

APPENDIX A

Protocols for handling failures to adhere to the requirements of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended).

CIL is administered in accordance with the CIL Regulations 2010 (as amended), and all procedures must be dealt with in direct reference to the legislation. Where breaches of the administrative process occur, the CIL regulations stipulate set penalties that must be imposed.

However, the regulations also grant the Council flexibility as to whether they choose to apply additional penalties through the means of surcharges. Subsequently, for the purposes of clarity and to set out a consistent approach in our application of surcharges, this protocol sets out those breaches of the administration process where surcharges can be imposed, and how West Lancashire Borough Council (“the Council”), as the charging authority and collecting authority, will implement them.

This protocol will set out the procedure for responding to:

- i) Failure to submit an assumption of liability notice
- ii) Failure to submit a commencement notice
- iii) Failure to submit a notice of chargeable development
- iv) Failure to notify of a disqualifying event
- v) Failure to comply with an information notice
- vi) Failure to make payment, or failure to make a payment on time

How the Council will spend surcharges

Under Regulation 88, surcharges or interest due must be collected as if it is part of the CIL charge. Any interest paid can be apportioned to the admin, local and strategic funding as per the process for the CIL charge. However, any surcharges paid cannot be apportioned to local councils, and so can only be apportioned to administrative and strategic funding.

The Council will therefore apportion 5% of each surcharge payment received to administrative costs, and 95% to strategic infrastructure.

Failure to assume liability prior to commencement of development

Mandatory requirements

In accordance with Reg 31, liability must be assumed on a chargeable development before that development commences. This must be done by submitting an assumption of liability notice to the collecting authority. That person is then liable to pay the CIL charge upon commencement of the chargeable development.

An assumption of liability notice is also required by the Council before accepting any claims for relief or exemption¹.

Reg 33 states that if development commences and nobody has assumed liability to pay CIL in respect of that development, then liability must be apportioned between each material interest in the relevant land, and applied in accordance with Reg 34.

In accordance with Reg 71(1), where nobody has assumed liability to pay CIL in respect of the chargeable development, but a commencement notice has been submitted, then payment is due in full on the intended commencement date.

In accordance with Reg 71(2), where nobody has assumed liability to pay CIL in respect of the chargeable development, and a commencement notice has not been received, action defaults to that required under a deemed commencement and payment is due in full immediately on the deemed commencement date.

Optional penalties

Reg 80 states that a collecting authority is able to impose a surcharge for failure to assume liability, where a development has commenced and nobody has assumed liability. This is charged at £50 on each person liable to pay CIL in respect of a chargeable development.

Furthermore, under Reg 81, where a collecting authority is required to apportion liability between each material interest in the relevant land, it is able to impose a surcharge of £500 in respect of each of those interests. The surcharge is payable by the owner of that interest.

A surcharge is not payable under Reg 81 where the Council is required to apportion a surcharge.

Where an assumption of liability is not received, but a commencement notice has been received, the Council will:

- Issue a £50 surcharge on each person liable to pay CIL in respect of that development
- Issue a £500 surcharge on each person liable to pay CIL where the Council have to apportion liability
- Issue a demand notice requesting full payment on the intended commencement date

Where an assumption of liability is not received, and development is deemed to have commenced by the Council, the Council will:

- Issue a £50 surcharge on each person liable to pay CIL in respect of that development
- Issue a £500 surcharge on each person liable to pay CIL where the Council have to apportion liability
- And issue a demand notice in accordance with the penalty process for failing to submit a commencement notice – i.e. payment is due in full on the deemed commencement date

¹ *Reg 31 states liability must be assumed on all chargeable developments, although under Reg 42B and Reg 47 there is no requirement in the CIL regulations for anyone to assume liability before claiming charitable relief or an exemption for residential extensions and annex. However, should a disqualifying event occur later on, the Council will need to know who the liable persons are. Subsequently, it is the Council's decision to require the assumption of liability on all chargeable developments, irrespective of the guidance on exemptions and relief, to bring all chargeable developments into accordance with Reg 31.*

Failure to submit a Commencement Notice, prior to commencement of development

Mandatory requirements

Reg 67 states a commencement notice must be submitted at least one day prior to the development commencing. The commencement notice provides the date of intended commencement, and is used to issue the demand notice and set the payment instalments against.

Avoiding doubt

For the avoidance of doubt, the definition of commencement is set out clearly on the liability notice, and was also reinforced to existing liable parties via letter on 26 February 2015.

A note was also added to Liability Notices in May 2015 to stress the importance for liable parties to ensure that they receive all acknowledgements before starting work. This is to avoid applicants, who may later have penalties imposed on them, claiming that notices were submitted but have been lost in post / by the Council and therefore dispute the application of any surcharge.

