
West Berkshire District Council CIL Enforcement Policy



West Berkshire
C O U N C I L

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1. Background and Purpose

- 1.1 Community Infrastructure Levy (“CIL”) is a charge levied in respect of development. The legislative basis is found in Part 11 of the Planning Act 2008 (<https://www.legislation.gov.uk/ukpga/2008/29/part/11>) which empowers the Secretary of State to make regulations providing for the imposition of CIL. Those regulations were made in the form of Community Infrastructure Levy Regulations 2010 (as amended) (“the CIL Regulations”) (<https://www.legislation.gov.uk/uksi/2010/948/contents>)
- 1.2 This document provides an overview of how the Council will use the enforcement powers contained within the legislation. It is not intended to be a step-by-step procedure note specifying how the Council will consider individual cases.
- 1.3 When considering the enforcement powers set out in the legislation the Council will be mindful of any guidance, including the note entitled Community Infrastructure Levy – collection and enforcement (<https://assets.publishing.service.gov.uk/media/5a7897a9e5274a2acd188448/1995794.pdf>) and the Council’s Customer Service Charter (https://www.westberks.gov.uk/media/54156/Customer-Service-Charter-January-2023/pdf/WBC_Customer_service_charter_January_2023.pdf?m=1675348889277)
- 1.4 The enforcement provisions contained within the CIL Regulations can be 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 Council
- 1.5 The Council is able to impose a range of financial penalties (surcharges) on developers when the liability, collection and/or payment processes outlined within the legislation have not been followed correctly. These penalties are designed to ensure that the Council does not lose out financially by having to carry out additional tasks. These surcharges are discretionary. This policy provides an overview of how the Council will exercise this discretion.
- 1.6 The Council has no discretion regarding the imposition of late payment interest however the Council does have a discretion regarding whether to continue with the recovery of any outstanding debt. This policy provides an overview of how the Council will exercise this discretion.
- 1.7 It is possible to appeal against the calculation of CIL and if you believe that the process has not been followed correctly by the Council. Further details can be found here [Community Infrastructure Levy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/topics/community-infrastructure-levy).
- 1.8 CIL can be a complex process and each development site can have its own complications and or nuances. The Council will provide support and guidance to developers to assist them with respect to the legislative requirements.
- 1.9 In particular, the Council is aware that the process can be daunting to individual homeowners wishing to extend their current property, create an annex for a

relative or build their own home. The Council will take this into consideration when applying the CIL Regulations.

1.10 This Policy has been approved by the Executive.

2. **Applicability**

2.1 This Policy applies to Householder Development. For the purposes of this policy, Householder Development shall mean development that meets the following criteria:

2.1.1 An extension to a persons own home in use as their principal residence in excess of 100sqm

2.1.2 Development of a residential annex (change of use/conversion of an existing building or newly constructed annex) within the grounds of a persons own home

2.1.3 A new build dwelling that has been built or commissioned to be built as a persons own home and principal residence.

3. **Policy**

3.1 People who extend their own homes or erect residential annexes within the grounds of their own homes are exempt from the levy, provided that they meet the criteria laid down in regulations 42A and 42B (inserted by the 2014 regulations and amended by the 2019 regulations) which includes the submission to the Council of the necessary claim forms.

3.2 The CIL Regulations require developers to submit the appropriate exemption form and, in respect of some development, notify the Council prior to commencement of the intention to commence. The Council will take into consideration any genuine error or oversight in submitting this documentation when considering the imposition of surcharges and/or the recovery of the outstanding liability. Consideration will include whether the developer is professionally represented.

3.3 The Council has set out below a couple of examples as to how the Council may approach matters: -

Residential Extensions

3.4 If an exemption for a residential extension would have been granted, if the correct paperwork had been submitted on time, then the Council is likely to exercise any discretion in favour of the developer and not impose surcharges or seek recovery of the outstanding liability.

