

Community Infrastructure Levy (CIL)

A Guide for Parish Councils

The information contained within this guide is intended to assist Parish Councils within Cheltenham Borough to understand their rights and responsibilities relating to the Community Infrastructure Levy.

The guide is structured around the following questions:

Contents

What is the CIL?	3
How is CIL calculated?	3
When do developers have to pay CIL?	3
Does every residential development have to pay CIL?	4
How much CIL funding are we entitled to?	4
When will we receive our funding?	4
What can we spend our funding on?	5
Do we need to apply for our funding?	6
Who makes the final decision on spending?	6
What help is available on identifying projects for funding?	7
What other sources of funding are there?	7
Can CIL and S106 contributions be put together to fund a project?	8
What requirements are there for us to report on income and expenditure?	8
What help is available with meeting our reporting requirements?	9
Appendix 1 'CIL Rate Summary Statement 2020'	10
Appendix 2 'Policy for paying by Instalments'	15
Appendix 3 'Template for the Parish Funding Statement'	17

What is the CIL?

The Community Infrastructure Levy (CIL) was introduced by the Government in the Planning Act 2008.

'District' Councils can choose to implement the levy if they can demonstrate that they require additional funding for infrastructure to accommodate their planned and required growth and that the proposed rates will not undermine the viability of development and stop it coming forward.

How is CIL calculated?

CIL is charged on planning applications for certain buildings (in Cheltenham Borough at the moment it is just residential dwellings, retirement homes and extra care homes) at a rate per square metre (see Charging Schedule in Appendix 1 'BCIS Index for 2020') so the exact amount will depend upon the size/'Net New Gross Internal Floor Area' of each dwelling.

When do developers have to pay CIL?

The Borough started 'charging' CIL on the 1st January 2019, however as a result of the legislation and Instalments policy adopted (see Policy for paying by Instalments in Appendix 2) payments are not necessarily received as soon as planning permission is granted. The instalments policy consists of three bands, based on the amount of CIL Liability:

Band 1 - £100,000 or less requires 'one instalment' of 100% payable within 18 months of commencement of development;

Band 2 - £100,001 to £1,000,000 requires 'three instalments' of 10% payable within 60 days, 45% within 6 months and 45% within 12 months all of commencement of development; and

Band 3 - £1,000,001 and above requires 'four instalments' of 10% payable within 60 days, 30% within 6 months, 30% within 12 months and 30% payable within 24 months all of commencement of development.

As you can see the periods are calculated from 'commencement of development' which is an important point to note as it is not on grant of planning permission, so this could be anytime up to 3 or 5 years from planning permission being granted.

Does every residential development have to pay CIL?

It is also worth saying that certain deductions for the demolition or re-use of existing buildings and 'Reliefs' for self-build houses, annexes, extensions, social housing and development by charities may be claimed, even after planning permission is granted, providing this is before commencement of development which may result in no CIL payment being received.

The process is governed by the Community Infrastructure Levy Regulations 2010 (as amended).

How much CIL funding are we entitled to?

The duty to pass on the Neighbourhood Fund/Allocation to Parishes (the legislation describes them as 'local councils') is found in Regulation 59, which was introduced in the 2013 amendments to the Regulations and states that the Charging Authority (Borough Council) must pay:

15% to Parish Councils - 59A (7) - subject to a cap of £100 per existing dwelling in the Parish, plus indexation (based on the number of Council Tax paying dwellings as at 30th March in the preceding year);

15% held by the Charging Authority from development within a designated Neighbourhood Area, which must be spent in the area in consultation with the Neighbourhood Forum;

25% (uncapped) to Parish Councils with a 'made' Neighbourhood Plan;

25% (uncapped) held by the Charging Authority from development within a designated Neighbourhood Area with a 'made' Neighbourhood Plan which must be spent in that area in consultation with the Neighbourhood Forum; and

15% (uncapped) to the Charging Authority in unparished and undesignated areas to be spent in consultation with the community in any area without a Parish Council or Neighbourhood Forum.

When will we receive our funding?

Regulation 59 also provides details of when payments must be made:

Unless otherwise agreed Parish Councils must receive their 'Neighbourhood' allocation on set dates twice a year from monies received in the preceding six months –

Regulation 59D:

The charging authority must make payment in respect of the CIL it receives from 1st April to 30th September in any financial year to the local council by 28th October of that financial year; and

The charging authority must make payment in respect of the CIL it receives from 1st October to 31st March in any financial year to the local council by 28th April of the following financial year; unless

The charging authority and the Parish agree an alternative timetable of payments.

