

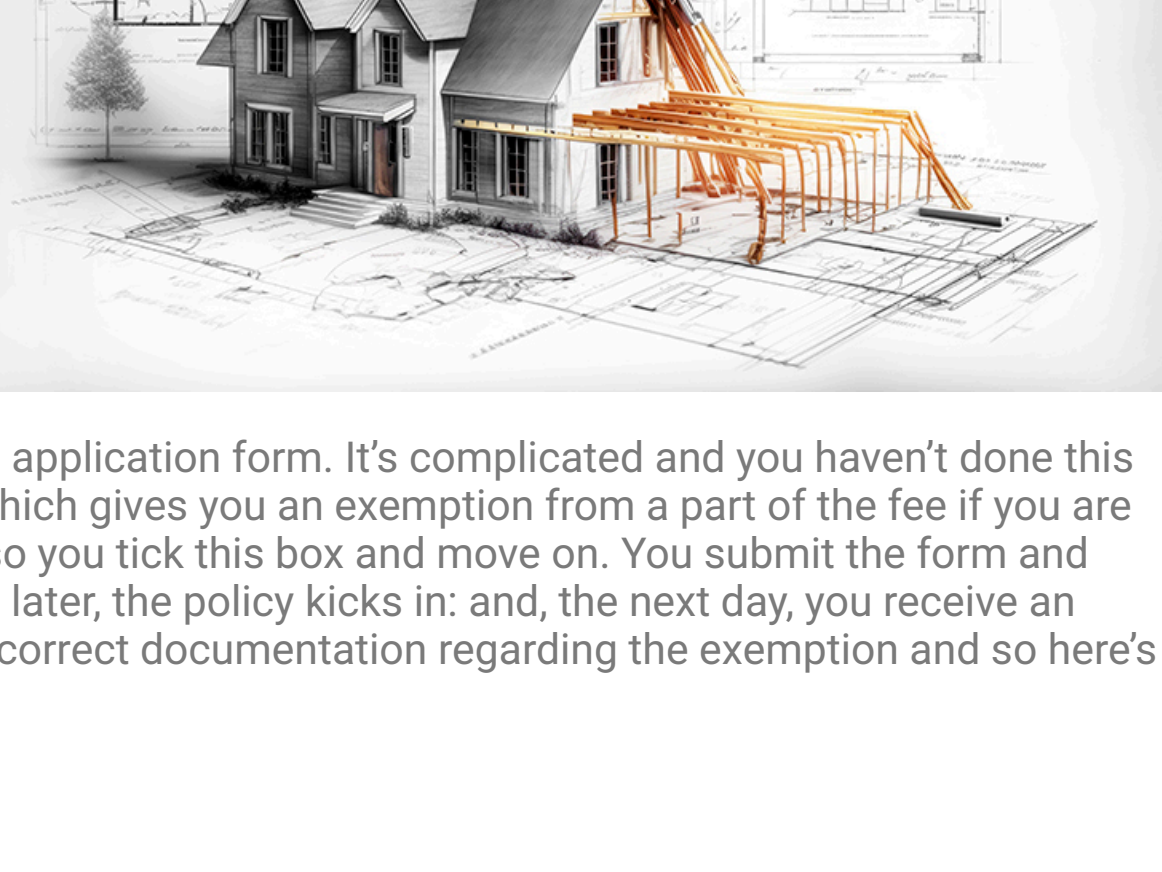
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How well does West Berkshire Council tick the box?



Imagine you were filling in an insurance application form. It's complicated and you haven't done this before. There's a box you have to tick which gives you an exemption from a part of the fee if you are self-employed. As it happens, you are, so you tick this box and move on. You submit the form and hear nothing further. A couple of weeks later, the policy kicks in: and, the next day, you receive an email saying that you didn't submit the correct documentation regarding the exemption and so here's an invoice for £25,000.

Ticking the box

On closer examination, you were in fact required to do something else. Even though you ticked the box, the insurance company did nothing to chase the missing paperwork. The policy having started there is now nothing you can do about it. After a lot of stress and appeals, which get you nowhere, the bailiffs turn up. How would you feel? Miffed? Cross? Would a stronger word or phrase be needed?

If you want to experience this first-hand, fill in a planning application with West Berkshire Council (WBC) and make a mistake with the exemption section for the community infrastructure Levy (CIL) obligation. CILs are developer contributions, first introduced in 2010, by which participating councils can get financial contributions from developers for related infrastructure.

Intentions and exemptions

Since WBC introduced these in 2015, they have raised about £7m. A lot of the infrastructure that accompanies developments, such as schools and playgrounds, has been paid for by CIL money. Your parish council also gets a share as a result of developments in its area: 15%, or 35% if it has an NDP in place.

