

Community Infrastructure Levy in Croydon

A guide

February 2014

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1. Introduction to the Community Infrastructure Levy

1.1 On 1 April 2013, the Croydon Community Infrastructure Levy (CIL) came into force. CIL is a charge which local authorities can levy on most types of new development. All developments permitted after this date in Croydon will potentially be liable to pay the levy. The introduction of CIL changes the way in which developers contribute to the provision of infrastructure in Croydon. Proceeds from the levy will provide new local and sub-regional infrastructure to support development within the borough in line with Croydon's development plan and infrastructure provision.

2. Who will have to pay the CIL

2.1 All developments may be liable to pay CIL if:

- They involve new build; and
- They result in one or more new dwellings **or** they have a net additional floor area of 100m² or more

2.2 CIL may be CIL payable even if the development does not require planning permission if it meets the criteria above.

2.3 A form is available at www.planningportal.gov.uk/uploads/1app/forms/cil_questions.pdf to determine whether a development is liable to pay CIL. This form should be submitted with every application for planning permission made to the council. It should also be used if the development does not require planning permission but meets the criteria above.

2.4 CIL is payable by the owner of the land with permission unless the council is otherwise notified that another person or organisation is assuming liability for the CIL. The council will send a CIL liability notice to the landowner shortly after the granting of planning permission unless another person or organisation has assumed liability. To assume liability for CIL a form is available at www.planningportal.gov.uk/uploads/1app/forms/form_1_assumption_of_liability.pdf

2.5 Failure to pay any liable CIL will result in the council taking enforcement action which may include issuing a notice requiring any construction works to cease until CIL has been paid. A record of CIL liability on each property or parcel of land will be kept by the council and any outstanding liability due will appear on any Local Land Charge searches carried out during the sale of the property or land.

3. How much is the CIL?

3.1 The table below shows the basic CIL rates¹ applicable in Croydon as of 1 April 2013. CIL is charged on net additional floor space in a development plus any existing floor space that has been vacant for more than six months of the three years prior the granting of permission².

Development type	Planning use class	Within Croydon Metropolitan Centre (see Map 1 opposite)	Rest of borough
Residential	C3 only	£20 per m ²	£140 per m ²
Business	B1, B2 or B8	£140 per m ²	£20 per m ²
Institutions (excluding schools, colleges, higher education institution or medical and health services)	C2 or D1	£20 per m ²	£20 per m ²
Schools, colleges, higher education institution, medical and health services)	C2 or D1	Nil	Nil
All other uses	A1, A2, A3, A5, A5, C1, C4, D2 or Sui Generis	£140 per m ²	£140 per m ²
In all cases above the first £20 per m ² goes to the Mayor of London. Any remainder is retained by Croydon Council.			

3.2 A calculator to work out the likely CIL charge of any development in Croydon based on the government’s prescribed formula can be found on the council’s website at www.croydon.gov.uk/contents/departments/planningandregeneration/xls/cilcalculator.xls. The formula set by the government in the Community Infrastructure Levy Regulations 2010 (as amended 2014) is reproduced in Appendix 1 of this guide.

¹ CIL rates increase/decrease in line with the BCIS All-in-Tender Price Index. The council will use the figure for Q4 taken on the 1st April of the following year as the basis of changes to the CIL rate. The BCIS All-in-Tender Price Index is a subscription service and under the terms of the licence agreement the Council cannot publish index figures.

² Vacant is defined as a building that has not been in “continuous lawful use” for at least six months in the three years prior to the granting of permission.

A building has a “lawful use” if the use of the building is as set out in a valid planning permission or Certificate of Lawful Development, or the building has been in the same use without any changes for at least ten years if it is non-residential or four years if it is residential.

“Not being in continuous lawful use” means that the building has been left unoccupied during its permitted operating hours (non-residential building) or for residential buildings the whole building has been left ‘substantially unfurnished’ (meaning that there isn’t enough furniture in the home for someone to live there, e.g. beds, chairs, tables, wardrobes or cabinets).