Any payments made will be accompanied by a statement showing a breakdown of the origin of the sums included.

What can we spend our funding on?

There are of course restrictions on what this funding can be spent on but the Neighbourhood Fund has more flexibility than the remaining Infrastructure Fund:

The remaining Infrastructure Fund, held by the Borough Council as Charging Authority, can only be spent on - “the provision, improvement, replacement, operation or maintenance of infrastructure” (Regulation 59C(a)). The Planning Act 2008 states that infrastructure includes:

- roads and other transport facilities;
- flood defences;
- schools and other educational facilities;
- medical facilities;
- sporting and recreational facilities; and
- open spaces.

The definition also includes affordable housing, however this is specifically excluded from CIL meaning that CIL relief may be claimed on any ‘social housing’ classed as affordable dwellings within a development and that ‘District’ CIL receipts will not be spent on providing affordable housing, as Section 106 must continue to be used to do this.

The Neighbourhood Fund can be spent on “the provision, improvement, replacement, operation or maintenance of infrastructure” plus - “anything else that is concerned with addressing the demands that development places on an area” (Regulation 59C(b)).

There are a couple of caveats to this:

First is that the Parish have to have the power to spend the funding on what they want, so those with a General Power of Competence (GPC)¹ may be able to spend on some items that others would have to ask the Borough to assist with;

Second is that there is a 'clawback period' of five years after which the Borough will reclaim the funding or ask for the justification for holding on to it; and

Third the Borough have a monitoring and enforcement role where monies that they believe have been inappropriately spent can be reclaimed. In any financial year when a Parish receive, hold or spend CIL monies they are required to produce a funding statement which must be published on their website and submitted to the Borough Council (who themselves now have to publish and submit to Government an annual 'Infrastructure Funding Statement' covering both CIL and S106 income and expenditure) which will be used for monitoring purposes.

Do we need to apply for our funding?

When the Borough Council receive CIL payments from a developer, in an area covered by a Parish Council, they 'must' pass on the 'Neighbourhood Fund/Allocation' to the Parish (providing they have a responsible financial officer) so there is no need to apply for it.

Who makes the final decision on spending?

It is for the Parish Council to take responsibility as since the Neighbourhood Fund (described as a "Meaningful Proportion" in the amendment to the regulations) was introduced on 25th April 2013 the government's intention has been that it would encourage communities to accommodate new development and allow them the ability to address the subsequent impact of new development, themselves.

Where a Parish Council has a 'Neighbourhood Plan' (also known as a Neighbourhood Development Plan or NDP) that has been approved at a referendum and then has, or will be, 'made' by the Borough Council, the expectation is that the priorities contained in the plan will guide the projects identified, unless there is a clear reason for doing otherwise.

¹ as outlined in the Localism Act (2011), ss 1-8

What help is available on identifying projects for funding?

In person help is available through the Borough Council's CIL Team.

Cheltenham Borough, Gloucester City and Tewkesbury Borough Councils were required to prepare an Infrastructure Delivery Plan (IDP), for the Joint Core Strategy (JCS), to identify infrastructure priorities across the three areas which are needed to support the development identified in the Plan. This document and an annually updated project tracker is/are available to use to identify potential collaboration between Parish and District Councils and identify where funding gaps exists.

Having adopted the JCS in December 2017 the JCS councils then prepared/are now preparing their own District Level Plans, which themselves will include their own IDPs to support the smaller scale development identified in them.

Consultation during the preparation of these plans was/is an opportunity for parish councils to not only have their say on proposed policies and sites but to also highlight infrastructure requirements identified by them as a priority to support development in their area.

What other sources of funding are there?

In theory there is nothing to stop parishes putting forward schemes for inclusion in the JCS, or Borough Plan's IDP, however success would be determined by whether the infrastructure they desire is such that it supports the development of the "Charging Authority's area", i.e. the JCS area and/or Cheltenham borough. Parishes accommodating Strategic Allocations for example may have aspirations that align with the infrastructure needs identified as critical in the JCS IDP in which case, if they want to ensure it's delivery it is likely to be more appropriate, or necessary if they don't have the relevant 'competence', to exercise their right, under Regulation 59A(12), to ask the Council to retain some or all of their neighbourhood Funding (if asked to do so the Borough 'must' do this).

