

# **FAREHAM**

**BOROUGH COUNCIL**

## **Community Infrastructure Levy and Planning Obligations**

### **A Guide for Developers and Land Owners**

## **Versions**

V001- May 2013

V002 - February 2014

V003 – September 2014

The latest revision of this guidance will always be published on the Council's web site and will replace all earlier versions.

## **Please Note**

The information relating to CIL contained in this guide is intended to assist developers and land owners to understand and determine their CIL liability. It should, however, not be regarded as definitive advice. It is not intended to replace the need to read and understand the CIL Regulations and Governmental advice on CIL. If in

doubt, developers and land owners are advised to seek their own professional advice.

## **Purpose of this Guide**

### **Introduction**

The Fareham Borough Council Community Infrastructure Levy (CIL) Charging Schedule came into force on 1 May 2013. All development for which the planning permissions are issued after this date will potentially be liable to pay the levy. In addition, certain types of development which are carried out after 1 May 2013 with the benefit of Permitted Development rights will be liable to pay the levy.

The introduction of CIL changes the way in which developers contribute to the provision of infrastructure in the borough. This guide explains the differences between CIL and S106 agreements, and the procedures that the Council will employ to collect contributions under both regimes. In addition, this guide is intended to help developers and landowners understand their CIL liabilities and how they relate to any future use of S106 agreements.

### **What is CIL?**

The Community Infrastructure Levy (CIL) was introduced by the Government in the Planning Act 2008 and allows local authorities to raise funds from new development to help pay for the infrastructure that is needed to support development in their area.

CIL takes the form of a tariff levied on each square metre of the additional floor space created by new development. Before deciding to adopt CIL a local authority has to demonstrate that a funding gap exists between the estimated cost of the provision of the infrastructure needed to support development in the area and existing identified funding sources. Once a funding gap has been demonstrated, the level of the tariff proposed by the local authority is tested to ensure that it will not affect the overall viability of development in the area. Different types of development can be subject to different rates of CIL and different rates of CIL can be applied in different geographical areas based, in both cases, on viability evidence. The CIL rates cannot be set to further policy objectives e.g. to encourage or discourage particular types of development.

The levy rate(s) applicable for different types of development are set out in the local authority's CIL Charging Schedule. Fareham Borough Council's Charging Schedule can be found here:

<http://www.fareham.gov.uk/PDF/planning/ldf/AdoptedChargingScheduleWithMaps.pdf>

From 1<sup>st</sup> January 2014 the CIL charges will be index linked (see below for further details of the index linking).

At present, certain types of development in Fareham have been given a CIL rate of £0 as, after testing, it was considered that requiring the payment of CIL would adversely affect the economic viability of those types of development. That however may change following future reviews of the Charging Schedule if viability improves.

CIL payments will be placed in a separate fund. The money from the fund will then be spent by the Council on infrastructure to support development in the borough. The Council will be able to pass on CIL funds to other organisations for them to use to provide infrastructure. For example CIL funds may be passed to Hampshire County Council for use in connection with the provision of highway and educational infrastructure.

Developers and landowners should be aware that, subject to the CIL Regulations relating to areas where there are parish or community councils or where there is a neighbourhood development plan in place, there is no requirement for there to be a direct link between the location of new development that pays CIL and the location in the borough in which the CIL contributions are spent on infrastructure schemes. CIL may even be spent on infrastructure outside the borough provided that the infrastructure would support development within the borough.

### **What happens to developer contributions previously secured by Planning Obligations?**

The Council has been using planning obligations made under Section 106 of the Town and Country Planning Act 1990 (commonly referred to as S.106 agreements) to secure pooled contributions for the provision of off-site open space and recreational facilities and, on behalf of the Hampshire County Council as Highway Authority, for sustainable transport measures. The CIL regime will not, however, completely replace the use of S106 agreements. Contributions that lie outside the scope of CIL will continue to be secured through the use of S.106 agreements. S.106 agreements will also continue to be used to restrict the development or use of land or to require that certain specified operations are carried out or that land is used/not used in specified ways.

Some development proposals will give rise to a requirement to both pay CIL and the completion of a S.106 agreement. The CIL liability and any contributions secured via S.106 planning obligations will however cover different matters and there will be no 'double charging'.

In order to clarify what types of infrastructure will in future no longer be funded via contributions secured by S.106 agreements, the Council has adopted and published a list of infrastructure types and projects that it intends will be, or may be, wholly or partly funded by CIL. This is known as the Regulation 123 list and it can be found here;

[http://www.fareham.gov.uk/planning/local\\_plan/ciladopt.aspx](http://www.fareham.gov.uk/planning/local_plan/ciladopt.aspx)

The list will be reviewed periodically to take into account any changes in circumstances and/or future infrastructure needs. It is important to note that the Reg. 123 list is not intended to be an exhaustive list of all the infrastructure types or projects that will be funded wholly or partly by CIL. Its only role is to indicate what infrastructure types or projects will not be funded by contributions secured by S.106 agreements.

