

South Worcestershire Councils

Malvern Hills District Council

Worcester City Council

Wychavon District Council

Community Infrastructure Levy (CIL)

User Guide

June 2017



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1. Introduction

- 1.1 The South Worcestershire Council's (Malvern Hills, Wychavon and Worcester City) adopted their Community Infrastructure Levy (CIL) Charging Schedules on 26th April 2017 (Wychavon) and 16th May 2017 (Malvern Hills and Worcester City). CIL will come into effect on 5th June 2017 for Malvern Hills and Wychavon District Councils, with Worcester City Council implementing CIL on 4th September 2017. The report of the Examiner who carried out the examination was received on 27th January 2017, where he concluded that the Charging Schedule represented an appropriate basis for collecting CIL in south Worcestershire, subject to a number of minor amendments, which have been incorporated. The Charging Schedules were approved by the two councils during April and May 2017.
- 1.2 From 5th June 2017 applications determined on 5th June 2017 or later may be liable to pay CIL. This includes all planning applications that were undetermined on this date, 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.
- 1.3 This guide provides information to applicants on the CIL process, including what development will be liable or exempt, how payment will be calculated and when and how it will be collected. For a full explanation of CIL in south Worcestershire, please see the Charging Schedule Report.
- 1.4 If you have any queries relating to CIL, please contact the South Worcestershire Council's at the following e-mail address: contact@swdevelopmentplan.org.

2. What is CIL?

- 2.1 CIL (the levy) is a planning charge that came into force on 6 April 2010 through the CIL Regulations 2010 (as amended). The levy allows charging authorities to raise funds from developers and land owners undertaking new developments in their area. The document setting out the rates at which a levy will be charged and the associated arrangements is called the 'Charging Schedule'.
- 2.2 The CIL Charging Schedules have been developed through the Draft Charging Schedule and the Preliminary Draft Charging Schedule stages, which were published for consultation between April and May 2016 and February and March 2015, respectively.
- 2.3 In developing the Charging Schedules the Councils have produced evidence of infrastructure needs across south Worcestershire, which is identified in the South Worcestershire Infrastructure Delivery Plan (SWIDP) (latest 'live' version July 2016), which underpins the development strategy set out in the South Worcestershire Development Plan (SWDP), and is guided specifically by policy SWDP 7: Infrastructure. The CIL rates have also been informed by viability studies, with the most recent assessment undertaken in January 2016.

- 2.4 CIL is a charge levied in £s per square metre on each square metre (sq. m) of additional floorspace created by new CIL liable development. Money collected through the levy can be used to fund a wide range of additional infrastructure (separate to planning obligations) that is needed to support development. For example, this can include roads and other transport-related facilities, flood defences, schools, medical facilities, sport and recreation facilities, open space and green infrastructure. The South Worcestershire Council's Regulation 123 list sets out the type of infrastructure that may be funded by the levy, and the infrastructure that will continue to be sought through S106 and S278 planning obligations.
- 2.5 The government's CIL guidance (with links to the CIL Regulations) is available to view online at: <https://www.gov.uk/guidance/community-infrastructure-levy>

3. What Development is Liable for CIL?

- 3.1 Development will potentially be liable for CIL if it:
- Creates new build floor space of at least 100 square metres;
 - Results in the creation of a new dwelling (even if the floor space is less than 100 square metres); and
 - Involves the conversion or change of use of a building that is no longer in lawful use.
- 3.2 The levy may also apply to development permitted by a 'general consent' (including permitted development) commenced on or after 6 April 2013.
- 3.3 The levy rates are based on the financial viability of different types of development across south Worcestershire. Accordingly, only certain types of development are liable to pay CIL. The rates for each charging authority are as follows:

Table 1 - CIL Rates (£/m²) for each Charging Authority

Use Type	Malvern Hills	Worcester City	Wychavon
Residential – Main Urban Areas	£0 (Malvern, Upton upon Severn and Tenbury Wells)	£0	£0 (Droitwich, Evesham and Pershore)
Residential – All other Areas except for the Strategic Sites listed in Table 2	£40	£0	£40
Student Accommodation	£100	£100	£100
Food Retail (Supermarkets)	£60	£60	£60
Retail Warehouses	£60	£60	£60
Shops	£0	£0	£0
Industrial and Office	£0	£0	£0
All Other Uses (including Education, Health and Community uses)	£0	£0	£0

Table 2 - Residential CIL Rates (£/m²) for Strategic Sites

Site	CIL Rate (£/m ²)	Charging Authority
SWDP 45/1 Worcester South Urban Extension	£0	Malvern Hills/ Wychavon/ Worcester City
SWDP 45/2 Worcester West Urban Extension	£0	Malvern Hills
SWDP 45/4 Gwillam's Farm	£0	Wychavon
WO135 & WO136 Crown Packaging, Worcester	£0	Worcester City
SWDP 45/3 Kilbury Drive, Worcester	£0	Wychavon
SWDP 45/5 Swinesherd Way	£0	Wychavon
SWDP 48/1 Vines Lane, Droitwich	£0	Wychavon
SWDP 51/1 Cheltenham Road, Evesham	£0	Wychavon
SWDP 47/1 Pershore Urban Extension	£0	Wychavon
SWDP 53 QinetiQ, Malvern	£0	Malvern Hills
SWDP 56 North East Malvern Urban Extension	£0	Malvern Hills

3.4 For a full run down of what types of development will and will not potentially be CIL liable, please see the [Charging Schedule Report](#) (Section 7). Maps showing the boundaries of the CIL charging areas can also be found in 'Appendix B' of the same report.

4. How will CIL be charged?

4.1 Any new build – that is a new building or an extension – is liable for CIL if it is in a CIL charging area, is a type of development that corresponds with a CIL rate, and has 100 square metres, or more, of gross internal floor space, or involves the creation of additional dwellings, even when that is below 100 square metres. CIL is measured on the gross internal area (GIA) of the new floorspace. For information on how to measure the GIA, see **Appendix 1**. The relevant council will use this guide to measure or check the GIA of a development and calculate or confirm its relevant CIL rate. The CIL formula for calculating the chargeable amount can be found under **Appendix 2**.

