

Community Infrastructure Levy Guidance

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Harrogate
BOROUGH COUNCIL

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Community Infrastructure Levy Guidance

Introduction 1

- 1.1** The Community Infrastructure Levy (CIL) is a planning charge, introduced by the Planning Act 2008 as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area.
- 1.2** This guide is intended to provide applicants and developers with brief overview of the Community Infrastructure Levy (CIL). All information is based upon the CIL Regulations 2010, the amendments to those regulations and the current statutory guidance. It is intended that this guide will be updated over time in response to future amendments to Government regulations and guidance.
- 1.3** Harrogate Borough Council adopted its [CIL Charging Schedule and associated policies](#) on 8th July 2020 at a meeting of Full Council. The CIL Charging Schedule was implemented and came into effect on 1 October 2020.
- 1.4** All planning applications submitted after the 8th July 2020 and determined on or after 1 Oct 2020 may be liable to pay CIL, in accordance with the Harrogate CIL Charging Schedule. This includes all planning applications that were undetermined on this date (if they were submitted after 8 July 2020), including those that were approved via a resolution to grant subject to the signing of a legal agreement. The levy will also apply to any appeal decisions allowed after the implementation date.

2 The CIL Process

- 2.1** The CIL Regulations clearly set out the notification procedure; it is important that this process is followed, as surcharges can be applied for failure to notify the Council of issues such as liability to CIL and commencement of development.
- 2.2** All CIL Forms are [supplied by the planning portal](#) but should be returned to Harrogate Borough Council. The Council will issue acknowledgment letters for all CIL forms (2 - 14) submitted. It is the liable person's interest to ensure that they receive all relevant acknowledgments before starting work (including demolition/site preparation). We are able to issue acknowledgements more promptly if an email address is provided.
- 2.3** The key steps in the CIL process are shown on the process diagram on the [Harrogate CIL Website](#) and are also summarised in the text below. For detailed guidance, you should always refer to the CIL Regulations 2010 (as amended). You should seek your own advice if you are in any doubt as regards how CIL operates or affects your own position.

Stage 1 - Information required for CIL Liable Development

a. Planning Applications

[Form 1: CIL Additional Information](#) must be submitted alongside all applications for: full planning permission, including householder applications; reserved matters (following grant of outline planning permission); and lawful development certificates.

The [associated Guidance Note](#) should be read when completing Form 1

The information provided on this form will enable us to determine whether or not CIL is payable and to calculate the chargeable amount. Failure to supply this information will invalidate the application.

b. Permitted Development

Some developments do not require planning permission and can be carried out under 'permitted development'. However, if the new floorspace exceeds 100sqm or a new dwelling or annex is created then the development is likely to be CIL liable. [Form 5: Notice of Chargeable Development](#) must be completed and returned to the Council before any works start in relation to the development. The Council can then calculate and apply a CIL charge.

Failure to complete a Notice of Chargeable Development will incur a surcharge - see the [Harrogate CIL Website](#)

c. Assuming Liability

Landowners are ultimately liable to pay the CIL, but anyone involved in a development may take on the liability to pay. The party intending to assume liability for the CIL must submit [Form 2: Assumption of Liability](#) to the Council before the development commences.

The Council strongly encourages Form 2 to be submitted when the application is made, although it is not required for validation. The sooner the form is submitted, the easier and quicker the Council should be able to process your CIL.

If no-one assumes liability then payment will default automatically to the owners of the land. If no payment is received, payment can also default to the owners of the land. If the Council has to identify the owners of the land, or identify the apportionment, then we can apply a surcharge.

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The liability can be transferred to another person at any time, or withdrawn if prior to commencement using: [Form 3: Withdrawal of Assumption of Liability](#) or [Form 4: Transfer of Assumed Liability](#)

Stage 2: Issue of a Liability Notice

The Council will issue a Liability Notice, as soon as is practicable after planning permission first permits development. The Liability Notice will set out how much CIL is payable.

Where planning permission is granted on appeal, the Liability Notice will be issued as soon as possible following the appeal decision.

Where the liability relates to Permitted Development, a Liability Notice will be issued as soon as possible after receipt of a Notice of Chargeable Development.

A new Liability Notice will be issued at any point the liability changes. This may be as a result of changes to the liable persons, effects of relief, CIL appeal decisions, the or the loss of instalments.

When a Liability Notice is issued, the CIL charge will be recorded on the Land Charges Register.

Stage 3: Claiming Relief or Exemption (Optional)

After submitting the 'Assumption of Liability' form (Stage 1), if you consider that your development, or part of it, should be exempt from CIL then the party claiming exemption must submit the appropriate forms (below) and receive a notification of the Council's decision whether to grant or not grant relief before the development commences.

