

# Guide to the Community Infrastructure Levy

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**GOSPORT**  
Borough Council

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## **1.0 What is CIL?**

1.1 The Community Infrastructure Levy (CIL) is a type of planning charge used to help to pay for the infrastructure needed to support new development (such as transport improvements and open space). The legislation for CIL is included in the Planning Act 2008, Localism Act 2011, and the CIL Regulations 2010 (as amended).

1.2 The amount of CIL payable depends on the size of a development. Charging Authorities (i.e. Gosport Borough Council) set the CIL charges (which can be different depending on the use and location of developments), but the Regulations set out how CIL will be collected and spent.

### **What type of development is liable for CIL?**

1.3 Within Gosport Borough, CIL applies to a number of types of development:

- New residential dwellings.
- Residential extensions of 100m<sup>2</sup> and above
- New supermarkets
- Supermarket extensions of 100m<sup>2</sup> and above
- New retail warehouses
- Retail warehouse extensions of 100m<sup>2</sup> and above

### **How much is the CIL charging rate?**

1.4 CIL charges are calculated by taking the new floor space of the development and multiplying it by the CIL rate for that use. The CIL rate has been set following an independent examination of the Council's charging schedule, which was carried out in spring 2015. The charging schedule was adopted by the Council on 14<sup>th</sup> October 2015. The CIL rates are effective from 1<sup>st</sup> February 2016. The Council's charging schedule is set out in Table 1 overleaf.

**Table 1: CIL rates per square metre in Gosport Borough**

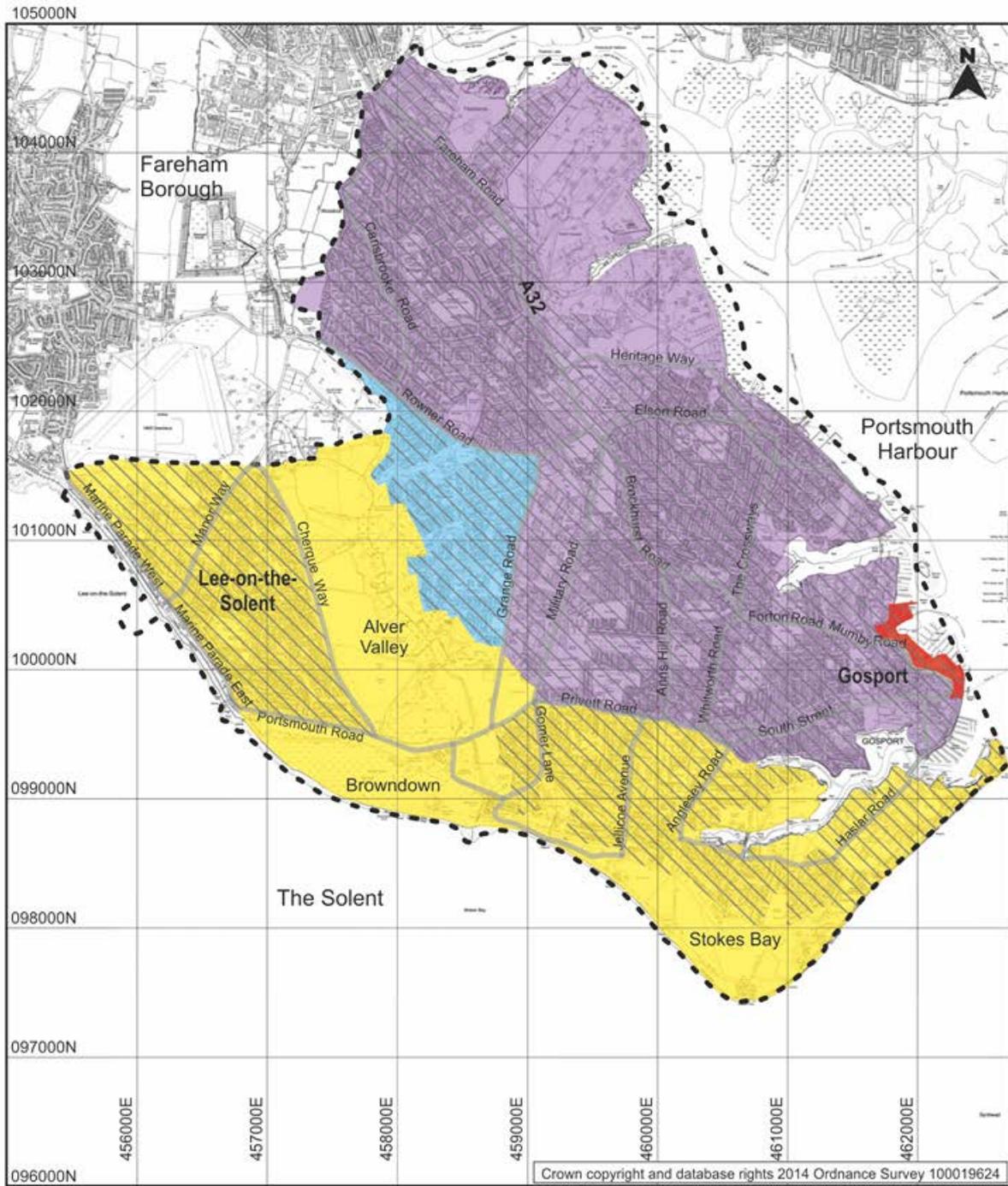
<b>Development Type</b>	<b>CIL charge £ per m<sup>2</sup></b>
<b>1. Residential:<sup>1</sup></b>	
Developments with less than 10 dwellings or units	
Charging Zone 1	<b>£60</b>
Charging Zone 2	<b>£100</b>
Charging Zone 3	<b>£100</b>
Developments with 10 or more dwellings or units	
Charging Zone 1	<b>£0</b>
Charging Zone 2	<b>£80</b>
Charging Zone 3	<b>£100</b>
<b>2. Non Residential:</b>	
Retail warehouses and supermarkets <sup>2</sup>	<b>£60</b>
Other non-residential	<b>£0</b>
<b>3. Gosport Waterfront site</b>	
All Residential	<b>£40</b>
Retail warehouses and supermarkets	<b>£60</b>
Other non-residential uses	<b>£0</b>

