

## **Stratford-on-Avon District Community Infrastructure Levy**

# **CIL User Guide**

**November 2017**

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This guide is intended to provide developers with background information on the Community Infrastructure Levy and answers to frequently asked questions (FAQs). It is intended that it will be updated over time to reflect further questions that arise during the process of implementing the levy, and in response to future amendments to Government regulations and guidance.

## **1. BACKGROUND**

### **1.1 Statutory Context**

The Planning Act 2008 made provision for the introduction of the Community Infrastructure Levy. Regulations governing the operation of CIL were first introduced in April 2010, and have subsequently been amended in 2011, 2012, 2013 and 2014. Part 6, Chapter 2 of the Localism Act 2011 has the effect of amending parts of the Planning Act 2008 as it relates to CIL.

Stratford-on-Avon District Council has followed the procedures and requirements set out in the Acts and Regulations to produce and introduce its CIL Charging Schedule. The Submission Charging Schedule was subject to Public Examination in September 2016, and the Examiner's report was received on 4<sup>th</sup> September 2017. Updates can be found on the Council's website:

<https://www.stratford.gov.uk/cil>

### **1.2 Stratford-on-Avon CIL Charging Schedule**

With some exceptions (see FAQs below- specifically FAQs 1 and 2) planning applications determined after the date on which CIL comes into effect, and involving new build of 100sq.m gross internal floorspace or greater may be liable to Stratford-on-Avon's Community Infrastructure Levy (CIL) charges, although the Council's charges will, until such time as they are revised, apply only to residential development and some retail development.

The Council's CIL Charging Schedule identifies which types of development are liable to pay CIL and identifies a number of different levy rates that apply in various locations.

The Council's Instalments Policy which can be found in the CIL Charging Schedule provides for CIL payments to be spread over the course of two years, depending on the scale of the CIL liability.

Except for applications for Outline planning consent, all planning applications must now be accompanied by the 'Planning Application Additional Information Requirement Form', available at the following link:

[http://www.planningportal.gov.uk/uploads/1app/forms/cil\\_questions.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/cil_questions.pdf)

Guidance on completing this form is available at the following link:  
[http://www.planningportal.gov.uk/uploads/1app/cil\\_guidance.pdf](http://www.planningportal.gov.uk/uploads/1app/cil_guidance.pdf)

### **1.3 Relationship to Section 106 Planning Obligations**

Developers should be aware that, depending on the nature, scale and location of the development, the Council may seek planning obligations through the Section 106 mechanism, in addition to the payment of CIL.

Affordable Housing provision and affordable housing contributions will continue to be sought through the Section 106 mechanism. (In particular, it is likely that Section 106 agreements will be negotiated to ensure that other on-site infrastructure requirements are met).

In some cases, Section 106 agreements may be negotiated to deliver strategic infrastructure, where the development gives rise to or contributes to the need for that infrastructure, and where the requirements of the tests set out in CIL Regulation 122 are met.

The Council's emerging Development Requirements Supplementary Planning Document (SPD) will assist with both developers and stakeholders understand what types of infrastructure will still require planning obligations and how these obligations will be sought.

### **1.4 Expenditure of CIL Receipts**

The Council's intentions for spending CIL receipts are set out in what is known as the 'Regulation 123 List' (after Regulation 123 of the CIL Regulations). This can be found on the Council's website:

<https://www.stratford.gov.uk/cil>

The Council cannot ask a developer to pay for infrastructure through the Section 106 mechanism if the developer is already required to pay for the same infrastructure through CIL. In other words, the Council cannot ask a developer to pay for infrastructure through the Section 106 mechanism if that infrastructure is identified on the Council's Regulation 123 List. Items can be added to or removed from the Regulation 123 List, subject to appropriate local consultation. The Council is required to publish annual reports on CIL income and spend.