- [Form 7: Self Build Exemption Claim Form - Part 1](#) - for claiming a Self Build Exemption on a new home. Please note that you will also need to submit [Form 7: Self Build Exemption Claim Form - Part 2](#) within 6 months of having completed the dwelling
- [Form 8: Residential Annex Exemption Claim Form](#) - for claiming an exemption on an annex
- [Form 9: Residential Extension Exemption Claim Form](#) - for claiming an exemption on an extension
- [Form 10: Charitable and/or Social Housing Relief Claim Form](#) - for claiming Charitable Relief and/or Social Housing Relief
- [Form 12: Further Charitable and/or Social Housing Relief Claim](#) - for charitable relief or social housing relief from CIL when the development originally receiving charitable or social housing relief from CIL has, or is intended to be, altered in a way which changes the extent of the relief previously granted
- [Form 13: Further Exemption Claim](#) - for further exemption where a Self Build Dwelling, Residential Annex or Residential Extension when the development is altered in a way which changes the extent of the relief previously granted

[Form 14: Phase Credit Application](#) - for a person who wishes to apply a 'phase credit' or part of a 'phase credit', created in a separate phase of the same development ("the donating phase"), to offset an existing, and not previously paid, CIL liability in another phase ("the receiving phase") of the development. The Council will consider your application for relief or exemption, and write to let you know whether it has been approved or refused. If necessary, a revised CIL Liability Notice may be issued.

2 The CIL Process

Subject to relief being granted, the Council will record the details of the relief on the Land Charges Register. Relief will be subject to clawback for a set period, meaning that if a disqualifying event occurs, then CIL will be payable.

Stage 4 - Commencing Development

Before any development works commence on site (including demolition) [Form 6: Commencement Notice](#) must be submitted, this can be no later than one day before the day on which the chargeable development is to be commenced.

The only exemption to this is where residential extension has been granted for the entire chargeable development. A CIL Commencement Notice (CIL Form 6) is not required to be submitted by the CIL Regulations. However, the Council advise applicants to alert the Council of commencement, to ensure the CIL can be removed promptly from the Land Charges Register.

It is important that development does not commence until you receive formal acknowledgement from the Council that the Commencement Notice has been received. Failure to do this before commencement will result in the loss of any right to pay by instalments and a surcharge.

If a valid CIL Commencement Notice is not submitted prior to commencement or an incorrect commencement date is given by the applicant, the Council will deem a commencement date and issue a Demand Notice, with the CIL being payable immediately. We will also issue a penalty surcharge. If you are eligible for instalments, you will also lose the right to pay by instalments.

If no-one assumes liability, then liability will rest with the landowner. Where the Council has to identify the landowner(s), a penalty surcharge is likely to be imposed.

Stage 5 - Paying CIL

Following receipt of a Commencement Notice, the Council will issue a Demand Notice to the person(s) who have assumed liability to pay CIL. The Demand Notice will set out the precise details of the amount of CIL payable, any relief granted, and payment options (including where CIL can be paid in instalments in accordance with the [Council's Instalment Policy](#)

If no-one has assumed liability to pay CIL (Stage 1) or a Commencement Notice is not received before works start (Stage 4) then liability defaults to the landowner(s), we will withdraw the right to pay by instalments and a surcharge will be due.

Payment procedures will be set out in the Demand Notice and the Council will issue an acknowledgement for all payments received

Stage 6 - Notification to Land Charges

Once we have received the full CIL payment, the CIL charge will be removed from the Land Charges Register, if no relief/exemption clawback periods apply.

The CIL Process 2

If an exemption has been granted for a residential extension, the CIL charge will be removed from the Land Charges Register once commencement has been confirmed. For other types of relief/exemption, the CIL charge will remain on the Land Charges Register for until the clawback period lapses, which depends on what exemption or relief was granted. In the event that a planning permission is not implemented, the CIL charge will be removed from the Land Charges Register upon expiry of the planning permission.

Stage 7 - Notification of any Disqualifying Event

Where relief has been granted, and then a disqualifying event occurs, you must notify the Council, in writing, giving 14 days advance notice. Failure to do so will incur a surcharge.

The Council will then issue a CIL Demand Notice detailing the payment due.

If you fail to notify of us of a disqualifying event, we will give the relevant person(s) 28 days' notice before taking action

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What is the Community Infrastructure Levy ?

- 3.1** The Community Infrastructure Levy (called ‘the levy’ or ‘CIL’) allows local planning authorities to raise funds from developers who are creating new buildings in their area. The funds raised will go towards infrastructure that is needed to support the growth of the district. The CIL is applied as a charge on each square metre of certain types of new buildings.
- 3.2** The Community Infrastructure Levy (CIL) is a standard, non-negotiable charge applicable to developments where there is **a net increase of 100 square metre of floor space or the creation of one or more dwellings.**

What is the CIL Charging Schedule ?

