

# Barnsley Community Infrastructure Levy (CIL)

Guidance Notes  
September 2016



**BARNLSLEY**  
Metropolitan Borough Council

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# 1 . The CIL Process

## Introduction

This guidance note sets out the process involved in the charging and collection of CIL. The Barnsley Council **CIL Charging Schedule** applies from dd/mm/yyyy. All relevant consents granted on or after this date will be liable to pay CIL.

The 'Is my development CIL liable' document will assist in working out if the proposed development will be subject to a CIL charge.

## The CIL process

### **Step 1 - Submitting information to enable CIL liability to be determined**

Applications for a development that will be, or may be, liable for CIL must include with their application the **CIL Additional Information Requirement form**. This is a **Local Planning Application Information Requirement** in Barnsley and without it a planning application cannot be validated.

In most cases the CIL form will contain enough information for the Council to calculate the CIL liability. (An exception might be if a transfer of land is a proposed form of payment.)

### **Step 2 – Assumption of Liability**

This form lets the Council know who is responsible for paying the CIL related to the development. If it is not submitted, then the charge will default to the registered land owner and a surcharge will be applied to cover the costs of establishing their identity.

#### **Note on timing:**

The earlier the Assumption of Liability form is submitted, the better, as without it a Liability Notice cannot be easily and promptly sent to the liable and interested parties. (The latest it can be sent is immediately prior to commencing development, but this will leave the liable and interested parties without the Council's formal determination of the CIL charge and with little time for options such as making changes, seeking a review of or appealing the decision. All these processes are unavailable on commencement of development.)

### **Step 3 - Issuing a Liability Notice**

When the Council grants planning consent, it will issue a Liability Notice. If the **Assumption of Liability form** has not been submitted to establish who the liable (and any interested) parties are, a **Draft Liability Notice** will be issued.

The Liability Notice sets out the total amount of CIL payment due for the development. It will include all relevant floor space contained in the development, including any floor space that may be eligible for social housing, charitable, self-build or exceptional circumstances relief.

## 1 . The CIL Process

In cases where consent is granted following an appeal, the Liability Notice will be issued as soon as possible after the appeal decision is issued.

### **Step 4 – Prior to commencing development**

Before commencing development, a **Commencement Notice** must be submitted. This form lets the Council know when the development is going to commence, and will form the basis of the dates that the CIL payments become due. This form must be submitted no later than one day before development is to commence. If it is not submitted, then surcharges will be applied.

### **Step 5 – Payment of CIL on commencement of development**

The CIL charge has to be paid within 60 days of commencement of development. (If payment by instalment has been agreed, the first payment will be due.) If not paid or payment is late, then a range of penalties and surcharges will be applied.

## 2 . Is my development liable for CIL?

### Introduction

This guidance note sets out to explain what type of development is liable for CIL charges and who is liable to pay.

### What type of development is CIL liable?

This guidance summarises the main aspects of the **Charging Schedule**, but only the Charging Schedule provides definitive information on CIL charges.

New developments, including extensions to buildings, are liable and CIL is charged per square metre of additional floor space. This applies to:

- The creation of a new dwelling, regardless of size, including change of use to residential, regardless of whether or not it includes additional floorspace
- Other development of 100 square metres or more

Changes of use are not normally liable for CIL if the buildings are considered to be 'in-use' – see the definition below on the next page. However, those deemed not to be 'in-use' may still warrant a charge.

However, in Barnsley, CIL charges only apply to the following uses:

- Residential
- Retail (A1 use only)

All other uses and development are not charged CIL. The rates vary in different residential zones.

### How the CIL charge is determined

Applications that are CIL liable must be accompanied by the **CIL Additional Information Requirement form**. This information enables us to calculate the correct CIL charge and inform known interested parties of it when planning permission is granted. This applies even if the development would be able to benefit from the Relief available for social housing, charitable development, self-build dwelling or exceptional circumstances. (Barnsley does not require the additional questions form for house extensions unless the applicant either doesn't have an ownership interest or doesn't occupy the house as the main residence.)

If the Assumption of Liability form has not been submitted, identifying who is going to pay the CIL charge, we will issue a Draft Liability Notice on granting planning permission.

The final CIL charge, including any instalments, will be set out in the **Demand Notice**, issued, on commencement.

The CIL charge can change throughout the process, due to various reasons, such as:

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- If a delay between the granting of permission and implementation leads to the CIL charge changing in line with the designated index
- If any relief is granted
- If successfully appealed
- If it proves necessary to apply any penalties or surcharges

### Permitted development (General Consent)

In some cases permitted development (development that does not require planning permission) for non-residential property may be large enough to be CIL liable. If you intend to commence development under General Consent you must submit a CIL Form - **Notice of Chargeable development** to the Council before the development is commenced. The CIL charge will then be calculated and applied as though planning permission had been granted.

### What type of development is not CIL liable?

The following types of planning applications are not liable for CIL:

- Development containing less than 100 square metres of new build, provided that it does not result in the creation of a new open market dwelling.
- Most house extensions (see above)

These types of applications, unless specifically requested by us, will not require the CIL Additional Information Requirement form.

Reserved matters applications resulting from an outline planning permission that has been granted before CIL was introduced (dd/mm/yyyy) would also not be liable for CIL.

### Relief from CIL

Separate guidance notes explain the various forms of relief possible in Barnsley:-

- Social Housing Relief
- Charitable Development Relief
- Self-build Dwellings Relief
- Residential Annex or Extension Relief
- Exceptional Circumstances Relief

CIL is only intended to generate infrastructure payments from new floor space developed, so there is a credit for demolished buildings that are in use which is used to offset chargeable floorspace.

### How is CIL calculated, taking into account existing buildings?

Please see the Charging Schedule on the Council's webpage and use the **CIL Calculator** provided.

## 2 . Is my development liable for CIL?

CIL is calculated by multiplying the net increase in the floor space of a development by the CIL rate set out in the charging schedule (plus indexation) with a credit given for existing buildings so as to reduce the overall liability. The credit applies to the areas of 'in-use buildings' that are to be demolished or retained. 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. This means the area of development chargeable to CIL may be reduced by the gross internal area of the existing building.