If the council has reason to believe that a building has not been in continuous lawful use for at least six months in the three years prior to the granting of planning permission then CIL will be charged on existing floor space unless evidence of continuous lawful use is provided.

4. Information needed for the council to calculate the correct CIL charge

4.1 The council will need the following forms at the times listed to be submitted to calculate the correct CIL charge for a development:

Form	Needs to be submitted	Download the form at...
Form 0 – Determining whether a development may be CIL liable	With any application for planning permission or a Certificate of Lawful Use, or if you want to check if a development not requiring planning permission is CIL liable	www.planningportal.gov.uk/uploads/1app/forms/cil_questions.pdf
Form 1 – Assumption of liability	With any application for planning permission or a Certificate of Lawful Use	www.planningportal.gov.uk/uploads/1app/forms/form_1_assumption_of_liability.pdf

5. Exemptions and relief from CIL

5.1 CIL is not negotiable. The viability of a development cannot be taken into account³. If a development meets the criteria below it will be liable to pay CIL at the rate determined for its type and location:

- It involves new build; and
- It results in one or more new dwellings **or** it has a net additional floor area of 100m² or more.

5.2 There are only four cases where exemption or relief from CIL may be granted. These are:

- Residential annexes or extensions for owner-occupied homes;
- Development by a registered charity wholly or mainly for charitable purposes;
- Development (or part of) which will be used to provide social housing; and
- Self-build housing (which includes both homes built by the occupier and homes commissioned by the occupier and built by someone else) for occupation as a sole or main residence.

5.3 There are strict eligibility tests for each of these exemptions or relief. If you believe that your development may qualify for one of these exemptions or reliefs then you are advised to discuss it with the council at the earliest opportunity.

³ Discretionary relief for exceptional circumstances (as set out in Reg 55 of the Community Infrastructure Levy Regulations 2010) is not available in Croydon.

6. When CIL has to be paid

6.1 CIL is payable as set out in the table below:

Total CIL to be paid	When it has to be paid
Any amount less than or equal to £250,000	Total amount payable within 60 days of commencement of development
Amounts more than £250,000 and less than or equal to £500,000	<p>£100,000 payable within 60 days of commencement of development</p> <p>Balance payable within 120 days of commencement of development</p>
Amounts greater than £500,000	<p>£250,000 payable within 60 days of commencement of development</p> <p>Balance payable in two further instalments of equal amount, the first within 120 days of commencement of development and the second within 180 days of commencement of development</p>
<p>If the council is not notified of the commencement of development or the planning permission is retrospective (because construction or engineering works commenced before permission was granted) then CIL is payable in full immediately</p>	

6.2 Development will be deemed to have commenced when any one of the following actions takes place⁴:

- Any demolition of a building that was on site at the time of granting permission;
- The laying of any underground main or pipe to the foundations of the building;
- Digging a trench which is to contain part or all of the foundations of a building;
- Any works laying out or constructing a road or part of a road that forms part of the development;
- Any construction work on a building; or
- If the development is a change of use and none of the above applies then development will be deemed to have commenced when the use is instituted.

⁴ The definition of commencement is the same as in the s.56 of Town and Country Planning Act 1990

7.How to pay CIL

7.1 The process for paying CIL varies depending on the type of permission. The table below set out the process for paying CIL in Croydon.

