

South Gloucestershire Council

DECISION REPORT BY DIRECTOR OF ENVIRONMENT AND COMMUNITY SERVICES AND THE DIRECTOR OF RESOURCES AND BUSINESS CHANGE ACTING UNDER DELEGATED AUTHORITY

DATE: 2 March 2020

COMMUNITY INFRASTRUCTURE LEVY SURCHARGING AND ENFORCEMENT

Purpose

1. To consider the adoption of a Community Infrastructure Levy Surcharging and Enforcement policy from 1 April 2020 in accordance with national regulations as set out in Appendix 1.

Policy

2. Legislation was introduced in the Planning Act 2008 to allow Local Authorities to introduce a Community Infrastructure Levy (CIL). A CIL allows local authorities to raise funds on a pro-rata (£per m² of net new development) basis on development projects in their area towards infrastructure provision.

3. The CIL charging schedule was adopted by the Council from 6 April 2015 and the charging of CIL on planning applications commenced on 1 August 2015. The CIL allows local planning authorities to raise funds from developers who are undertaking new building projects in their area.

4. CIL policies in respect of payments in kind, paying by instalments, charities investment activities relief and social housing relief, which support the CIL charging arrangements, were also adopted by the Council from 6 April 2015.

5. The resolutions that were approved by Council in March 2015 in respect of the adoption of the CIL charging schedule includes, the amendment of the Scheme of Delegation in relation to the delegations of the Director of Environment and Community Services and the Director of Corporate Resources to permit the levying, collection and enforcement of the CIL in accordance with the Community Infrastructure Regulations 2010 (as amended).

Background

6. The Council has commenced a wider review of its adopted CIL charging schedule given that on adoption the Council stated that it intended that it would review CIL at least every three years. Recently, the Government has consulted on further amendments to the regulations. These new regulations were enacted on the 1st September 2019, and the review will take account of these.

7. The Council has benefitted from an increasing annual amount of total CIL receipts since the commencement of CIL charging on 1 August 2015. In 2015/16 total CIL receipts were £49k, in 2016/17 £560k, in 2017/18 £1,900k and in 2018/19 £3,340k. It is important

that the Council continues to have robust arrangements in place to ensure the timely collection of CIL receipts given their increasing annual amount.

8. The CIL regulations have always allowed authorities to levy surcharges/interest on developers where they fail to adhere to the requirements of the national CIL regulations; effectively this is a penalty for non-compliance with the regulations. It is for the Council to decide whether to adopt a policy setting out how and when it will use surcharges/interest. The Council could decide to adopt a policy to apply surcharges ahead of the wider review of its adopted CIL charging schedule. If the Council's CIL process is not followed correctly by developers, the following nationally set surcharges/interest and enforcement may be applied in line with CIL regulations:

Regulation 80 - Failure to assume liability and the development commences - £50 surcharge on each person liable to pay

Regulation 81 – Apportionment of liability between each material interest in the relevant land - £500 per interest in the land.

Regulation 82 - Failure to submit Notice of Chargeable development and development commences – 20% of the chargeable amount or £2,500, whichever ever amount is the lower

Regulation 83 – Failure to submit a Commencement Notice and development commences - 20% of the chargeable amount or £2,500, whichever ever amount is the lower.

Regulation 84 – If a developer fails to notify the authority of a disqualifying event within 14 days of said event - 20% of the chargeable amount or £2,500, whichever ever amount is the lower

Regulation 85 – Late payment surcharge (if the required amount is not paid within 30 days of the due date) – 5% of the chargeable amount or £200 whichever ever amount is higher

Regulation 86 – Failure to comply with an Information Notice - 20% of the chargeable amount or £1,000, whichever ever amount is the lower

Regulation 87 – Failure to pay the required amount by the due date will result in late payment interest being charged starting on the day the payment was due by (this is not discretionary) – interest payable at 2.5% above the Bank of England base rate

Regulations 89 & 90 – Service of a Stop Notice where the collecting authority has issued a warning notice in respect of the chargeable development and the amount specified in the warning is unpaid. Continuing to develop in the presence of such a notice is a criminal offence, punishable by potentially unlimited fines.