### **1.5 Downloads and Links**

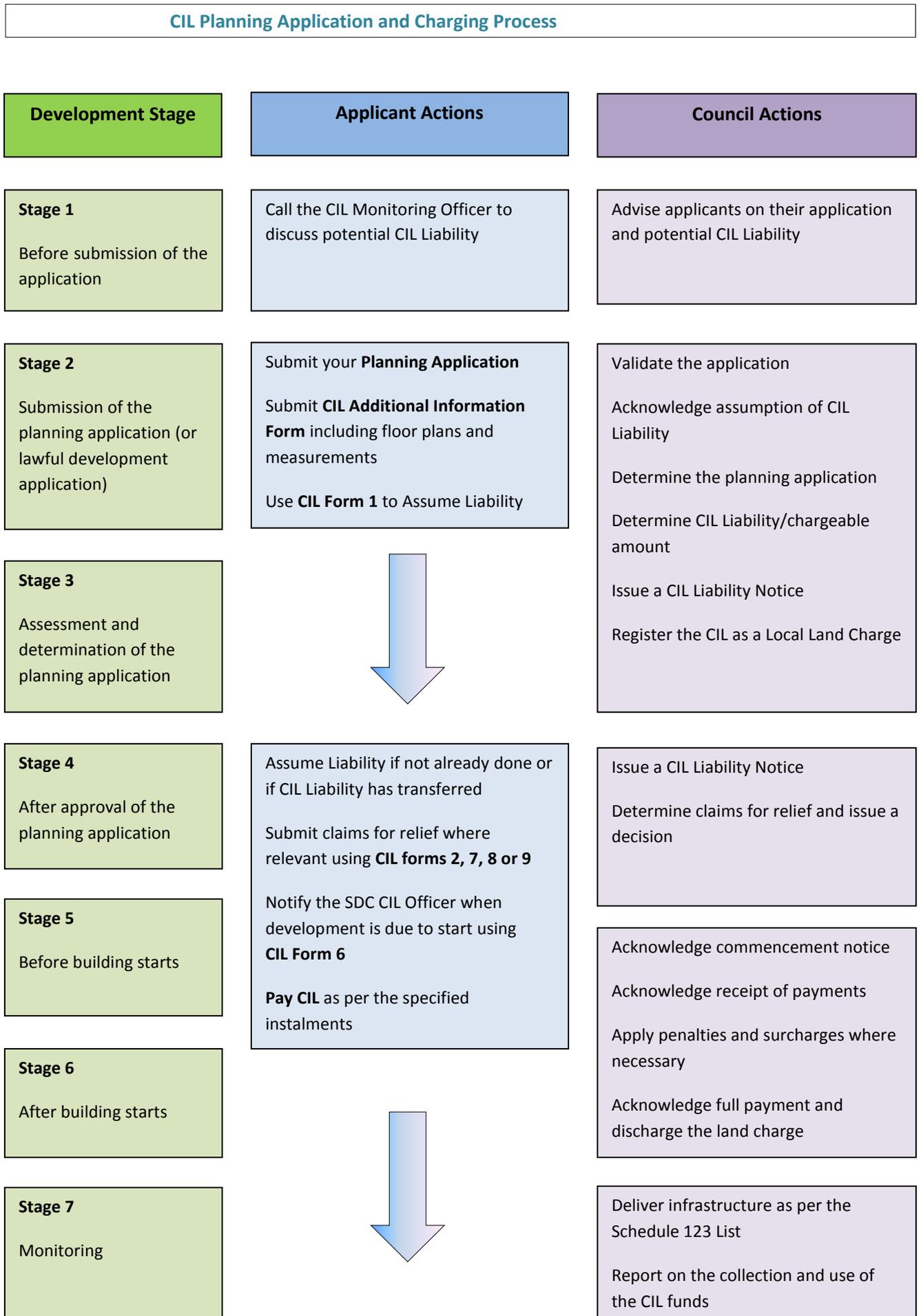
In addition to the Stratford-on-Avon District Council documentation which is accessible via the weblinks in this document, official guidance and advice is available in other locations, some of which are as follows:

Government Department for Communities and Local Government –  
<https://www.gov.uk/guidance/community-infrastructure-levy>

- Planning Portal -  
<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>

## **2. CIL PAYMENT AND COLLECTION PROCESS**

2.1 A diagram showing a simplified CIL Planning Application and charging process in Stratford-on-Avon is found in Figure 1 below. The diagram is followed by an explanation of the process in words. Figure 1



## .2 CIL Payment and Collection Process - Explanation

An explanation of the process is shown in the above figure follows. To avoid potential complications, including enforcement action, developers are advised to contact the Council's CIL Monitoring Officer as soon as possible if they are in doubt about any part of the process.

### Stage 1 - Before submission of the application

- Developer - determine whether planning permission is needed.
- If planning permission is required, follow the process below.
- If planning permission is not required, but the development is nonetheless a CIL liable development (i.e. the development constitutes 'permitted development' on which CIL is chargeable), submit a 'Notice of Chargeable Development' to the Council. The form can be found at the following weblink:

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_5\\_notice\\_of\\_chargeable\\_development.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_5_notice_of_chargeable_development.pdf)

- Developer - Contact the Council's CIL Monitoring Officer if you need advice on your CIL liability or on the CIL payment process.

### Stage 2 - Submission of the planning application or lawful development application

- Developer - submit planning application or lawful development application
- Complete CIL 'Additional Information Requirements Form' and submit with planning application, to provide for the Council to correctly calculate CIL liability and issue a CIL Liability Notice when planning permission is granted. The form can be found at the following weblink: [http://www.planningportal.gov.uk/uploads/1app/forms/cil\\_questions.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/cil_questions.pdf).

NOTE that your planning application will not be validated if this form is not submitted alongside it.