Step	Any planning permission granted prior to commencement of development	Retrospective planning permission or Certificate of Lawful Use	Permitted development
1	<p>As soon as practicable after the granting of permission for a CIL liable development a CIL Liability Notice will be issued. The CIL Liability Notice will be sent to the person or organisation claiming liability for CIL (or the landowner if no one claims liability). This is not a demand for payment but sets out the amount that will be payable after commencement of development.</p>	<p>As soon as practicable after the granting of a retrospective permission or Certificate of Lawful Use for a CIL liable development the council will send a CIL Demand Notice to the person or organisation assuming liability to pay CIL. This must be paid in accord with the timescales set out in “When CIL has to be paid” above. The invoice contains details on how to pay the CIL charge to the council.</p>	<p>A Notice of Chargeable Development must be submitted to the council prior to commencement of development which can be downloaded at www.planningportal.gov.uk/uploads/1app/forms/form_5_notice_of_chargeable_development.pdf. As soon as practicable after the receipt of a Notice of Chargeable Development a CIL Liability Notice will be issued if the development is CIL liable.. The CIL Liability Notice will be sent to the person or organisation claiming liability for CIL (or the landowner if no one claims liability). This is not a demand for payment but sets out the amount that will be payable after commencement of development.</p>

Step	Any planning permission granted prior to commencement of development	Retrospective planning permission or Certificate of Lawful Use	Permitted development
2	<p>Prior to commencement of development the person assuming liability to pay CIL must notify the council that work is about to start using Form 6 – Commencement notice which can be downloaded at www.planningportal.gov.uk/uploads/1app/forms/form_6_commencement_notice.pdf. Failure to do so could result in additional surcharges, interest payments and enforcement action being taken by the council.</p>		<p>Prior to commencement of development the person assuming liability to pay CIL must notify the council that work is about to start using Form 6 – Commencement notice which can be downloaded at www.planningportal.gov.uk/uploads/1app/forms/form_6_commencement_notice.pdf. Failure to do so could result in additional surcharges, interest payments and enforcement action being taken by the council.</p>
3	<p>Upon receipt of notice of the intention to commence development the council will send a CIL Demand Notice to the person or organisation assuming liability to pay CIL. This must be paid in accord with the timescales set out in “When CIL has to be paid” above. The invoice contains details on how to pay the CIL charge to the council.</p>		<p>Upon receipt of notice of the intention to commence development the council will send a CIL Demand Notice to the person or organisation assuming liability to pay CIL. This must be paid in accord with the timescales set out in “When CIL has to be paid” above. The invoice contains details on how to pay the CIL charge to the council.</p>

8. Change of person or organisation assuming liability for CIL

8.1 If for any reason the person or organisation assuming liability for CIL changes before the CIL due has been paid in full then the council must be notified using Form 4 – Transfer of Assumed Liability which can be downloaded at www.planningportal.gov.uk/uploads/1app/forms/form_4_transfer_of_assumed_liability.pdf.

9. Actions the council may take of the CIL payment procedure is not followed

9.1 This section sets out the possible consequences of not following the CIL payment procedure.

Surcharge for failing to assume liability before commencement

9.2 Failure to assume liability before the commencement of development may result in the council imposing a surcharge of £50 per landowner subsequently discovered. This surcharge ensures that the costs of establishing the identities of landowners are borne by the liable parties.

Surcharge where apportionment is necessary

9.3 Further, where the council has to apportion liability between one or more owners of the land, it may also impose a surcharge of £500 per owner. This is to ensure the costs of this apportionment are borne by the owners in question. Both these surcharges are in addition to the loss of payment rights that result from failing to assume liability before the commencement of development.

What happens if a valid commencement notice is not submitted before development commences?

9.4 Failure to submit a valid commencement notice before development commences may result in the council imposing a surcharge of 20% of the CIL amount due, up to a maximum of £2,500.

Surcharge for failing to respond to a request for information about either the apportionment of CIL liability or the calculation of Social Housing Relief

9.5 Failure to respond to a request for information (either on the apportionment of CIL liability or on the calculation of Social Housing Relief) within 14 days of the request formally being made may result in the council imposing a surcharge. This would be of 20% of the CIL amount due, up to a maximum of £2,500.

Late payment interest

9.6 Failure to pay CIL on time will result in the imposition of late payment interest by the council at 2.5 percentage points above the Bank of England base rate applicable at the time.