## **The CIL Regulations**

The CIL Regulations first came into effect on 6<sup>th</sup> April 2010 (the 2010 Regulations). Subsequently, amendment regulations have been brought into effect in 2011, 2012, 2013 and 2014. Unfortunately, the Regulations have not been officially consolidated at any point and therefore the 2010 Regulations have to be read in conjunction with all of the subsequent amendment regulations.

Links to the 2010 Regulations and the four sets of amendment regulations can be found at the end of the first section of this guide.

The remainder of this guide is split into two sections — Part One relating to CIL, and Part Two to the future use of S106 planning obligations.

## Part One

### Fareham Community Infrastructure Levy

#### Will my development be liable to pay CIL?

Your development will be liable to pay CIL if it is of a type that is not zero rated in the Charging Schedule and

- It is a building into which people normally go to use,  
and
- If upon completion the gross internal floor area of new build will be more than 100m<sup>2</sup>. This includes extensions to existing buildings;  
or
- It is creating 1 or more dwellings even where it is not a new building (e.g. through a change of use, or an extension to an existing building) and even where the new build floor space is less than 100m<sup>2</sup>
- In certain circumstances, it involves the change of use of a building that has been unused for a period of time. See below for further details.

Your development will not be liable to pay CIL if

- It is a structure or building into which people do not usually go or go into only intermittently for maintenance (e.g. electricity sub-stations or telecommunications plant rooms) or
- It is a change of use with no additional floor space and the former use was lawful and in continuous use for a period of at least six of the twelve months preceding the issuing of the planning permission.
- It is a change of use from a single dwelling house to two or more separate dwelling houses.
- It is a “residential annexe” or a “residential extension”\*
- It is “social housing” as defined in the CIL Regulations\*
- It will be used for “charitable purposes” as defined in the CIL Regulations\*
- It will be “self-build housing” or “self-build communal development” as defined in the CIL regulations\*

\* Please note that if your proposed development is for one of these purposes you will have to formally apply for relief from CIL (see page 16-17 of this guide).

## Example CIL Scenarios

Below are some example CIL scenarios that illustrate what types of development will or will not be liable to pay CIL.

- A dwelling with a floor area of 85 sq m is to be erected on previously undeveloped land - CIL is payable on the 85m<sup>2</sup>, because a new dwelling is being created.
- A commercial building that is not in use\* is to be converted into one or more dwelling(s) - CIL is payable on the floor space of the new dwelling(s), as new dwellings are being created and no floor space is discounted.
- A site which has 2000 sq m of existing buildings all of which are in use\* is to be redeveloped for a different use. The existing 2000 sq m are reused and 1000 sq m of new floor space is created. CIL is payable on 1000 sq m because the existing floor space will be discounted.
- An existing building with a floor area of 2000 sq m of which 500 sq m is in use\* is to be demolished and a new building having a floor area of 3000 sq m is erected - CIL is payable on 1000m<sup>2</sup>, because the whole original building will be considered in use and therefore the whole existing floor area will be discounted.
- A mixture of market and social housing is to be erected on previously undeveloped land - CIL is only payable on the floor area of the market housing because affordable housing relief will be granted (if it is applied for).
- An existing building of 2000 sq m all in use\* is to be demolished and a new 2099 sq m building is erected - CIL is payable on the additional 99 sq m. There is less than 100 sq m of net additional floor space, but the 'less than 100 sq m rule' does not apply here, as the gross internal area of new build is more than 100 sq m.
- A single dwelling is to be subdivided to form two separate dwellings - no CIL is payable, because conversions from a single dwelling to two or more dwelling houses are not liable for CIL.
- An office in use\* is to be converted into one or more dwellings with no new floorspace being created - no CIL is payable because although new dwelling(s) are being created, and the floor space of the dwelling(s) is therefore theoretically liable, the existing floor space is discounted.
- Non-residential buildings with a floor area of 85sq m are to be erected on previously undeveloped land - no CIL is payable, because the new development's floor area is less than 100 sq m.

\* "in use" means that the building, or part of it, was continuous lawful use for at least six months in the three years prior to the date of the planning permission that authorised the development.

## How much CIL will I have to pay?

The amount of CIL you will be liable to pay (the chargeable amount) depends on the size, type and proposed use(s) of your development. CIL is levied as a charge per sq m of net additional internal floor space created by the development.

The gross internal floor space of any existing buildings on the site that are going to be demolished or reused may be deducted from the calculation of the CIL liability. However, these deductions in respect of demolition or change of use will only apply where the existing building (or part of it) has been in continuous lawful use for at least six months in the three years prior to the issuing of the planning permission for the development.

The CIL rates that will be applied per sq m for particular uses will be those set out in the Council's CIL Charging Schedule that was in force on the date on which a planning permission first permitted the development and not those set out in any CIL Charging Schedule that was in force at the time development commenced, if different.