Inconsistency of approach within the regulations

Reg 67(1)(A) states that commencement notices are not required in cases of minor development, where an exemption for residential extensions has been granted or where the chargeable amount is zero [before relief or exemption is applied]. However, Reg 42(B)(6), Exemption for residential annexes or extensions: procedure, contradicts Reg 67(1)(A) by stating that the full chargeable amount is due where residential self-build exemption is granted but a commencement notice is not submitted.

Claims for self-build residential extensions must be made using the Planning Portal's *Self-Build Extension Exemption claim form (Form 9)* which states a commencement notice "should be received by the collecting authority prior to the date of commencement of the development" – supporting Reg 42B. Within Form 9's 'Section B: Self-build declaration' the fourth check box requires the applicant to declare that "I will establish whether the charging/collecting authority require a commencement notice to be issued prior to commencing my development" – which seemingly serves to bridge the gap between the requirements of Reg 67(1)(A) and Reg 42(B)(6).

For consistency therefore, the Council will request a commencement notice for all developments except those where the chargeable amount is zero [before relief or exemption is applied]. This requirement is stated on the relevant forms and notices issued through the CIL administration process. The Council will not accept any claims by persons that they were not aware a commencement notice was required.

In the absence of a commencement notice, Reg 68 allows the collecting authority to deem a commencement date. This deemed date is used to inform the date from which payment is due on the demand notice. As the Council has adopted an instalments policy, it will also form the date at which any instalments will be calculated.

As a result of failing to submit a commencement notice, and work commencing, under Reg 71(2) the ability to pay through instalments is withdrawn, and payment is due in full on the deemed commencement date.

Under the regulations governing relief and exemption (42B, 47, 51 & 54B) any relief or exemption which has been granted will also be withdrawn for failure to submit a commencement notice.

Optional penalties

For failing to submit a commencement notice, in accordance with Reg 83, a collecting authority is able to impose a surcharge equal to 20% of the chargeable amount payable, or £2500, whichever is the lower amount. This is an optional penalty.

In this instance, should full payment not be received, the full surcharge would be applied and a revised demand notice issued. Each person known to be an owner of the relevant land would also be informed by the collecting authority of the imposition of the surcharge.

Where liability needs to be apportioned to owners of a material interest, the surcharge must also be apportioned. In all other cases, the surcharge is payable by the person liable to pay the CIL charge.

The collecting authority is able to waive this surcharge if the CIL chargeable amount is paid in full within 14 calendar days from the date of the Demand Notice.

The Council consider that the regulations provide sufficient scope to penalise those persons who do not adhere to the CIL administration process – as the mandatory requirements for failing to submit a commencement notice result in the automatic loss of any relief or exemption granted and/or the loss of payment through instalments. The Council are aware of the impact requiring full payment may have on the viability of a development, and are keen to ensure that the due CIL funds can be received. It is also in the Council's interest to avoid any legal costs required in enforcing payments through the courts. It is for these reasons, that liable persons will be given a 14 calendar day opportunity to pay their CIL charge in full, without the addition of a surcharge.

However, should payment not be received following this 14 calendar day period, then the surcharge will be applied.

Where a commencement notice is not received, and development is deemed to have commenced, the Council will:

- Record a deemed date, and withdraw any relief or exemption granted
- Withdraw any instalment policy granted to that development
- Issue a demand notice requesting full payment on the deemed commencement date
- Allow 14 calendar days for payment to be received in full
- Where payment is not received within 14 calendar days, the Council will add a surcharge in accordance with Reg 83 and issue a new demand notice, requesting payment within 14 calendar days
- Where applicable, surcharges will be apportioned to material interests
- In the event of non-payment, standard enforcement procedures and payment surcharges will apply

Failure to submit a notice of chargeable development

In some cases, development will be authorised through a general consent (permitted rights) but still be of sufficient size or type to trigger a CIL liability under Reg 42. In these cases a notice of chargeable development (NCD) is required.

Most developments permitted under general consent in the Borough, particularly agricultural developments, will not require an NCD because the rate for that use is set at zero and so no charge will result. For most developments that will incur a charge, it is likely that a planning permission would be required. However, there may be cases, particularly conversions to dwellings, which may be dealt with under general consent but trigger a charge under CIL. In these cases an NCD must be submitted.

Mandatory requirements

Under Reg 64, before any development authorised by a general consent is commenced, a notice of chargeable development must be submitted to the collecting authority. This does not apply to minor development (Reg 42), or where no CIL is payable because an exemption for residential extensions was granted, or where the chargeable amount, calculated under regulation 40, is zero. The notice must be accompanied by a plan which identifies the land and relevant building(s). The collecting authority can ask a person who has submitted an NCD to provide further information relevant to assist the authority in calculating the chargeable amount.

Under Regulation 108A, a collecting authority may require any owner of a material interest in any relevant land to provide it with such further information, documents or materials as the collecting authority considers relevant to assist it to ascertain whether a NCD must be submitted under Regulation 64 (2).