- 3.3** A CIL Charging Schedule sets out the CIL levy rates for a charging authority area. The Charging Schedule should be consistent with, and support the implementation of the Local Plan.
- 3.4** The [Harrogate District Charging Schedule](#) which details the tariff rates, was formally approved by Full Council on 8 July 2020 and takes effect from 1 October 2020. Applications determined on or after the 1st October will be liable for CIL except those valid applications in the system on the 8 July 2020 which will be exempt (regardless of determination date).
- 3.5** For CIL purposes the District has been split into three zones :
- 3.6** Zone 1 – All areas that are not in Zone 2 or Zone 3
- 3.7** Zone 2 – The main urban areas of Harrogate, Knaresborough, Boroughbridge, Masham and Pateley Bridge. The main urban area of Ripon and the allocations adjacent to it -see [Harrogate District Charging Schedule](#)
- 3.8** Zone 3 – The strategic sites at Boroughbridge (B4, B12, B21), Green Hammerton/Cattal New Settlement, West Harrogate (H49, H51, H70 allocations and H50, H46, H36, H45 commitments), Manse Farm (K25 allocation and K31 commitment) and Ripon (R24, R25, R27)
- 3.9** The CIL charge varies between these zones and between the different use classes as follows:

Residential development:

- all sites of 10 units or fewer in all areas at £50 per sqm
- all sites larger than 10 units in Zone 1 at £50 per sq m
- sheltered housing in Zone 1 and 3 at £60 per sqm
- sheltered housing in Zone 2 at £40 per sqm

Distribution:

- distribution development in all zones at £20 per sqm

Retail:

- shops in central Harrogate at £120 per sqm
- shops in Zone 1 and Zone 3 at £40 per sqm
- large supermarkets (over 2500 sqm gross) in all zones at £120 per sqm
- small supermarkets (less than 2500 sqm gross) in all zones at £40 per sqm
- retail warehouses in all zones at £120 per sqm

There is no charge for:

- residential development on sites larger than 10 units in Zone 2 and 3
- shops (outside Central Harrogate, Zone 1 and Zone 3)
- all other development

3.10 The figures above will be index linked for inflation and updated annually (see below) using the RICS CIL Index, and is published on the [RICS](#) website (see below)

3.11 More information about the preparation, consultation, formal examination and adoption process can be found on the [CIL webpage](#)

Are the CIL charges index linked?

3.12 CIL charges are subject to indexation, which takes into account any changes in price between the time when the Charging Schedule comes into force and the time at which planning permission is granted.

3.13 In applying the CIL indexation, for planning permissions granted before 1 January 2020 Harrogate Borough Council will use the figure published in the BCIS All-in Tender Price Index for the November of the preceding year in which the permission was issued.

3.14 From 1 January 2020, the RICS CIL Index using the RICS CIL Index will be used for planning permissions granted on or after that date. The Index is published on the [RICS](#) website. The BCIS index will reapply if for any reason the RICS CIL Index is not produced in November of any preceding year.

3.15 In accordance with the CIL Regulations, the Council will publish an Annual Infrastructure Funding Statement setting out the effective CIL rates that will apply from 1 January 2020 to 31 December 2020

What kinds of buildings are liable for the levy ?

3.16 The levy is payable on new dwellings of any size, and other development where the gross internal area of a new building or extension or change of use exceeds 100 square metres (the whole new floorspace is charged, not just the amount over 100 sqm). The following development is not liable for the CIL:

1. a building into which people do not normally go
2. a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery
3. structures which are not buildings, such as pylons and wind turbines
4. a gross internal area of a new building or extension less than 100 sq m (other than where development will include one or more dwellings)
5. Change of use floorspace if not also associated with an extension of more than 100 sq m or the change of use is for a dwelling
6. mezzanine floors inserted into an existing building (unless they form part of a wider planning permission that seeks to provide other works as well)
7. a building for which planning permission was granted for a limited period
8. the change of use of any building previously used as a single dwelling house to use as two or more separate dwelling houses.

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In addition, subject to various criteria being met the following types of development will not have to pay CIL but applicants are required to submit relevant information before the Council can confirm that there is no liability for:

9. Houses, flats, residential annexes and residential extensions which are built by 'self builders' (this includes home owners extending their own house)
10. Social housing
11. development by charities of their own land to be used wholly or mainly for their charitable purposes
12. development by a predominantly publicly funded or not for profit organisation. e.g sports and leisure centres, medical or health services, community facilities, and education
13. vacant buildings brought back into the same lawful use
14. the equivalent floorspace which is replacing an existing building to be demolished, or change of use of an existing building which is part of a wider scheme (including over 100 sq m additional new floorspace), where part of the existing building has been in continuous lawful use for at least six months in the three years prior to the development being permitted.
15. where the final CIL charge will be less than £50

When did CIL come into effect ?

3.17 The Community Infrastructure Levy Charging Schedule was approved by Harrogate Council on 8th July 2020 and comes into force on 1st October 2020. It applies to all applications submitted after 8 July 2020 and permitted after the 1 October 2020.

Will development be liable to pay the CIL if planning permission was granted before 1 October 2020?

3.18 In most cases, there will be no CIL liability for a planning permission granted before 1 October 2020. The relevant date is the date of the issuing of the planning permission decision notice. If a new planning application is decided after 1 October 2020 may be CIL liable even if the planning application relates to a site that already has a planning permission.