4.2 Whilst any new build over the size threshold will be subject to CIL, the gross floorspace of any existing buildings on the site that are going to be demolished or be re-used can be deducted from the final liability, as long as those buildings have been in lawful use for at least six months of the previous three years. After these deductions the net additional floorspace will be chargeable (even if the total is less than 100 sq. m).

4.3 A change of use to one or more residential units development will be liable for CIL if the floorspace involved has not been in lawful use for six months in the previous three years to the development being permitted. Applicants must provide the necessary declaration (via the CIL Additional Information form) that existing buildings on the site are “in use” and therefore eligible to be deducted from the overall liability.

- 4.4 Eligible developments which receive planning permission from 5th June 2017 will be charged in accordance with the rates set out in the CIL Charging Schedule. The amount payable is calculated on the day planning permission first permits development (i.e. full or reserved matters permissions).
- 4.5 The amount payable will be index linked from the year CIL was introduced by the South Worcestershire Councils to the year when planning permission is granted. The index to be used is known as the national All-in Tender Price Index, which is published by the Build Cost Information Service (BCIS). This may increase the amount payable from that shown on the charging schedule.
- 4.6 Where the chargeable development is calculated at less than £50 the CIL Regulations deem it to be zero.
- 4.7 A range of example CIL scenarios can be found under **Appendix 3**, with some common CIL questions and process issues following under **Appendix 4**.

5. The CIL Process

- 5.1 The CIL Regulations set out a statutory process for the collection of CIL that all applicants and councils must follow. To help guide applicants through the process, a breakdown of the CIL forms can be found under **Appendix 5** and a CIL flow chart is located under **Appendix 6**.
- 5.2 Please note that in addition to CIL, developer contributions and planning obligations (also known as Section 106 and Section 278 (highways) agreements) may also be required as part of a planning application, provided that there is no duplication of charges with CIL and pooling restrictions are not exceeded (i.e. no more than five separate planning obligations for the same project or type of infrastructure). Contributions must also comply with the three tests of Regulation 122 which states that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:
- necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.

Please see the Regulation 123 List in the main CIL [Charging Schedule Report](#) for the South Worcestershire Council's approach to the relationship between CIL and S106/S278 planning obligations. Applicants are also advised to refer to advice in the [Developer Contributions SPD](#) and the [Affordable Housing SPD](#) for further information on the South Worcestershire Council's approach to planning obligations.

Submission of a Planning Application

- 5.3 From 5th June 2017, all planning applications for full planning permission, reserved matters following an outline planning permission, and some 'Permitted

Development' schemes and Lawful Development Certificates involving the construction of new floor space must provide sufficient information to allow the relevant council to determine whether CIL is liable and, if so, the amount of the charge.

- 5.4 Therefore when submitting a planning application, applicants must submit the **CIL Additional Information Requirements Form (or CIL Form 5 for Permitted Development)**, to ensure that your CIL liability is calculated accurately. **Planning applications that do not provide the CIL additional information form will not be validated.** Please note that this form is not required at the outline planning application stage.
- 5.5 The purpose of the CIL Additional Information Form is to set out the floor areas of the development and also the area of any buildings to be demolished which should be credited against the new build floor area.

Assumption of Liability

- 5.6 The responsibility to pay CIL runs with the ownership of the land. However, the Regulations recognise that other people involved in a development may wish to pay. To allow this, anyone can come forward and assume liability for the payment.
- 5.7 It is the responsibility of the person(s) who will pay CIL to serve an Assumption of Liability Notice (**CIL Form 1**) on the relevant council prior to the commencement of the development. However, the South Worcestershire Councils recommend that the assumption of liability notice is submitted during the planning application process.
- 5.8 Where no one has assumed liability to pay CIL prior to the commencement of the development, the liability will automatically default to the landowners.
- 5.9 The South Worcestershire Councils have adopted an Instalments Policy which allows payment of CIL liabilities over a longer time period to assist with development cash-flow (see section 8 below). Failure by any parties to assume liability prior to commencement will mean that payment becomes due immediately upon commencement of the development and the instalments policy will not apply.

Liability Notice

- 5.10 When planning permission is granted for a CIL liable development, the relevant council will issue a Liability Notice alongside the planning Decision Notice. The Liability Notice will specify how much CIL is to be paid and when it is to be paid. The Liability Notice is not a demand for payment. It will be sent to the applicant/owner or other parties that have already assumed liability and copied to

planning agents working on the applicants/owners behalf. A revised Liability Notice will be issued every time the CIL charge changes.

Commencement Notice

- 5.11 Prior to the development commencing, the relevant council must be served with a Commencement Notice (**CIL Form 6**) stating the date when the development will commence.
- 5.12 Failure to submit a valid Commencement Notice before development commences will invalidate any agreed instalments policy and full payment will become immediately payable.

Demand Notice

- 5.13 The relevant council will serve a Demand Notice following receipt of a Commencement Notice, or a decision by the collecting authority to deem that the development has commenced. The Demand Notice will set out precise details of payment arrangements including instalment options, which will be payable from the date upon which development commences.
- 5.14 If a valid Commencement Notice has not been submitted before development commences, payment will be due in full on the day that the relevant council believes the development to have commenced.
- 5.15 If a development takes place in phases, each phase is a separate chargeable development and the payments can be made in line with the Instalments Policy.
- 5.16 A collecting authority may issue a revised demand notice under certain circumstances. A revised notice must be issued where the commencement date, levy amount or instalment options subsequently change. It may also be revised in other circumstances, for example if the liable parties change, or if there is any change to the amount payable.

