

North Somerset Council Community Infrastructure Levy (CIL) Frequently Asked Questions on development liability

This guidance note focuses on the liability of developments for CIL and some of the technical issues as to how it is calculated.

We recommend that applicants refer to national regulations and guidance on the CIL. The answers below reflect North Somerset Council's interpretation of CIL regulations. In the event of any error or dispute, national regulations and guidance will take precedence.

The FAQs below cover the following topics:

- A. Basic information on the types of development that are liable for CIL.
- B. Liability for applications registered prior to 18th January 2018
- C. Liability for different types of development including conversions and permitted development.

A. TYPES OF DEVELOPMENT THAT ARE LIABLE FOR CIL

What types of development are liable for CIL?

In North Somerset, the following types of development are liable for CIL:

- Residential development which results in the creation of a new dwelling.
- Residential or retail development where the new floorspace exceeds 100sqm.

This includes the conversion of existing buildings into residential or retail development, unless it can be shown that the building has been in lawful use for a continuous period of six months during the three years prior to the issue of planning permission.

The term "residential development" includes use classes C3 and C4. Purpose-build student accommodation is also liable.

Use class C2 extra-care housing is subject to a £0 CIL rate. To be eligible for this rate, the development in question must meet the specific criteria set out in the North Somerset CIL Charging Schedule.

The term "retail development" includes use classes A1, A2, A3, A4 and A5.

There is no charge on commercial development within use classes B1, B2 or B8.

Are there any exemptions?

The following exemptions or reliefs apply in North Somerset:

- Mandatory social housing relief.
- Self-build exemption (for a whole house).
- Self-build exemption (for a residential annex or extension).
- Mandatory charitable relief.

Please see national guidance on eligibility and application processes for these reliefs and exemptions (weblinks provided above). It is critical that applications for relief are made and

approved prior to commencement of development. If a development has commenced, North Somerset Council will be unable to issue any exemption or relief and the full amount of CIL will be payable. We recommend that applicants submit their requests for exemptions as early as possible in the planning process.

B. LIABILITY FOR APPLICATIONS REGISTERED PRIOR TO 18TH JANUARY 2018

Will a development be liable to pay CIL if there was a resolution to grant planning permission (e.g. subject to a S106 agreement) before the CIL Charging Schedule is brought into effect on 18th January 2018 but the formal grant of planning permission is made after the 18th January 2018?

Yes. If the formal grant of permission is made on or after the CIL Charging Schedule comes into effect on 18th January 2018, it would be liable to pay CIL. This is because any resolution to grant planning permission by the Committee does not formally grant planning permission. The decision notice is usually issued very shortly after the resolution to grant but note that, if the grant of permission is subject to the completion of a section 106 agreement, a decision notice cannot be issued until a S106 agreement has been completed. This will apply also to section 73 applications (see below).

Will a development be liable to pay CIL if there was a refusal of planning permission before the CIL Charging Schedule came into effect on 18th January 2018, but an approval of planning permission on appeal is made on or after 18th January 2018?

Yes. If planning permission was refused before 18th January 2018, but a grant of planning permission was made on appeal after 1st April, the development granted planning permission on appeal may be liable to pay CIL.

Are outline applications liable for the levy (CIL)?

Outline planning permissions granted after 18th January 2018 are liable to pay CIL when the development is built, but 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. As above, the CIL liability for each phase is calculated at reserved matters stage for that phase.

Will a development be liable to pay CIL if there was a planning permission before the CIL Charging Schedule came into effect on 18th January 2018, but an approval of a Section 73 application to vary or remove conditions of that planning permission is made on or after 18th January 2018?

Yes. If full planning permission is granted before 18th January 2018, but, on or after 18th January 2018, the authority issues a decision notice on a S73 application to vary or remove conditions, whenever the application is made or the resolution is passed, 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 net 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 a 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 planning permission before the CIL Charging Schedule came into effect on 18th January 2018, but a different planning permission is granted on the same site on or after 18th January 2018?

Yes.

Whilst a planning permission granted prior to 18th January 2018 can be implemented in its current form without incurring CIL, if a fresh application is submitted then any residential development it comprises, granted planning permission after 18th January 2018, would be liable for CIL even if it was within the application site of the development that had been granted planning permission previously.

