if the relief had not been granted;

“relevant development” means a chargeable development in relation to which a person has been granted—

an exemption for residential annexes; (a)

an exemption for self-build housing; (b)

charitable relief; or (c)

social housing relief (d)

- In addition, loss of ability to pay by instalments and loss of any granted exemption or relief

5.7 Regulation 85: Late payment

- Applicable where the levy amount due (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. (Also applicable at 6 and 12 months).
- A collecting authority may impose a surcharge of 5% of the overdue amount (A) or £200, whichever is the greater. This can be applied on three occasions; 30 days; 6 months; and 12 months.

5.8 Regulation 86: Failure to comply with an information notice

- 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.
- A collecting authority may impose a surcharge of 20% of the relevant amount or £1,000, whichever is the lesser.

5.9 Regulation 87: Late payment interest

- Applicable where payment is not received on the date it 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.
- At an annual rate of 2.5 percentage points above the Bank of England base rate.

CIL Enforcement Financial Penalties in Waverley Borough Council

5.10 Utilising the above provisions, Waverley Borough Council (WBC), as the CIL Charging Authority and the CIL Collecting Authority will apply financial penalties as follows:

CIL Enforcement	Summary of application in WBC	Ability to appeal	Comment
Failure to assume liability (Regulation 80)	A surcharge of £50 on each person liable to pay CIL for failure to assume liability (Regulation 80) will be applied by WBC.	Can submit an appeal on the surcharge, to Secretary of State (Planning Inspectorate) under Regulation 117	No discretion applied in WBC
Apportionment of Liability (Regulation 81)	A surcharge of £500 for each material interest where liability has to be apportioned (Regulation 81) will be applied by WBC.	Can submit an appeal on the surcharge to Secretary of State (Planning Inspectorate) under Regulation 117	No discretion applied in WBC

CIL Enforcement	Summary of application in WBC	Ability to appeal	Comment
Failure to submit a notice of chargeable development (Regulation 82)	A surcharge equal to 20% or £2,500 of the chargeable amount, whichever is the lower amount, for failure to submit a Notice of Chargeable Development (Regulation 82) will be applied by WBC.	Can submit an appeal on the surcharge to Secretary of State (Planning Inspectorate) under Regulation 117	No discretion applied in WBC
Failure to submit a commencement notice (Regulation 83)	A surcharge equal to 20% or £2,500 of the chargeable amount, whichever is the lower amount, for failure to submit a Commencement Notice (Regulation 83) will be applied by WBC.	Can appeal, on the basis of the surcharge, to Secretary of State (Planning Inspectorate) under Regulation 117	No discretion applied in WBC
Disqualifying events (Regulation 84)	A surcharge equal to 20% or £2,500 of the chargeable amount, whichever is the lower amount, for failure to notify of a disqualifying event (Regulation 84) will be applied by WBC.	Can only appeal, on the basis of the application of a surcharge. Any appeal would be to the Secretary of State (Planning Inspectorate) under Regulation 117	No discretion applied in WBC
Late payment (Regulation 85)	A surcharge equal to 5% or £200, whichever is the greater amount, on the outstanding liability for late payment after the end of 30 days after the liability is due, further increasing after outstanding after six months and after 12 months under Regulation 85 will be applied by WBC.	Can submit an appeal on the surcharge to Secretary of State (Planning Inspectorate) under Regulation 117	No discretion applied in WBC in relation to the surcharge where a formal instalment has been missed. Discretion to disapply a late payment surcharge(s), for example where an 'informal payment plan is agreed' and payment perms have been adhered to.
Failure to comply with an information request (Regulation 86)	A surcharge equal to 20% or £1,000 of the relevant amount, whichever is the lower amount, for failure to comply with an Information		No discretion applied in WBC

CIL Enforcement	Summary of application in WBC	Ability to appeal	Comment
	Notice under Regulation 86 will be applied by WBC.		
Late payment interest (LPI) (Regulation 87-88)	Late payment interest at a rate of 2.5% on the relevant amount above Bank of England Base Rate due from the date payment was due under Regulation 87 will be applied by WBC.	Regulations do not allow for an appeal on LPI.	Late Payment Interest is mandatory under the CIL Regulations and therefore no local discretion applies.