Applications for Charitable Relief, Social (Affordable) Housing Relief or a Self-Build Exemption

- 5.17 Exemption and Relief from CIL can be made in a number of instances:
- Social (Affordable) Housing (**CIL Form 2**);
 - Charitable purposes (**CIL Form 2**); and
 - Self-build new homes, extensions or residential annexes (**CIL Forms 7, 8, and 9**)
- 5.18 In all cases claims for relief must be made before development commences and will become void if the development commences and no Commencement Notice has been provided. Claims can be made at any time up to the point where development commences. The person making the claim must be an owner of a

material interest in the relevant land to claim relief. A 'material interest' is a freehold interest or a leasehold interest the term of which expires more than seven years after the date on which planning permission first permits development (as defined in regulation 4(2)). The 'relevant land' in which such an interest must be owned is the land which will be developed when building the chargeable development.

- 5.19 If no claim is made, the relevant council will issue the Liability and Demand Notices showing the full CIL liability in the usual way.
- 5.20 If relief is granted, the Demand Notice will state the amount of relief. In the instances where a reduced CIL is paid, but within seven years the development ceases to be used for affordable housing or charitable purposes, the relief is disqualified and the outstanding CIL charge must be paid.
- 5.21 If self build development is granted relief under **CIL Form 7 Part 1**, the council will require notification of completion of the dwelling within six months of the finish date via **CIL Form 7, Part 2**. Additional evidence to support a claim for self build exemption is required on this form.

6. **Enforcement**

- 6.1 Enforcement procedures are set out in Part 9 of the CIL Regulations.
- 6.2 Almost all parties liable to pay the levy are likely to pay their liabilities without problem or delay, guided by the information sent by the collecting authority in the liability notice. However, where there are problems in collecting the levy, it is important that collecting authorities are able to penalise late payment and discourage future non-compliance.

Interest and Late Payment Surcharges

- 6.3 The regulations provide for a range of proportionate enforcement measures, such as surcharges on late payments. Surcharges and interest may be imposed as per the CIL Regulations 80 to 86 as follows:
- **Failure to assume liability to pay CIL** (Regulation 80) – Where nobody has assumed liability and the development has commenced - £50 on each liable person.
 - **Apportionment of CIL liability** (Regulation 81) - Where the relevant council has to apportion liability between different owners - £500 on each owner.
 - **Failure to submit a Notice of Chargeable Development** (Regulation 82) – 20% of the chargeable amount or £2,500, whichever is the lower amount.

- **Failure to submit a Commencement Notice** (Regulation 83) – 20% of the chargeable amount or £2,500, whichever is the lower amount.
- **Failure to notify the relevant council of a disqualifying event** within 14 days (Regulation 84) – 20% of the chargeable amount or £2,500, whichever is the lower amount.
- **Late payment surcharge** (Regulation 85) – When CIL payment due is not received on the day it was due, 5% of the chargeable amount or £200 (whichever is greater) will be imposed after 30 days and again after 6 months and then again after 12 months on any outstanding amount.
- **Failure to comply with an information notice** within 14 days (Regulation 86) – 20% of the chargeable amount or £1,000, whichever is the lower amount.
- **Late payment interest** (Regulation 87) - must be paid starting on the day after payment was due at an annual rate of 2.5 percentage points above the Bank of England base rate.

CIL Stop Notice (CIL Regulations 89 to 94)

- 6.4 If the relevant council considers that interest and late payment surcharges will be ineffective in securing payment of the overdue CIL, it 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.
- 6.5 Before serving a CIL stop notice however, the relevant council will first issue a warning to the person liable to pay the amount, the land's owners, occupiers and all those who the relevant council consider will be affected by the notice. It will also post a notice on the warning 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 relevant council may serve a stop notice which will prohibit development with immediate effect immediately until payment of the outstanding amount is made.

Liability Orders and Distress (CIL Regulations 96 to 98)

- 6.6 The relevant council, after issuing a reminder notice to the party liable for the levy, can apply to a magistrates' court to make a liability order allowing it to seize and sell assets of the liable party. After the liability order has been made, the relevant council can levy the appropriate amount by distress and sale of goods of the debtor against whom the liability order was made.

- 6.7 Where the relevant council is unable to recover the amounts due, it can ask the court to commit the debtor to prison for up to three months (Regulations 100-101). This is likely to be a very rare situation.
- 6.8 As an alternative to distress, where a liability order is made and more than £2,000 is still owed, the relevant council can ask the court to serve a “charging order” on the debtor and ask them to secure the outstanding amount (Regulations 103-104).

7. **Reviews and Appeals**

- 7.1 Once a Charging Schedule is adopted, the rate of the levy is non-negotiable and the South Worcestershire Councils are not required to justify its application on a case-by-case basis. Appeals under the CIL Regulations are overwhelmingly about matters of fact.
- 7.2 The process allows a liable person to request a review of the chargeable amount, which must be done within 28 days from the date on which the liability notice (that outlines the chargeable amount) has been issued. The collecting authority is required to review the calculation and it must be carried out by someone who is senior to the person who made the original calculation, and who had no involvement in that original calculation. A decision must be issued within 14 days, and this decision cannot be reviewed again.
- 7.3 An appeal can be made on the following matters:
- An appeal of the calculation of the chargeable amount (Regulation 114) following a review (Regulation 113).
 - An apportionment of liability appeal (Regulation 115).
 - Charitable Relief Appeal (Regulation 116).
 - Exemption for Residential Annexes Extensions Appeal (Regulation 116A).
 - Exemption for self-build housing Appeal (Regulation 116B).
 - Surcharges appeal (Regulation 117).
 - Deemed Commencement Appeal (Regulation 118).
 - CIL Stop Notice (Regulation 119).
- 7.4 Appeals under Regulations 114, 115, 116, 116A and 116B are administered by the Valuation Office Agency (VOA). Appeals under Regulations 117, 118 and 119 are administered by the Planning Inspectorate. Further information can be found at the gov.uk website ([link for VOA appeals](#), or [link for Planning Inspectorate appeals](#)).