Late payment surcharge

9.7 Continued failure to pay CIL may result in council imposing one or more late payment surcharge. Such surcharges will be imposed in the following manner:

- Five per cent of the outstanding amount where payment is still overdue after 30 days, subject to a £200 minimum;
- Five per cent of the outstanding amount where payment is still overdue after six months, subject to a £200 minimum; and
- Five per cent of the outstanding amount where payment is still overdue after 12 months, subject to a £200 minimum.

The CIL stop notice

9.8 Sometimes the council may believe that interest and late payment surcharges will be ineffective in securing payment of the overdue CIL. In such circumstances, the council may decide to serve a CIL stop notice on the development in question. A CIL stop notice prohibits development from continuing until payment is made. Continuing to develop in the presence of such a notice is a criminal offence, punishable by potentially unlimited fines.

9.9 Before serving a CIL stop notice however, the council will first issue a warning to the person liable to pay the amount, the land's owners, occupiers and all those who the council believes will be affected by the notice. It will also post a warning on the site itself. This warning will state that continued non-payment may result in a CIL stop notice being issued. It will also set out the amount overdue and the number of days after which a CIL stop notice may be served if payment continues not to be made. If payment is not made by the end of this period, the council may serve a stop notice which will prohibit development with immediate effect immediately until payment of the outstanding amount is made.

Distrain on goods (asset seizure)

9.10 If you fail to pay CIL the council may seek a court's consent to seize and sell your assets to recover the money due. These assets may include any land you hold. It is a legal requirement for the council to send you notice of its intention to do so beforehand.

Committal to prison

9.11 If you continue to evade paying CIL, the council can ask a magistrates' court to commit you to prison for no more than three months. To do this, the council must be able to demonstrate to the court that it has been unable to recover the CIL amount due by seizing and selling your assets and land.

10. Appealing against a decision made by the council on CIL

10.1 Appeals can be made against most aspects of the CIL collection and enforcement system, from the council's calculation of the amount due to any enforcement actions it may take. The seven different appeals are:

- Appealing against the council's calculation of the levy chargeable amount in a liability notice;
- Appeals against the apportionment of liability for the levy;
- Appeals against the value of the exemption granted for residential annexes (including the refusal to grant relief);
- Appeals against the value of the exemption granted for self-build homes (including the refusal to grant relief);
- Appeals against the value of the relief granted for charitable development (including the refusal to grant relief);
- Appeals concerning enforcement actions taken by the council regarding the levy; and
- Appeals against decisions by the council to deem that development has commenced.

10.2 The only aspects of CIL where there is no right of appeal is on decisions made by the council on the granting or level of social housing relief and the value of exemption for residential extensions.

10.3 This section sets out how to make each of the appeals above, when to make an appeal by, and who to make the appeal to.

Appealing against the council's calculation of the levy chargeable amount in a liability notice

10.4 If you feel that the amount of CIL set out in your liability notice has been calculated incorrectly, you can ask the council to review the calculation. Such a request must be made in writing to CIL.DevelopmentManagement@croydon.gov.uk or to Head of Development Management, Planning & Environment Department, Taberner House, Park Lane, Croydon CR9 1JT. It must be made within 28 days of the date on which the liability notice was issued. You may also submit whatever evidence in writing you may feel is appropriate to support your request to the council.

10.5 When the council receives your request to review the amount, it must ensure that the person conducting the review is senior to the one who carried out the original calculation. The council must then notify you of the decision of the review within 14 days of receiving your request, including the reasons for the decision. However, where development is commenced before you receive notification of this decision, the review will lapse and the original amount will become due for payment in the manner set out in the demand notice⁵.

10.6 If you are dissatisfied with the decision of the council's review or have not been notified within 14 days, you may appeal to the Valuations Office Agency (VOA) (see www.voa.gov.uk/cil/index.html). This appeal must be made no later than 60 days beginning with the day on which the liability notice was issued. However, you may not appeal to the VOA on how the Community Infrastructure Levy amount due was calculated if development has commenced. This appeal will also lapse if development commences before you have been told of the outcome of the appeal⁶.