Residential floorspace previously granted planning permission cannot be set against CIL liability on the new development.

The exception to this is S73 applications mentioned above where there is only a minor amendment to the original scheme and where, if there is no increase in floorspace then in effect there is no charge.

C. LIABILITY FOR DIFFERENT TYPES OF DEVELOPMENT INCLUDING CONVERSIONS AND PERMITTED DEVELOPMENT

Is CIL chargeable for subdividing a house into two or more homes?

No, unless additional new build floorspace is provided as part of the scheme in which case the additional floorspace may be liable.

Is CIL chargeable on second homes?

Yes, providing they are not temporary buildings. Second homes are still dwellings that come under Use Class C3.

Is CIL chargeable on mobile homes?

No. CIL can only be charged on buildings. Mobile homes are not normally buildings as defined by law therefore no CIL will be charged on them unless the proposal is considered to be a building

Is CIL chargeable on houses in multiple occupation?

The Charging Schedule refers to residential uses which would include, amongst others, houses in multiple occupation. Therefore they may be liable for CIL.

Is CIL payable on garages?

Garages that are an integral part of planning applications for new houses count as “residential floorspace” and are liable for CIL whether integral to the new house design or detached.

Application for a new garage for an existing house will not normally be liable for CIL unless the new floorspace exceeds 100 sqm.

No CIL is payable on “lean to” or fully open sided car ports/canopies.

Is CIL chargeable on a barn conversion?

Where a barn is a permanent usable building and has been in lawful use for a continuous period of six months during the three years prior to planning permission first permitting development, there would not normally be a charge for the converted floorspace.

Where a barn has not been in lawful use for the required period, the development will be treated as newbuild and will be charged CIL accordingly.

The onus is on the applicant to provide proof as to the lawful use of the building. To meet the criteria, such buildings should be weathertight with four walls, floor and a roof. We recommend applicants take photos etc of their building so that they have evidence if required.

Any increase in floorspace proposed as part of the application would be charged CIL, for example extending the barns or providing newbuild garages.

Should loft areas be included in the calculation of CIL floorspace.

Loft space that is not generally accessible except via a loft ladder should not be included as chargeable floorspace. Loft space that is used as rooms with stairs or a permanent ladder is chargeable floorspace. This includes accessible storage areas.

There are buildings on the application site that will be demolished as part of the development proposals. Will this reduce my CIL liability?

Where a building is to be demolished as part of a development proposal, the floorspace that will be demolished will normally be deducted from the total of chargeable floorspace, reducing the overall costs.

This is subject to the demolition meeting a number of criteria. Deductions for demolition can only apply where the building to be demolished is still in place at the point of planning consent and where the building in question has been in continuous lawful use for at least six months of the three years prior to planning permission first permitting development and the building is a permanent building into which people normally go.

The onus of proof in terms of the floorspace to be demolished and its lawful use is on the applicant. Evidence of the nature of the use and its duration should be submitted with the CIL Questions form or Notice of Chargeable Development.

Does CIL apply to schemes given permission under General Consents?

CIL applies to proposals given permission under General Consents/permitted development rights in the same way as to any other development.

However many such proposals will result in a nil charge, as they will involve the conversion of existing floorspace in lawful use and/or fall below the threshold for CIL charges.

If I am implementing a scheme given permission under a general consent when do I need to serve the Notice of Chargeable Development?

Section 64 of the CIL Regulations refers to the Notice of Chargeable Development needing to be served before development authorised by the general consent is commenced.

Therefore the trigger point would be the works or change of use whichever comes first (see S56(1)(c) of the 1990 Planning Act).

Where the Council is aware that there may be a CIL charge arising from a scheme given permission under a general consent the owner or agent will normally be invited to submit a CIL Questions Form so that everybody is aware of potential CIL liability at an early date.

Does CIL apply to applications for Lawful Development Certificates?

Applications for Lawful Development Certificates may be liable for CIL unless the floorspace has been in a lawful planning use for a period of 6 months in the last 3 years before the application is made.