8. Instalments Policy

8.1 Regulation 70 (as amended by the 2012 and 2013 Regulations) provides for payment by instalment where a policy is in place. It sets out the requirements that must be complied with in order to benefit from the CIL Instalment Policy. The south Worcestershire Councils instalments policy is as follows:

Total Amount of CIL Liability	Number of Instalments	Payment Periods and Proportion of CIL due			
		1 st instalment	2 nd instalment	3 rd instalment	4 th instalment
Any amount less than £50,000	None	Total amount payable within 60 days of commencement of development			
Amounts from £50,000 to £249,999	Two	50% payable within 60 days of commencement of development	50% payable within 6 months of commencement of development		
Amounts from £250,000 to £1,000,000	Three	30% payable within 60 days of commencement of development	30% payable within 6 months of commencement of development	40% payable within 9 months of commencement of development	
Any amount greater than £1,000,000 In principle CIL can be paid in 4 instalments for any amount greater than £1,000,000. However instalments will be open to negotiation on an individual basis.	Four	25% payable within 60 days of commencement of development	25% payable within 6 months of commencement of development	25% payable within 9 months of commencement of development	25% payable within 18 months of commencement of development

8.2 This instalment Policy only applies where:

- The relevant council has received a CIL Assumption of Liability form prior to commencement of the chargeable development (Regulation 70(1)(a)) and
- Where the relevant council has received a CIL Commencement Notice prior to commencement of the chargeable development (Regulation 70(1)(b)).

If either of the requirements are not met, the total CIL liability will be payable in full within 60 days of the commencement of the chargeable development.

Appendix 1

Guide to Calculating Gross Internal Area (GIA)

Floorspace is measured according to the Royal Institution of Chartered Surveyors Code of Measuring Practice for Gross Internal Area (GIA) (6th Edition). Residential floorspace includes new dwellings, extensions, conversions, garages or any other buildings ancillary to residential use. Generally, any structure with 3 walls and a roof can be considered to be a building with internal floorspace and is therefore chargeable under CIL.

The South Worcestershire Councils will use this guide to measure or check the GIA of a development and calculate or confirm its relevant CIL rate.

The gross internal area could also include:

- Areas occupied by internal walls and partitions.
- Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections and vertical ducts.
- Atria and entrance halls, with clear height above, measured at base level only.
- Internal open-sided balconies and walkways.
- Structural, raked or stepped floors are property to be treated as a level floor measured horizontally.
- Horizontal floors, with permanent access, below structural, raked or stepped floors.
- Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies).
- Mezzanine floor areas with permanent access.
- Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level.
- Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms and cleaner's rooms.
- Voids over stairwells and lift shafts on upper floors.
- Loading bays.
- Areas with a headroom of less than 1.5m under stairways.

- Pavement vaults.
- Garages.
- Conservatories.

For the avoidance of doubt the following will be excluded from CIL liable floorspace:

- Perimeter wall thicknesses and external projections.
- External open-sided balconies, covered ways and fire escapes.
- Canopies.
- Voids over or under structural, raked or stepped floors.
- Greenhouses, garden stores, fuel stores, and similar in residential.
- Areas with a headroom of less than 1.5m, except under stairways.

Appendix 2

CIL Formula for Calculating the Chargeable Amount

The calculation involves multiplying the CIL charging rate by the floorspace and factoring in an index figure to allow for changes in building costs over time.

The formula for assessing the chargeable area is below. Please see CIL Regulation 40 (as amended) for full regulation

<http://www.legislation.gov.uk/ukxi/2014/385/regulation/6/made>

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

I_c

This can also be expressed as $R \times A \times (I_p/I_c)$ or

CIL Rate (R) x Chargeable Area (A) x BCIS Tender Price Index (Permission year) (I_p)

BCIS Tender Price Index (charging schedule year) (I_c)

R = relevant CIL rate (as set out in the south Worcestershire CIL Charging Schedules)

A = chargeable area or deemed net area chargeable at rate R

I_p = The BCIS All-in Tender Price Index figure for the year in which planning permission was granted

I_c = The BCIS All-in Tender Price Index figure for the year in which the charging schedule Rate R took effect

The All-in Tender Price Index is published by the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors.

The amount is based on the “Gross Internal Area” (GIA) of the development, which is summarised in **Appendix 1**.

Where the amount is less than £50 the chargeable amount is deemed to be zero.

What is the chargeable area A?

Where there is no demolition or reuse of buildings in your development, i.e. you are developing a new or a cleared site, the chargeable area is simply the GIA (sq. m) of the development charged at the rate(s) set for the proposed use(s).

However, if there are buildings in lawful use on the site at the time planning permission is granted, which are to be re-used or demolished, another formula will be applied to calculate the chargeable area of your development.

The purpose of this formula is to calculate what proportion of the development is new, and to fairly apportion any demolition or re-use of buildings on the site amongst all the elements of the new development. Where there is a mixed use, the formula apportions the floorspace that is being demolished and/or re-used between the different levy rates where more than one rate is applicable.

This is set out in Regulation 40 paragraph (7) as amended (2014) (see <http://www.legislation.gov.uk/uksi/2014/385/regulation/6/made>)

$$GR - KR - \frac{GR \times E}{G}$$

G

G = Gross Internal Area of the total proposed development floorspace

GR = the gross internal area of the part of development chargeable at rate R – i.e. the gross internal area of one type of use within the development

KR = Retained Floorspace. This is the gross internal floor area of buildings that are already in use on the site and that will be re-used as part of the new development. For example, if you are proposing 2,500 sq. m retail warehouse floorspace but 500 sq. m of that is an existing building that is in use and will be re-used for a retail warehouse on the site, then GR – KR for the use will be 2,000 sq. m.