6. Other Provisions for CIL Enforcement under the CIL Regulations 2010: Recovery of CIL Charges

6.1 Aside from financial penalties (surcharges and late payment interest – Regulation 80-88), in cases of persistent non-compliance, collecting authorities may take more direct action to recover the amount due as indicated below.

Stop Notices and Injunctions

6.2 Where development has started and the levy has not been paid if the CIL collecting authority believe that financial penalties will be ineffective in securing payment of the overdue CIL and it is considered expedient to stop the development from progressing any further until payment is made, then a Stop Notice will be served. A CIL stop notice prohibits development from continuing until payment is made. Continuing to develop in these circumstances is a criminal offence, punishable by potentially unlimited fines.

6.3 Before serving a CIL stop notice, a CIL collecting authority will first issue a warning to the person liable to pay the amount, the land's owners, occupiers and all those who the CIL collecting authority believe will be affected by the notice. It will also post a warning on the site itself. This warning will state that continued non- 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, a CIL collecting authority will serve a stop notice which will prohibit development with immediate effect until payment of the outstanding amount is made. A CIL stop notice does not prohibit any works on the relevant land which are necessary in the interests of health and safety.

6.4 As an alternative to using the Stop Notice procedure, a CIL collecting authority can seek a court injunction (in the High Court or county court) preventing the commencement or continuation of the development where there is an actual or apprehended breach of a Stop Notice.

Applying for a Liability Order

6.5 A CIL collecting authority may, after issuing a reminder notice to the party liable for the levy, apply to a magistrates court to make a liability order. Once the Court is satisfied that the amount is payable and have made the liability order, the authority can proceed to recover the amount due together with the costs of making the application through seizing and selling assets of the liable party. The Court must make the liability order if it is satisfied that the amount has become payable by the defendant and has not been paid.

Distress (asset seizure)

6.6 When you fail to pay CIL, a collecting authority 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 collecting authority must send notice of its intention to do so beforehand. No person making a distress may seize any clothing, bedding, furniture, household equipment or provisions which are necessary for satisfying the basic needs of the debtor and their family. If, before any goods are seized the outstanding amount is paid or tendered to the collecting authority, the collecting authority must accept the amount and proceed with the levy.

Committal to Prison

6.7 Where all of the above options are exhausted, and the authority is unable to recover the amounts due, they may ask the Court to commit the debtor to prison for up to three months. To do this, the collecting authority 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. Whilst this may be an unlikely scenario, the regulations do offer this mechanism to recover the unpaid levy.

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

6.8 Where a liability order is made and more than £2000 is still owed, then an authority 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.

6.9 Insolvency Action can be considered where a liability order has been made against a debtor (grounds of creditor's petition) in accordance with the Insolvency Act 1986.

Recovery in a court of competent jurisdiction

6.10 As an alternative to recovery where CIL is not paid and a Liability Order has not been made, the collecting authority 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

6.11 A CIL collecting authority 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. A CIL collecting authority can ask the Court (County Court) to enforce a local land charge if the outstanding amount of CIL due in respect of that development is less than £2000.