Regulation 64(A) sets out the action required where no NCD has been submitted to the authority and the authority deem the development has been commenced. In these cases, the collecting authority must prepare an NCD, along with a plan, and any other information used to calculate the charge, and serve the notice on each person known to the authority as an owner of the relevant land, together with the liability notice served under Regulation 65(3). This action does not apply to those developments that are exempt because they are minor development (Reg 42) or where an exemption for a residential extension has reduced the CIL liability to zero. In order to gather the necessary information to determine whether a NCD is required, authorities are able to request information and are granted powers of entry.

Under Regulation 109, an authorised person may at any reasonable hour enter the relevant land – to ascertain whether a chargeable development has commenced, to display any notice, to ascertain whether there has been a compliance with any requirement imposed, to gather information to calculate the chargeable amount in the case of a NCD submitted or, where no NCD has been submitted, or to gather information in order to ascertain whether a NCD should be submitted under regulation 64(2). A person entering the land must be able to provide evidence of their authority, and state the purpose of their entry before entering.

In accordance with Regulation 108A, before entering the relevant land to gather information in order to ascertain whether a NCD should be submitted, the collecting authority must first request the information in writing.

Authorised persons may not enter any part of the relevant land which is used as a private dwelling unless a justice of the peace has issued a warrant authorising the person to do so.

Regulation 78 allows that a collecting authority may request, by notice given in writing, a relevant person to supply it with information which the authority requires for the purposes of carrying out its functions under these regulations. Information must be supplied within 21 calendar days of the request being made. There are no penalties for failure to comply with a request under Reg 78.

Optional penalties

Under Reg 82, where a NCD is not submitted, the collecting authority is able to impose a surcharge equal to 20% of the chargeable amount payable, or £2500, whichever is the lower amount. Where liability needs to be apportioned between each material interest in the relevant land, the surcharge must be apportioned on the same basis.

Where a notice of chargeable development (NCD) is not received, but is required, and development commences, or is deemed to have commenced, the Council will:

- Issue a demand/request for the NCD to be submitted, along with the CIL Additional Information Form. Request that this is returned within 21 calendar days
- Issue a demand for any other additional information to be supplied in order to ascertain the charge for the development. Request that this is returned within 21 calendar days

On receipt of the NCD

- Calculate charge and issue a demand notice requesting full payment immediately (within 14 calendar days)
- If payment is made within 14 calendar days, waive surcharge of £2500
- If payment is not made within 14 calendar days, add surcharge of £2500 and reissue demand notice. If no payment is received, standard enforcement procedures apply.

If no NCD is supplied after 14 calendar days

- Request any additional information that may be required to ascertain facts required to calculate the charge. This may also include a site visit. Some information may be accessible from prior notification applications.
- Prepare a NCD and serve on relevant persons along with a liability notice.
- Add surcharge of £2500. Apply any additional surcharges – for example surcharges for identifying who the relevant landowners are in order to assign and default liability to them.
- Issue a demand notice
- If no payment is received, standard enforcement procedures apply.

Failure to notify of a disqualifying event

Mandatory requirements

Where exemption or relief is granted, clawback periods are put in place for a period of:

- 3 years following completion (self-build whole house exemption or annex exemption); or
- 7 years following commencement (charitable exemption and social housing relief).

Where a disqualifying event occurs prior to commencement, or within the respective clawback period, and the criteria for granting relief or exemption are subsequently affected, the collecting authority can clawback the full chargeable amount payable on the development.

Disqualifying events are set out in the regulations 42C (residential annexes), Reg 48 (charitable), Reg 53 (social housing) and Reg 54D (self-build whole house). There are no disqualifying events or clawback periods for residential extensions.

Persons should notify the collecting authority where a disqualifying event occurs by giving notice in writing within 14 calendar days of the disqualifying event occurring.

Optional penalties

Under Reg 84, the collecting authority is able to impose a surcharge of 20% of the chargeable amount payable, or £2500, whichever is the lower amount, for failure to notify the authority of a disqualifying event within 14 calendar days from the date it occurs.

Where the disqualifying event occurs before commencement of the chargeable development then the surcharge is payable upon commencement. In all other cases the surcharge is payable on the day it is imposed, and payable by relevant persons.

Where liability has been apportioned between material interests, any surcharge must be apportioned on the same basis. In all other cases, the surcharge is payable by the person liable to pay CIL in respect of the chargeable development.