As a result of the Economic Viability Assessment that was carried out on behalf of the Council prior to the adoption of the CIL Charging Schedule, the Council has set the CIL charging rate for certain types of development at £0 sq m. In the current Fareham Charging Schedule all uses are rated at £0 except:

- Residential uses falling within Use Classes C3(a) & (c) and C4
- Care homes falling within Use Classes C3(b) and C2
- Hotels falling within Use Class C1
- Retail Uses falling within Use Class A1 except those that will sell predominantly comparison goods and which will be located within the 'centres' as defined on the maps attached to the Charging Schedule.

The chargeable amount will be calculated using the formulas set out in the CIL Regulations (Regulation 40 of the Community Infrastructure Levy Regulations 2010, as amended in 2014). The formulas are set out in the following pages together with an explanation and worked examples to demonstrate how CIL will be calculated.

The Council has produced a CIL liability calculator which can provide a guide to the amount of CIL you will pay. This calculator can be found on the Council's website at: <http://www.fareham.gov.uk/cilcalc/>

Where the chargeable amount is calculated at less than £50 the CIL Regulations deem it to be zero.



## What are the CIL rates in Fareham?

The rates that development in Fareham will be liable to pay are set out in the CIL Charging Schedule. This has been examined by an independent examiner and found to be fit for purpose and in accordance with the CIL Regulations. The Charging Schedule that took effect on 1 May 2013 can be found here:

<http://www.fareham.gov.uk/PDF/planning/ldf/AdoptedChargingScheduleWithMaps.pdf>

## The Formula for calculating the chargeable amount of CIL

The amount of CIL chargeable at a given relevant rate has to be calculated by applying the following formula from Regulation 40 of the CIL Regulations:

$$\frac{R \times A \times I_p}{I_c}$$

R = relevant CIL rate

A = chargeable area

I<sub>p</sub> = index figure for year in which the planning permission was granted.

I<sub>c</sub> = index figure for year in which the charging schedule containing the rate R took effect (2013)

In the case of a simple single use development (for example an hotel or 1 new house; or 10 new houses), your CIL liability will be calculated using this formula. If you have a mixed use development, the formula will be applied for each use, and the results added up to get your total CIL liability.

## What is the Relevant Rate R?

The 'relevant rate' is the CIL rate for your type of development as set out in the Fareham Borough Council CIL Charging Schedule that was in effect on the date on which the planning permission for the development was first granted.

## What is the Chargeable Area A?

Where there is no demolition or reuse of buildings involved in your development, i.e. you are developing a new or a cleared site; the chargeable area is simply the total gross internal floor area (in sq m) of your development. The floor space will be charged at the rate(s) set for the use(s) you are proposing.

If, however, there are buildings in lawful use on the site at the time planning permission is granted, which are to be re-used or demolished, another formula will be applied to calculate the chargeable area (A) of your development. This formula is:

$$G_R - K_R - \left( \frac{G_R \times E}{G} \right)$$

**G<sub>R</sub>** is the gross internal floor area of the part of the development which is being calculated i.e. all the floor space of one type of use within in the development.

**K<sub>R</sub>** is the gross internal floor area of buildings that are already in use on the site and that will be re-used as part of the new development. For example, if you are proposing 4000sqm of office space, but 600 sq m of that is an existing building that is in use and will be reused as an office on the site, then **G<sub>R</sub> - K<sub>R</sub>** for office use will be 3400sqm.

**G** is the gross internal floor area of the whole chargeable development.

**E** is the total gross internal floor area of all buildings which are to be demolished.

The purpose of this formula is to calculate what proportion of the development is new, and to fairly apportion any demolition of buildings on the site amongst all the elements of the new development.

It is important to note that the deductions in respect of reuse (as included in **K<sub>R</sub>**) or demolitions (as featured in **E**) will only apply where relevant buildings have been in continuous lawful use for at least six months in the three years prior to the development being permitted. In addition, the CIL Regulations excludes from these deductions (a) buildings into which people do not normally go; (b) buildings into which people go only intermittently for the purpose of maintaining or inspecting machinery; and (c) buildings for which planning permission was granted for a limited period.

### **What are the Index Figures IP and IC?**

The CIL Regulations specify that the index to be used is the “National All-in Tender Price Index” published from time to time by the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors; and the figure for a given year is the figure for 1st November of the preceding year. In the event that the All-in Tender Price Index ceases to be published, the index to use will be The Retail Prices Index.

In the first year (2013) of the operation of CIL in Fareham, the indexation part of the formula can be disregarded, as the indexes for the year in which the permission was granted and for the year the CIL Charging Schedule first came into effect will be the same and cancel each other out. From 1<sup>st</sup> January 2014 the indexation came into effect and applies to any chargeable development that is granted planning permission after that date. The effect of the indexation is to increase the figures shown in the Council's Charging Schedule by 7.17% or, put another way, by multiplying them by 1.0717.