CIL Enforcement Measures in Waverley Borough Council

6.12 Waverley Borough Council CIL Charging Authority and the CIL Collecting Authority will apply the CIL Enforcement measures as follows:

CIL Enforcement	Summary of application in WBC	Ability to appeal	Comment
CIL Stop Notices (Regulation 89-94)	A CIL stop warning notice served on the liable party and placed on the land in question. Followed by a CIL Stop Notice – preventing further continuance of works on site until the CIL liability is paid in full. (Regulation 89-92) will be applied by WBC to all relevant CIL enforcement cases where payment is between 2-6 months late or more.	It is an offence if a person contravenes the CIL Stop Notice. Appeal possible via Regulation 119 to the Secretary of State for someone who is aggrieved of the decision to issue a Stop Notice.	Any discretion applied by WBC will relate to an expediency test.
Liability Order (Regulation 95-97)	Regulation 96-97. The CIL Collecting Authority may apply to a magistrate's court for an order. WBC will apply for Liability Order in all relevant CIL enforcement cases where payment is more than 3 months late or more.	Via the magistrate's court.	Any discretion applied by WBC will relate to an expediency test.
Enforcement by taking control of goods (Regulation 98)	Regulation 98 will be applied by WBC to all relevant CIL enforcement cases.	Via the magistrate's court.	Legal advice would be sought on a case-by-case basis based on expediency.
Commitment to Prison (Regulation 100-102)	Regulation 100-101 will be applied by WBC to all relevant CIL enforcement cases.		Legal advice would be sought on a case-by-case basis based on expediency.
Charging Order (Regulation 103-104)	Regulation 103. Charging orders as made following a liability order will be applied by WBC to all relevant CIL enforcement cases.		Any discretion applied by WBC will relate to an expediency test.
Insolvency (Regulation 105-106)		No appeal procedure through CIL	Legal advice would be sought on a case by case basis based on expediency.
Enforcing of local land charges	Regulation 107. Applies to liabilities owed which are more than £2000. This	No appeal procedure through CIL	Any discretion applied by WBC will

CIL Enforcement	Summary of application in WBC	Ability to appeal	Comment
(Regulation 107)	measure will be applied by WBC to all relevant CIL enforcement cases.		relate to an expediency test.
Outstanding liabilities on Death (Regulation 108)	Regulation 108. Outstanding CIL liabilities (unpaid amount and any interest, surcharges and costs) are payable by executor/administrator. This will be applied by WBC to all relevant CIL enforcement cases.	Can appeal via Regulation 117, 118 or 119	Legal advice would be sought on a case-by-case basis based on expediency.
Power to require information (Regulation 108A)	Regulation 108A requires information to be supplied by the liable party. This will be applied by WBC to all relevant CIL enforcement cases.	No appeal procedure through CIL	Limited discretion
Powers of Entry (Regulation 109)	Regulation 109 allows the collecting authority to enter relevant land at a reasonable hour. It is an offence to wilfully obstruct and is liable on summary conviction to a fine (level three). This will be applied by WBC to all relevant CIL enforcement cases.	No appeal procedure through CIL	Applies universally
Offence for supplying false information (Regulation 110)	Regulation 110 provides that it is an offence to knowingly or recklessly supply information which is false or misleading which is punishable by fine and or imprisonment (a term of up to two years). This will be applied by WBC to all relevant CIL cases.	No appeal procedure through CIL	Applies universally
Prosecution of CIL offences (Regulation 111)	Prosecute proceedings for any offence under the CIL regulations. This will be applied by WBC to all relevant CIL enforcement cases.	No appeal procedure through CIL	Applies universally

6.13. WBC, will exercise its powers under the CIL Regulations following non-payment of the levy to establish if there is a need to serve notices on other interested parties. Under the CIL Regulations there are several measures that WBC will undertake as part of the process for the recovery of CIL liabilities and to investigate any anomalies in information provided by a CIL Liable Party:

- i. Under Regulation 109, the CIL collecting authority (WBC) will undertake, where possible, an annual programme of site visits to investigate progress of CIL liable developments (commencements and occupations);
- ii. Under Regulation 110, liaison with the Land Registry regarding changes in property ownership (for example through interrogating 'day lists');
- iii. Under Regulation 110, communication with land agents; estate agents; developers; lending companies etc where CIL liable land and property is the subject of a sale or change in legal ownership and it is expedient to contact relevant and potential new owners in order to recovery outstanding CIL liabilities.