Residential Annexes

3.5 If an exemption for a residential annex would have been granted, if the correct paperwork had been submitted on time, then the Council is likely to exercise any discretion in favour of the developer and not impose surcharges or seek recovery of the outstanding liability. However, if any of the following disqualifying events occur within 3 years of completion:

- 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

then the exemption will be withdrawn and the developer will be liable for the outstanding liability as specified by the Council at the time when the exemption was first claimed (or the amount of relief granted, if lower).

3.6 In cases of residential annexes where a disqualifying event has occurred, the Council will consider Enforcement Options.

Retrospective Development

3.7 In the case of retrospective development (where development commences without planning permission) and where it involves an extension to a dwelling or a residential annex, CIL Practice guidance, states the following;

Developments consented through retrospective planning permissions granted under section 73A of the Town and Country Planning Act 1990 are not able to obtain relief or exemption from the levy. This also applies when a section 73A permission is obtained to rectify a planning breach of an earlier permission which had been subject to a relief or exemption; the previously granted relief or exemption cannot be carried over or re-applied for in respect of the section 73A permission, and the CIL liability would be payable.

3.8 The Council will consider the CIL Practice guidance and the facts of each case when considering liability.

Self-Build and Replacement Dwellings (Whole House)

3.9 If an exemption for a self build dwelling would have been granted, if the correct paperwork had been submitted on time, then the Council is likely to exercise any discretion in favour of the developer and not impose surcharges or seek recovery of the outstanding liability. However, if any of the following disqualifying events occurs during the 3 year occupancy period:

- 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.

3.10 Then the exemption will be withdrawn and the developer will be liable for the outstanding liability including any surcharges and interest.

3.11 The only exception is where the developer fails to comply with the evidence requirements on completion. In such cases, the collecting Council must give the developer at least 28 days to submit the necessary form and evidence before taking any further action.

- 3.12 If the exemption is withdrawn the person must pay the full levy and the Council will consider Enforcement Options.

List of Enforcement Options

- 3.13 The Council will approach enforcement in a reasonable and proportionate manner, having regard to the particular facts of each case.

Stop Notices

- 3.14 If development has started without the CIL Liability being paid and the Council thinks it expedient to stop the development from progressing any further until payment is made, it may issue a stop notice. The Council will only consider this option if they consider the imposition of surcharges will not be effective.

Liability Order

- 3.15 Following the reminder notice, if the amount is still wholly or partly unpaid the Council can apply to the Magistrates Court for a Liability Order. This can include if requested, recovering the cost of the application in the same order. 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

- 3.16 Where a Liability Order has been made the Council may levy the appropriate amount by distress and sale of goods of the debtor. 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 his family. If, before any goods are seized the outstanding amount is paid or tendered to the Council, the Council must accept the amount and proceed with the levy.

Commitment to prison

- 3.17 Where the Council is unable to recover debts due by way of the charging order or distress the Council may ask to commit the debtor to prison. This is a very unlikely scenario; however the regulations do offer this mechanism to recover the unpaid levy.

Charging Orders

- 3.18 As an alternative to recovering the debt via distress and where the outstanding debt is greater than £2000 the Council can ask the Court to serve a charging order to recover the amount of debt owed.

Enforcement of local land charges

- 3.19 As an alternative to recovering debt via distress and Charging Orders the Council can enforce a local land charge if the outstanding amount of CIL due in respect of that development is less than £2000.

4. **Implementation**

- 4.1 This Policy will be supported and implemented by the development and publication of Standards (requirements), Procedures (how to) and Guidance (advice) as appropriate.

5. **Roles and Responsibilities**

- 5.1 The overall responsibility for the West Berkshire District Council CIL Enforcement Policy rests with Executive Director – Place.
- 5.2 The responsibility for day-to-day management of the CIL Enforcement Policy throughout West Berkshire Council rests with the Service Lead – Planning and Economy (Chief Planning Officer), they are also responsible for maintaining this Policy, for reviewing all other security policies and procedures and for providing advice and guidance on their implementation.

6. **Review**

- 6.1 This policy will be reviewed to respond to any changes when there is a change in CIL regulations or guidance or at least annually.
- 6.2 The Service responsible for reviewing and maintaining this Policy is Development and Regulation.

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