Regulations 96 to 98 – If a developer fails to pay CIL the Collecting Authority may apply for a Liability Order and seek a court's consent to seize and sell assets to recover the money due. These assets may include any land the developer holds. The collecting authority must send you notice of its intention to do so beforehand.

Regulation 100 – Commitment to Prison - Where a developer continues to evade paying CIL, a Collecting Authority may apply to a magistrate's court for the issue of a warrant, committing the debtor to prison.

Regulation 103 – Charging orders, if a court has made a liability order of at least £2,000, the Collecting Authority may apply for a charging order on a relevant interest to secure the amount owed.

Regulation 107 – Enforcement of local land charges - CIL is registered as a local land charge and the charge can be enforced if payment is not received.

9. Appendix 1 contains the proposed South Gloucestershire Council Community Infrastructure Levy Surcharges and Enforcement Policy.

10. It is important to note that any income raised through CIL surcharging/interest would need to be used in the first instance to fund the relevant resources to carry out any required monitoring/enforcement of sites, as set out in the Human Resources section of this report. An advantage of having dedicated resources for monitoring/enforcement is that the Council would have a robust data set from which due CIL receipts could be collected and surcharges/interest could be applied, if required. The desired outcome of adopting CIL surcharging/interest is to encourage developers to improve compliance with the requirements of the CIL regulations, rather than to generate income from levying surcharges/interest.

11. The estimated financial impact over the last eighteen months, if a CIL surcharging/interest policy had been in operation by the Council has been considered. It is estimated that the potential new income from CIL surcharging/interest would be sufficient to meet the cost of monitoring/enforcement of sites.

Consultation

12. There has not been any external consultation on the proposed adoption of a CIL Surcharging and Enforcement policy.

13. A short engagement with developers will be undertaken as part of the process to adopt the new policy. Developers will be sent a copy of South Gloucestershire Council Community Infrastructure Levy Surcharging and Enforcement Policy (Appendix 1) in advance of the commencement of the new policy on 1 April 2020, subject to the Directors' delegated decision on its adoption. It is important to note that the desired outcome is to encourage developers to improve compliance with the requirements of the CIL regulations.

Equalities Considerations

14. An Equality Impact Assessment and Analysis (EqIAA) accompanied the Charging Schedule and CIL and S106 Guide Supplementary Planning Documents when the Council made the decision to commence charging CIL in 2014. The EqIAA concluded that no disproportionate negative or positive impacts were likely as a result of implementing the Charging Schedule and CIL and S106 Guide Supplementary Planning Documents. Since this time there have been no complaints received which relate to any protected characteristics, nor any wider equalities related issues. It is however, noted that all and any relevant issues relating to protected characteristics are considered on an individual basis. An analysis of the CIL regulations as set out in paragraph 8 of this report has shown that there are a variety of regulations in place nationally and they apply equally to all developers. Key to the successful implementation of the CIL Surcharging and Enforcement policy is clarity of communication. In this respect the Council has in place a well-established Equality and Diversity in Communications policy which will continue to be followed by those administering CIL. This will ensure that people with a full range of protected characteristics and needs are fully included in the receipt of information. In

addition, an appeals route is in place in relation to the Community Infrastructure Levy Surcharging and Enforcement Policy which allows for consideration of all and any equalities related issues.

15. The Community Infrastructure Levy Surcharging and Enforcement Policy has the potential to impact differentially. This is identified as being largely relevant to the protected characteristic of Disability where for example, there may be a greater likelihood of needing more than 100sqm (due to accessibility requirements), and particular needs in respect of communications. In response to this the Council proactively ensures that all exemptions/reliefs are applied, the Equality and Diversity in Communications Policy is followed and the appeal route allows for full consideration of equalities related issues. As such implementation of the CIL Surcharging and Enforcement policy is not likely to result in any positive or negative impact in respect to any protected characteristic groups.

Alternative Options Considered

16. The Council could choose not to adopt a CIL Surcharging and Enforcement policy. Not adopting a policy could mean that the Council foregoes the benefit of improvements to the compliance of developers with the requirements of the CIL regulations, including the timely collection of CIL receipts.

Risk Assessment

Financial Implications (includes tax implications such as VAT)

17. CIL regulations permit use of up to 5% of CIL receipts collected to be used to fund the cost of administering the levy. To date, this CIL administration funding has been sufficient to meet in full the costs of administering the levy.