- The party or parties responsible for paying CIL must also submit an 'Assumption of Liability Form' to the Council, which can be found at the following weblink: [http://www.planningportal.gov.uk/uploads/1app/forms/form\\_1\\_assumption\\_of\\_liability.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_1_assumption_of_liability.pdf).
- If the party or parties liable to pay the CIL charge change, either prior or subsequent to the grant of planning permission, the Council can be informed through the submission of further forms available on the Planning Portal website at the following links: [http://www.planningportal.gov.uk/uploads/1app/forms/form\\_3\\_withdrawal\\_of\\_assumption\\_of\\_liability.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_3_withdrawal_of_assumption_of_liability.pdf) and [http://www.planningportal.gov.uk/uploads/1app/forms/form\\_4\\_transfer\\_of\\_assumed\\_liability.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_4_transfer_of_assumed_liability.pdf)

### Stage 3 - Assessment and determination of the planning application

- Council – grant planning permission

- At the point at which planning permission first permits the chargeable development (see explanation in 'FAQs' section below), the Council will issue a CIL Liability Notice to the party or parties who have assumed liability to pay CIL. This will specify how much CIL must be paid to the Council, but is not a demand for payment of CIL.
- Council - register the CIL charge as a Local Land Charge so that if the land is sold with planning permission in place the CIL liability will be apparent to potential purchasers.
- To reiterate a point made above, if the party or parties liable to pay the CIL charge change, the Council can be informed through the submission of further forms available on the Planning Portal website at the links given above. Once CIL is paid in full, Local Land Charge records can be amended accordingly.

#### **Stage 4 - After approval of the planning application**

- Developer – apply for social housing relief, or exemption from CIL if applicable, and subsequently commence development
- If a developer wishes to claim an exemption from CIL, or relief from CIL because, for example, they are providing social housing, a 'Claiming Exemption or Relief Form' will need to be submitted. The Council envisages applicants submitting this after it has issued them with a CIL Liability Notice, although applicants can choose to submit this form with their planning application or at any point subsequently. The form can be downloaded at the following weblink:  
[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_2\\_claiming\\_exemption\\_and\\_or\\_relief.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf)
- If a developer wishes to claim an exemption for self-build, for an annex or an extension, a 'Self-Build Exemption Claim Form' (Parts 1 & 2), or a 'Self-Build Annex or Extension Claim Form' will need to be submitted prior to commencement. These forms can be downloaded at the following weblink:  
<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>

#### **Stage 5 - Before building starts**

- Form 5 should be used by landowners wishing to notify us that they intend to start work on a development which does not need planning permission but which may be liable for the levy. A CIL charge may apply to a development which is granted as part of a general permitted development order, local development order, neighbourhood development order and a community right to build order. We may also issue Notices of Chargeable Development where we consider that liable development has occurred.  
[https://ecab.planningportal.co.uk/uploads/1app/forms/form\\_5\\_notice\\_of\\_chargeable\\_development.pdf](https://ecab.planningportal.co.uk/uploads/1app/forms/form_5_notice_of_chargeable_development.pdf)
- Developer - Immediately before development commences, submit a 'Commencement Notice' to the Council. The form can be found at the following weblink:  
[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_6\\_commencement\\_notice.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_6_commencement_notice.pdf)

- Developer - Notify the SDC CIL Officer when development is due to start using CIL Form 6 and pay CIL as per the specified instalments

#### Stage 6 - After building starts

- Council - acknowledge commencement notice and receipt of payments.
- Council - apply penalties and surcharges where necessary and acknowledge full payment and discharge the land charge
- The Council will acknowledge receipt of 'Commencement Notices' and will subsequently issue CIL Demand Notices, setting out CIL payment terms in line with its Instalments Policy.
- Failure to submit a Commencement Notice, or the provision of the incorrect information in terms of the commencement date will result in the Council determining the 'deemed commencement date', in which case the entire CIL liability becomes payable immediately. Failure to pay in accordance with the Demand Notice which the Council issues in response to its receipt of a correctly submitted Commencement Notice will also result in the forfeit of the right to pay in accordance with the Council's CIL Instalments Policy. Other enforcement actions available to the Council are detailed in the publication at the following weblink: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6312/1995794.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6312/1995794.pdf)

#### Stage 7 - Monitoring

- Council - deliver infrastructure as per the Regulation 123 List
- Council - report on the collection and use of the CIL funds

#### 2.3 Definitions

**Floorspace** – CIL is calculated based on internal floorspace calculations. All references to floorspace are therefore related to internal measurements and calculations.

**In-use** - An 'In use building' is defined as a building which contains a part of an existing building that has been in **lawful use** for a continuous period of 6 months within the past three years before the grant of the planning permission.