It is important to remember that CIL does not replace Section 106 agreements and developers will still be expected to mitigate any impact on the environment or local infrastructure that arises directly as a result of their development, in line with the tests set out in CIL Regulation 122 and National Planning Policy Framework (NPPF) Paragraph 56, so for example the following will still continue to be provided through planning obligations:

- Affordable housing (as this is outside the scope of CIL);
- Infrastructure that is required as a result of specific development;
- Commuted sums for the maintenance of facilities/infrastructure that the developer would like another body to adopt; and
- Mitigating the direct negative impacts of a specific development.

Can CIL and S106 contributions be put together to fund a project?

As a result of changes brought about by the 2019 amendment Regulations including the removal of Regulation 123 and pooling restrictions on S106 obligations it is now possible/legal to fund a project from both CIL and S106 and whilst we must still not take 'the same money' twice it is now our obligation, through the annual Infrastructure Funding Statement, to demonstrate that this has not happened.

What requirements are there for us to report on income and expenditure?

In any financial year when a Parish receive, hold or spend CIL monies they are required to produce a funding statement which must be published on their website and submitted to the Borough Council (who themselves now have to publish and submit to Government an annual 'Infrastructure Funding Statement' covering both CIL and S106 income and expenditure) for monitoring purposes and published on their website if the parish do not have their own. The regulations provide a template for this 'Parish Funding Statement' which is included in Appendix 4.

The Borough Council ask that the following timetable is followed:

Any time	<ul style="list-style-type: none"> Parish Council spend / allocate CIL Income
After 31st March each year	<ul style="list-style-type: none"> Parish Council prepare and audit annual CIL report
By 30th June each year	<ul style="list-style-type: none"> Parish Council submit CIL report to Borough Council and publish on Parish Council website
July to November each year	<ul style="list-style-type: none"> Borough Council review the Parish Council's report, reconcile with accounts and raise any issues with Parish Council
By 31st December each year	<ul style="list-style-type: none"> When Parish Council reports are agreed with the Borough Council they are added to the Borough Councils own report and published
Annually	<ul style="list-style-type: none"> If Parish Councils do not spend / allocate CIL income within 5 years it will be 'clawed back' by the Borough Council

What help is available with meeting our reporting requirements?

An annual statement will be sent to all Parishes who have received funding in the last financial year, in April.

Cheltenham Borough Council's 'Annual CIL Rate Summary Statement'

Approved for Publication by Cabinet on the 1st December 2020

Introduction

The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) require CIL Charging Authorities to:

"Each calendar year, no earlier than 2nd December and no later than 31st December ... publish a statement ("Annual CIL Rate Summary") in relation to the next calendar year".

Regulation 121C(1)

This 'Annual CIL Rate Summary' Statement sets out how 'indexation' will affect CIL charges within Cheltenham Borough from 1st January 2021 to 31st December 2021.

Indexation

Indexation allows the rates we charge to be adjusted to take account of inflation.

Whilst the most common index is the Retail Prices Index (RPI), published by the Office for National Statistics, the CIL Regulations require us to use an index published by the Royal Institute of Chartered Surveyors (RICS).

The CIL Regulations require RICS to publish the CIL Index for 1st November each year, starting in 2019 and updated annually thereafter and for all Charging Authorities to apply this index.

Calculating CIL

CIL is calculated by multiplying the net increase in gross internal area (GIA)² by the relevant CIL rate (£/m²). The CIL rates must be index linked from the year that CIL was introduced to the year that a planning permission is granted.

Background

Prior to changes in the CIL Regulations in 2019 we were required to use the national 'All-In Tender Price Index', published by RICS' Build Cost Information Service (BCIS). Changes to the CIL Regulations that came into force on the 1st September 2019 now require us, from the Calendar year 2020, to use a new RICS 'CIL Index'.

Along with the other JCS Authorities Cheltenham Borough Council began charging CIL on planning permissions granted after the 1st January 2019. As required at the time the Authorities applied the 'All-In Tender Price Index' published on the 1st November 2018 for the first calendar year of charging.

The index is now applied annually on the 1st January each year based on the RICS 'CIL Index' published on the 1st November in the previous year.

New Charges

² The definition of gross internal area is not specified in the regulations; however, the generally accepted method of calculation is the RICS Code of Measuring Practice (6th edition, 2015)

From the 1st January 2021 to the 31st December 2021 rates have been adjusted in line with the RICS CIL Index published for the 1st November 2020 (26th October 2020).