Appeals against the apportionment of liability for the levy

10.7 You may appeal to the VOA (see www.voa.gov.uk/cil/index.html) against any apportionment of liability carried out by the council. Any such appeal must be made within 28 days of receiving notice of such a decision by the council. Where an appeal is allowed, any demand notices (including surcharges) relating to the development in question will be suspended pending the outcome of the appeal.

Appeals against the value of the exemption granted for residential annexes including refusal to grant exemption

10.8 You may appeal to the VOA (see www.voa.gov.uk/cil/index.html) against the value of the exemption granted for residential annexes or refusal to grant exemption by the council. Any such appeal must be made within 28 days of receiving notice of such a decision by the council. Where an appeal is allowed, any demand notices (including surcharges) relating to the development in question will be suspended pending the outcome of the appeal.

⁵ This does not apply if the planning permission was retrospective

⁶ This does not apply if the planning permission was retrospective

Appeals against the value of the exemption granted for self-build homes including refusal to grant exemption

10.9 You may appeal to the VOA (see www.voa.gov.uk/cil/index.html) against the value of the exemption granted for self-build homes or refusal to grant exemption by the council. Any such appeal must be made within 28 days of receiving notice of such a decision by the council. Where an appeal is allowed, any demand notices (including surcharges) relating to the development in question will be suspended pending the outcome of the appeal.

Appeals against the value of the relief granted for charitable development including refusal to grant exemption

10.10 You may appeal to the VOA (see www.voa.gov.uk/cil/index.html) against the value of the relief granted for charitable development or refusal to grant relief by the council. Any such appeal must be made within 28 days of receiving notice of such a decision by the council. Where an appeal is allowed, any demand notices (including surcharges) relating to the development in question will be suspended pending the outcome of the appeal.

Appeals concerning enforcement actions taken by the council regarding the levy

10.11 If you feel that a levy enforcement action is unwarranted or has been taken in error, you are encouraged in the first instance to contact the council. It may be a lot quicker and easier to resolve the issue by contacting the council first before taking more formal action. However, you should be aware that a formal appeal can be lodged no later than 28 days after the date of your notification by the council.

10.12 You may appeal against a surcharge imposed by the council on the following grounds to the Planning Inspectorate (see www.planningportal.gov.uk/planning/appeals/otherappealscasework/cilappeals) within 28 days of the surcharge being imposed:

- The claimed breach which led to the imposition of the surcharge did not occur;
- The council did not serve a liability notice in respect of the chargeable development to which the surcharge relates; or
- That the surcharge has been calculated incorrectly.

10.13 Appealing against a surcharge will suspend its effect until the Planning Inspectorate has decided the appeal in question.

Appeals against decisions by the council to deem that development has commenced

10.14 You may appeal to the Planning Inspectorate (see www.planningportal.gov.uk/planning/appeals/otherappealscasework/cilappeals) against any decision by the council to deem that development has commenced. This appeal must be made within 28 days of receiving notice of such a decision by the council. Where an appeal is allowed, any enforcement decisions relating to the deemed date of commencement, including the imposition of any surcharges, will be suspended pending the outcome of the appeal.

11. What is the CIL spent on?

11.1 CIL in Croydon is split between the Mayor of London and Croydon Council and is spent on the following infrastructure shown in the table below:

Mayor of London	Croydon Council
Crossrail construction works	Provision, improvement, replacement, operation or maintenance of: <ul style="list-style-type: none">• Education facilities;• Health care facilities;• Projects in the Connected Croydon Delivery Programme;• Public open space;• Public sports and leisure; and• Community facilities (as defined by the Croydon Local Plan: Strategic Policies)

11.2 When CIL is charged at £140 per m² up to £18 per m² can be spent on items not listed above. This proportion of the CIL could be spent on other infrastructure projects or anything else concerned with addressing the demands that development places on Croydon. Local community and amenity groups will be invited by the council to suggest projects that this proportion of the CIL could be spent on. The council's Infrastructure Finance Group will manage this funding to ensure that over the course of a four year period each of the sixteen Places of Croydon (identified in the Croydon Local Plan: Strategic Policies) receive some investment.