1. Defined as all development within the three categories of Class C3 (Dwelling House) of the Use Classes Order 2010, except public sector Sheltered Housing, public sector Extra Care facilities or other public sector specialist housing providing care to meet the needs of older people or adults with disabilities.
2. A simple definition of a Supermarket for this purpose is a food based, self-service, retail unit greater than 280 square metres and governed by the Sunday Trading Act 1994. A retail warehouse can be defined as a large store, typically on one level, that specialises in the sale of bulky goods such as carpets, furniture, electrical goods or DIY items.

### **CIL Charging Zones**

1.5 Diagram 1 overleaf shows the boundaries of the charging zones which are the basis for the differential CIL rates for residential development within the Borough. Gosport Waterfront also has a separate CIL rate. The retail warehouse and supermarket CIL rates are consistent across the Borough.

**Diagram 1: Plan of CIL charging zones.**



- - - Gosport Borough Boundary
-  Gosport Borough Urban Area
-  Zone 1 : £60/m<sup>2</sup> (£0 for 10 and above dwellings)
-  Zone 2 : £100/m<sup>2</sup> (£80 for 10 and above dwellings)
-  Zone 3 : £100/m<sup>2</sup> all dwellings
-  Waterfront : £40/m<sup>2</sup> all dwellings



### **Will the CIL charge be Index Linked?**

1.6 The amount of CIL payable is index linked and can also include interest for late payments and surcharges for failing to follow the payment procedure set out in the Regulations.

1.7 CIL payments will be index linked from the year that CIL was introduced to the year that planning permissions are granted. Regulation 40 of the CIL Regulations 2010 (as amended) sets out the specific formula for calculation for the CIL charge. The chargeable rate is index linked using the All-in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors.

### **Who is liable to pay CIL?**

1.8 Landowners are responsible for the payment of CIL. Although liability rests with the landowner, the regulations recognise that others involved in a development may wish to pay the charge on the landowners behalf. Therefore, anyone can come forward and assume liability for the charge on the development. Otherwise liability will be assumed to fall with the landowner.

1.9 Liability can be changed to another party before or after a development commences, but this must be done before the final payment of the CIL is due.

### **Why are not all types of development liable to pay CIL?**

1.10 Levy rates are based on the financial viability of different types of development in the Borough which were tested at a public examination. Those types of development considered to be on the margins of viability have been given a nil rate.

### **Will a development be liable to pay CIL if there was a planning permission before 1<sup>st</sup> February 2016?**

1.11 No. If a scheme was granted planning permission before the CIL implementation date. However, if a fresh application is decided after this date it would be liable for CIL even if the application relates to a site that already has a planning permission.

### **What if I want to vary a condition of a planning permission granted before 1<sup>st</sup> February 2016?**

1.12 Applications to remove or vary a condition can be made under Section 73 of the Planning Act. Where the original planning permission was granted prior to the 1<sup>st</sup> February 2016 but the Section 73 application is granted after this date, the consent will only trigger CIL for any additional liability it introduces to the development (such as increased floorspace).