**Lawful Use** – there is no official definition for this term. Evidence must be provided to show that the building is in **actual** use for its lawful purpose. It is not sufficient that the building has a lawful use to which it could be put. Such evidence could include a combination of the following:

- Copies of leases
- Electricity/gas bills for the 6 month period
- Business rate/council tax bills and payments. Note: The Local Planning Authority does not have access to this information as it is data protected
- Where an informal arrangement exists redacted bank statements to show rent/rates have been paid

- Confirmation from a letting agent/solicitor advising of the period of occupancy
- An affidavit

## 2.4 Examples of how liabilities are calculated

The following examples of development scenarios illustrate what the CIL liability will be and how this is calculated. All references to floorspace are internal floorspace calculations.

### Scenario 1

The development of one new dwelling outside Canal Quarter, Long Marston Airfield and Gaydon/Lighthorne Heath, either detached or attached to an existing dwelling. The new dwelling is 90sq.m.

Though the development is less than 100sq.m, it results in the creation of a new dwelling and therefore CIL applies.

The CIL charge for residential development for small site of 10 dwellings and under outside the Canal Quarter, Long Marston Airfield and Gaydon/Lighthorne Heath is £75 per sq.m.

The calculation is as follows:

90sq.m x £75 per sq.m = CIL liability of £6,750

### Scenario 2

The development of an extension to an existing dwelling. The existing dwelling is 100sq.m and the extension is 45sq.m

The size of the existing dwelling is irrelevant. The only matter of relevance is the size of the extension. As the extension is for less than 100sq.m of development, and does not result in the creation of a new dwelling, CIL does not apply.

### Scenario 3

The conversion of an existing dwelling to two flats. The existing dwelling is 100sq.m and the conversion will not result in any new build floor space.

The size of the existing dwelling is irrelevant. As the conversion does not result in any new internal floorspace (i.e. it all takes place within the existing dwelling), CIL does not apply.

### Scenario 4

The conversion and extension of one existing dwelling outside Canal Quarter, Long Marston Airfield and Gaydon/Lighthorne Heath to form 2 flats. The existing dwelling is 105sq.m and the extension is 45sq.m.

The size of the existing dwelling is irrelevant here. What is relevant is the level of new build. Although it is only 45sq.m, because it results in a new dwelling, CIL applies.

The CIL charge for residential development for small site of 10 dwellings and under, outside the Canal Quarter, Long Marston Airfield and Gaydon/Lighthorne Heath is £75 per sq.m.

The calculation is as follows:

45sq.m x £75 per sq.m= CIL liability of £3,375

### Scenario 5

The demolition of an existing in use dwelling in lawful use (outside Canal Quarter, Long Marston Airfield and Gaydon/Lighthorne Heath) and the construction of a block of flats in its place. The existing dwelling is 120sq.m and the block of flats is 1,000sq.m

The development of the block of flats results in the creation of new dwelling units therefore CIL applies. However, because the existing dwelling is in use, its floor space is deducted when calculating the CIL liability.

To ascertain the relevant charge zone applicable the calculation will need to be made based on the number of proposed units. In this case there are more than 11 new units therefore the rate outside of Canal Quarter, Long Marston Airfield and Gaydon/Lighthorne Heath will be £150 per sq.m.

The calculation is as follows:

Process 1 – deduct existing floor-space from new floor space

The chargeable area is 1,000sq.m – 120sq.m= 880sq.m

Process 2 – calculate CIL liability based on the net increase in floor space

880sq.m x £150 per sq.m= CIL liability of £132,000

### Scenario 6

The demolition of an existing dwelling not in-use outside Canal Quarter, Long Marston Airfield and Gaydon/Lighthorne Heath and the construction of a block of flats in its place. The existing dwelling is 120sq.m and the block of flats is 1,000sq.m.

The development of the block of flats results in the creation of new dwelling units therefore CIL applies. Because the existing dwelling is not in lawful use, its floor space is not deducted when calculating the CIL liability

To ascertain the relevant charge zone applicable the calculation will need to be made based on the number of proposed units. In this case there are more than 11 new units therefore the rate outside of Canal Quarter, Long Marston Airfield and Gaydon/Lighthorne Heath will be £150 per sq.m.

The calculation is as follows:

Process 1 – calculate CIL liability based on the net increase in floor space

1,000sq.m x £150 per sq.m= CIL liability of £150,000

### Scenario 7

The conversion of an office block of 5,000sq.m, not in use in the Canal Quarter to a block of flats.

As the site is not in lawful use, the conversion is considered as new development and the existing floor space is not deducted when calculating the CIL liability.

To ascertain the relevant charge zone applicable the calculation will need to be made based on the number of the location of the development, in this case the Canal Quarter. The CIL charge in the Canal Quarter is £85 per sq.m

The calculation is as follows:

Process 1 – calculate CIL liability based on the net increase in floor space

5,000sq.m x £85 per sq.m= £425,000

### Scenario 8

The demolition of a warehouse building of 5,000sq.m, 1,000sq.m of which is in lawful use, and its replacement with a building of 10,000sq.m, comprising 1,000sq.m of retail development, 5,000sq.m of office development and 4,000sq.m of residential development.