3.19 Outline planning applications granted prior to 1 October 2020 will not be liable to CIL when reserved matters are approved post 1 October 2020; since reserved matters do not constitute a new planning consent.

3.20 If a general consent (e.g. prior approval or permitted development) commences after 1 October 2020 it may be CIL liable.

If an application was submitted before, but not determined before CIL was introduced, will the CIL be payable?

3.21 Yes, CIL applies to all eligible development where the application was submitted after 8 July 2020 and determined on or after 1 Oct 2020. Valid applications already in the system prior to 8 July 2020 will not be liable to CIL if determined on or after 1 October 2020. This will also apply to developments that have been granted subject to the satisfactory completion of S106 agreements and developments at the appeal stage.

Does the CIL apply to applications to amend existing permissions, resubmissions and applications to extend the time of existing unimplemented permissions?

- 3.22** If an application was permitted after 1 October 2020 (and submitted after 8 July 2020) and the proposal involves a gain of 100sq m of floorspace or one or more new dwellings are created then the resultant development may be CIL Liable.

Planning permission was granted for a development prior to 1 October 2020. Is CIL chargeable if a S73 application is made?

- 3.23** In cases where, full planning permission was granted before 1 October 2020, but an approval of a S73 application to vary or remove conditions is made after this date, the approval does trigger a liability to pay CIL because it results in a new planning permission. However, although a new CIL liability is triggered, the new additional chargeable amount is equal only to the increase in the chargeable amount arising from the original planning permission, so as to avoid double counting of liability. In effect, if the application to vary condition does not result in an increase in floorspace then there will be no charge.

Will a development be liable to pay CIL if there was a refusal of planning permission before CIL came into effect, but an approval of planning permission on appeal is made on or after CIL comes into effect?

- 3.24** Yes

When is the chargeable amount calculated?

- 3.25** The chargeable amount is calculated using the charging schedule rates which are in effect at the time planning permission first permits the chargeable development. The table below sets out when planning permission first permits the development for the purposes of the CIL Regulations (this does not include planning permission granted before CIL has been implemented)

Application Type	Phasing	Conditions	Date that 'planning permission first permits the development'
Full Planning Application	No Phasing	N/A	Date of Decision Notice approving the permission
Full Planning Application	Phased	No pre-commencement conditions	Date of decision Notice approving the permission
Full Planning Application	Phased	With pre-commencement conditions	Date of approval of final pre-commencement condition for that phase

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Application Type	Phasing	Conditions	Date that 'planning permission first permits the development'
Outline Planning application	No phasing	N/A	Date of Decision Notice approving the last reserved matters
Outline Planning application	Phased	No pre-commencement conditions	Date of Decision Notice approving the Reserved Matters for that phase
Outline Planning application	Phased	With pre-commencement conditions	Date of approval of final pre-commencement condition for that phase
Permitted development	N/A	N/A	Date of Notification of Commencement to the Charging Authority OR Date that HBC serve the Notice of Chargeable Development

Table 3.1

Will S106 Contributions still be asked for from developers ?

- 3.26** The CIL Regulations allow both S106 and CIL contributions to be asked for so Harrogate will continue to ask for S106 contributions towards site specific issues. New development often has a direct impact on its surroundings, which creates a need for additional infrastructure or improved community services/facilities. Hence, affordable housing and site specific infrastructure such as highway works, open space, education required to mitigate the impact of or enable a development will continue to be secured on a site by site basis through either S106 agreements, Unilateral Undertakings or planning conditions. They may also be used in circumstances where a development proposal results in the loss of an existing facility/feature directly by the developer or through a financial contribution set out in a S106 agreement.
- 3.27** Yes. In many cases the CIL will be paid on development that does not require a S106 Agreement. There will also be certain types of development that require both CIL payment and a S106 Agreement (where the threshold for the requirement of a S106 is triggered). The CIL regulations enable S106 and CIL payments to be paid for the same development.
- 3.28** CIL monies must be spent on infrastructure to support growth, but their use is not tied to a specific development or the provision of specific infrastructure. CIL can be spent anywhere within the District.

Who has to pay the levy ?

- 3.29** Anyone involved in a development may take on the liability to pay, by submitting [Form 2 - Assumption of Liability](#). In most cases it will be the developer who has applied for planning permission, or the landowner. Where more than one person owns the site and they want to

share the liability to pay, the CIL is apportioned between them based on the value of their proportion of the site. If by the time development commences no one has assumed liability to pay the levy, the liability automatically defaults to the landowner(s), but they forfeit the right to pay by instalments. A person may [withdraw](#) or [transfer](#) their assumption of liability at any time before commencement by giving notice in writing to the Council. After the development has commenced, a person cannot withdraw, but instead has to transfer to another person by submitting a liability transfer notice.

How is the CIL calculated?