18. The estimated financial impact over the last eighteen months, if a CIL surcharging/interest policy had been in operation by the Council has been considered. It is estimated that potential new income (over and above CIL administration funding) from CIL surcharging/interest of between £50k to £80k.

19. The adoption of a CIL surcharging/interest policy will require some additional staffing resources for monitoring/enforcement of sites, together with two 12 months temporary acting up roles in the Planning Enforcement and Technical Support teams to support the requirements of operating the new policy, and some modifications to existing IT systems. The actual amount of income from CIL surcharging/interest and the cost of monitoring/enforcement of sites would be monitored following the adoption of the proposed CIL Surcharging and Enforcement policy. It is envisaged that the potential income from CIL surcharging/interest would be sufficient to meet the cost of monitoring/enforcement of sites.

Steve Strange, Finance Business Partner
☎ 01454 863122

Legal Implications

20. CIL is effectively a local development tax it therefore has legal implications in terms of collecting outstanding amounts where they become debts. The proposed CIL

Surcharging and Enforcement policy will be applied in accordance with the CIL Regulations 2010 (as amended) and will support the collection of CIL receipts.

Gill Sinclair, Deputy to the Head of Legal Governance & Democratic Services
☎ 01454 863039

Human Resources Implications

21. Environment and Community Services department supported by appropriate corporate teams are leading on preparing the CIL Surcharging and Enforcement policy and have prioritised staff resources needed to bring the policy to the point of adoption. A 12 months additional staff resource comprising of 1 FTE Planning Enforcement Investigator (H9) will be required for the monitoring/enforcement of sites, together with four additional hours for the existing Compliance Case Officer post. Also for 12 months a temporary increase in grade for two roles in the Planning Enforcement and Technical Support to support the requirements of operating at a higher level role profile in support of introducing the new policy. It is important to note that these additional resources will initially be recruited into on a temporary basis, whilst the sustainability of income is determined.

Gaynor Fisher, Human Resources Business Partner
☎ 01454 868193

Climate Emergency and Environmental Implications

22. CIL provides financial contributions to support existing and new communities to have the necessary environmental infrastructure and services to ensure they are sustainable. The adoption of a CIL Surcharging and Enforcement policy will encourage developers to improve compliance with the requirements of the CIL regulations.

Environmentalpolicy@southglos.gov.uk

Social Implications.

23. CIL provides financial contributions to support existing and new communities to have the necessary social infrastructure and services to ensure they are sustainable. The adoption of a CIL Surcharging and Enforcement policy will encourage developers to improve compliance with the requirements of the CIL regulations.

Mark Pullin, Strong, Safer Communities Manager
☎ 01454 868480

Economic Implications

24. CIL provides financial contributions from new development towards the provision of off-site strategic infrastructure. Business will benefit from infrastructure provided as a consequence of funds raised through the CIL.

Antony Merritt, Strategic Economic Development Manager
☎ 01454 863870

Privacy Impact Assessment

25. There is no direct requirement for a Privacy Impact Assessment to be undertaken.

Risks, Mitigations & Opportunities

26. The major proportion of CIL financial contributions from many medium sized development schemes are for off-site infrastructure such as local schools and transportation needs. The adoption of CIL Surcharging and Enforcement policy would be to encourage developers to improve compliance with the requirements of the CIL regulations and ensure timely receipt of CIL funding by the Council to support infrastructure requirements.

27. The potential new income from the adoption of a CIL Surcharging and Enforcement Policy would be used to fund the cost of monitoring/enforcement of sites. The additional resource required would initially be recruited into on a fixed term basis, given the uncertainty over the amount of income available over time, to mitigate against the risk of the estimated income not coming to fruition.

28. There is a risk that the adoption of a CIL surcharge/interest policy may have a greater impact on small developers rather than the national developers, as small developers often have issues with cash-flow and find it difficult to pay CIL within 60 days of commencement. This is due to the majority of small builds being funded by financing, which is released from the funding source at intervals as the building progresses. The CIL Instalment Policy has recently been revised to allow the option of all developers to pay their CIL liability over 18 months and not just those with liabilities over £35k, as had previously been the case.