## **Calculated Examples**

### **Example 1**

Two houses totalling 180 sq m of gross internal floor space are to be built on a previously unused site with the planning permission being issued in 2013.

There is no need to calculate the chargeable area, as this is clearly 180sqm. All that needs to be done is to look up the residential CIL rate in the Charging Schedule (£105 sq m), and calculate the CIL liability using the formula (R x A x Ip) divided by 1c.

As mentioned above, in 2013, Ip divided by Ic will be 1, therefore your calculation will simply be: £105 x 180= £18,900.

### **Example 2**

A proposed mixed use development outside of one of the defined centres consists of 2000 sq m in total (1,200 of residential and 800 retail) and 500 sq m of existing floor space on the site are to be demolished.

**Step I: Calculate the Chargeable Area (A) for each use using formula**

$$G_R - K_R - \left( \frac{G_R \times E}{G} \right)$$

Firstly, for the residential:

GR = proposed residential floor space = 1200 sq m

KR = residential floor space to be accommodated in existing buildings = 0 sq m

E = floor space in use to be demolished = 500 sq m

G = total floor space of the development = 2000 sq m

Therefore

$$1200 - 0 - ((1200 \times 500) / 2000) = 1200 - 300 = 900 \text{ sq m.}$$

Secondly, for the retail:

$$\text{GR} = \text{proposed retail floor space} = 800 \text{ sq m}$$

$$\text{KR} = \text{retail floor space to be accommodated in existing buildings} = 0 \text{ sq m}$$

$$\text{E} = \text{floor space in use to be demolished} = 500 \text{ sq m}$$

$$\text{G} = \text{total floor space of the development} = 2000 \text{ sq m}$$

Therefore

$$800 - 0 - ((800 \times 500) / 2000) = 800 - 200 = 600 \text{ sq m.}$$

**Step 2: Calculate the CIL charge for each use using formula**

$$\frac{R \times A \times I_p}{I_c}$$

The figures of 900 sq m and 600 sq m from step 1 are now entered as 'A' into two separate calculations using the CIL liability formula  $R \times A$ , which are then multiplied by  $I_p / I_c$ .

$$\text{Firstly, for the Residential} - £105 \times 900 = £94,500$$

$$\text{Secondly, for the Retail} £120 \times 600 = £72,000$$

For the purposes of completing this example, the value of  $I_p / I_c$  is assumed to be 1.2.

$$£94,500 \times 1.2 = £113,400$$

$$£72,000 \times 1.2 = £86,400$$

**Step 3: Add all results to get your total CIL liability:**

$$£113,400 + £86,400 = £199,800$$

### **Example 3**

A proposed mixed use development outside a centre is made up of 2000 sq m in total (1,200 sq m of residential and 800 sq m retail). 500 sq m of existing floor space on the site are to be demolished. 160 sq m of existing floor space on site will be reused as part of the retail element of the new scheme.

**Step 1: Calculate Chargeable Area (A) for each use using formula:**

$$G_R - K_R - \left( \frac{G_R \times E}{G} \right)$$

Firstly, for the residential:

GR = proposed residential floor space = 1200 sq m

KR = residential floor space to be accommodated in existing buildings = 0 sq m

E = floor space to be demolished = 500 sq m

G = total floor space of the development = 2000 sq m

Therefore

$$1200 - 0 - ((1200 \times 500) / 2000) = 1200 - 300 = 900 \text{ sq m.}$$

Secondly, for the retail:

GR = proposed retail floor space = 800 sq m

KR = retail floor space to be accommodated in existing buildings = 160 sq m

E = floor space to be demolished = 500 sq m

G = total floor space of the development 2000 sq m

Therefore

$$800 - 160 - ((800 \times 500) / 2000) = 640 - 200 = 440 \text{ sq m.}$$

**Step 2: Calculate the CIL charge for each use using formula**

$$\frac{R \times A \times I_p}{I_c}$$

The figures of 900 sq m and 440 sq m from step 1 will now be entered as 'A' into two separate calculations using the CIL liability formula R x A, which are then multiplied by p/lc. -

For the Residential £105 x 900 = £94,500

For the Retail £120 x 440 = £52,800

For the purposes of completing this example, the value of  $I_p / I_c$  is again assumed to be 1.2.

$$£94,500 \times 1.2 = £113,400$$

$$£52,800 \times 1.2 = £63,360$$

### **Step 3 Add all results to get your total CIL liability**

$$£113,400 + £63,360 = £176,760$$

## **The CIL process**

The CIL collection arrangements are covered in Part 8 of the CIL Regulations, and in section 3 of the Government's CIL Guidance which can be found here:

<http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/>

The process is summarised in the chart on page 20 of this guide. Throughout the process a number of forms have to be submitted to the Council. All the CIL forms are available from the Planning Portal. The appropriate links are given for each form as they are mentioned in the following sections.