- 3.30** CIL takes the form of a charge on each square metre of new build floorspace created. The charge to be applied depends on the type and location of the development as set out in the Council's CIL Charging Schedule.
- 3.31** As CIL is non-negotiable, applicants are strongly encouraged to familiarise themselves with likely CIL liabilities when making offers to purchase land.
- 3.32** The CIL Regulations, as amended in 2019 include Schedule 1, which explains how to calculate the chargeable amount. The main calculation is as follows:

$$\frac{R \times A \times I_p}{I_c}$$

Where:

A = the net area chargeable at rate R

I_p = the index figure for the calendar year in which planning permission was granted;

and

I_c = the index figure for the calendar year in which the charging schedule containing R took effect

The value of A is calculated using a formula which takes into account the GIA of the building and the retained parts of in-use buildings. This ensures that parts of the development which are in lawful use can be 'netted off' the total CIL amount.

How is the floorspace of the new buildings measured ?

- 3.33** The calculation in the CIL Regulations sets out the precise way in which floorspace is measured for elements such as any discount for existing buildings and the yearly index changes. Gross internal floorspace is the area of a building measured to the internal face of the perimeter walls at each floor level, and should include rooms, circulation and service space such as lifts and floorspace devoted to corridors, toilets, storage, and underground parking etc. More guidance can be found in the CIL Calculation Guidance on the [Harrogate CIL Website](#)

Is there exemptions/relief from CIL?

- 3.34** Harrogate does not offer discretionary relief. However, in accordance with the CIL Regulations the following types of development may receive some or full relief from the CIL, if eligible:
- Social housing
 - Development to be used for charitable purposes
 - Self Build dwelling

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- Residential annex
- Residential extensions

3.35 In all of the above cases there are particular criteria that must be met and the relief must be claimed using the prescribed form. Applicants are strongly advised to read the information relating to CIL on both the Planning Portal and the National Planning Practice Guidance, to ensure an exemption is not lost as the result of disqualifying events. Typical disqualifying events include:

- Making changes to an exempt development during construction (e.g. a Section 73A application)
- Selling or letting out an exempt self-build property within three years of occupation.

3.36 In such events, the exemption is lost and the CIL that would have been due becomes payable with immediate effect. A surcharge may also apply.

3.37 If you commence development before the grant of CIL exemption/relief, no relief can be applied, and you become liable for the full charge.

See Stage 3 of the CIL Process guidance above to access the forms.

How and when is the CIL payable?

3.38 The charge is levied in £ / sqm on the increase in floorspace. It will normally be collected as a monetary payment, although there is also provision for it to be paid by transfer of land to the local authority if certain criteria are met.

3.39 The CIL Demand Notice (the invoice) is issued on commencement of development. The Council have adopted an Instalment Policy which can be found on the [Harrogate CIL Website](#) the amount of time given for payment to be paid and the provision of payment by instalment is dependent on the chargeable amount

What is classed as commencement for CIL purposes?

3.40 Development is classed as commenced in accordance with Section 56 of the Town and Country Planning Act 1990 and the definition of 'material operations'. Material operations include the demolition of existing buildings, any work of construction in the course of erecting a building, digging of a trench to contain the foundations, or part of the foundations, laying of underground mains or pipes, any operation in the course of laying out or construction of a road, and any change in use of the land which constitutes material development.

Is the CIL a local land charge?

3.41 The Community Infrastructure Levy Regulations 2010 (as amended) state that the chargeable amount payable in respect of a chargeable development is a local land charge

What happens if the CIL payment is late or not paid?

Can I appeal against the CIL?

3.42 Yes although there are certain requirements for lodging appeals. You must first ask the council for a review of the chargeable amount. This must be requested within 28 days of the date of the liability notice by emailing us at planningobligations@harrogate.gov.uk.

3.43 We have 14 days to issue a decision on the review. If you still dispute the CIL Liability following the review decision you can then appeal to the Valuation Office. If you have not received a decision at the end of 14 days you can submit your appeal to the Valuation Office.

- 3.44** Your appeal must be submitted to the Valuation Office within 60 days of the liability notice.
- 3.45** A review/appeal cannot be requested if development has already commenced (unless permission was granted after development commenced).
- 3.46** Appeals relating to surcharges, commencement notices and stop notices should be submitted to the Planning Inspectorate.
- 3.47** Full details of the processes and relevant appeal forms are available on Gov.uk at [Guidance on CIL Appeals](#)

Is VAT applied to CIL charges?

- 3.48** CIL is exempt from VAT

Do Town and Parish Councils have a deadline to spend their CIL monies? Do they have to report on how they have spent their CIL?

- 3.49** The money should be spent within five years of receipt. Harrogate Borough Council can serve notice requiring repayment of the money back to the Charging Authority if the money is not spent.

How will the CIL be monitored?

- 3.50** As a result of the 2019 amendment to the CIL Regulations, there is a new requirement for councils to publish an Infrastructure Funding Statement (IFS). The IFS will be published on our website at least once a year. We are required to publish our first IFS by 31 December 2020. The IFS will set out how much revenue from the CIL has been received, what it has been spent on and how much is left.
- 3.51** The CIL Regulations also required Town and Parish Councils to report on the Neighbourhood CIL they received and spend each year.
- 3.52** Additionally, our developer contributions database provides details of the CIL: potential, due, collected, allocated and spent.