The chargeable amount will be calculated in accordance with the **CIL Regulations**. This is most simply stated as the chargeable amount based on the floor space (in square metres) multiplied by the levy rate (£xx per sq m):

Levy = CIL rate (R) x Net additional new build floorspace (A) x inflation measure (I)

R = the levy rate as set in the Charging Schedule.

A = the gross internal area of floor space chargeable in square metres after deducting any existing floor space and any demolitions, where appropriate.

I = inflation measure calculated at the November rate proceeding the issue of the Liability Notice (using BCIS All-in Tender Price Index).

### Examples of development types, showing whether or not they are CIL liable

Current Site	Completed Development	CIL Liable?	Chargeable Area
Cleared building site	92 sq m new residential dwelling	√	92 sq m (no minimum when creating new dwelling)
Single dwelling – in use	25 sq m extension	X	Not liable as under 100 sq m new build and does not create a new dwelling
Single dwelling – in use	125 sq m extension	X	most cases this will be considered 'self-build'
Cleared building site	2,000 sq m residential, including 40% affordable housing (800 sq m)	√	1,200 sq m NB: the social housing relief (800 sq m) must be applied for and meet certain criteria to be granted

## 2 . Is my development liable for CIL?

Current Site	Completed Development	CIL Liable?	Chargeable Area
Single dwelling – in use but to be demolished	125 sq m new development 90 sq m original dwelling demolished	√	35 sq m  NB: not exempt as development comprises of one or more dwellings but charge reduced due to original building to be demolished being in use
Single dwelling – not in use and to be demolished	125 sq m new development 90 sq m original dwelling demolished	√	125 sq m  NB: not exempt as development comprises of one or more dwellings and no reduction in charge as original building not in use
Single dwelling – not in use but to be retained	35 sq m new development 90 sq m original retained	X	Not liable as under 100 sq m new build and does not create a new dwelling (but extends an existing one).
3,500 sq m residential development not in use to be demolished.	15,000 sq m new residential 5,000 sq m new offices	√	15,000 sq m residential is CIL liable. 5,000 sq m offices is zero rated.  No credit for demolition of existing buildings as not in use.
3,500 sq m office development in use and to be demolished	15,000 sq m new residential 5,000 sq m new offices  3,500 sq m original offices demolished.	√	12,375 sq m residential is CIL liable. 4,125 sq m offices but as zero rate no charge.  NB: The demolished amount is apportioned across the whole development e.g. $\frac{3}{4}$ development residential; $\frac{1}{4}$ business; therefore, of the 3,500 sq m demolished floor

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Current Site	Completed Development	CIL Liable?	Chargeable Area
			space, 2,625 sq m is deducted from residential floor space and 875 sq m from business.

### Appealing against payment of the CIL charge

Appeals can be made against all aspects of the CIL collection and enforcement system, from the levy collection authority's calculation of the amount due to any enforcement actions it may take. Please see Guidance Note 4 for further details. There are three exceptions where an appeal system does not exist: social housing relief; exceptional circumstance relief and self-build exemption.

### Surcharges and penalties

If payment is not made by the due date then penalties and surcharges will apply. The Council does not have the flexibility to defer payment of CIL, other than through the Instalments Policy.

### Who is liable to pay the CIL?

Responsibility to pay the levy runs with the ownership of the land and the levy is registered as a local land charge. Liability to pay the levy may be assumed by the land owner or another party or parties. This is done by completing and submitting a CIL Assumption of Liability Notice form. Liability must be assumed by submission of a completed form before the development commences.

Failure to submit the form prior to commencement of the development will result in the liable party/land owner losing any right to pay the levy in instalments, as set out in the Council's Instalment Policy, and may incur a surcharge.

Liability may be transferred at any time before commencement of the development, unless an application for social housing relief has been made, by submitting the appropriate CIL form:-

- **Assumption of Liability Notice**
- **Withdrawal of Assumption or Relief**
- **Transfer of Assumed Liability**

If the Council is unable to recover CIL from a party that has assumed liability, the liability defaults to the owner/s of the land.

## 3 . Payment by instalment policy

### Instalment policy

In accordance with Regulation 69B of the Community Infrastructure Levy (Amendment) Regulations 2014, Barnsley Council (the charging authority) will allow the payment of CIL by instalments as set out in the table below.

Chargeable Amount	Number of Instalments	Payment Due
Less than £50,000	0	Required in full within <b>60 days</b> of the commencement date.
From £50,000 to £200,000	2	Two equal instalments <b>60 and 365 days</b> after the commencement date.
£200,000 or more	3	Three instalments* <b>60, 365 and 548 days</b> after the commencement date.

\*These will be 33%, 33% and 34% respectively.

CIL becomes payable when development commences. Regulation 7 (2) defines this as “the earliest date on which any material operation begins to be carried out” and Regulation 7 (6) confirms that ‘material operation’ has the same meaning as in section 56(4) of the Town and Country Planning Act 1990 (time when development begun).

In a few cases on larger developments we will accept transfer of land by instalment. These will be negotiated on a case by case basis with the planning officer dealing with the case.

This policy came into effect on dd/mm/yyyy.

### Instalment Policy Guidance notes

Regulation 70 of the Community Infrastructure Levy (Amendment) Regulations 2014 sets out the requirements that must be complied with in order to benefit from the CIL instalment policy.

The CIL instalment policy will apply in the following circumstances:

1. Where the Council has received the CIL **Assumption of Liability form** prior to commencement of the development (Regulation 70(1)(a).
2. Where the Council has received a CIL **Commencement Notice** prior to commencement of the development (Regulation 70(1) (b))

If either of the above requirements are not complied with, the total CIL liable will become payable within 60 days of commencement of the development.

### 3 . Payment by instalment policy

In addition surcharges may apply. (Please read Guidance Note 5) if either the CIL Assumption of Liability form and or the CIL Commencement Notice have not been submitted prior to the commencement date of the development.

Once the development has commenced the CIL payments must be made in accordance with the CIL instalment policy. Where there is a breach in payments, the total CIL liability will become payable in full immediately (Regulation (70) (7))

## 4 . The appeal process

### Introduction

This note sets out the procedures for making appeals: how to make an appeal, when to make an appeal by, and who to make the appeal to.