### **What information will I need to submit with my application?**

The introduction of the levy means that the Council now requires additional information to determine whether a charge is due and, if it is, to determine its amount. Applicants are therefore required to answer additional questions to enable the Council to calculate the levy liability.

The planning portal has provided a form which should be filled in and submitted with planning applications to provide all the information the Council requires. The form can be found here:

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

It is in the applicant's interest to provide this information accurately, especially where there are existing buildings in use on the site as the Council will use it to calculate any discounts which may be available.

It is a criminal offence to knowingly or recklessly supply false or misleading information. A person guilty of such an offence is liable, on summary conviction, to a fine of up to £20,000 or, on indictment, to imprisonment for a term of up to two years and/or an unlimited fine.

## How will I know how much CIL I am liable for?

This guide provides an overview of how your CIL liability will be calculated. The Council has also produced a CIL calculator to allow you easily to estimate your likely CIL liability. This calculator can be found on the CIL pages of the Council's website at: <http://www.fareham.gov.uk/cilcalc/>

You will be informed formally of your CIL liability by a 'CIL Liability Notice', which the Council will issue shortly after planning permission has been granted, or, where planning permission was not required, once you have sent the Council a Notice of Chargeable Development.

If your development is liable to pay CIL, but the chargeable amount is £0 because, for example, your development attracts 100% social housing relief, or if your total liability is less than £50, you will still be sent a CIL liability notice, confirming that your liability is £0.

The CIL regulations state that if your CIL liability is less than £50, it will be deemed to be £0

## Letting the Council know who will pay the CIL linked to a development

The person (including the owner of the land on which the development will take place) who wishes to assume liability for the payment of CIL **must** inform the Council.

If you wish to assume liability to pay the CIL charge, you must complete an Assumption of Liability form and send it to the Council ('Form 1: Assumption of Liability'), available on the Planning Portal:

[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 you later want to withdraw or transfer liability, for example if you sell the site, you must complete either 'Form 3: Withdrawal of Assumption of Liability' or 'Form 4: Transfer of Liability' both available from the Planning Portal:

[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)

[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)

and send it to the Council.

The Council will issue the CIL Liability Notice to the persons who have assumed liability, as well as the landowner(s), if the two are different.

If no person has assumed liability, the liability to pay CIL defaults to the owner(s) of the land on which the development will take place and the Council may impose a surcharge of £50 on each of the owner(s) if development has commenced. In addition, the option of paying the CIL in accordance with the Council's Instalment Policy is lost and the full CIL amount must be paid within sixty days of the commencement of the development.

### **Relief for Social Housing and Charitable Development**

Social housing relief is mandatory and will benefit most social rent, affordable rent and intermediate rent housing that is provided by a local authority or a private registered provider.

Although the relief is mandatory if the criteria are met, it must be claimed.

If you want to claim mandatory Social Housing Relief or Charitable Relief you should make your claim once planning permission has been granted, although of course you can inform the Council that you intend to do this earlier in the process. The claim **must** however in any event be made **before** any development commences

To claim relief, you must use Form 2: Claiming Exemption and Relief, available from the Planning Portal:

[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)

The Council will send out a revised liability notice if relief has been granted.

Note that any relief granted is repayable to the Council if the development ceases to be used for social housing or charitable purposes within the period of seven years from the date of the commencement of the development.

### **Forms of Discretionary Relief**

The CIL Regulations give CIL Charging Authorities the discretion to make available 'Exceptional Circumstances Relief', 'Discretionary Charitable Relief' (which is in addition to and separate from 'Mandatory Charitable relief) and "Discretionary Social Housing Relief" (which is separate from mandatory Social Housing Relief) available in their areas. Fareham Borough Council has decided not to make any of these types of discretionary relief available within its area at present.

### **Exemption for Self-Build Dwellings Residential Annexes and Extensions**



The 2014 CIL Amendment Regulations introduced exemption from CIL for “self-build housing” and “self-build communal development”. Self-build housing is defined as being a dwelling built or commissioned by a person and occupied by that person as their sole or main residence. Self-build communal development is defined as being development which is not a dwelling and is for the benefit of more than one dwelling that is self-build housing.

Claims for self-build housing or self-build communal development exemption **must** be made **before** development commences. The claim must be made on the prescribed form which is available from the Planning Portal:

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_sb1-1\\_exemption\\_claim.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_sb1-1_exemption_claim.pdf)

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_sb1-2\\_exemption\\_claim.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_sb1-2_exemption_claim.pdf)

The second form must be submitted to the Council within six months of the completion of the dwelling.

Note that any self-build exemption granted is repayable to the Council if a “disqualifying event” occurs within three years from the date of the compliance certificate relating to the relevant dwelling. See Regulation 54D for what constitutes a disqualifying event.

Further detailed guidance can be found in section 7 of the Government’s CIL Guidance:

<http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/>

## **Exemption for Residential Annexes and Extensions**

The 2014 CIL Amendment Regulations also introduced exemption from CIL for “residential annexes and residential extensions”. See Regulation 42A for the relevant definitions.