The key issue here is that the existing building is in lawful use. Therefore the total amount of existing floor space can be deducted from the CIL liability. As the new building comprises a range of uses, the deduction of the existing floor space is applied on a pro rata basis across the new uses.

The CIL charge for office development is £0 per sq.m. The CIL charge for retail development in the Canal Quarter is £0 per sq.m. The CIL charge for residential development in the Canal Quarter is £85 per sq.m

The calculation is as follows:

Process 1 – calculate the deduction factor for the existing floor-space

5,000sq.m (existing floor-space) / 10,000sq.m (new floor space) = 0.5

Process 2 – calculate the retail liability

1,000sq.m x £0 per sq.m x 0.5 = £0

Process 3 – calculate the office liability

5,000sq.m x £0 per sq.m x 0.5 = £0

Process 4 – calculate the residential liability

4,000sq.m x £85 per sq.m x 0.5 = £170,000

Process 5 – calculate the total liability

retail (£0) + office (£0) + residential (£170,000) = CIL liability of £170,000

### 3. FREQUENTLY ASKED QUESTIONS

#### 1. Q: Which developments are liable to pay CIL? Which are not? What are the Council's CIL charges? Are any types of development exempt from CIL?

A: Generally speaking, the CIL Regulations identify the following types of development as being liable to pay CIL:

- Development comprising 100sq.m or more of new build floorspace.
- Development of less than 100sq.m of new build floorspace that results in the creation of one or more dwellings.
- The conversion of a building that is no longer in lawful use.

In practice, only the types of development referred to in the Council's adopted CIL Charging Schedule will be liable to pay CIL in Stratford-on-Avon District.

Development Sector	Proposed CIL £ per sqm
<u>Residential Development</u>	
Gaydon/Lighthorne Heath new settlement (GLH)	£0
Long Marston Airfield (LMA)	£0
Canal Quarter Regeneration Zone (11 units or more)	£85
Small Sites (up to and including 10 units)	£75
Rest of District (11 units or more)	£150
Extra Care	£ as above prevailing rate
Retirement Dwellings	£0
<u>Retail (A1-A5)</u>	
Within all Identified Centres	£0
Within Gaydon/Lighthorne Heath and Long Marston Airfield	£10
Out of Centre Retail	£120
All Other Forms of Liable Floor Space	£0

Development of buildings and structures into which people do not normally go (e.g. electricity sub-stations, wind turbines) will not be liable to pay a CIL.

The CIL (2011 Amendment) Regulation 6 (1) (d) ) specifies that the change of use of any building last used as a single dwellinghouse to use as two or more separate dwellinghouses does not result in liability to pay CIL as long as no new floorspace is created.

In addition, the 2014 CIL (Amendment) Regulations (specifically the insertion of amendment regulations 42A to 42C and of regulations 54A to 54D) depending on the circumstances, exempt the following types of development from paying CIL:

- minor development exemption
- mandatory charitable relief
- discretionary charitable relief
- mandatory social housing relief
- discretionary social housing relief
- exceptional circumstances relief
- self build exemption (for a whole house)
- self build exemption (for a residential annexe or extension)

There are strict qualification criteria and procedures, including clawback provisions. The weblink below provides more information on relief and exemption:

[https://www.planningportal.co.uk/info/200126/applications/70/community\\_infrastructure\\_levy/4](https://www.planningportal.co.uk/info/200126/applications/70/community_infrastructure_levy/4)

It is important to note that there is scope for the Council to revise its Charging Schedule in future.

**2. Q: Which types of development are eligible for relief from CIL?**

A: Affordable Housing, and development by charities for charitable purposes. CIL Regulations 49 and 43 (as amended) provide for such relief. It is important to note that if Affordable Housing which benefits from relief from CIL reverts to market housing, the CIL Regulations provide for the Council to claw back the relief given if the change to market housing occurs within a period of seven years beginning with the day on which the development commenced. Developers apply for relief from CIL for Affordable Housing – a form is available for this purpose on the Planning Portal website at the following link. Relief from CIL can only be claimed prior to commencement. [http://www.planningportal.gov.uk/uploads/1app/forms/form\\_2\\_claiming\\_exemption\\_and\\_or\\_relief.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf)

**3. Q: Will discretionary relief from CIL in exceptional circumstances be made available by the Council?**

A: The Council has decided to make discretionary relief from CIL available in exceptional circumstances in its area. However, the circumstances in which such relief can be made available are expected to be genuinely exceptional. Paragraph 2:7:4 of the February 2014 DCLG CIL Guidance gives a general introduction to the circumstances in which exceptional circumstances relief can be contemplated – this document can be accessed via the following link:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6314/19021101.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6314/19021101.pdf)

Developers should note that one of the conditions for offering discretionary relief from CIL in exceptional circumstances is that a Section 106 agreement has already been entered into. Consequently, the Council understands that discretionary relief in exceptional circumstances can only be offered where economic circumstances change significantly after planning permission has been granted and the developer can demonstrate that the circumstances are such that his or her ability to deliver the development is significantly compromised by the changed circumstances. Please note that there are strict conditions which must be met and the onus is on the applicant to demonstrate that they qualify for relief and appropriate evidence must be submitted to do so.