The Planning Service acts for the Council as the collecting authority.

Appeals are possible to the Valuation Office Agency (VOA) in respect of CIL charging decisions or to the Planning Inspectorate (PINS) in respect of CIL enforcement decisions.

However, the CIL Regulations require you to seek a review of the collecting authority's charging decisions, before you can appeal to the VOA.

There are two CIL decisions where the Regulations do not allow an appeal: social housing relief and exceptional circumstances relief.

### Seeking a review of the CIL charge

If you feel that the amount of CIL charge set out in your Liability Notice has been calculated incorrectly or you disagree with any other aspect of the Planning Service's CIL decisions, you can seek a review of that decision. Such a request must be made in writing and within 28 days of the date on which the Liability Notice (or Draft Liability Notice) was issued, or of any other CIL decision made by the Planning Service.

You may submit whatever evidence in writing you may feel is appropriate to support your review request.

### How the Planning Service will conduct the review and notify you of the outcome

When the Planning Service receives your request to review the amount, we will ensure that the person conducting the review is senior to the one who carried out the original calculation. We will notify you of the decision of the review within 14 days of receiving your request, including the reasons for the decision.

However, where development is commenced before you receive notification of this decision, the review will lapse and the original amount will become due for payment in the manner set out in the demand notice.

To facilitate a timely response, you are asked to seek a review by e-mail if at all possible, addressed to [CIL@barnsley.gov.uk](mailto:CIL@barnsley.gov.uk).

### Rights of appeal against decisions made by the Planning Service following a review

If you are dissatisfied with the decision of the Planning Service's review or have not been notified within 14 days, you may appeal to the Valuation Office Agency (VOA) in respect of the following decisions:

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- Chargeable Amount (Regulation 114)
- Apportionment of Liability (Regulation 115)
- Charitable Relief (Regulation 116)
- Exemption for Residential Annexes (Regulation 116A)
- Exemption for Self Build Housing (Regulation 116B)

Appeals against the chargeable amount must be made no later than 60 days beginning with the day on which the Liability Notice was issued. Appeals against apportionment and the specified relief or exemption decisions must be made within 28 days from the Demand Notice or other decision on a claim for exemption or relief.

You may not appeal to the VOA on how the CIL charge was calculated if development has commenced. Appeals will also lapse if development commences before you have been told of the outcome of the appeal.

Where an appeal is allowed, any Demand Notices (including surcharges) relating to the development in question will be suspended pending the outcome of the appeal.

The [Valuation Office Agency CIL Appeals Guidance Note](#) provides more information and a link to their appeal forms.

### **Rights of appeal against CIL enforcement decisions**

You can appeal to the Planning Inspectorate (PINS) if you feel that a CIL enforcement action or surcharge is unwarranted or has been taken in error, but you are encouraged to contact the Planning Service to see if we can resolve the matter first. The following types of enforcement appeal are possible:

- Surcharge (Regulation 117)
- Deemed Date of Commencement (Regulation 118)
- Stop Notice (Regulation 119)

However, you should be aware that a formal appeal can be lodged no later than 28 days after the date of your notification by the Planning Service (or within 60 days of a CIL Stop Notice taking effect).

[Enforcement appeal guidance and forms](#) are provided on the Planning Portal web site.

Where a valid appeal is submitted, any enforcement decisions relating to the deemed date of commencement, including the imposition of any surcharges, will be suspended pending the outcome of the appeal.

## 5 . Penalties and surcharges

### Background

This note sets out the possible consequences of not following the CIL payment procedure, and of late and non-payment of CIL.

The Council has made every reasonable effort to take into account the viability needs of developers, to ensure that CIL should not deter much needed development when setting its **CIL Charging Schedule**. Development requires infrastructure to support it and CIL replaces most S106 funding for infrastructure. CIL is therefore essential to help meet the infrastructure needs of Barnsley and developments must make a reasonable contribution.

### Consequences of failing to follow the CIL payment procedure

#### Surcharge for failing to assume liability before commencement

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

#### Surcharge where apportionment is necessary

Further, where the Council has to apportion liability between one or more owners of the land, we may also impose a surcharge of £500 per owner. This is to ensure the costs of this apportionment are borne by the owners in question. Both these surcharges are in addition to the loss of payment by instalment rights that result from failing to assume liability before the commencement of development.

#### What happens if a valid Commencement Notice is not submitted before development commences?

Failure to submit a valid commencement notice before development commences will result in the Council imposing a surcharge of 20% of the CIL amount due, up to a maximum of £2,500.

#### Surcharge for failing to comply with an information notice

Failure to comply with any requirement of an information notice within 14 days of the notice being served may result in the Council imposing a surcharge. This would be of 20% of the CIL amount due, up to a maximum of £2,500.

#### Surcharge for failing to respond to a request for information about either the apportionment of CIL liability or the calculation of Social Housing Relief

Failure to respond to a request for information (either on the apportionment of CIL liability or on the calculation of

## 5 . Penalties and surcharges

Social Housing Relief) within 14 days of the request formally being made may result in the council imposing a

surcharge. This would be of 20% of the CIL amount due, up to a maximum of £2,500.

### **Removal of payment by instalments option**

A Demand Notice will be issued for the full amount of CIL remaining (regardless of any previous agreement to payment by instalment) in any of the following circumstances:

- If instalment terms are broken
- If liability has not been assumed
- Where a commencement notice is not received.

The requirements for qualifying for instalments are set out in Payment by Instalment Policy - CIL Guidance note 3.

### **Consequences of late or non-payment**

#### **Late payment interest**

Failure to pay CIL on time will result in the imposition of late payment interest by the Council at 2.5 percentage points above the Bank of England base rate.

#### **Late payment surcharge**

Continued failure to pay CIL may result in the Council imposing one or more late payment surcharge. Such surcharges will be imposed in the following manner:

- Five per cent of the outstanding amount where payment is still overdue after 30 days, subject to a £200 minimum;
- Five per cent of the outstanding amount where payment is still overdue after six months, subject to a £200 minimum;
- Five per cent of the outstanding amount where payment is still overdue after 12 months, subject to a £200 minimum.