What is the 'lawful use' test and how is existing floorspace taken into account?

- 3.53** The CIL liability can be reduced by counting the existing floor space against the new floor space proposed. This applies only where the existing floor space can be proven to have been in lawful use for a continuous period of at least six months within the last three years prior to the day that planning permission is granted, the approval of the final reserved matter for an outline application or on receipt of a 'Notice of Chargeable Development' for permitted development or a prior approval, to be used as deductible floor area against the calculation of the CIL liability for the development.
- 3.54** It is the applicant's responsibility to provide the evidence to demonstrate the continuous lawful use. Information that could be submitted to demonstrate this can include a combination of the following:
- copies of leases
 - electricity/gas bills for the six month period
 - business rate/council tax bills and payments. Note: The Local Planning Authority does not have access to this information as it is data protected
 - where an informal arrangement exists, redacted bank statements should be submitted to show rent has been paid

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- confirmation from a letting agent/solicitor advising of the period of occupancy
- an affidavit

3.55 We will need further evidence of continuous use if it is not evident from the information supplied. We will not consider the existing floor space as deductible floor space, unless the applicant demonstrates this. It is advised that such evidence should be submitted alongside [Form 1: CIL Additional Information](#)

3.56 If floorspace from a previous building on the site is being retained and converted as part of a new mixed-use development, and the existing floorspace meets the 'lawful use' test that floorspace should be deducted from whatever the new use in that area will be, based on the plans.

3.57 Where existing buildings are demolished, the charge will be based on the floorspace of new buildings less the floorspace of the demolished buildings (provided the buildings were in lawful use prior to demolition).

Are care homes CIL Liable?

3.58 The [CIL Charging Schedule](#) sets rates for 'sheltered housing'. It states that whilst the term Sheltered Housing is a generic term, CIL will only be applied to those developments falling under the 'Age-restricted general market housing' and 'Retirement living or sheltered housing' types of older persons housing included within Paragraph 010 (Reference ID:63-010-20190626) of the NPPG which are detailed below. The 'Extra care housing or housing-with-care' and 'Residential care homes and nursing homes' types of older persons housing will not be liable for CIL.

- **Age-restricted general market housing:** this type of housing is generally for people aged 55 and over and the active elderly. It may include some shared amenities such as communal gardens, but does not include support or care services
- **Retirement living and sheltered housing:** this usually consists of purpose-built flats or bungalows with limited communal facilities such as a lounge, laundry room and guest room. It does not generally provide care services, but provides some support to enable residents to live independently. This can include 24 hour on-site assistance (alarm) and a warden or house manager
- **Extra care housing or housing-with-care:** This usually consists of purpose-built or adapted flats or bungalows with a medium to high level of care available if required, through an onsite care agency registered through the Care Quality Commission (CQC). Residents are able to live independently with 24 hour access to support services and staff, and meals are also available. There are often extensive communal areas, such as space to socialise or a wellbeing centre. In some cases, these developments are known as retirement communities or villages - the intention is for residents to benefit from varying levels of care as time progresses
- **Residential care homes and nursing homes:** These have individual rooms within a residential building and provide a high level of care meeting all activities of daily living. They do not usually include support services for independent living. This type of housing can also include dementia care homes.

Will the CIL be charged for a conversion or change of use?

3.59 A planning application for the change of use of an existing building in lawful use will not be liable to pay the CIL charges unless it involves an extension which provides 100 sqm or more of new build floorspace, or involves the creation of a new dwelling even when it is below 100 square metres.

- 3.60** The deduction of existing floorspace will depend whether or not the existing building has been in continuous lawful use for at least six months in the last three years prior to the development being permitted. This will determine the total amount payable.

Is CIL chargeable on a barn conversion?

- 3.61** Potentially, but a change of use from a barn to a residential use should not result in CIL liability as long as the barn is a permanent usable building in lawful use. To be useable such buildings should be weathertight with four complete walls, floor and a roof. Any additional new floorspace proposed as part of the application, extending the barn, or providing a garage for example would be charged CIL.

Is the CIL payable on the conversion of a building into 2 or more flats?

- 3.62** The CIL will not be charged if there is no increase in floor area and the building has been in continuous lawful use for six months out of the three years before development is permitted.
- 3.63** Where development involves the creation of new dwellings, the CIL is payable on all new build floorspace and the exemption for extension of floorspace below 100sqm does not apply. Any increase in gross internal floorspace provided through extensions to the existing floorspace will be liable to pay the CIL charges.
- 3.64** If the building has not been in continuous lawful use for six months out of the last three years then the CIL will also be charged on the existing floor area.
- 3.65** You don't need to pay CIL on a sub-division of an existing residential property into two or more dwellings, if no additional gross internal area (GIA) is created.

Are residential garages included in the CIL calculations?