Please see separate guidance on SDC Exemptions Policy via the Council’s website:

<https://www.stratford.gov.uk/cil>

**4. Q: How much CIL will I have to pay?**

A: CIL is calculated on the basis of the net increase in gross internal floor area. The formulae in CIL Regulation 40 (as amended) are used to determine the CIL liability. The charges in the Council’s Charging Schedule feed into the calculation. The Council will send a formal liability calculation, in the form of a ‘Liability Notice’ once planning permission is granted. Note that CIL charges will increase in line with increases in the national All-In Tender Price Index published from time to time by the RICS Building Cost Information Service (BCIS), or in line with the Retail Prices Index.

**5. Q: Is there scope to make ‘payment in kind’ instead of making the required cash CIL payment?**

A: The Council acknowledges that payment in kind in accordance with Regulation 73 may in some circumstances be appropriate where it is evident that it involves the acquisition and use of land for a relevant purpose. A ‘relevant purpose’ is one involving the provision of infrastructure to support the development of Stratford-on-Avon District.

Any agreement relating to an in kind payment must be made before the chargeable development commences. The land must be valued by a suitably qualified independent valuer who will ascertain its ‘open market value’. This will determine how much liability the ‘in-kind’ payment will off-set. The Council will require the valuation costs to be demonstrated at the developer’s expense. It is not obliged to accept any offer of payment in kind, but when an offer is agreed the payments in kind must be provided to the same

timescales as cash payments, or otherwise on an agreed basis, subject to the provisions in the regulations and any other State Aid Considerations. Payments in kind may only be made with the agreement of the liable party, Stratford-on-Avon District Council, and any other relevant authority that will need to assume a responsibility for the land.

**6. Q: Is there scope to make an 'infrastructure payment' instead of making the required cash CIL payment?**

A: It is Regulation 73A that provides for the introduction of infrastructure payments. These involve the provision of infrastructure by a person who would otherwise be liable to pay CIL. The Council has not to date identified any circumstances within the District under which an infrastructure payment may be deemed appropriate. As such the Council is not currently proposing to issue the document (as required under section 73B) that would need to be in place in advance of any consideration of an infrastructure payment being accepted. This position will be subject to periodic review.

**7. Q: Can demolished floorspace be subtracted from the floorspace which is liable to CIL?**

A: Yes. Where planning permission is granted for a new development that involves the demolition of a building in lawful use, the level of CIL payable will be calculated based on the net increase in floorspace. This means that the existing floorspace contained in the building to be demolished can be deducted from the total floorspace of the new development when calculating the CIL liability. However, it is important to note CIL Regulation 40, as amended by the 2014 Amendment CIL Regulations. If the demolished floorspace is to be subtracted from the floorspace which is liable to CIL, at least part of the demolished building must have been in use for a continuous period of at least six months within the period of 3 years ending on the day planning permission first permits the chargeable development.

**8. Q: Do I have to pay CIL if I convert existing premises into a use which is subject to a CIL charge, for example if I convert an existing space above a shop into residential units?**

A: CIL is only payable on the net increase in gross internal floor area. Floorspace to be converted or demolished can be taken into account in calculating the CIL liability. It does not matter if the floorspace to be converted or demolished is a different use to the end use to which the floorspace is to be put, or to the floorspace to be constructed. In other words, changes of use are not liable to a CIL charge provided there is no net increase in gross internal floor area. As noted above, the 2011 Amendment Regulations (amendment to regulation 6) specify that the change of use of any building previously used as a single dwelling house to use as two or more separate dwellinghouses does not result in liability to pay CIL as long as no new floorspace is created.

**9. Q: Do I have to pay CIL if I seek to revise an existing permission through a Section 73 application (i.e. to remove or vary a condition)? ('Section 73' refers to section 73 of the 1990 Town and Country Planning Act).**

A: If a variation is sought to a planning permission which was granted before the Charging Schedule came into effect, only any additional floorspace created through the variation to that permission will be liable to pay CIL. When making the S73 application, developers will

therefore need to provide floorspace figures for the development as originally proposed and as proposed in the S73 application, assuming there is an increase in the floorspace proposed. S73 applications may also require a deed of variation to the legal agreement relating to the original permission.