#### **The CIL Stop Notice**

In some cases the Council may believe that interest and late payment surcharges will be ineffective in securing payment of the overdue CIL. In such circumstances, the Council may decide to serve a CIL Stop Notice on the development in question. A CIL Stop Notice prohibits development from continuing until payment is made. Continuing to develop in the presence of such a notice is a criminal offence, punishable by potentially unlimited fines.

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Before serving a CIL Stop Notice however, the Council will first issue a warning to the person liable to pay the amount, the land's owners, occupiers and all those who will be affected by the notice. It will also post a warning on the site itself. This warning will state that continued non-payment may result in a CIL Stop Notice being issued. It will also set out the amount overdue and the number of days after which a CIL Stop Notice may be served if payment continues not to be made. If payment is not made by the end of this period, the Council may serve a Stop Notice, which will prohibit development with immediate effect until payment of the outstanding amount is made.

### **Asset seizure**

If you fail to pay CIL the Council may seek a court's consent to seize and sell your assets to recover the money due. These assets may include any land you hold. The collecting authority must send you notice of its intention to do so beforehand.

### **Committal to prison**

If you continue to evade paying CIL, the Council can ask a magistrates' court to commit you to prison for no more than three months. To do this, the Council must be able to demonstrate to the court that it has been unable to recover the CIL amount due by seizing and selling your assets and land.

### **Rights of appeal against CIL enforcement decisions**

You can appeal to the Planning Inspectorate (PINS) against the following types of enforcement action by the Council:

- Surcharge (Regulation 117)
- Deemed Date of Commencement (Regulation 118)
- Stop Notice (Regulation 119)

The Council provides guidance on The Appeal Process. [Enforcement appeal guidance and forms](#) are provided on the Planning Portal web site.

## 6 . Social housing relief

### Introduction

Development that incorporates social housing is entitled to mandatory relief from CIL on the social housing element of the development.

### Definition of Social Housing

Regulation 49 of the Community Infrastructure Levy (Amendment) Regulations 2014 states that; social housing relief applies where at least one of four conditions are met.

#### Condition 1

The dwelling is let by a local housing authority on one of the following:

- a) A demoted tenancy;
- b) An introductory tenancy;
- c) A secure tenancy;
- d) An arrangement that would be a secure tenancy but for paragraph 4ZA or 12 of Schedule 1 to the Housing Act 1985 (a).

Condition 2 (is that all the following criteria are met):

- a) The dwelling is occupied in accordance with shared ownership arrangements within the meaning of section 70(4) of the Housing and Regeneration Act 2008(b);
- b) The percentage of the value of the dwelling paid as a premium on the day on which a lease is granted under the shared ownership arrangement does not exceed 75 per cent of the market value (where the market value at any time is the price which the dwelling might reasonably be expected to fetch if sold at that time on the open market);
- c) On the day on which a lease is granted under the shared ownership arrangements, the annual rent payable is not more than three per cent of the value of the unsold interest; and
- d) In any given year the annual rent payable does not increase by more than the percentage increase in the retail price index for the year to September immediately preceding the anniversary of the day on which the lease was granted plus 0.5 per cent.

Condition 3 (is that):

a) The dwelling is let by a private registered provider of social housing on one of the following:

- i) An assured tenancy (including an assured shorthold tenancy);
- ii) An assured agricultural occupancy;
- iii) An arrangement that would be an assured tenancy or an assured agricultural occupancy but for paragraph 12(1)(h) or 12ZA of Schedule 1 to the Housing Act 1988(c);
- iv) A demoted tenancy; and

b) One of the criteria described below is met

The criteria:

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a) The rent is-

- i) Subject to the national rent regime, and
- ii) Regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008;

b) The rent is-

- i) Not subject to the national rent regime;
- ii) Not regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008; and
- iii) No more than 80 per cent of market rent;

c) The rent is-

- i) Not subject to the national rent regime; and
- ii) Regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regeneration Act 2008 which requires the initial rent to be no more than 80 per cent of the market rent of the property (including service charges).

Condition 4 only applies to development in Wales.

A claimant must provide evidence that the chargeable development qualifies for social housing relief. The regulations provide that dwellings that no longer meeting these requirements must pay the levy.

### **Process for claiming Social Housing Relief**

Regulation 51 of the Community Infrastructure Levy (Amendment) Regulations 2014 sets out the procedures for claiming social housing relief. It is important to note that unless these procedures are rigorously followed, development will cease to be eligible for social housing relief and/or claims for social housing relief will lapse.

In order to benefit from social housing relief, the person/organisation claiming social housing relief must:

1. have assumed liability to pay CIL, through the submission to the Council of a CIL Assumption of Liability notice from prior to the commencement of the chargeable development; and
2. be an owner of the relevant land.

The claim must:

1. be submitted to the Council on a CIL Claiming Exemption or Relief form, prior to commencement of the chargeable development; and

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2. include a relief assessment that identifies on a map the location of the dwellings to which social housing relief applies, sets out the gross internal area of each of the dwellings, and includes a calculation of the amount of social housing relief claimed.

If the chargeable development is commenced before the Council has notified the person/organisation claiming social housing relief of its decision, then the claim for social housing relief will lapse.

In addition, development will cease to be eligible for social housing relief if any of the following apply:

1. The Council has not received a CIL Commencement Notice prior to commencement of the chargeable development;
2. The Council has received a Withdrawal of Assumption of Liability form from the claimant prior to commencement of the chargeable development; or
3. The Council has received a Transfer of Assumed Liability form prior to and determined prior to commencement of the chargeable development.

### **In summary**

To benefit from social housing relief the relevant person / organisation must be an owner of the land, must have assumed liability to pay CIL and must have submitted their claim for relief by returning an Assumption of Liability form, and received the Council's determination, prior to commencing the chargeable development.

They must also have submitted a CIL Commencement Notice to the Council and not withdrawn or transferred liability to pay CIL, prior to commencement of the chargeable development.

### **Disposal of land before occupation**

The beneficiary of all relief on a chargeable development is the claimant regardless of whether the claimant owns the land on which the social housing will be situated. However the relief attached to each qualifying dwelling will transfer whenever the land on which the dwelling(s) sit is sold before they are ready for occupation. In this event the relief applicable will be recalculated and transferred to the new beneficiary.