Claims for residential annexe and residential extension exemption **must** be made **before** development commences. The claim must be made on the prescribed form which is available from the Planning Portal:

[http://www.planningportal.gov.uk/uploads/1app/forms/form\\_sb2\\_annex\\_or\\_extension\\_claim.pdf](http://www.planningportal.gov.uk/uploads/1app/forms/form_sb2_annex_or_extension_claim.pdf)

Note that any exemption granted in relation to residential annexes is repayable to the Council if a “disqualifying event” occurs within three years from the date of the compliance certificate relating to the relevant dwelling. See Regulation 42C for what constitutes a disqualifying event.

Further detailed guidance can be found in section 7 of the Government's CIL Guidance:

<http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/relief/self-build-exemption/>

## **Paying the Levy**

Whoever has assumed liability to pay CIL (or the owner of the land) must send a commencement notice (Form 6) 'Commencement Notice':

[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)

to the Council and to all owners of the relevant land before development commences to notify them of the intended commencement date. The Council will then send a CIL Demand Notice to the person or persons who have assumed liability (or the owner(s)). After this, the liable parties should follow the correct payment procedure, including payment dates as set out in the Demand Notice.

It is vital that the Council receives a Commencement Notice **before** development commences. If a Commencement Notice has not been received before development commences, the Council may impose a surcharge of 20% of the chargeable amount up to a maximum of £2,500. In addition, the option of paying the CIL in accordance with the Council's Instalments Policy will be lost and the full amount becomes payable within sixty days of the commencement of development.

The CIL charge becomes due when development commences. The CIL Regulations require payment to be made within 60 days of commencement of the development unless the Council has adopted an instalment policy. Fareham Borough Council has, however, adopted a CIL instalments policy which allows payment by instalment for some developments. The instalment policy can be found here:

[http://www.fareham.gov.uk/planning/local\\_plan/ciladopt.aspx](http://www.fareham.gov.uk/planning/local_plan/ciladopt.aspx)

It is important that all CIL instalments are made to the Council by the due dates. Late payment of an instalment results in the outstanding balance of the chargeable amount becoming payable immediately and the Council may also impose a surcharge of 5% of the chargeable amount up to a maximum of £200.

The Council will issue a receipt for all CIL payments that are made.

## **Where to send all CIL Forms**

All CIL forms sent to the Council should be addressed to:

Fareham Borough Council, Department of Planning and Environment (CIL), Civic Offices, Civic Way, Fareham, Hants PO16 7AZ.

## **Payment in Kind**

The CIL Regulations allow the Council to accept full or part payment of a CIL liability by way of the transfer of land to the Council (Reg.73). An agreement relating to such a payment must be made in writing **before** the chargeable development commences.

The value of any land offered by way of payment has to be determined by a suitably qualified independent person.

Note that the Council is not obliged to accept any offer of payment in kind.

The 2014 CIL Amendment Regulations (Reg.73A) introduced the ability for CIL Charging Authorities to make available in their area the payment of all or part of a CIL liability by the provision of one or more items of infrastructure. At present the Council has not made the option of such payments available in its area.