Regulation 40 (7) (2014 amendments) defines KR as an aggregate (sum) of the gross internal area of the following:-

(i) Retained parts of in-use buildings (In-use building means a building which is part of the application proposal and contains a part that has been in lawful use for a continuous period of at least 6 months within the period of 3 years ending on the day planning permission first permits the chargeable development) and

(ii) For other buildings on site (not “in-use”), retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully without further planning permission (i.e. permitted development).

E = Demolished buildings. An aggregate (sum) of the following:-

(i) The gross internal area of parts of in-use buildings that are to be demolished before completion of the chargeable development.

(ii) For second or subsequent phases of a phased planning permission there is a further formula to calculate E – outlined in Regulation 40 (7) (ii) and (8) of the CIL (Amendment) Regulations 2014. This provides for certain credit for existing buildings that are demolished in one phase to be carried over into future phases.

Appendix 3

Example CIL Scenarios

The scenarios below give examples of whether CIL is chargeable under the regulations. However, the South Worcestershire Councils have set different and/or a zero rates for certain types of chargeable development in certain areas. Please see the Charging Schedule Report for further information in relation to CIL rates and boundaries.

Site Description	Proposed Development	CIL Liable?	Chargeable Area
Cleared site	80 sq. m new residential dwelling	Yes	80 sq. m
Single dwelling – in use	Single dwelling with a 30 sq. m extension	No	Not liable as extension is under 100 sq. m new build and does not create a new dwelling.
Single dwelling – in use	Single dwelling with an additional 105 sq. m extension	Yes	105 sq. m
Cleared site	2,500 sq. m residential, including 40% affordable housing (1,000 sq. m)	Yes	1,500 sq. m NB: the social housing relief (1,000 sq. m) must be applied for and meet certain criteria to be granted/discounted.
Single dwelling – in use but to be demolished	125 sq. m new development 90 sq. m original dwelling demolished	Yes	35 sq. m NB: not exempt as development comprises of one or more dwellings but charge reduced due to original building to be demolished being in use.
Single dwelling – not in use and to be demolished	125 sq. m new development 90 sq. m original dwelling demolished	Yes	125 sq. m NB: not exempt as development comprises of one or more dwellings and no reduction in charge as original building not in use.
Single dwelling – not in use but	35 sq. m new development 90 sq. m	No	Not liable as under 100 sq. m new build and does not create a new dwelling (but extends an existing

Site Description	Proposed Development	CIL Liable?	Chargeable Area
to be retained	original retained		one). NB: Original building not included in calculation as not change of use or to be demolished so does not need permission.
Shop unit – not in use	90 sq. m conversion /change of use of unit to residential	Yes	90 sq. m NB: No exemption even though under 100 sq. m as creating new dwelling. As the unit has not been in use, the floorspace is chargeable.
Shop unit – in use	90 sq. m conversion /change of use of unit to residential	Yes	0 sq. m so no charge NB: No exemption even though under 100 sq. m as creating new dwelling. However, as the unit has been in use, the floorspace is deductible and so there is no charge in this scenario.
Cleared Site	1,000 sq. m Retail Warehouse	Yes	1,000 sq. m
500 sq. m Warehouse – in use	Demolish and build 1,000 sq. m Retail Warehouse	Yes	500 sq. m, discounting the demolished floorspace.
500 sq. m Warehouse – not in use	Demolish and build 1,000 sq. m Retail Warehouse	Yes	1,000 sq. m. Warehouse not in use so no discount applied to demolition.
1,500 sq. m offices – in use	1,500 sq. m conversion/change of use of offices to flats	No	0 sq. m. New dwellings created but not liable as existing floorspace being converted and is deductible.
1,500 sq. m offices – in use	1,500 sq. m conversion/change of use of offices to flats with 200 sq. m additional extension for flats	Yes	200 sq. m. Existing floorspace creating new dwellings but is not liable as it is being converted and is deductible, but the additional extension is liable as it will create at least one new dwelling.

Appendix 4

Common Questions and Process Issues

a) Frequently Asked Questions

Question	Answer
<i>Are outline applications liable for the levy (CIL)?</i>	Outline planning permissions that are granted from the date the CIL Charging Schedule comes into effect (i.e. 5th June 2017) will be liable to pay CIL, when the development is built. However, as the liability is calculated at reserved matters stage there is no need to submit any CIL forms with the outline application. If an outline application includes phasing of development, each phase is treated as a separate development for the purpose of paying CIL. The CIL liability for each phase is then calculated at reserved matters stage for that phase.
<i>Will a development be liable to pay CIL if planning permission is granted before the CIL Charging Schedule came into effect, i.e. 5th June 2017?</i>	No. There is no CIL liability for a planning permission if that planning permission was granted before the CIL Charging Schedule came into effect, i.e. 5th June 2017.
<i>Will a development be liable to pay CIL if there was a resolution to grant planning permission (e.g. subject to a S106 agreement or call-in) before 5th June 2017, but the formal grant of planning permission is made on or after 5th June 2017?</i>	Yes. If a resolution to grant planning permission (e.g. subject to a S106 agreement or call-in) before 5th June 2017, but the formal grant of permission was made on or after 5th June 2017, it would be liable to pay CIL.
<i>Will a development be liable to pay CIL if there was an outline planning permission before 5th June 2017, but the approval of reserved matters/phases is made on or after 5th June 2017?</i>	No. If outline planning permission is granted before 5th June 2017, but the approval of reserved matters/phases is made on or after 5 th June 2017, the approval of reserved matters/phases does not trigger a liability to pay CIL. However, if the outline planning permission is granted on or after 5th June 2017, followed by the approval of reserved matters/phases at a later date, the approval of reserved matters/phases does trigger a new liability to pay CIL.
<i>Will a development be liable to pay CIL if there was a refusal of planning</i>	Yes. If planning permission was refused before 5th June 2017, but a grant of planning permission

