



Stratford-on-Avon District Community Infrastructure Levy

Penalties and Surcharges Policy

November 2017

Penalties and Surcharges

A range of financial penalties ('surcharges') can be imposed by collecting authorities on persons when CIL processes have not been followed correctly. These actions are taken to ensure that authorities do not suffer financially by having to carry out additional tasks.

Stratford on Avon District Council may impose the following surcharges

Failing to assume liability before commencement

Failure to assume liability to pay CIL prior to the commencement of development will result in the Council imposing a surcharge of £50 per landowner. This surcharge ensures that the costs of establishing the identities of landowners are borne by the liable parties.

Surcharge for apportionment of liability

Where we are required to apportion liability to pay CIL between material interests in the land, we will impose a surcharge of £500 in respect of each of these interests.

Failing to submit a notice of chargeable development

Where a development is granted by way of general consent and is commenced before the collecting authority has received a notice of chargeable development. We will impose a surcharge of 20% of the chargeable amount or £2,500, whichever is the lower amount.

Failing to submit a commencement notice

Where development has commenced before the charging authority has received a valid commencement notice. We will impose a surcharge of 20% of the chargeable amount or £2,500, whichever is the lower amount.

We will notify each person known as an owner of the land of the imposition of the surcharge.

Late payment

Where payment is not received within 30 days after the due date we will impose a surcharge equal to 5% of the amount or £200 whichever is the greater amount. If the first payment is missed under our Instalment Policy the total amount of CIL that the development is liable for will become payable and the Instalment Policy will no longer apply to that development.

Late payment interest

In addition to the surcharge for late payment, we must charge interest on any late payments.

Late payment 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, and
- at an annual rate of 2.5 percentage points above the Bank of England base rate.

Failure to comply with an information notice

This applies where a person fails to comply with any requirement of an information notice before the end of 14 days beginning with the day on which the notice is served.

We may impose a surcharge equal to 20% of the relevant amount or £1,000, whichever is the lower amount.

Disqualifying events

This surcharge applies where a person who is required to notify SDC 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 occurs.

We may impose a surcharge equal to 20 % of the chargeable amount payable in respect of the chargeable development to which the disqualifying event relates, or £2,500, whichever is the lower amount.

Other Enforcement Action

Stop notices

Where development has started, CIL has not been paid and the authority thinks it expedient to stop the development from progressing any further until payment is made the authority may issue a 'stop notice'.

Warning notice

If the authority decides to issue a stop notice, it must first issue a 'warning notice', warning of its intention to impose the stop notice.

A warning notice must be served on the relevant persons:

- The liable party
- Every owner of the relevant land
- Every occupier of the relevant land
- Any other person whom the authority considers may be materially affected by the stop notice

The warning notice must be in writing and state:

The date of the notice

The authority's reasons for issuing it

The unpaid amount

That payment of this amount is due in full immediately

The period after which a CIL stop notice may be issued if the unpaid amount is not paid (this must not be less than three days or more than 28 days after the warning notice is issued)

The effect of, and possible consequences of failure to comply with, a CIL stop notice

A copy of the notice will be displayed on the relevant land.

Service of a stop notice

If the warning notice is not complied with the authority can issue the CIL stop notice. This must be sent to the relevant persons and contain the same information as required for a warning notice. A copy of the notice will be displayed on site.

If the date on the stop notice is reached without payment, no further specified activity must take place (although works necessary in the interest of health and safety will not be subject of a stop notice). It is an offence to contravene the notice, with the potential for a fine of up to £20,000 (or more on indictment). An authority may also apply to the Courts for an injunction if necessary to enforce a stop notice.

A stop notice must be withdrawn by the authority if payment is made. It may also withdraw it for other reasons.

Stop notices must be registered in the register of enforcement and stop notices.

Recovery of CIL

Collecting authorities have powers to recover charges that are due under CIL. These can be used in conjunction with stop notices or separately, e.g. where development has finished.

Reminder Notice

Collecting authorities who wish to use these mechanisms to recover CIL charges must first serve a 'reminder notice' on the person against whom the application is to be made. This must state every amount in respect of which the authority is to make the application. A reminder notice may be served in respect of any amount at any time after it has become due.

Liability order

At the end of a seven day period after the reminder has been issued, the authority can apply to the Magistrates Court for a 'liability order' against the person by whom it is payable. This is done by complaining to the justice of the peace (i.e the Magistrate's Court) and requesting that a Court summons is sent to the person(s) asking them to attend Court to explain why they have not paid the relevant amount.

Distress

Following the liability order the authority can levy the appropriate amount by distress and sale of goods of the debtor against whom the liability order was made.

The procedure for distress is set out in regulation 98. The debtor can still make full payment right up to the point before goods are sold.

Charging order

A charging order is an alternative to distress. Where a liability order is made and more than £2,000 is still owed, the authority can ask the Court to serve a 'charging order' on the debtor, to ask them to secure the outstanding amount. The procedure in regulations 103 and 104 must be followed.

Charge over the land

Authorities 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. Authorities can ask the Court to enforce a local land charge.

Commitment to prison

Where an authority is unable to recover the amounts due, it may ask the Court to commit the debtor to prison. This is likely to be an extremely rare situation, however it provides a useful last option for an authority who has exhausted all other options.