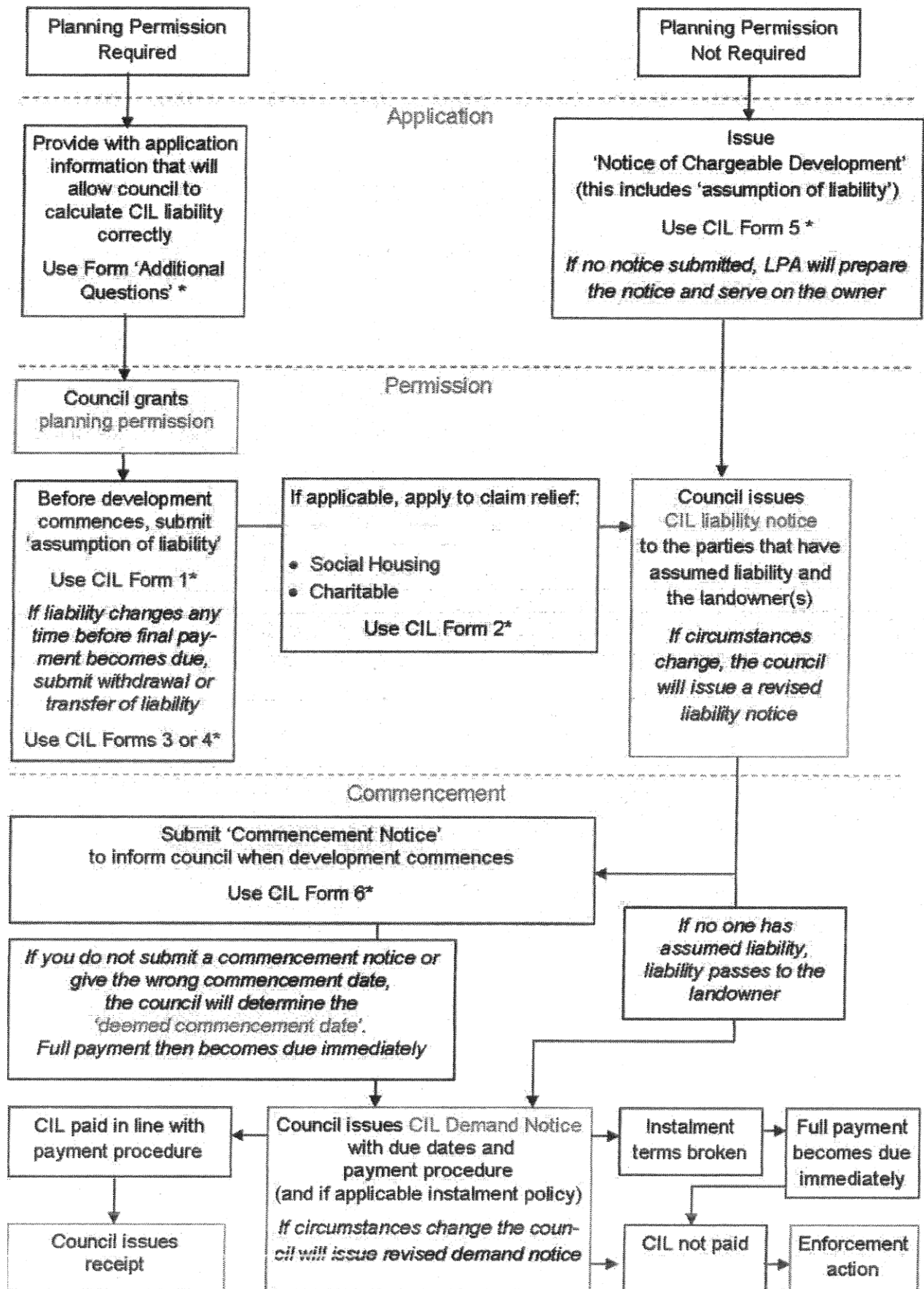
## **Enforcement**

If the correct payments are not received at the right times, the Council has the power to impose a range of surcharges, to issue CIL stop notices preventing further development and, if necessary, to recover funds through legal action including the seizure of goods. The enforcement options available to the Council are set out in regulations 80-107 of the CIL Regulations 2010. They are also explained in the CIL collection and enforcement information document issues by CLG

[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)

## **CIL Process Flow Chart**

The next page shows a flow chart for the basic CIL process.



## FAQs on CIL Liability

### **Q. What about applications that pre-date the date CIL comes into effect in Fareham?**

A. The Regulations require the levy to be applied to all development for which the planning consent was granted i.e. issued, after the date on which a charging schedule came into effect (1st May 2013 in Fareham's case). The date at which the application was made is not relevant, neither is the date of the officer's recommendation nor the date on which a planning application was considered by the Planning Committee. The Council has no discretion in this matter, as it is set by law. The levy will also apply to any planning consents issued by a Planning Inspector as a result of a successful appeal after the date on which a Charging Schedule comes into effect

### **Q. I have an existing Outline Permission, so would I have to pay CIL when the Reserved Matters are approved?**

A. If your outline was granted prior to the coming into effect of the CIL Charging Schedule, no, because the reserved matters do not constitute a new planning consent. You would only be liable for the levy if you receive permission on a new outline application or a detailed full application.

### **Q. My development does not need planning permission. Will I still pay CIL?**

A. Development commenced under a 'general consent' is liable to pay CIL if the relevant local authority has a CIL Charging Schedule in effect. 'General consent' includes permitted development rights granted under the General Permitted Development Order 1995, and developments permitted through a Local Development Order. If you intend to undertake a chargeable form of development under general consent you must submit a 'Notice of Chargeable Development' (Form 5 available on the Planning Portal [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))

to the Council before you commence the development. You do not need to submit such a notice if your development will be less than 100 square metres of new floor space and it does not comprise one or more new dwellings.

## Further Information

### **Guidance Documents**

The CIL Regulations and detailed guidance from the Department of Communities and Local Government can be found here:

DCLG Community Infrastructure Guidance -  
<http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/>

["The community infrastructure levy regulations 2010 !\[\]\(d0a1791f26d167e866e44ebbf83efebe\_img.jpg\)](#)

["The community infrastructure levy \(amendment\) regulations 2011 !\[\]\(5eb1325dfdc3f1cad8426726c0db51cd\_img.jpg\)](#)

["The community infrastructure levy \(amendment\) regulations 2012 !\[\]\(eafc244b53721dd1ec133f0772f70fc7\_img.jpg\)](#)

["The community infrastructure levy \(amendment\) regulations 2013"](#)

["The community infrastructure levy \(amendment\) regulations 2014"](#)

Please note that the CIL Regulations have not been consolidated and therefore the 2010 Regulations must be read in conjunction with all the subsequent amendment regulations.

