Community Infrastructure Levy (CIL)

CIL Penalties and Surcharges – Guidance Note 8

Background

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

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 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 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 the 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.

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.

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 immediately until payment of the outstanding amount is made.

Distraint on goods (asset seizure)

When 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.