DECISION

To adopt a Community Infrastructure Levy Surcharging and Enforcement policy from 1 April 2020 in accordance with national regulations as set out in Appendix 1.

Decision of the Director of Environment and Community Services and Director of Resources and Business Change

I make the decision as recommended having been advised and taken account of all relevant factors.



Nigel Riglar
Director of Environment and Community Services

Date 03 March 2020

I make the decision as recommended having been advised and taken account of all relevant factors.



David Wilkin
Director of Resources and Business Change

Date 05 March 2020

Departmental Contact

Andrew Birch, Head of Resources and Support Services

☎ 01454 865985

Appendices

Appendix 1 - South Gloucestershire Council Community Infrastructure Levy Surcharges and Enforcement Policy

Background Papers

South Gloucestershire Community Infrastructure Levy (CIL) – Council 18 March 2015

South Gloucestershire Council

Community Infrastructure Levy

Surcharges and Enforcement Policy

Community Infrastructure Levy Surcharges

Where there are problems in collecting the levy, the Council (as charging authority) has the means to penalise late payment through the use of surcharges.

In South Gloucestershire, surcharges will be applied in line with the below table and in accordance with the CIL Regulations 2010 (as amended).

Failure to comply with the CIL requirements may trigger enforcement action by the Council. In cases of persistent non-compliance, the regulations allow the Council to consider more direct action such as the issuing of a CIL Warning Notice and subsequent Stop Notice or applying to the courts for seizure of assets to pay the outstanding monies or for custodial sentences.

It is possible to appeal to the Planning Inspectorate against a surcharge or enforcement action taken by us in relation to the non-payment of CIL. Details of how to appeal a surcharge can be found at Regulation 117 and details of how to appeal a CIL Stop Notice at Regulation 119.

The following table sets out the surcharges South Gloucestershire Council will apply in the event of non-compliance with the Regulations, in line with Part 9 of the Community Infrastructure Levy Regulations 2010 (as amended). The table is a summary and you should refer to the CIL Regulations 2010 (as amended) for full details concerning surcharging.

Surcharge for	Amount	CIL Regulation
Failure to assume liability.	£50 on each person liable to pay CIL	80
Apportionment of liability.	£500 in respect of each material interest	81
Failure to submit notice of chargeable development (Form 5) (i.e. development has taken place under general consent)	20% of the chargeable amount or £2,500, whichever is lower	82
Failure to submit a commencement notice (prior to development starting)	20% of the chargeable amount or £2,500, whichever is lower	83
Disqualifying events	20% of the chargeable amount	84

(Where a person fails to notify the Council of a disqualifying event before the end of the period of 14 days with the day being the date on which the disqualifying event occurs)	or £2,500, whichever is lower	
Late Payment	5% of the outstanding chargeable amount or £200, whichever is greater. Payment not received within 30 days of due date. If the sum is not paid in full within 6 months a further surcharge of 5% or of the unpaid amount or £200 whichever is the greater, the same surcharge can be applied at 12 months.	85
Failure to comply with an Information Notice	20% of the chargeable amount or £1,000, whichever is lower	86
Late Payment Interest	When the CIL liability is not received (in whole or in part) on the day payment is due, late payment interest will become payable on the unpaid amount. Late payment interest is calculated for the period starting on the day after the day payment was due and ending on the day the unpaid amount is received at an annual rate of 2.5 percentage points above the Bank of England base rate	87

Community Infrastructure Levy Enforcement

The CIL Stop Notice and Warning Notice

The Regulations contain range of enforcement powers available to the Council and the Council will where necessary consider using the most appropriate means of enforcement on a case by case basis.

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. (Regulation 89).

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.

Distress and Sale of Goods (asset seizure)

When you fail to pay CIL the Council may apply for a Liability Order and 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. (Regulations 96-98).

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. (Regulation 100-101)

Charging Order

If a court has made a liability order of at least £2,000, the Collecting Authority may apply for a charging order on a relevant interest to secure the amount owed.

Enforcement of Land Charge

CIL is registered as a local land charge and the charge can be enforced if payment is not received. (Regulation 107)

Appeal

Where a person is aggrieved at a decision of a collecting authority to impose a surcharge, they may appeal to the appointed person within 28 days beginning with the day on which the surcharge is imposed in accordance with regulations.