- 3.66** Yes, because these fall within the RICS Code of Measuring definition of Gross Internal Area (GIA). Garages that are an integral part of planning applications for new dwellings count as 'residential floorspace' and are liable for the CIL whether internal to the new design or detached.
- 3.67** As a general rule, the Council will consider that a car port will be defined as a CIL liable and included in the GIA if it is walled on three sides and is covered by a roof. The walls do not have to go to roof height, as they can support the roof by piers. However, each application will be reviewed on a case-by-case basis to determine CIL liability.
- 3.68** Applications for a new garage for an existing dwelling will not normally be liable for the CIL as the floorspace will usually be less than 100sqm.

My proposal is bigger than 100 sq m. Is the CIL chargeable on the entire new build area or just the area above the threshold?

- 3.69** The CIL is chargeable for the entire area of the build including the threshold. For example, if the new floorspace for a supermarket extension equated to 99 sqm there would be no CIL charge. However, if the new floor area equated to 101 sqm the CIL charge would be for the entire 101 sqm. Once the threshold is breached the entire development becomes chargeable.

Is permitted development liable for CIL?

- 3.70** Developments that commenced after 1 October 2020 under general consent, may be liable to pay CIL.

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- 3.71** A general consent means a development order made under section 59 of the Town and Country Planning Act (TCPA) 1990, it includes prior approvals and permitted development.
- 3.72** Applicants are required to submit [Form 5: Notice of Chargeable Development](#) prior to the commencement of development, along with photographic or other evidence if they are claiming lawful use over a six month continuous period during the past three years. The only exception to this requirement is where the development is less than 100 square metres of new build floorspace and no new dwelling is created, or if there is no CIL rate for that particular use in the Harrogate District CIL Charging Schedule.
- 3.73** If the Permitted Development is CIL Liable no work should commence until the relevant notices have been served on the Council ([Form 6: Commencement Notice](#)). If you commence work without notifying the Council you could forfeit any rights you have to appeal or pay in instalments, and you may also incur a surcharge.

Are mezzanines CIL liable?

- 3.74** The NPPG states that "Mezzanine floors, inserted into an existing building, are not liable for the levy unless they form part of a wider planning permission that seeks to provide other works as well".
- 3.75** Taking into account this guidance, the Council will assess each independent application as a case-be-case basis as to whether a mezzanine floor forms part of a wider planning permission that seeks to provide other works.

Is loft or attic space CIL liable?

- 3.76** Attic or loft space that is only accessible by pulldown ladders or ceiling hatch access should not be included as chargeable floorspace. Loft space that is accessible by stairs or a fixed permanent ladder is chargeable floorspace. This includes accessible storage areas.

Do I have to pay the CIL for a cycle or bin store?

- 3.77** It is unlikely that cycle/bin store will be subject to a CIL charge as they are not a building that people go into regularly or go into intermittently for the purpose of inspecting or maintaining fixed plant or machinery. However, each application will be reviewed on a case by case basis to determine whether the size and usage constitute a building.

How does the CIL relate to planning applications and other development consents ?

- 3.78** The majority of new development over 100 sqm requires planning permission and so for in most cases the CIL liability will be managed through the planning application process. The levy may also be payable on development from other consents e.g. through local planning orders, and also on permitted development, including where identified through a Lawful Development Certificate.

Full and Outline Permissions (including retrospective applications)

- 3.79** Any permissions granted prior to 1st October 2020 were not liable for the CIL. This includes outline permissions, i.e. later reserved matters stages will not be liable for the CIL if the outline was granted before 1st October 2020 .
- 3.80** All relevant planning permissions granted on or after 1st October 2020 are liable for the CIL, no matter what date they were originally submitted to the Council. This includes any appeals allowed by the Planning Inspectorate or the Secretary of State after this date.

- 3.81** The liability for outline permissions will be calculated on the day that the final reserved matter is approved. If an application includes phasing of development, each phase is treated as a separate development for the purpose of paying CIL.
- 3.82** It may be possible for a full or outline planning application to be subdivided into 'phases' for the purposes of the levy, so that CIL is only liable on each phase as it is developed. This needs to be specified in the description of development on the planning application form and you are advised to discuss this with the Council before submission.

Section 73 permission to vary a condition

- 3.83** A condition attached to a planning consent can be amended under Section 73 of the Town and Country Planning Act. If the S73 permission does not change the liability to the levy, only the original consent will be liable. If the section 73 permission does change the levy liability, the most recently commenced scheme is liable for the levy. In these circumstances, levy payments made in relation to the previous planning permission are offset against the new liability, and a refund is payable if the previous payment was greater than the new liability. Where the original planning permission was granted before 1st October 2020, and a S73 permission is granted afterwards, the CIL will effectively only be liable on any additional floorspace the S73 adds (no 100 sqm threshold).

Permitted development (general consent)

- 3.84** Permitted development is liable for CIL when the development is commenced. The liable person should submit a 'CIL Form 5 – Notice of Chargeable Development' to the Council before commencement.

Extension of time (under Article 18 of the Development Management Procedure Order)

- 3.85** Provided the extension of time application meets the requirements of Article 18 of the Development Management Procedure Order, no CIL is liable. The power to extend a planning permission does not apply to permissions granted after 1 October 2010.