Question	Answer
<i>permission before 5th June 2017, but an approval of planning permission on appeal is made on or after 5th June 2017?</i>	was made on appeal after 5th June 2017, the development granted planning permission on appeal may be liable to pay CIL.
<i>Will a development be liable to pay CIL if there was a planning permission before 5th June 2017, but an approval of a S73 application to vary or remove conditions of that planning permission is made on or after 5th June 2017?</i>	<p>Yes. If full planning permission is granted before 5th June 2017, but an approval of a S73 application to vary or remove conditions is made on or after 5th June 2017, the approval does trigger a liability to pay CIL because it results in a new planning permission.</p> <p>However the CIL (Amendment) Regulations 2012 confirm that although a new CIL liability is triggered, the new additional chargeable amount is equal only to the net increase in the chargeable amount arising from the original planning permission, so as to avoid double counting of liability.</p>
<i>If a large scheme has outline planning permission, is the whole development due to pay CIL at the time the first phase/reserve matter of the outline commences? How should existing floorspace be treated?</i>	<p>If a large scheme has outline permission each phase is a separate chargeable development and each phase is regarded as having a permission which 'first permits development' when the last reserved matter is approved for that phase. This is used to establish the point in time at which '6 months in the last 3 years' runs from, as it will depend on which phase a building to be demolished or retained forms part of.</p> <p>Schemes which are authorised by full permissions can also be phased for the purposes of CIL.</p> <p>Regulation 40 (as amended) provides for a deduction in the CIL liability arising as a result of an area being demolished in one phase, to be carried over into future phases.</p>
<i>Will the renewal of a planning permission which was approved prior to the CIL implementation date trigger a liability for CIL?</i>	No. The renewal of a planning permission which was approved prior to the CIL implementation date does not trigger a liability for CIL.
<i>On a new build of 110 sq. m, is CIL payable on the 110 sq. m or the 10 sq. m over the threshold?</i>	As soon as the threshold is reached, the whole build is chargeable. So CIL would be payable on the 110 sq. m.

Question	Answer
<i>Is CIL chargeable on a sub-division of an existing residential dwelling into two dwellings?</i>	No. The regulations make clear that the sub-division of a single dwelling into two or more separate dwellings is not liable for CIL.
<i>Is change of use/conversion liable for CIL?</i>	Potentially. If a building has not been in lawful use for a period of at least 6 months in the 3 years running up to the day planning permission is granted for conversion of the building into residential use, the development will be liable for CIL. A proposal for the conversions of an unused, redundant barn to a dwelling could therefore be liable for CIL. A change of use from a building not in lawful use to a supermarket or a retail warehouse could also be liable for CIL, but only if there is additional new build of over 100sqm.
<i>Where buildings are redeveloped will their floorspace be deducted from the final floorspace of the new development when working out how much CIL is to be paid?</i>	Yes. Where buildings are demolished to make way for new buildings, the charge will be based on the floorspace of new buildings less the floorspace of the demolished buildings. To qualify for this deduction the area to be demolished must still be in existence when the development is first permitted and have been in lawful use for a continuous period of 6 months within the period of 3 years ending on the day planning permission first permits the chargeable development.
<i>When is a proposed residential annex counted as a householder extension (100sqm threshold applies) and when is it considered to be a new dwelling (no threshold applies)?</i>	Provided that the above criteria are satisfied, if more floorspace is demolished than is erected in the new development no CIL would be liable.
<i>My development does not need planning permission. Do I still need to pay the CIL?</i>	Potentially. Whilst most chargeable developments will require planning permission there may be a small number of cases where a development does not need planning permission under permitted development rights but is still liable for the CIL because of its type and size. In these cases the landowner must notify the relevant council of their development by submitting a 'Notice of Chargeable Development' which can be found on the Planning Portal website.
<i>Is VAT applied to CIL charges?</i>	No. CIL is outside the scope of VAT.

b) CIL Process Questions

Question	Answer
<p><i>Do I have to submit a 'CIL Additional Information form' for each new application?</i></p>	<p>From 5th June 2017, all planning applications (excludes outline applications), including householder applications will require a 'CIL Additional Information form' or in the case of prior approvals under permitted development a 'Notice of Chargeable Development' (form 5) if the application creates:</p> <ul style="list-style-type: none"> • At least 100 sq. m of new floorspace (measured as gross internal floor area); • At least 100sqm of change of use; • A new dwelling regardless of floorspace. <p>Every application must be accompanied by the appropriate Additional Information or Chargeable Development Form otherwise the application will be deemed invalid.</p>
<p><i>Is there any relief from CIL?</i></p>	<p>Yes. In accordance with the Regulations the following development may receive relief from CIL:</p> <ul style="list-style-type: none"> •Charitable development •Social housing development •Self-build development •Self-build residential annex or extension <p>Guidance notes are available to explain the process for claiming relief.</p> <p>If you consider that your development, or part of it, should be exempt from CIL you should submit an exemption claim form after having submitted an Assumption of Liability Form.</p> <p>Any exemptions must be applied for and granted prior to commencement.</p>
<p><i>When is a Liability Notice issued?</i></p>	<p>A Liability Notice is issued as soon as practicable after the day on which a 'planning permission first permits development'.</p> <p>In the case of an outline planning permission, 'planning permission first permits development' on the day of the final approval of the last reserved matter.</p> <p>It is the responsibility of the person(s) who will pay CIL to submit</p>