## **Part Two**

### **Planning Obligations**

#### **What are Planning Obligations?**

Planning obligations are agreements (also known as “S.106 agreements”) made between the Council and land owners under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) that impose covenants on the land in question to regulate its use, to secure monetary contributions or the provision of facilities.

CIL Regulation 122 states that planning obligations may only be used if they are necessary to make the development acceptable in planning terms. They must also be directly related to the development; and be fairly and reasonably related in scale and kind to the development.

As well as these legal tests the CIL regulations have introduced restrictions on the pooling of S106 contributions, so that no more than 5 developments may contribute to the same infrastructure project. Following the adoption of its CIL Charging Schedule, the Council will no longer collect the tariff type developer contributions towards off-site recreational facilities and, on behalf of Hampshire County Council, sustainable transport.

The Council has published a list under CIL Regulation 123 (known as the Reg.123 List) which sets out what types of infrastructure it may wholly or partly fund through CIL. From the date of the bringing into effect of its CIL Charging Schedule (1 May 2013) the Council will not use S106 planning obligations to secure contributions towards those items.

The Reg.123 list may be changed by the Council at any time subject to compliance with the procedures set out in the CIL Regulations and Government guidance. The Council’s up to date Reg.123 list will always be published on the Council’s website.

#### **Affordable Housing**

The securing of the provision of on-site affordable housing is nationally one of the most common uses S106 planning obligations. In Fareham however the Council has historically secured the provision of affordable housing through the use of planning conditions rather than planning obligations.

Unless otherwise agreed by the Council, affordable housing must be provided in line with Policy CS18 of the Fareham Core Strategy, adopted in August 2011 which can be found here:

<http://www.fareham.gov.uk/pdf/planning/CoreStrategyAdopted.pdf>

## **Possible Future Uses for S.106 Planning Obligations**

The guiding principle behind the use of S106 planning obligations is that they must be directly related to the development and necessary to make the development acceptable in planning terms. Planning obligations will therefore only be sought where the nature of a site and the proposals for it make it necessary to do so. Examples of possible uses of planning obligations are:

The provision of on-site public open space and arrangements for its long term maintenance.

Crime Prevention: crime prevention should be considered as part of the design process of all development. However, sometimes it will be necessary to secure through planning obligations such things as CCTV cameras,

Sustainability Measures: for example sustainable drainage (see policy CS15 Sustainable Development and Climate Change of the Fareham Core Strategy).

Employment and Skills: the Council may seek the provision of skills training or the use of local labour in construction.

To secure contributions towards the cost of making traffic regulation orders adjacent to application sites.

To restrict the way in which land is used e.g. to prevent the use of a residential annexe as a separate dwelling house.

## **Planning Obligations – The Process in Fareham**

The Council uses the following procedure in relation to planning obligations:

The Council will use planning obligations to mitigate site specific impacts caused by the development. Obligations will only be used where the development should not be permitted without the measures, i.e. where the measures are necessary to make the development acceptable in planning terms.

The Council will assess each planning application individually to determine whether an obligation is needed and what matters it should address.

## **Timings**

Where a proposed development is likely to require the completion of a S106 planning obligation, this will be brought to the developer's attention as soon as possible in the process. This is likely to be at the pre-application stage if pre-application advice is sought. For more details of the Council's pre-application advice service, applicants should refer to the Council's website at [http://www.fareham.gov.uk/planning/applications\\_and\\_advice/preapp](http://www.fareham.gov.uk/planning/applications_and_advice/preapp).



## **Fees**

Developers will be expected to pay the Council's reasonable legal costs associated with the drafting and completing of S106 planning obligations. Those costs must be paid on or before the completion of the obligation. In some cases the payment of a contribution towards the costs of monitoring compliance with the terms of the planning obligation may also be required.

## **Monitoring**

Following the completion of a s106 planning obligation, a copy will be placed on the planning register and an appropriate entry made on the Local Land Charges Register. Information relating to the agreement is then entered into a database for the purpose of monitoring.

## **Enforcement**

If it is evident that a S106 planning obligation is not being or has not been complied with, formal enforcement action will be initiated once other efforts to secure compliance have failed. The formal method of enforcing compliance with planning obligations is by applying to the Courts for an injunction, which if granted, may have the effect of stopping the development proceeding. The Council also has the power to enter the land and carry out any works required by the planning obligation and then recover the costs of so doing from the land owner. Any person who obstructs the Council carrying out such works commits an offence and is liable, on conviction, to a fine of up to £1000.

Any planning obligation relating to a monetary contribution will contain a provision for interest to be payable on late payments.

## **Highways Requirements**

Hampshire County in its capacity as Highway Authority will continue, in appropriate circumstances, to require the completion of agreements under S.278 of the Highways Act 1980. Any such agreements will not however be used to secure the provision of infrastructure that the Charging Authority intends to fund through CIL.