

Maidstone Community Infrastructure Levy (CIL) Surcharges and Planning Enforcement Procedure

1. Introduction

This document sets out how Maidstone Borough Council (MBC) as Charging and Collecting Authority for the Community Infrastructure Levy (CIL), deals with breaches of the Community Infrastructure Regulations 2010 (as amended). It is applicable to all development that is CIL liable post 1 October 2018.

These breaches can only occur where planning permission has been granted by the Local Planning Authority, or by way of general consent i.e. permitted development.

Part 9 – Enforcement of The CIL Regulations 2010 (as amended) sets out the processes and enforcement powers of the Charging Authority, to ensure a smooth collection of the levy.

These enforcement procedures can be triggered by the following:

- Failure to complete and submit the relevant CIL form(s).
- Failure to inform of a disqualifying event
- Late Payment
- Failure to comply with an information notice from the Charging Authority

The CIL regulations give the Council the ability, to impose late payment surcharges and interest on the levy. In most cases, these measures should be sufficient. Persistent failure to pay the levy can result in a CIL Stop Notice being issued which will prohibit any further development on site. Further to this, legal action can be sought to recover the debt due, or in an extreme case result in 3 months imprisonment.

Surcharges and interest applied to CIL are solely for situations where the correct paperwork has not been submitted to the Charging Authority and / or that payment has not been received.

If the correct forms have not been submitted and the chargeable development has commenced then this will mean the loss of any granted exemption or relief as well as the loss of the benefit of paying in instalments, as set out in MBC's Instalment Policy.

https://maidstone.gov.uk/_data/assets/pdf_file/0007/158038/Approved-Instalments-Policy-October-2017.pdf

All additional penalties and surcharges will be added to the land charges register.

If as the liable party you do not agree with the CIL calculation on the issued liability notice, email CIL@maidstone.gov.uk asking for a review of the chargeable amount under Section 113 of the CIL Regulations, within 28 days of the liability notice being issued.

2. Surcharges and Interest

The table below gives an overview of the level of surcharges and interest that could be imposed, and the circumstances in which each specific regulation would come into force. Surcharges and interest will be calculated by the CIL team and a letter sent to the appropriate liable persons.

Surcharges and Interest Table

Failure to assume liability	Regn 80	Maidstone (MBC) will impose a surcharge of £50 on each person liable to pay CIL in respect of a chargeable development if : 1.Nobody has assumed liability to pay CIL in respect of the chargeable development; and 2. The chargeable development has commenced.
Apportionment of liability	Regn 81	When MBC is required to apportion liability to pay CIL between each material interest in the relevant land, it will impose a surcharge of £500 in respect of each of those interests.
Failure to submit a notice of chargeable development *	Regn 82	MBC will impose a surcharge equal to 20% of the chargeable amount payable in respect of the development or £2,500 whichever is the lower amount.
Failure to submit a commencement notice	Regn 83	When a chargeable development has commenced before MBC has received a valid commencement notice MBC will impose a surcharge equal to 20% of the chargeable amount or £2500 whichever is the lower amount.
Failure to notify MBC of a Disqualifying event **	Regn 84	If a person who is required to notify the relevant authority of a disqualifying event, fails to do so before the end of the period of 14 days beginning with the day on which the disqualifying event occurs, MBC will impose a surcharge equal to 20% of the chargeable amount or £2,500, whichever is the lower amount.

Late payment	Regn 85	When the CIL payment due is not received in full after the end of the period of 30 days beginning with the day on which the payment is due, MBC will impose a surcharge of 5% of the monies due or £200 whichever is the greater amount.
Failure to comply with an information notice	Regn 86	When a person fails to comply with any requirement of an information notice before the end of the period of 14 days beginning with the day on which the notice is served, MBC will impose a surcharge of 20% of the relevant amount of £1000 whichever is the lower amount.
Late interest payment	Regn 87 & 88	If the CIL payment due is not received on the date it is due, late payment interest will be added. Late payment interest is calculated from the period starting on the day after the payment was due and ending on the day the unpaid amount is received, at an annual rate of 2.5% above the Bank of England base rate.