Question	Answer
	<p>an Assumption of Liability Notice to the relevant council before commencement of the development.</p> <p>The responsibility to pay CIL runs with the ownership of land on which the liable development will be situated. However, the CIL Regulations recognise that other parties involved in a development may wish to assume liability for the payment of the levy.</p> <p>An 'Assumption of Liability Notice' must be submitted before the relevant council can submit a Liability Notice.</p> <p>A revised Liability Notice will be issued every time the CIL charge changes, e.g. if the floor area changes or if a surcharge is applicable.</p>
<p><i>I assumed liability but I have now sold the site, what should I do?</i></p>	<p>Liability can be transferred to another person before or after a development commences but this must occur before the final payment of the CIL is due. If you want to withdraw or transfer assumed liability you need to fill out the relevant Notice and submit it to the relevant council. The forms are:</p> <p>Form 3: Withdrawal of Assumption of Liability</p> <p>Form 4: Transfer of Assumed Liability</p>
<p><i>When is a Demand Notice issued?</i></p>	<p>CIL becomes payable on commencement of development. The CIL Regulations require that a liable person(s) submits a Commencement Notice to the relevant council stating the day that they intend to commence development.</p> <p>A Demand Notice is issued on receipt of a Commencement Notice or, in the case of a general consent, on receipt of a Notice of Chargeable Development.</p> <p>The Demand Notice will set out precise details of payment arrangements including any instalment options, which will be payable from the date upon which development commences.</p>
<p><i>What happens if I don't pay the CIL charges?</i></p>	<p>Unlike S.106 obligations, CIL is a mandatory and non-negotiable planning charge and there are penalties and surcharges for non-payment, including the option to pay by instalment being automatically withdrawn. There are also strong enforcement powers, including Stop Notices, surcharges and prison terms.</p>
<p><i>How will CIL be monitored?</i></p>	<p>To ensure that the levy is open and transparent, charging authorities must prepare short reports on the levy for the previous financial year which must be placed on their websites by 31st December each year. These reports will set out how much revenue from the levy has been received, what it has been spent on and how much is left.</p>

c) Other CIL Questions

Question	Answer
<p><i>What is the meaning of 'the day planning permission first permits development'?</i></p>	<p>In most cases, this will be the day that planning permission is granted. However, there are some caveats outlined in Regulation 8 for different types of permission. For example, if there is a Charging Schedule in force when outline planning permission is granted, then 'the day planning permission first permits development' relates to the final approval of reserved matters, for each phase of that outline permission.</p>
<p><i>How is a development's size calculated?</i></p>	<p>The size of development is calculated on the basis of its Gross Internal Area (GIA). The Royal Institute of Chartered Surveyors has produced guidance on how to calculate GIA and this is contained in a document called the 'Code of Measuring Practice 6th Edition'.</p>
<p><i>What is meant by 'Lawful Use' in CIL?</i></p>	<p>Regulation 40 of The Community Infrastructure Levy (Amendment) Regulations (2014) allows for existing floor space that has been in continuous lawful use for at least six months in past three years on the day that planning permission is granted, the approval of the final reserved matter on an outline application or on receipt of a Notice of Chargeable Development for permitted development or a prior approval application to be used as deductible floor space against the CIL charge for the development.</p> <p>It is applicant's responsibility to provide the evidence to demonstrate the continuous lawful use. Information that could be submitted to demonstrate this can include the combination of the following:</p> <ul style="list-style-type: none"> • Copies of leases • Electricity/gas bills for the 6 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 to show rent/rates have been paid • Confirmation from a letting agent/solicitor advising of the period of occupancy <p>The relevant council will require further evidence of continuous use if it is not evident from the information supplied and will not consider the existing floor space as deductible</p>

Question	Answer
	floor space unless the applicant demonstrates this.
<p><i>What is the Regulation 123 List?</i></p>	<p>The Regulation 123 List refers to infrastructure types that will be funded wholly or partly from CIL. It also outlines what infrastructure will remain as being delivered through Section 106 and Section 278 (Highways) agreements. S106/S278 agreements may be sought where site specific measures are required to make a development acceptable in planning terms.</p> <p>Any S106/S278 agreements will need to meet the 3 tests set out in Regulation 122 of the CIL Regulations 2010 (as amended). Agreements must be:</p> <ul style="list-style-type: none"> • Necessary to make the development acceptable in planning terms; • Directly related to the development and • Fairly and reasonable related in scale and kind to the development. <p>The Regulation 123 List can be found under Appendix A of the <u>CIL Charging Schedule Report</u>.</p>
<p><i>Does CIL replace S106 contributions?</i></p>	<p>Not entirely. Since April 2015 the Government have introduced restrictions on the ability to pool planning obligations. Local authorities are prevented from seeking planning obligations relating to infrastructure where five or more planning obligations for that infrastructure have been entered into since 6 April 2010. It will therefore become more difficult to deliver larger scale items of infrastructure such as schools, swimming pools and major transport schemes through S106.</p> <p>S106 contributions will continue to be used to deliver some infrastructure, but this will largely be restricted to site-specific mitigation and for providing affordable housing. CIL and S.106 will cover different infrastructure, and developments will not be charged for the same items through both S.106 and CIL.</p>
<p><i>What types of affordable housing qualify for relief?</i></p>	<p>Developments for affordable housing are eligible for relief from CIL providing that they are let by a private registered provider of social housing, a registered social landlord, a local authority or the dwelling is occupied in accordance with shared ownership arrangements.</p> <p>To qualify for affordable housing relief, the claimant must have a material interest in the area granted planning permission and have assumed liability to pay the levy for the whole</p>