**10. Q: When is CIL payable?**

A: CIL is unlikely to be payable immediately upon grant of planning permission, unless development commences instantaneously (see below FAQ 22 for information on retrospective applications). As noted above, the formulae in CIL Regulation 40 (as amended) are used to determine the CIL liability, and the charges in the Council's Charging Schedule feed into the calculation. The Regulation 40 calculation of CIL liability is made at the 'time at which planning permission first permits development' (see question and answer below for explanation). The Council's CIL Liability Notice is issued at this point. CIL Liability Notice is not the same as the CIL Demand Notice, which is issued when the development commences. The Liability Notice details the amount of CIL payable, whereas the Demand Notice specifies payment terms.

The Demand Notice will reflect the payment terms provided for in the Council's Instalments Policy. The Instalments Policy provides for phased payment of larger CIL liabilities over longer periods. However, in all cases, 25% of the CIL charge will be payable within 90 days of the commencement of development. If payments are not made in line with the Council's Instalments Policy, the privilege to pay CIL in instalments may be withdrawn and developers will subsequently be liable to pay the entire CIL liability on demand. There is no scope for developers to seek the arbitrary application of different payment terms to those specified in the Demand Notice.

**11. Q: If my development is phased, when is CIL payable?**

A: The CIL (Amendment) Regulations 2014 provide for CIL payments to be phased where the planning permission specifically provides for the development to be phased. Where this is the case, each phase of development can be treated as a separate CIL 'chargeable development', and CIL payments relating to each phase of can be made in line with the Council's Instalments Policy.

**12. Q: When do I submit my Commencement Notice? What does 'commencement' mean in the CIL context?**

A: In CIL terms, development is considered to have commenced when any 'material operation' begins to be carried out on the land subject to the CIL charge. To avoid potential surcharges and forfeit of the right to pay in accordance with the Council's Instalments Policy, developers are required to submit their Commencement Notice to the Council the day before 'material operations' commence. For CIL purposes, 'material operation' is defined in section 56(4) of the Town and Country Planning Act 1990, as follows:

'Material operation' means –

(a) Any work of construction in the course of the erection of a building;

- (aa) Any work of demolition of a building;
- (b) The digging of a trench which is to contain the foundations, or part of the foundations, of a building;
- (c) The laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
- (d) Any operation in the course of laying out or constructing a road or part of a road;
- (e) Any change in the use of any land which constitutes material development.

**13. Q: When does planning permission first permit development?**

A: Planning permission first permits development on the day that planning permission is granted for that development unless it is a phased permission.

The effect of the planning permission is to permit development to commence straight away, in which case the Council can issue a CIL Liability Notice with the planning permission and a Demand Notice on receipt of the developer's Commencement Notice.

In the case of a phased planning permission, planning permission first permits a phase of development –

- a) In the case of an outline permission, on the day of final approval of the last reserved matter associated with that phase or earlier, if agreed in writing by the collecting authority before commencement of any development
- b) For any other phase the relevant date is the date that final approval is given but if there are pre-commencement conditions the relevant date is when the final approval is given to those pre-commencement conditions.

**14. Q: What CIL related information do I have to submit with my planning application?**

A: Except for applications for Outline planning consent, all planning applications and applications for lawful development certificates must now be accompanied by the 'CIL Additional Information Requirement Form', available at the following link: [http://www.planningportal.gov.uk/uploads/1app/forms/cil\\_questions.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/cil_questions.pdf)

It is a 'Local Validation List' requirement that this form is submitted with a planning application. The application will not be validated if the form is not submitted.

**15. Q: Does CIL replace Section 106 planning obligations? If I pay CIL does that mean I won't have to negotiate a Section 106 agreement? In what circumstances will Section 106 planning obligations be negotiated?**

A: CIL does not replace Section 106 planning obligations. Subject to the requirements of CIL Regulations 122 and 123, the Council will continue to seek to negotiate Section 106

agreements in appropriate cases. If your development is required to provide Affordable Housing you will be required to negotiate its provision through the Section 106 mechanism.

Generally speaking if your development has site specific impacts that need to be mitigated, there will be a requirement for a Section 106 agreement to be negotiated. In some circumstances a S106 agreement will also be required to mitigate developments' impacts on strategic infrastructure, provided this can be justified in terms of the tests in CIL Regulation 122. Negotiations will be informed by the emerging Development Requirements Supplementary Planning Document (SPD). Developers are advised to seek early dialogue with the Council to secure advice on the likely scope of Section 106 obligations.

The Council cannot ask a developer to pay for infrastructure through the Section 106 mechanism if the developer is also required to pay for the same infrastructure through CIL.

**16. Q: What will my CIL contribution be spent on?**

A: The Council's Regulation 123 List identifies items of infrastructure which CIL receipts will be used towards delivering.