Lawful Development Certificate

- 3.86** A Lawful Development Certificate (granted under section 191 or 192 of the Town and Country Planning Act 1990) is often sought to confirm permitted development rights. It does not by itself trigger the CIL payment because it is not a planning permission but simply confirms that no further application for planning permission is needed for that development. So where a Certificate is sought, the normal levy provisions in respect of permitted development rights apply, and the grant of such a certificate is not relevant to whether or not, or when, the levy may be payable.

After I have started construction do I have to pay the CIL twice if my scheme changes ?

- 3.87** Payments made for a development that has commenced but has not been completed can be credited against the levy liability for a revised scheme under a new planning permission (on the same site). This is known as abatement and is to ensure that the charge is not inappropriately levied twice. It can also include taking into account the floorspace of a building which was demolished during the development of a previous scheme. However, no refund is payable from the Council under the abatement provisions if a later development scheme has a lower levy liability than the one which was first paid on the site.

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When does a development have to pay the levy ?

3.88 Charges are due when a chargeable development is commenced. The definition of commencement of development is the same as that used in planning legislation, i.e. ‘material operations’ on the site (see section 56(4) of the Town and Country Planning Act 1990). This defines a material operation as including any works of construction, demolition, digging foundations, laying out or constructing a road, or a material change in the use of the land. Development under retrospective planning permission becomes liable when granted. It may also be possible for a full or outline planning application to be subdivided into ‘phases’ for the purposes of the levy, so that the CIL is only liable on each phase. This needs to be specified in the description of development on the planning application form and be clear on the planning permission. You are advised to discuss this with the Council before submission. Leeds has an instalments policy for paying the CIL. If the appropriate instalment amount is not received by the specified date then the whole remaining balance becomes due immediately, plus interest:

Total CIL Liability	Number of Instalments	Payment periods and amounts
Less than £20,000	One	100% payable within 60 days of the commencement date
Equal to or greater than £20,000 but less than £30,000	Two	1 st Instalment of 50% payable within 90 days of the commencement date and 2 nd Instalment of 50% payable within 120 days of commencement date
Equal to or greater than £30,000 and less than £50,000	Two	1 st Instalment of 50% payable within 90 days of the commencement date and 2 nd Instalment of 50% payable within 180 days of commencement date
Equal to or greater than £50,000 but less than £100,000	Three	1 st Instalment of 25% payable within 120 days of the commencement date and 2 nd Instalment of 25% payable within 180 days of commencement date and 3 rd Instalment of 50% payable within 270 days of commencement date
Equal to or greater than £100,000 but less than £500,000	Three	1 st Instalment of 25% payable within 120 days of the commencement date and 2 nd Instalment of 50% payable within 270 days of commencement date and 3 rd Instalment of 25% payable within 365 days of commencement date
Equal to or in excess of £500,000	Four	1 st Instalment of 25% payable within 180 days of the commencement date and

Total CIL Liability	Number of Instalments	Payment periods and amounts
		2 nd Instalment of 25% payable within 365 days of commencement date and
		3 rd Instalment of 25% payable within 540 days of commencement date and
		4 th Instalment of 25% payable within 720 days of commencement date

Table 3.2

How was the CIL developed in Harrogate ?

- 3.89** The Council's main evidence for the CIL is the Whole Plan Viability Study (Oct 2016) and the CIL Viability (Jan 2019). Various stages of public consultation were undertaken in developing the Charging Schedule, as required by the CIL Regulations. The rates were tested at the Examination hearing on 23 October 2019 and the Examiner's report recommended only minor changes. Full Council approved the final Charging Schedule on 8th July 2020, for implementation on the 1st October 2020. More details about the preparation of the Charging Schedule can be found on [Harrogate CIL Website](#)
- 3.90** The council collects money for infrastructure from new development through the CIL. Legislation allows 15% of CIL to be spent on infrastructure that is concerned with addressing the demands that development places on an area. In places with an adopted Neighbourhood Plan, this increases to 25% of CIL. This is called Neighbourhood CIL or Neighbourhood Fund.
- 3.91** Neighbourhood CIL may be used to deliver a wide range of local projects - for example:
- road and footpath improvements
 - tree planting
 - new or improved play spaces and facilities
 - community safety measures (eg CCTV, lighting)
 - new or improved cycling facilities
 - improvements to school grounds and buildings
 - improvement of local facilities such as libraries, community centres or sports halls
- 3.92** Neighbourhood spend projects must be decided following consultation with local people.
- 3.93** A CIL Additional Information Form will need to be submitted with your planning application. The form asks the size of the development – if it is less than 100 square metres you will not be liable for CIL. If it is over 100 square metres, and the development is not your main residence, you will need to complete a [Self Build Annex or Extension Claim Form 9](#) and agree it with the Council before commencement of the development on site.
- 3.94** As above but please note that your residential annex will become liable if within three years the annex is used for any purpose other than as an annex **or** the annex is let **or** either the main residence or annex is sold separately from the other.