The table below shows:

- The original charges in Year 1 (2019) when we began charging and the index was 322;
- the increased charges in Year 2 (2020) as the index rose by 3.73% to 334; and
- the reduced charges that will apply in Year 3 (2021) as the index has fallen by 0.3% to 333.

Charging Schedule

Development Category	All-in TPI 01/11/18	Year 1 (2019)	CIL Index 01/11/19	Year 2 (2020)	CIL Index 01/11/20	Year 3 (2021)
Cheltenham Borough Council						
10 dwellings and under including extensions and annexes greater than 100 m ²	322	£148 per m ²	334	£153.52 per m ²	333	£153.06 per m ²
Between 11 and 449 dwellings	322	£200 per m ²	334	£207.46 per m ²	333	£206.83 per m ²
450 dwellings and over	322	£35 per m ²	334	£36.31 per m ²	333	£36.20 per m ²
JCS Strategic Allocations A5 and B1	322	£35 per m ²	334	£36.31 per m ²	333	£36.20 per m ²
Retirement Homes	322	£200 per m ²	334	£207.46 per m ²	333	£206.83 per m ²

Extra Care Homes	322	£100 per m ²	334	£103.73 per m ²	333	£103.42 per m ²
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Publication

Regulation 121C(3) requires us to “publish each annual CIL rate summary” on our “website”. This statement will therefore be published on-line, alongside Cheltenham Borough Council’s Infrastructure Funding Statement (IFS) no later than the 31st December 2020.

Contingency

If the RICS CIL Index is discontinued, we will revert to using the BCIS Index and, in the event that both are discontinued, we will use the Retail Price Index.

Further information and all CIL forms are available on the Planning Portal website at:

www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil

If you have any questions regarding CIL please contact us at:

Cheltenham – cil@cheltenham.gov.uk

Appendix 2 'Policy for paying by Instalments'

Community Infrastructure Levy (CIL) Instalments Policy

In accordance with Regulation 69B of the Community Infrastructure Levy Regulations 2010 (as amended), Cheltenham Borough Council have produced this Instalments Policy for publication.

This policy allows persons liable to pay CIL to do so by instalments. As required by regulations, the time the first payment is due is calculated from the date the development is commenced at which time a demand notice will be issued setting out the Instalments Plan in detail.

Failure to submit the assumption of liability form (CIL Form 1), prior to commencement of development, will disqualify an applicant from paying by instalments and the total amount liable will become payable within 60 days of commencement of development.

In accordance with Regulation 83, failure to notify the charging authority of commencement through the submission of a statutory commencement notice (CIL Form 6) will result in the total amount liable, along with any surcharges and interest specified in the regulations, becoming payable immediately.

Failure to pay an instalment on or before the due date identified in the statutory demand notice will result in the total outstanding amount liable, along with any surcharges and interest specified in the regulations, becoming payable immediately.

INSTALMENTS POLICY:

This Instalments Policy will take effect from 1st January 2019.

Table 1: Schedule of Instalments

Total Amount of CIL Liability	Number of Instalments	Payment periods and Proportion of CIL Due			
		1 st Instalment	2 nd Instalment	3 rd Instalment	4 th Instalment
£100,000 or less	One	100% payable within 18 months of commencement of development			
£100,001 to £1,000,000	Three	10% payable within 60 days of commencement of development	45% payable within 6 months of commencement of development	45% payable within 12 months of commencement of development	
£1,000,001 and above	Four	10% payable within 60 days of commencement of development	30% payable within 6 months of commencement of development	30% payable within 12 months of commencement of development	30% payable within 24 months of commencement of development

Appendix 3 'Template for the Parish Funding Statement'

Reporting by parish councils

Regulation 121B.—(1)A parish council must prepare a report for any financial year (“the reported year”) in which it receives CIL receipts.

(2) The report must include—

(a) the total CIL receipts for the reported year;

(b) the total CIL expenditure for the reported year;

(c) summary details of CIL expenditure during the reported year including—

(i) the items to which CIL has been applied;

(ii) the amount of CIL expenditure on each item;

(d) details of any notices received in accordance with regulation 59E, including—

(i) the total value of CIL receipts subject to notices served in accordance with regulation 59E during the reported year;

(ii) the total value of CIL receipts subject to a notice served in accordance with regulation 59E in any year that has not been paid to the relevant charging authority by the end of the reported year;

(e) the total amount of—

(i) CIL receipts for the reported year retained at the end of the reported year;

(ii) CIL receipts from previous years retained at the end of the reported year.