Where a disqualifying event occurs pre-commencement and the Council is not notified, the Council will:

- Withdraw relief or exemption, and confirm this in writing
- Apply a surcharge of 20% of the chargeable amount, or £2500, whichever is the lower amount and issue a revised liability notice.
- Upon commencement, issue a demand notice in line with normal procedures

Where a disqualifying event occurs post commencement or post completion within the clawback period, and the Council is not notified within 14 days, the Council will:

- Withdraw relief or exemption for the dwelling, and confirm this in writing
- Apply a surcharge of 20% of the chargeable amount, or £2500, whichever is the lower

amount

- Issue a demand notice requesting full payment immediately (within 14 calendar days)
- Follow normal enforcement procedures for failure to pay CIL on time (as set out above)

To monitor disqualifying events the Council will:

- Record all liability notices & relief approvals on the land register
- Received land searches will be checked against CIL records and CIL officer informed

Failure to comply with an information notice

The collecting authority can issue an information notice under Regulation 35 (to seek information on how to apportion liability) or Reg 54 (to seek information in relation to a claim for social housing relief). Such requests must be complied with within 14 calendar days of the notice being served.

Optional penalties

Under Reg 86, the collecting authority is able to impose a surcharge of 20% of the chargeable amount payable, or £1000, whichever is the lower amount, if a person fails to comply with the request for information after 14 calendar days, beginning with the date on which the notice is served.

Where someone fails to comply with the requirements of an information notice, within 14 calendar days of the notice having been served the Council will:

- Impose a surcharge of 20% of the chargeable amount payable, or £1000, whichever is the lower amount
- This surcharge will then be due for payment upon commencement, and issued in line with the demand notice procedure

Alternative information requests

Regulation 78 allows that a collecting authority may request, by notice given in writing, a relevant person to supply it with information which the authority requires for the purposes of carrying out its functions under these regulations. The Council will write to relevant persons to request information.

Information must be supplied within 21 calendar days of the request being made.

There are no penalties for failure to comply with a request under Reg.78.

Failure to pay CIL, or failure to pay CIL on time

Mandatory requirements

Reg 70 allows for payment of CIL to be made in accordance with an adopted instalments policy, where a person has assumed liability and where a commencement notice has been received. However, where an instalment which is due is not received in full, on or before the date on which it is due, the unpaid balance of all remaining instalments becomes payable in full **immediately**. A revised demand notice must be sent to all persons known to the collecting authority as an owner of the relevant land.

In those circumstances where someone has failed to assume liability Reg 71 sets out that payment is due in full on the **intended** commencement date. Where someone has failed to submit a commencement notice, payment is due in full on the **deemed** commencement date.

Optional requirements

The collecting authority is able to impose surcharges for late payment. This is charged at 5% of the chargeable amount or £200, whichever is the greater amount. This can be applied following each of these set periods: the end of 30 calendar days, the end of 6 months and the end of 12 months, beginning on the date that payment is due.

Under Reg 87 late payment interest can also be applied. This will need to be calculated by the Council's accountants on a case by case basis. Late payment interest will be calculated at an annual rate of 2.5 percentage points above the Bank of England base rate, in accordance with Reg 87(2).

Mandatory provisions

Where payment is not received, and the collecting authority considers it expedient that development should stop until the amount has been paid, it can issue a warning notice (Reg 89), followed by a stop notice (Reg 90). A warning notice must be served first, and it must state the period after which a CIL stop notice may be issued. This must not be less than 3 days or more than 28 days after the warning notice is issued. Warning notices and stop notices, as enforcement action, will be prepared and served in liaison with the Council's legal services and issued by the Development Management enforcement officers. The amount of time granted through the warning notice will be assessed on each individual case basis.

The collecting authority may also apply to the courts for a liability order (Reg 96, 97) in order to recover the monies.

It is acknowledged that in many cases, time will be of the essence for such enforcement action and a timely pursuit of the monies will be required.

Where an instalment or payment is not received on time, the Council will:

- Issue a demand notice requesting full payment is made immediately

Where payment is not received after 30 calendar days of the payment being due, the Council will:

- Impose a surcharge of 5% of the chargeable amount or £200, whichever is the greater amount;
- Apply 30 calendar days' interest to the chargeable amount;
- Reissue a demand notice setting out the surcharges / interest now due in addition to the original payment;

Where payment is still not received after 6 months of the payment being due, the Council will:

- Impose a further surcharge of 5% of the chargeable amount or £200, whichever is the greater amount;
- Apply 6 months' interest to the chargeable amount; and
- Reissue a demand notice setting out the surcharges / interest now due in addition to the original payment.

Where payment is still not received after 12 months of the payment being due, the Council will:

- Impose a further surcharge of 5% of the chargeable amount or £200, whichever is the greater amount;
- Apply 12 months' interest to the chargeable amount; and
- Reissue a demand notice setting out the surcharges / interest now due in addition to the original payment.

At any time after 30 calendar days of the payment being due the Council can:

- Consider the expediency of issuing a warning notice and Stop Notice;
- Where this is considered expedient, notify the solicitor to take the necessary action; and
- Where considered necessary, issue a reminder notice and apply for a liability order.