**17. Q: Can local people influence the expenditure of CIL receipts?**

A: In England, communities that draw up a neighbourhood plan or neighbourhood development order (including a community right to build order), and secure the consent of local people in a referendum, will benefit from 25% of the levy revenues arising from the development that takes place in their area. This amount will not be subject to an annual limit. For this to apply, the neighbourhood plan must have been made (see section 61E of the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38C of the Planning and Compulsory Purchase Act 2004) before a relevant planning permission first permits development (as defined by regulation 8, as amended by the 2011 Regulations and the 2014 Regulations of the Community Infrastructure Levy Regulations). This higher amount will also apply when the levy is paid in relation to developments which have been granted permission by a neighbourhood development order (including a community right to build order) (see related guidance).

<https://www.gov.uk/guidance/community-infrastructure-levy>

**18. Q: What are my procedural (and other) obligations as a developer? What happens for example if I neglect to tell the Council when my development commences?**

A: The 'Simplified CIL Payment / Collection Process' flowchart above shows the basic process that needs to be followed in order for the CIL liability to be determined and paid without complications or difficulties arising. If the process is not followed correctly, a number of sanctions are available to the Council. For example, if developers fail to submit a Commencement Notice, (meaning that the Council has to determine when the development started), or fail to pay in accordance with the Demand Notice which the Council subsequently issues in response to its receipt of the Commencement Notice, they will forfeit their right to pay in accordance with the Council's CIL Instalments Policy. The

Commencement Notice must be submitted to the Council no later than the day before the day on which the development is to be commenced.

**19. Q: What recourse to legal action does the Council have at its disposal to deal with non-payment of CIL?**

A: The CIL Regulations make numerous sanctions and financial penalties available to the Council in the event that CIL is not paid in accordance with its Charging Schedule or in the event that processes are incorrectly followed. These sanctions and penalties are not detailed here, but can be read in Part 9 of the Regulations (as amended), and Chapter 3 of the Department for Communities and Local Government document entitled 'Community Infrastructure Levy – Collection and Enforcement – Information Document', which can be accessed at the following weblink:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6312/1995794.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6312/1995794.pdf)

Sanctions include the application of surcharges and interest in the event that CIL charges are not paid in accordance with the Council's CIL Instalments Policy, the application of CIL Stop Notices in the event of non-payment of CIL, recovery of CIL through court proceedings, the sale of CIL debtors' assets, commitment to prison, and pursuit of outstanding CIL payment upon death through the deceased's executor or administrator.

**20. Q: How do I appeal against the calculation of the CIL liability, or the apportionment of the liability, against a CIL surcharge, or CIL Stop Notice, etc?**

A: The CIL Regulations provide scope for appeals to be made on a number of grounds, ranging from appeal against the calculation of the amount of CIL due, to appeal against enforcement actions the Council may take. The above mentioned CLG 'CIL Collection and Enforcement Information Document' references these in chapter 3. There are strict time limits about when appeals can be made. The Valuations Office Agency (VOA) plays a role in some appeal situations. Information is available on the VOA's website at the following weblink: <http://www.voa.gov.uk/cil/index.html>

The Planning Inspectorate also plays a role in some appeal situations, for example, in relation to appeals against the imposition of CIL surcharges, in relation to CIL collecting authorities deeming development to have commenced, and in relation to those authorities' serving of CIL stop notices. Information is available on the Planning Portal and Planning Inspectorate websites at the following weblinks:

<https://www.gov.uk/guidance/appeal-a-community-infrastructure-levy-enforcement-notice>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/521663/How to CIL May 2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/521663/How_to_CIL_May_2016.pdf)

Before initiating appeals, developers are encouraged to contact the Council in the first instance as it may be quicker, easier and less expensive to resolve issues before taking more formal action. Developers are reminded that, except in the case of applications for outline consent, it is a 'Local Validation List' requirement that a 'Planning Application Additional

Information Requirements Form' is submitted along with planning applications to provide for the Council to accurately determine the CIL liability. The form can be downloaded at the following weblink:

[http://www.planningportal.gov.uk/uploads/1app/forms/cil\\_questions.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/cil_questions.pdf)

**21. Q: Will I get my CIL contribution back if the Council does not spend it within a given period?**

A: The CIL Regulations do not provide for CIL contributions to be returned to those making the contribution within any given period, although the Regulations (specifically Regulation 62 as amended) do require the Council to report on its CIL expenditure in each financial year, detailing, for example, the items of infrastructure on which CIL has been spent, the amount spent on each item, and the total CIL received and spent.

**22. Q. When I started my development CIL was not in force but I failed to obtain planning permission. I have now been served with an enforcement notice and have submitted a retrospective planning application. If CIL is in force when I am granted planning permission will I be liable to pay CIL?**

A. Yes. Development under retrospective planning permission becomes liable when granted. Please note that it is likely that it will be too late at this point to apply for any exemptions and various surcharges and interest may be applied. The amount of CIL and surcharges may be appealed.

<https://www.gov.uk/guidance/appeal-a-community-infrastructure-levy-enforcement-notice>

<http://www.voa.gov.uk/cil/index.html>