If the development is sold the beneficiary must;

Notify the collecting authority in writing of the sale and copy this to the previous beneficiary.

- Include the gross internal area of the qualifying dwellings
- Include a plan showing the location of those dwellings
- Include the name and address of the seller the buyer and former beneficiary

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On receipt of the new details, the relief will be recalculated and a revised liability notice will be served on the new beneficiaries and what relief they will receive.

Once a qualifying dwelling is made available for occupation the beneficiary remains the beneficiary regardless of future ownership arrangements.

### **Withdrawal of social housing relief**

Social housing relief can be withdrawn for any qualifying dwelling where a disqualifying event occurs up to seven years from the commencement of development (the “clawback period”). The relief for that dwelling must be repaid by the beneficiary of relief.

The occupant of the dwelling will never pay clawback – liability falls on the owner of the land immediately prior to the dwelling being made available for occupation.

Where a disqualifying event occurs prior to the commencement of development, social housing relief will cease to apply.

A disqualifying event is any change to a qualifying dwelling causing it to no longer qualify for social housing relief. However the sale of a qualifying dwelling is not a disqualifying event if the proceeds of sale are spent on a qualifying dwelling. Transferring the sale proceeds to the Secretary of State, a local housing authority or the Homes and Communities Agency are also not disqualifying events. Disqualifying events do not include the purchase of social housing by the Regulator of Social Housing.

Where a disqualifying event occurs, the beneficiary of relief on the dwelling concerned must inform the Council in writing within 14 days. Where this is not done, a surcharge equal to the lesser amount of 20 per cent of the chargeable amount or £2,500 may be applied. The notification must include the area of floor space which is no longer eligible and a map locating its position in the chargeable development.

The Council will calculate what clawback is payable, and notify the beneficiary in writing of the withdrawn amount and how this has been calculated. Alongside this, a new liability notice will be issued and a demand notice will be served to collect the clawed back relief. This will be done even if the development is complete.

## 6 . Social housing relief

### Examples of how Social Housing Relief is calculated

The following examples show how Social Housing Relief will be calculated. Scenario 2 deals with how existing floor space is taken account of in calculating Social Housing Relief. Please refer to [National Planning Guidance on CIL Social Housing Relief](#)

Scenario	Completed Development	Relief Applicable	CIL Liability
<p>The developer is a housing association.</p> <p>The residential CIL rate for zone is £75 sq m; therefore the CIL liability is £150,000.</p>	<p>Prior to the commencement of the development, the Council receives a claim for 2,000 sq m of Social Housing Relief, as the whole of the development will be social housing.</p>	Yes	<p>Social Housing Relief is granted on the whole development.</p> <p>CIL liability = £0.</p>
<p>A residential development of 4,000 sq m Gross Internal Area (GIA) on a cleared site is granted planning permission.</p> <p>The residential CIL rate is £75 per sq m; therefore the CIL liability is £300,000.</p>	<p>Prior to the commencement of the development, the Council receives a claim for 950 sq m of Social Housing Relief.</p>	Part	<p>The calculation of the revised CIL liability is as follows:</p> <p><b>Process 1</b> – Deduct the GIA eligible for relief from the total GIA</p> <p>The total GIA (4,000 sq m) – the GIA eligible for relief (950 sq m) = 3,050 sq m</p> <p><b>Process 2</b> – Recalculate the CIL liability</p> <p>3,050 sq m x £75 = <b>Revised CIL liability of £228,750</b></p>
<p>A residential development of 4,000 sq m GIA is granted planning permission. It is on a site currently occupied by a house in lawful use</p>	<p>Prior to the commencement of the development, the Council receives a claim for 950 sq m of Social Housing Relief.</p>	Part	<p>The calculation of the revised CIL liability is as follows:</p>

## 6 . Social housing relief

<p>comprising 125 sq m GIA, which is to be demolished.</p> <p>The residential CIL rate is £75 sq m.</p> <p>The existing floor-space is deducted from the CIL liability because it is in lawful use, giving a CIL chargeable area of 3,875 sq m, and a CIL liability of £290,625.</p>		<p><b>Process 1</b> – Calculate what percentage of the total GIA the discounted GIA comprises</p> <p>Discounted GIA (125 sq m)/total GIA (4,000 sq m) x 100 = 3.125%</p> <p><b>Process 2</b> – Calculate 3.125% of the GIA claim for Social Housing Relief to ascertain the level of GIA to be deducted from the relief claim</p> <p>GIA claim for Social Housing Relief (950 sq m) / 100 x 3.125 = 30 sq m</p> <p><b>Note:</b> the above figure of 30 sq m has been rounded to the nearest square metre.</p> <p><b>Process 3</b> – Calculate the revised GIA of the relief claim</p> <p>Relief claim (950 sq m) – pro rata deduction (30 sq m) = 920 sq m</p> <p><b>Process 4</b> – Deduct the GIA eligible for relief from the total chargeable area</p> <p>Total chargeable area (3,875 sq m) – GIA eligible for relief (920 sq m) = 2,955 sq m</p> <p><b>Process 5</b> – Recalculate the CIL liability</p>
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## 6 . Social housing relief

			2,955 sq m x £75 per sq m = <b>Revised CIL liability of £221,625</b>
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## 7 . Charitable development relief

### Introduction

Certain types of charitable development are entitled to an exemption from the community Infrastructure Levy (CIL). This note details those types of development and provides information about the process for claiming charitable relief, and shows examples of how it is calculated.

### Charitable Development entitled to Mandatory relief

Regulation 43 of the Community Infrastructure Levy (Amendment) Regulations 2014 sets out the conditions that must be met for a charitable development to be entitled to mandatory relief from CIL.

In practice there are three main types of charity to which relief is applicable:

- Registered charities: charities which are registered with the Charity Commission
- Exempt charities: charities which cannot register under the Charities Act 2006 and are not subject to the Charity Commission's supervisory powers. They are listed in Schedule 2 of the 1993 Charities Act and include some educational institutions, and most universities and national museums.
- Excepted charities: charities excepted from the need to register but which are still supervised by the Charity Commission. Excepted charities with an income over £100,000 will have a duty to register when the relevant part of the Charities Act 2006 comes into force.