Question	Answer
	<p>chargeable development. To receive affordable housing relief, you must submit a 'CIL Claiming Exemption or Relief' form to the Council prior to commencement of the development. A claim for relief will be invalid if the chargeable development is commenced before the Council has notified the claimant of its decision on the claim.</p> <p>Under the government's Starter Homes exception site policy, starter homes are exempt from CIL.</p>
<p><i>Is CIL a land charge?</i></p>	<p>Yes. It is a legally enforceable levy which is shown as a land charge on the local land charges register.</p>
<p><i>What happens to collected CIL money and how will local neighbourhoods benefit from CIL? ?</i></p>	<p>70-80% of the money collected will be retained by the south Worcestershire Councils and spent on providing or improving infrastructure.</p> <p>15-25% is set aside as a neighbourhood portion, the higher percentage dependant upon a Neighbourhood Plan being in place. At 15%, the neighbourhood portion is capped at £100 per existing council tax dwelling, whereas the 25% is uncapped. The money will either be allocated directly to parish and town councils, (on a bi-annual basis), or retained and spent by the south Worcestershire Councils in consultation with local communities where there is no parish or town council.</p> <p>5% will be used for administration costs.</p>
<p><i>How do I find out how CIL money is used?</i></p>	<p>The south Worcestershire Councils are required to produce annual reports detailing CIL receipts and expenditure by 31st December each year. This information will be published on each charging authorities' respective website.</p> <p>Parish and Town Councils also need to provide annual reports relating to their neighbourhood receipts and expenditure.</p>
<p><i>Are Holiday Let/Chalet accommodation and/or glamping/safari tents liable for CIL?</i></p>	<p>No. These uses are not classed as C3 residential and so are not liable for CIL under the charging schedule.</p>
<p><i>Are Extra Care homes or Sheltered Accommodation liable for CIL?</i></p>	<p>No. These uses are not classed as C3 residential for the purposes of the charging schedules and so are not liable for CIL.</p>

Appendix 5

CIL Forms Guide

CIL Form 1 - Assumption of Liability. Use this form to submit an assumption of liability for paying the CIL charge.

CIL Form 2 - Claiming Exemption or Relief. Use this form to claim relief on social housing and charitable development.

CIL Form 3 - Withdrawal of assumption of liability. Use this form if you have assumed liability to pay CIL but will no longer be the party making the payment.

CIL Form 4 - Transfer of assumed liability. This form should be used to transfer the responsibility for paying CIL between parties. It should be used if the person who assumed liability using CIL form 1 will no longer be paying the CIL, and has already agreed with another party that it is now their responsibility.

CIL Form 5 - Notice of chargeable development. This form is to be used to let the relevant council know about work being carried out under General Consent/Permitted Development which may be CIL liable.

CIL Form 6 - Commencement Notice. This form is to be used to let the relevant council know the day that you intend to commence development.

CIL Form 7 - Self Build Exemption Claim Form (Parts 1 and 2). Use these forms to claim relief (part 1) and notify the relevant council of completion (part 2) on self build homes.

CIL Form 8 - Self Build Residential Annex Exemption Claim Form. Use this form to claim relief on a self build annex.

CIL Form 9 - Self Build Residential Extension Exemption Claim Form. Use this form to claim relief on a self build extension.

Other Forms required for submission with a planning application







Planning Application - Additional Information Requirements Form – Use this form to assist the South Worcestershire Councils in determining whether or not CIL will be payable on the development and, if so, the correct amount. A planning application will not be validated if this form is not submitted. Please note that this form is not required at the outline planning application stage.



All CIL forms can be downloaded from the Planning Portal Website:

https://www.planningportal.co.uk/info/200126/applications/70/community_infrastructure_levy/5

Appendix 6

CIL Process Flow Chart

Planning Permission <u>REQUIRED</u>		Planning Permission <u>NOT REQUIRED</u>
APPLICATION		
Applicant must provide an ' Additional Information Form ' (this is not required at the outline planning application stage) to allow CIL to be calculated by the relevant council.		For 'Permitted Development' you must submit a ' Notice of Chargeable Development ' (CIL Form 5). If not submitted the relevant council will prepare the notice and serve on the owner.
DETERMINATION		
Consent Granted.		Consent not required/Prior approval process completed.
Before development commences, applicant submits ' Assumption of Liability ' (CIL Form 1) If liability changes any time before final payment becomes due, applicant must submit withdrawal or transfer of liability (CIL Forms 3 and 4).		Before development commences, applicant submits ' Assumption of Liability ' (CIL Form 1) If liability changes any time before final payment becomes due, applicant must submit withdrawal or transfer of liability (CIL Forms 3 and 4).
If applicable, applicant must apply to claim relief Social (Affordable) Housing (CIL Form 2) Charitable (CIL Form 2) Self-Build (CIL Forms 7, 8, 9)		If applicable, applicant must apply to claim relief Social (Affordable) Housing (CIL Form 2) Charitable (CIL Form 2) Self-Build (CIL Forms 7, 8, 9)
Council issues CIL liability notice to the parties that have assumed liability and the landowner(s). If circumstances change, the council will issue a revised liability notice. If no one has assumed liability, liability passes to the landowner.		Council issues CIL liability notice to the parties that have assumed liability and the landowner(s). If circumstances change, the council will issue a revised liability notice. If no one has assumed liability, liability passes to the landowner.
COMMENCEMENT		
Applicant must submit a ' Commencement Notice ' to inform the council when development commences (CIL Form 6). If you do not submit a commencement notice or provide an incorrect commencement date the council will determine the 'deemed commencement date'. Full payment then becomes due immediately (therefore forfeiting any instalments plan).		Applicant must submit a ' Commencement Notice ' to inform the council when development commences (CIL Form 6). If you do not submit a commencement notice or provide an incorrect commencement date the council will determine the 'deemed commencement date'. Full payment then becomes due immediately (therefore forfeiting any instalments plan).

<p>Council issues a Demand Notice with due dates and payment procedure (and instalments policy if applicable).</p> <p>If circumstances changes the council will issue a revised Demand Notice.</p>		<p>Council issues a Demand Notice with due dates and payment procedure (and instalments policy if applicable).</p> <p>If circumstances changes the council will issue a revised Demand Notice.</p>
<p>If CIL is paid in line with payment procedure the council will issue a receipt.</p> <p>If Instalments terms are broken, full payment will become payable immediately.</p> <p>If payment continues to be unpaid, enforcement action will be taken.</p>		<p>If CIL is paid in line with payment procedure the council will issue a receipt.</p> <p>If Instalments terms are broken, full payment will become payable immediately.</p> <p>If payment continues to be unpaid, enforcement action will be taken.</p>