***Notice of a Chargeable Development** - CIL is liable on planning permissions granted by the Local Planning Authority and also on permitted development /permission by way of general consent/ applications for certificate of lawfulness (check what's the right terminology)

It is the responsibility of the land owner (liable party) to inform MBC of development via CIL Form 5 (Notice of Chargeable Development) if the development falls into the adopted charging schedule parameters, for example if development is;

- Creating a dwelling
- Increasing the floor area by 100 sqm
- Converting a building that is not in use ^

[^] The definition of lawful use is contained in Regulation 40 (11) of the CIL Regulations 2010 as (amended). This states that an "in use building" is a building which "contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development".

https://ecab.planningportal.co.uk/uploads/1app/forms/form_5_notice_of_chargeable_development.pdf

****Disqualifying Event** – If development commences prior to the submission of Form 6: Commencement of Development, then this would constitute a disqualifying event. For applications that have had relief or an exemption granted, a disqualifying event would be triggered by a change in circumstances contrary to the terms and conditions of the relief/exemption.

If the chargeable development has not commenced then the surcharge is payable on commencement of that chargeable development.

https://ecab.planningportal.co.uk/uploads/1app/forms/form_6_commencement_notice.pdf

Disqualifying events examples include:

- An annex sold separately to the house.
- A Self builder who sells the house within 3 years.
- Social housing is sold on the private market within 7 years. NB In this instance the liable person is the person who benefitted from the exemption and not the occupant of the dwelling
- Charity buildings which are used for non charitable purposes within 7 years.

3. Enforcement

Failure to comply with the CIL requirements may result in the Council's planning department taking enforcement action. This can include:

- the use of warning notices (warning development may need to stop)
- Issuing a stop notice (to force development to stop)
- or even court action

See Planning Enforcement diagram

3.1 CIL stop notice

Sometimes MBC may believe that interest and late payment surcharges will be ineffective in securing payment of the overdue CIL or that writing to the liable person informing them of the surcharges and interest has not resulted in payment.

In these circumstances, the Council may decide to serve a CIL stop notice on the development. A stop notice prohibits development from continuing until payment is made. Once a notice is issued it is a criminal offence to continue with the development. However a CIL stop notice does not prohibit any works on the relevant land which are necessary in the interest of health and safety.

Before serving a CIL stop notice, the Council will first issue a 'warning notice' to the person liable to pay the amount warning of its intention to impose the stop notice.

The warning notice must be served on the 'relevant persons' i.e.:

- the person who is liable for the unpaid amount
- every owner of the land
- every occupier of the land, and
- any other person whom the collecting authority considers may be materially affected by the stop notice

The warning notice must be in writing and state:

- the date of the notice
- the authority's reasons for issuing it
- the unpaid amount
- that payment of the unpaid amount is due in full immediately
- the period after which a CIL stop notice may be issued if the unpaid amount is not paid (which must not be less than three days or more than 28 days after the warning notice is issued)
- the effect of, and possible consequences of failure to comply with, a CIL stop notice

The Council will then post the warning notice on the site itself. This notice will state that continued non-payment may result in a CIL stop notice being issued. If payment is not made by the end of this stated period, MBC can serve a stop notice which will prohibit development with immediate effect until payment of the outstanding amount is made.

The Council can withdraw the CIL stop notice at any time by serving a written notice to that effect on the persons served with a CIL stop notice. The Council can withdraw it when the unpaid amount stated in the notice is paid in full. As part of this process, the Council will display a notice of withdrawal on the relevant land in place of the CIL stop notice. The stop notice ceases to have effect on the day the collecting authority serves notice of its withdrawal.

As the Charging Authority, the Council must keep a register of all CIL Stop Notices issued.

The CIL

Regulations 2010 (as amended) states they should be logged on the Local Planning Authorities enforcement and stop notices register. The CIL team will inform enforcement for them to add it to the register. All entries will be removed from the register if the notice is withdrawn or quashed.

3.2 Asset seizure

Continued failure to pay the outstanding CIL may result in the Council asking for the court's consent to seize and sell assets to recover the money due. These assets may include any land held. Alternatively the Council may apply for a charging order if there is more than £2,000 outstanding. The MBC CIL team will send a notice of its intention to apply to the Courts, to the land owner and other interested parties before doing so. This letter will be copied to the Council's legal team who will then be instructed by the CIL team to proceed with applying to the courts. The Court will then issue the instruction to either seize or sell assets or issue an order imposing the charge on a relevant interest to secure the amount due.

3.3 Committal to prison

In a very small number of cases where the Council can demonstrate that recovery measures have been unsuccessful, the Council can ask the magistrates' court to commit the liable person/persons to prison for a maximum of three months. To do this, MBC must be able to demonstrate to the court that it has been unable to recover the CIL amount due. Regulations 100 & 101

4.0 Further information

Guidance on the Community Infrastructure Levy, including the collection and enforcement process, can be found on the [Planning Practice Guidance website](#).