All in all, it was intended to be a fair, certain and simple way of ensuring that a development contributed money to the cost of infrastructure that was required to mitigate its effects. There's nothing wrong with the idea that developers should contribute to the area in which they're creating more housing.

Some developments are exempt from CIL. There's a box on the application form that you tick if you think this applies to you. Supporting information is, however, required in the shape of more forms. These may or may not be filled in correctly. There is one ultimate test: if your CIL exemption certificate does not arrive by the time work is started, the system assumes that CIL is payable. This can be for an eye-watering amount of money.

Unease

It's the bit between ticking the box and the consequences of starting work without the certificate that is causing the unease. These two stages are legal obligations on both parties. What is not is the view the council takes as to whether any errors or omissions should be highlighted to the applicant.

We all know that we need to take advice before embarking on anything important and unfamiliar. With a development, particularly a small and/or first-time one, mistakes can get made, by the applicant or the agent. If the box on the form has not been ticked, then the planning authority will charge CIL. If it has been ticked but the supporting paperwork is missing or incomplete, should it alert the applicant?

Morals and ethics

There probably isn't any official policy which governs this. Ultimately, it's a moral and ethical decision on the part of the leadership and senior management which will then filter down to the whole organisation. What moral and ethical standards do we expect from our councils? The simple answer is, the highest ones. They are not private companies but the result of, and the expression of, local democratic will.

It would appear that West Berkshire Council doesn't pass this test. There have been two high-profile such cases in the last few years, involving close to £100,000 of CIL money, one of which was paid and the other the subject of an ongoing legal case. Both applicants contend that the developments were CIL-exempt: the only problem was a technical oversight with the forms. According to one West Berkshire Councillor I spoke to recently there is reason to believe there are many others.

It was also revealed to me this week that one agent, calling the WBC planning department to ask about CIL, was advised not to sign the documents themselves but to get the applicant to do so, that way any problems becoming the applicant's responsibility. If true, this has the look of a system which anticipates and perhaps even welcomes non-compliance.

A member acts

The matter has led to sufficient concern for it to be the subject of a motion from Lib Dem member Jeff Brooks at the Full Council on 3 December:

"We call upon the Council to urgently engage external expertise to undertake an independent review of the management of CIL payments from local developers. This is in light of two cases - that Members are aware of - where the sums paid by the applicants have been contested as they maintain they have been penalised by many thousands of pounds for incorrect paperwork submissions. These were able to be corrected rapidly when pointed out to the applicant, but the Council pressed on in charging the applicant based on the original assessment."

Whether the matter is debated and, if it isn't, what steps are taken to address this seeming elephant trap for the unwary remain to be seen. It all depends on what the council believes its attitude towards its residents should be.

Setting the compass

CIL exists as a way for councils to make money (by an irony, it was introduced in the same year, 2010, as the 'austerity' government was elected, so some councils may have seen it is a financial opportunity).

Whether this should be by waiting for small developers to make procedural errors and then hitting them with life-changing invoices is a matter that only the conscience of the leadership and the senior management can determine. Having spoken to a number of councillors, there is a distinct sense that the moral compass of the council is pointing in the wrong direction on this matter.

Looking over the fence

I was curious to know if this was a widespread problem so decided to call a few councillors in some nearby authorities. Nick Fogg, an Independent councillor of 30-years experience on Conservative Wiltshire Council, was the first I got through to. Was his planning authority aware of any cases where an applicant's exemption had failed simply because of an oversight that was not chased up?

"No," he said after a few moments' thought. "I'm pretty sure Wiltshire has clean hands on this one."

My next call was to the Vale of White Horse, Lib Dem since last year, Conservative before that. I spoke to Andy Crawford, a long-time Vale and Wantage TC Councillor who has also been much involved in the planning process and who is currently the Vale's portfolio holder for finance and corporate assets.

"CIL is a complex business," he admitted, "and there are certain aspects of it that are laid down by law. For example, people need to understand that if they are claiming an exemption they should not start work until they have the exemption certificate. However, any right-thinking council would ensure, if any aspect of the paperwork was deficient, that the applicant would be chased for this in good time."

For good measure, I also spoke to Jenny Hannaby, another experienced Vale and Wantage TC Councillor who knows the planning system very well. She said she was not aware of any recurring problem of the handling of CIL exemptions leading to accusations that the council had behaved in an unethical way.

"Such cases would generate publicity and would probably involve several members and officers, so it's likely I'd have heard of it," she explained. "I can't think of an instance offhand and certainly nothing that would have led people to feel there was something systemically wrong. If there had been, we'd have fixed it."