11.3 The council's Regulation 123 list (the legal document setting out what the council's CIL can be spent on) can be downloaded at www.croydon.gov.uk/contents/departments/planningandregeneration/pdf/cil/reg123list.pdf.

12. Contact the council regarding CIL

12.1 If you have a query regarding the CIL charge for a specific planning application contact the case officer responsible for the application.

12.2 If your query is about the CIL charge on a specific development that does not require planning permission you should contact the council's Development Management service at CIL.DevelopmentManagement@croydon.gov.uk or 020 8726 6800.

12.3 If you have a general query that is not site specific contact the council's Spatial Planning service at ldf@croydon.gov.uk or 020 8407 1385.

12.4 The council has a paid for pre-application advice service (see www.croydon.gov.uk/planningandregeneration/make-application/preappadvice). Queries about CIL on prospective developments should be made using this service.

Appendix 1: The government's prescribed formula for calculating CIL

“Calculation of chargeable amount

40.—(1) The collecting authority must calculate the amount of CIL payable (“chargeable amount”) in respect of a chargeable development in accordance with this regulation.

(2) The chargeable amount is an amount equal to the aggregate of the amounts of CIL chargeable at each of the relevant rates.

(3) But where that amount is less than £50 the chargeable amount is deemed to be zero.

(4) The relevant rates are the rates, taken from the relevant charging schedules, at which CIL is chargeable in respect of the chargeable development.

(5) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

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

where—

A = the deemed net area chargeable at rate R, calculated in accordance with paragraph (7);

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

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

(6) In this regulation the index figure for a given year is—

(a) the figure for 1st November for the preceding year in the national All-in Tender Price Index published from time to time by the Building Cost Information Service of the Royal Institution of Chartered Surveyors(a); or

(b) if the All-in Tender Price Index ceases to be published, the figure for 1st November for the preceding year in the retail prices index.

(7) The value of A must be calculated by applying the following formula—

$$G_R - K_R - \frac{(G_R \times E)}{G}$$

where—

G = the gross internal area of the chargeable development;

G_R = the gross internal area of the part of the chargeable development chargeable at rate R;

K_R = the aggregate of the gross internal areas of the following—

(i) retained parts of in-use buildings, and

(ii) for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development;

E = the aggregate of the following—

- (i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development, and
 - (ii) for the second and subsequent phases of a phased planning permission, the value E_x (as determined under paragraph (8)), unless E_x is negative,
- provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

(8) The value E_x must be calculated by applying the following formula—

$$E_p - (G_p - K_{PR})$$

where—

E_p = the value of E for the previously commenced phase of the planning permission;

G_p = the value of G for the previously commenced phase of the planning permission; and

K_{PR} = the total of the values of K_R for the previously commenced phase of the planning permission.

(9) Where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building.

(10) Where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish—

(a) whether part of a building falls within a description in the definitions of K_R and E in paragraph (7); or

(b) the gross internal area of any part of a building falling within such a description,

it may deem the gross internal area of the part in question to be zero.

(11) In this regulation—

“building” does not include—

- (i) a building into which people do not normally go,
- (ii) a building into which people go only intermittently for the purpose of maintaining or inspecting machinery, or
- (iii) a building for which planning permission was granted for a limited period;

“in-use building” means a building which—

- (i) is a relevant building, and
- (ii) contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development;

“new build” means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings;

“relevant building” means a building which is situated on the relevant land on the day planning permission first permits the chargeable development;

“relevant charging schedules” means the charging schedules which are in effect—

- (i) at the time planning permission first permits the chargeable development, and
- (ii) in the area in which the chargeable development will be situated;

“retained part” means part of a building which will be—

- (i) on the relevant land on completion of the chargeable development (excluding new build),
- (ii) part of the chargeable development on completion, and

(iii) chargeable at rate R.”