Other bodies that may be eligible for relief where they are established for charitable purposes only

- A body which has a Her Majesty's Revenue and Customs charity reference number will usually meet this requirement.
- Charging and collecting authorities must treat EU charities in the same way as UK charities for the purposes of charitable relief or be in breach of European law. The

Regulations do not preclude non-UK charities from the definition so any decision on the eligibility of a non-UK charity must be made on the merit of the charitable purpose.

Charitable relief may also apply to trusts or unit trusts whose only beneficiaries or unit holders are charities. The most usual arrangements of this type are collective investment schemes – for example, unit trusts and common investment funds.

### In summary

1. The claimant must be a charitable institution (i.e. a charity, or a trust of which all the beneficiaries are charities, or a unit trust scheme in which all the unit holders are charities).
2. The chargeable development must be used wholly or mainly for charitable purposes and it must be occupied by or under the control of a charitable institution.
3. The claimant must own a material interest in the relevant land. The claimant must not own the interest jointly with a person who is not a charitable institution.

## 7 . Charitable development relief

4. The granting of mandatory relief would not constitute a state aid.

Where a development is owned jointly by a charitable institution and a private institution, relief will be given to the proportion owned by the charity.

Relief is not limited to only one charitable institution, where relief conditions are met every charitable institution owning a material interest in the relevant land can benefit from relief for their portion of the charge.

### Discretionary charitable relief

Discretionary charitable relief for investment activities (Regulation 44 of the CILR 2014) and other charitable relief (Regulation 45 of the CILR 2014) are not available.

### The process for claiming mandatory charitable relief

Regulation 47 of the CIL (Amendment) Regulations 2014 sets out the procedures for claiming charitable relief. These procedures must be rigorously followed or the development will cease to be eligible for charitable relief and/or claims for charitable relief will lapse.

- The claim for relief must be submitted by the charitable institution claiming relief on the **CIL form** - Claiming Exemption or Relief prior to commencement of the chargeable development.
- If there is more than one material interest in the land each claimant must submit an apportionment assessment alongside its claim. This applies even if all the interests are charities.
- The Council will decide on the accuracy of the apportionment assessment(s) made by the claimant. If the assessment is found to be incorrect it will be revised.
- The claimant must inform the council if a disqualifying event occurs prior to commencement of the chargeable development. e.g. the interest is transferred to a person(s) who is not eligible for charitable relief (see regulation 48)(1).
- Upon determining a claim for relief the Council will inform the claimant(s) in writing of its decision and the reasons for its decision and include the amount of relief granted.
- If the chargeable development is commenced before the Council has notified the charitable institution of its decision, the claim for relief will lapse. The development will also cease to be eligible for charitable relief if the Council has not received a CIL **Commencement Notice** prior to commencement of the chargeable development.

### Withdrawal and clawback of charitable relief

A charitable relief claimant must inform the collecting authority where an event happens that disqualifies them from eligibility for relief up to seven years after commencement of development (the “clawback period”). This must be done within 14 days of the day on which the disqualifying event occurred. Where this is not done, a surcharge equal to 20 per cent of the chargeable amount or £2,500, whichever is the lesser, may be applied.

A disqualifying event occurs where one or more of the following events has occurred:

## 7 . Charitable development relief

- Change of purpose: the owner of the interest in the land in which relief was given ceases to be eligible for charitable relief i.e. the owner ceases to be a charitable institution or uses the building for an ineligible use
- Change of ownership: The whole of the interest in the land in which relief was given is transferred to a person who is not eligible for charitable relief or
- Change of leasehold: The interest in the land in which relief was given is a lease and is terminated before the end of its term and the owner of the reversion is not eligible for charitable relief.

Where a disqualifying event happens before commencement, the relief is cancelled and the full charge once more applies, unless a new claim by the charitable institution relief is submitted. If the disqualifying event occurs after commencement, the claimant's share of the charge becomes due. In either instance, a revised liability notice must be issued showing what is payable and a demand notice must be served to collect the clawed back relief.

Despite the threat of surcharge, a minority of claimants may not inform the collecting authority of a disqualifying event within the 14 day period. In such cases the charitable relief along with the surcharge is payable immediately by the claimant.

### Charitable relief appeals

A charitable relief claimant, or the assumed liable party for the chargeable development, may appeal to the Valuation Office Agency that the collecting authority has incorrectly determined the value of the charity's interest in the land. An appeal must be submitted within 28 days of the date of the collecting authority's decision on the claim. Any appeal will lapse where the chargeable development is commenced prior to the Valuation Office Agency making its decision. At appeal the Valuation Office Agency may increase or reduce the amount of relief given to the claimant. Where the Valuation Office Agency amends the claimant's share, the collecting authority must serve a revised liability notice. The Liability Notice will detail the new value of charitable relief.

There is no right to appeal to an external body on any other grounds for charitable relief. Collecting authorities may decide to allow claimants to request a review of decisions made on their claim by a different official to the official that decided the claim.

### State Aid

The regulations prohibit the giving of a mandatory charitable exemption where it would constitute a state aid. However, if a mandatory charitable exemption would otherwise have been allowed, and such a policy on discretionary charitable relief under Regulation 45 existed, a charitable institution could benefit from relief which was not a notifiable state aid.

Sheffield may automatically ensure that mandatory charitable exemption claims failing solely on state aid grounds are considered for relief under Regulation 45. Discretionary Charitable Investment Relief can similarly be given where relief is not a notifiable state aid. More detail on this and the de minimis block exemption can be found in National Planning Practice Guidance.

## 7 . Charitable development relief

### Default of liability

Where a party assuming liability fails to pay the full amount of the levy owing, the regulations allow the collecting authority to default liability to the owners of the relevant land within the chargeable development. A collecting authority may only default liability after it has taken all reasonable efforts to recover the outstanding amount, using one or more of the provisions set out within the regulations (please see the Collection and Enforcement Information for further details).