Nobody's perfect

There was recently an issue of illegal dumping in the the SSSI-protected River Lambourn. This was reported by the Parish Council to WBC's Planning Enforcement team which sent an automated response saying a more detailed reply would follow within seven days. This didn't arrive until it was chased up several weeks later. It was suggested to me that this was because the officers - over-worked and under-staffed, a point I fully accept - didn't realise the river was an SSSI and the issue therefore was urgent. This does, however, take about 30 seconds to check on WBC's own online map. Not to have done so is an oversight. Could happen to anyone. The inaction could, however, have led to a pollution incident.

As it happened, it didn't. I have every sympathy for the fact that the enforcement team is stressed and short-handed. Given the lack of consequences, the oversight is likely to be forgiven (though its root cause not solved). Developers, small or otherwise, are also stressed and also commit oversights.

Gotcha

It appears, however, that WBC does not chase these up but waits for the infringement to happen and then pounces - "Gotcha" as *The Sun* would say. (Indeed, this very description was used by the previous leader of West Berkshire Council Gordon Lundie to describe this policy.) How would the planners have felt if the Environment Agency had pounced on them in the same way?

Councils spend a lot of time trumpeting their credentials on matters such as transparency, inclusiveness, listening and engagement. On many matters, WBC does this sort of thing very well: its reaction to the pandemic has been excellent (and would have been better still if the government had got councils involved earlier) as has been its recent handling of the libraries. Like all councils, it's had to contend with massive funding cuts. On other matters, including it would seem this one, some feel otherwise.

A fresh look

When uncertain how to proceed, councils often look to internal precedents, wait for government advice or obtain the views of expensive consultants. One simple and free alternative is to peer over the garden fence to see how the neighbours do it.

By this test, certainly as regards prompting developers about CIL exemptions, there's a case to be made for things being done in a different and better way. Surely the best thing is to take a fresh and objective look at what is clearly a matter of mounting local unease.

Brian Quinn

Photo credit: Adobe Stock Images

If anyone, from within West Berkshire or elsewhere, wishes to comment on any aspect of this article, please either use the 'comment' box below or email brian@pennypost.org.uk. I welcome other opinions and would be happy to add these to the post if other things that the subject (as of February 2025, there have been a lot...).

Addendum February 2025

Since this article was written, Penny Post has referred to this matter numerous times. A conclusion seems to have been reached, in West Berkshire at least, [which we summarised in this article in August 2024](#).

However, it became increasingly clear that the problem wasn't restricted to West Berkshire. We were contacted by victims elsewhere, as were some of the people mentioned above. Communication on this matter is currently being formalised.

If anyone from anywhere in the UK wants to contact me on brian@pennypost.org.uk I'll be happy to explain how you can get in touch with others who appear to have suffered at the hands of this system and are still seeking redress.

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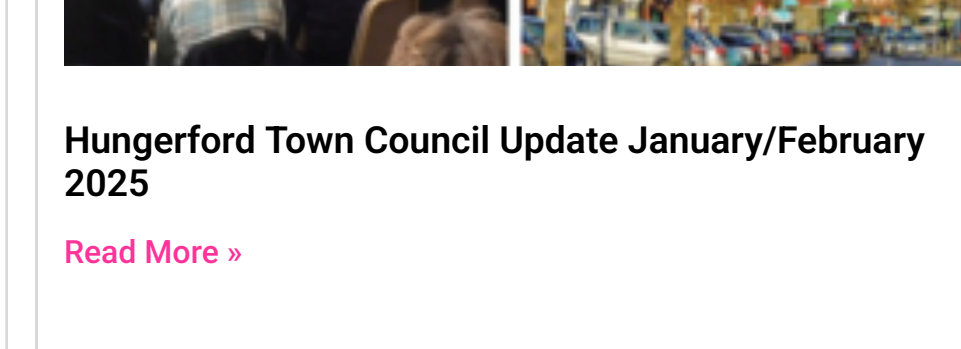
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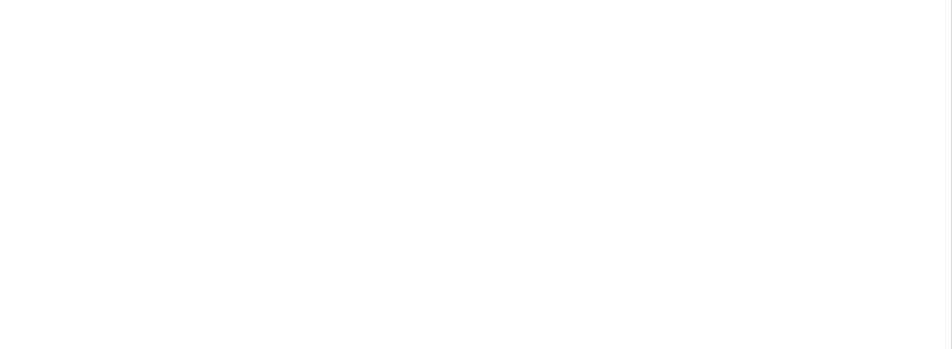
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