Where the outstanding amount is defaulted, it will be apportioned between the owners of the relevant land according to their material interest in the relevant land. A charity benefiting from discretionary charitable relief may be liable to pay a share of the outstanding amount based on its material interest in the land. Charities are expected to manage the risk of a default of liability by another party. It is expected that they will carefully select development partners and make appropriate contractual arrangements to safeguard their interests.

A charity receiving a mandatory charitable exemption (under Regulation 43) will continue to be exempt from any liability to pay the outstanding charge.

### Summary

To benefit from mandatory charitable relief, the charitable institution must be the owner of the land and using the land wholly or mainly for charitable purposes. Prior to commencing the chargeable development, they must have submitted their claim for relief and received the Council's determination, and submitted a CIL **Commencement Notice** to the Council.

### Further assistance

[The charity commission](#) or the Governments [Community Infrastructure Levy Relief information document](#).

## 7 . Charitable development relief

## Examples of charitable relief

Scenario	Completed Development	Relief Applicable	CIL Liability
<p>A charitable institution gains planning permission for a supported housing residential development of 1,315 sq m Gross Internal Area (GIA) on a cleared site.</p> <p>The residential CIL rate is £75 sq m; therefore the CIL liability is £98,625.</p>	<p>Prior to the commencement of the development, the Council receives a claim for charitable relief. The Council grants mandatory charitable relief because the tests in Regulation 43 are satisfied.</p>	Yes	£0
<p>A charitable institution gains planning permission for a supported housing residential development of 1,315 square metres GIA, and a retail unit (which will be occupied by the charitable institution) of 75 sq m GIA on a cleared site.</p> <p>The residential CIL rate is £75 sq m and the retail CIL rate is £70 sq m, therefore the total CIL liability is £103,875 (i.e. Residential liability of £98,625 + Retail liability of £5,250)</p>	<p>Prior to commencement of the development, the Council receives a claim for charitable relief.</p> <p>The Council grants mandatory charitable relief for the residential element because the tests in Regulation 43 are satisfied, but does not grant charitable relief for the retail element because that is classed as an investment activity and the Council is not offering discretionary charitable relief for investment activity.</p>	Part	CIL liability is reduced to £5,250 (i.e. the retail liability)

## 8 . Exception Circumstances Relief

### Introduction

This note sets out the Council's Exceptional Circumstances Relief (ECR) Policy, with some additional guidance, where considered helpful.

### The Policy

The Council has determined to make relief for exceptional circumstances available, in accordance with Regulations 55 to 57 of the Community Infrastructure Levy Regulations 2010 (as amended).

Relief for exceptional circumstances will be available from dd/mm/yyyy until further notice.

ECR will be offered where individual sites with specific and exceptional cost burdens would not be viable due to the payment of the CIL charge (See CIL Regulations 55 to 57).

The Regulations state that the Council may grant relief from liability to pay CIL if it appears to the Council that there are exceptional circumstances which justify doing so and the Council consider it expedient to do so. Each case will be considered individually by the Council, which retains the discretion to make judgements about the viability of the scheme and whether the exceptional circumstances policy applies.

Schemes can also be made viable by phasing payments (see Payment by Instalments Policy - CIL Guidance Note 3).

The Government and the Council expect that these exceptional circumstances will be rare, as the CIL rates set have been set at a level where most development can afford to pay the charge and include significant margins for flexibility. The CIL rates have been set in accordance with standard assumptions, and with a cautious approach to these assumptions, that include an element of non-CIL obligations and a large buffer, to ensure viability. These assumptions and this approach were agreed as appropriate and reasonable by an independent Government Planning Inspector.

Government guidance is set out in the National Planning Practice Guidance on ECR (paragraphs 129-134).

### Practical considerations

Any application for ECR from an applicant must address the assumptions used in the CIL Viability Study (produced by independent consultants and agreed by the independent Inspector) and identify why their development differs specifically from the standard assumptions used in the Viability Study.

Applicants will need to have opened negotiation with Planning Service officers to establish any Section 106 obligation and Section 278 highway contributions that the development might be liable for, so that the total infrastructure costs of the development can be taken into account.

The CIL Regulations state that discretionary relief for exceptional circumstances can only be granted if a S106 agreement is in place and that any relief must not constitute state aid.

## 8 . Exception Circumstances Relief

A claim cannot be made after development has commenced.

Relief is granted for a chargeable development. This can mean the whole development or a part of a scheme where a development proceeds in phases as separate chargeable developments, where that is agreed by the Planning Service.

### **Review and appeal rights**

The Head of Planning, or any manager delegated to do so, will make the final decision on whether to grant ECR. There is no right of appeal, but a review can be requested by a more senior officer unconnected with the original decision (see also the Appeal Process – CIL Guidance Note 4).

## 9 . Self-build relief

### Introduction

The Community Infrastructure Levy Regulations 2010 (as amended) ('the Regulations') provides that self-build development is entitled to relief from CIL.

Barnsley is providing automatic self build relief for residential annexes and extensions, subject to review (see Residential Annex and Extension Relief - Guidance Note 9 for more details).

### Definition of a Self Build Development

Regulation 54A states:

'...a person (P) is eligible for an exemption from liability to pay CIL in respect of a chargeable development, or part of a chargeable development, if it comprises self-build housing or self-build communal development.'

'Self-build housing is a dwelling built by P (including where built following a commission by P) and occupied by P as P's sole or main residence.'

'...development is self-build communal development if it is for the benefit of the occupants of more than one dwelling that is self-build housing, whether or not it is also for the benefit of the occupants of relevant development.'

'Development is not self-build communal development if it is-

- (a) Wholly or partly made up of one or more dwellings;
  - (b) Wholly or mainly for use by the general public;
  - (c) Wholly or mainly for the benefit of occupants of development which is not relevant development;
- or
- (d) To be used wholly or mainly for commercial purposes.'

'..."relevant development" means development which is authorised by the same planning permission as the self-build housing in question, but which does not include the self-build housing or the self-build communal development.'

### Process for claiming Self Build Exemption

There are two stages that must be completed in order to claim and remain eligible for a self-build exemption..

**Stage 1** The first stage must be completed **prior to commencement of development.**

Regulation 54B sets out the procedure for claiming self-build relief from the levy. Unless these procedures are followed, a development will cease to be eligible for relief from the levy.

The claim for a self-build exemption must:

## 9 . Self-build relief

1. Be made by a person who intends to build, or commission the building of, a new dwelling, and intends to occupy the dwelling as their sole or main residence for a period of at least three years ('the clawback period');
2. Be made by a person who has assumed liability to pay CIL in respect of the new dwelling, whether or not they have also assumed liability to pay CIL in respect of other development. The claimant must assume liability by submitting the Assumption of Liability form **prior to the commencement of development;**
3. Be submitted to the Council on the **Self Build Exemption Claim Form: Part 1 prior to the commencement of development**

Development will cease to be eligible for relief from the levy if:

1. The development commences before the Council has reached a decision on whether or not to grant relief from the levy
2. The Council has not received a **Commencement Notice prior to the commencement of development**

### Stage 2

The second stage must be completed within six months of the date of the compliance certificate (building control completion certificate) for the development being issued.

Regulation 54C sets out the procedure for providing the evidence to the self-build claim. Unless these procedures are followed, a development will cease to be eligible for relief from the levy.

**The Self-build Exemption Claim Form: Part 2** must be submitted to the Council

**within six months of the date of the compliance certificate for the development being issued**

The form must be accompanied by **all** of the following as evidence to support the claim for relief:

1. A compliance certificate for the development issued under either Regulation 17 (compliance certificates) of the Building Regulations 2010 or Section 51 of the Building Act 1984 (final certificates);
2. Title deeds of the property
3. Council tax certificates

The form must be accompanied by **two** of the following as evidence to support the dwelling being occupied as a person's sole or main residence:

1. Utility Bill
2. Bank Statement
3. Local Electoral Roll Registration

The form must be accompanied by **one** of the following:

## 9 . Self-build relief

1. An approved claim from HM Revenue and Customs under 'VAT431C: VAT refunds for DIY housebuilders'
2. Proof of a specialist Self Build or Custom Build Warranty
3. Proof of an approved Self Build or Custom Build Mortgage from a bank or building society.

A Self Build or Custom Build Warranty is a warranty and Certificate of Approval issued by a Warranty provider which provides a 'latent defects insurance' policy which is accompanied by certified Stage Completion Certificates issued to the owner/occupier of the home.

A Self Build or Custom Build Mortgage is an approved mortgage arranged to purchase land and/or fund the cost of erecting a home where the loan funds are paid to the owner/occupier in stages as the building works progress to completion.

### **Withdrawal of the exemption for self-build housing**

Self-build relief will be withdrawn where a disqualifying event occurs up to three years from the date of the compliance certificate.

A disqualifying event is:

1. Any change in relation to the self-build housing or self-build communal development where it ceases to be self-build housing or self-build communal development;
2. Failure to submit Self Build Exemption Claim Form: Part 2 and the relevant evidence within six months of the date of the compliance certificate
3. The letting out of a whole dwelling or building that is self-build housing or self-build communal development;
4. The sale of the self-build housing; or
5. The sale of the self-build communal development.

Where a disqualifying event occurs, the beneficiary of the relief is liable to pay an amount of CIL equal to the amount of CIL that would have been payable on commencement of development had relief not been granted.

Where a disqualifying event occurs, the beneficiary of relief must notify the Council, in writing, within 14 days of the disqualifying event. Where this is not done, a surcharge equal to the lesser amount of 20 per cent of the chargeable amount or £2,500 may be applied.

The Council will calculate what clawback is payable, and notify the beneficiary in writing of the withdrawn amount and how this has been calculated. Alongside this, a new liability notice will be issued and a demand notice will be served to collect the clawback relief.

### **'Custom Build'**

Anybody who is building their own home or has commissioned a home from a contractor is eligible for relief from CIL under the Self-Build Regulations. The CIL Planning Practice Guidance sets out how to apply for Self-Build Relief (paragraph 135 onwards) and makes it clear that only the owner

## 9 . Self-build relief

and occupier of the dwelling will be eligible as long as they assume liability for the CIL prior to commencement as explained above – the exemption does not apply retrospectively. Individuals claiming the exemption must own the property and occupy it as their principal residence for a minimum of three years after the work is completed. There have been some statements from the Government that custom-build housing is eligible for relief, but neither the Regulations nor the Guidance refer to ‘custom-build’, so only those custom-build houses that qualify as self-build will be eligible for relief.

## 10 . Residential annex and extension relief

### Introduction

[The Community Infrastructure Levy Regulations 2010](#) (as amended) ('the Regulations') provides that a development that incorporates a self-build annexe or extension is eligible for relief from the levy.

Nevertheless, Barnsley is not requiring qualifying applications to include an Additional Information Requirement form with the planning application, as the vast majority will be exempt from CIL as self build development. Barnsley is automatically granting self build relief to this development type. Consequently, in these qualifying cases the developments will not be made CIL liable and it will not be necessary to apply for relief.

The Barnsley qualifying criteria are those set out in Regulation 42A and summarised below. Barnsley will withdraw the automatic application of this relief if monitoring of development demonstrates that there are significant number of developments benefiting that should not have or if finds any evidence of abuse.

### Definition of Residential Annex or Extension

Regulation 42A states:

'...a person (P) is exempt from liability to pay CIL in respect of the development if-

- a) P owns a material interest in the dwelling ("main dwelling");
- b) P occupies the main dwelling as P's sole or main residence; and
- c) The development is a residential annex or a residential extension.'

'The development is a residential annex if it-

- a) Is wholly or mainly within the cartilage of the main dwelling; and
- b) Comprises one new dwelling.'

'The development is a residential extension if it-

- a) Is an enlargement to the main dwelling; and
- b) Does not comprise a new dwelling.'

## 11 . Payment in kind

### **Payments in kind**

The CIL Regulations allow for the Council to accept payments in kind, in the form of land or infrastructure, to be offset against the CIL liability, where agreed by the Council as more desirable instead of monies. This must only be done with the intention of using the land to provide, or facilitate the provision of, infrastructure to support the development of the area. The Council does not have to adopt a payment in-kind policy, but should it choose to do so, they must publish a policy document which sets out conditions in detail. In line with best practice a policy will not be introduced until CIL is implemented and if the circumstances arise.