### **Will a development be liable to pay CIL if it was granted planning permission after 1<sup>st</sup> February 2016?**

1.13 Yes, planning permissions granted after 1<sup>st</sup> February 2016 which consist of the type of development set out in the charging schedule will be liable to pay CIL. Where a development has already commenced then it will be liable to pay CIL when a respective planning permission is granted.

### **Are outline planning applications liable to pay CIL?**

1.14 If a scheme is granted outline planning permission before the CIL implementation date, the subsequent approval of reserved matters will not trigger a liability for CIL. Outline planning

permissions granted after the implementation date will be liable to pay CIL although the liability is calculated at Reserved Matters stage consequently there is no need to submit any CIL forms until that point.

### **Can CIL payment be phased?**

1.15 If an application or an outline application includes phasing of development which is agreed by the Council, each phase can be treated as a separate development for the purpose of paying CIL. The CIL liability for each phase is calculated when the application / reserved matters application for that phase is received. In addition phased payment will be able to be made in line with the Council's instalments policy set out in section 3.

### **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 1<sup>st</sup> February 2016 but an approval of planning permission on appeal is made after this date?**

1.16 Yes. If planning permission was refused before 1<sup>st</sup> February 2016 but a grant of planning permission was made on appeal after this, the development granted planning permission on appeal is liable to pay CIL.

## Diagram 2- Stages of the CIL process

### Forms needed

#### Stage 1 - Submission

- All residential, supermarket and retail warehouse planning applications (extensions and new builds) must complete the '**CIL Additional Information Form**'. If this form is not completed the application will be invalid.
- The CIL Additional Information Form will allow the Council to calculate the CIL charge for the development.
- If planning permission is not required (including Permitted Development) **CIL Form 5: Notice of chargeable development** should be submitted to the Council prior to commencing work.

CIL additional information form

CIL form 5: notice of chargeable development

#### Stage 2 - Determining applications

- Once planning permission has been granted the Council will issue landowners with a 'Liability Notice'. This notice will state the amount of CIL to be paid.
- If planning permission is granted after an appeal, the Liability Notice will be issued as soon as possible after the appeal decision.

#### Stage 3 - Assuming Liability

- Prior to you starting work on the development you must submit a form to tell the Council who will be paying the CIL owed by submitting: **CIL Form 1: Assumption of liability notice**.
- The 'Assumption of liability notice' can be submitted at any point between submission of the application and commencement of development, the sooner the form is submitted the faster the application can be processed.

CIL form 1: Assumption of liability notice

#### Stage 4 - Applications for relief

- Relief/Exemptions can be claimed at any point between submission of the application and commencement of development.
- If you consider that the development is exempt or should be offered relief you need to submit: **CIL Forms SB1-1, SB2 and form 2: Claiming Exemption or Relief**.

CIL forms SB1, SB2, and 2: claiming exemption or relief

#### Stage 5 - Commencement

- After submitting the 'Assumption of Liability Notice' but before you start work **CIL Form 6: Commencement Notice** must be submitted to the Council. This form will allow the Council to calculate the final amount of CIL payable, by whom it will be paid as well as when it needs to be paid (if appropriate in accordance with the Council's instalment policy).
- If the liability for CIL changes after submitting Form 1, either **CIL Form 3: Withdrawal of Assumption of Liability** or **Form 4: Transfer of Assumed Liability** should be completed before the final payment of CIL is due.

CIL form 6: Commencement Notice

CIL form 3: Withdrawal of assumption of liability

CIL form 4: Transfer of assumed liability

#### Stage 6 - Paying CIL

- When the Council receives the 'Commencement Notice' it will issue a 'Demand Notice' to whoever has assumed liability to pay CIL. This will set out the amount and date when the CIL needs to be paid
- If no-one has assumed liability to pay CIL before the Demand Notice is issued the liability defaults to the owner(s) of the land.
- CIL must be paid in accordance with the terms of the Council's Instalment policy.

## **2.0 How is CIL calculated?**

### **How do I calculate CIL?**

2.1 CIL is calculated based on the net additional increase in floorspace of a development multiplied by the charging rate.

### **How is floorspace calculated?**

2.2 CIL is based on measurements of the gross internal area (GIA) of a building. The Council will need to be provided with this information when completing the CIL Additional Information Form when a planning application is submitted. Further guidance on how to calculate CIL liability has been published on the planning portal: [http://www.planningportal.gov.uk/uploads/1app/cil\\_guidance.pdf](http://www.planningportal.gov.uk/uploads/1app/cil_guidance.pdf) The Royal Chartered Institute of Surveyors (RICS) Code of Measuring 6<sup>th</sup> Edition provides a useful guide on how to measure the gross internal area of buildings.

2.3 GIA is the area of a building measured to the internal face of the perimeter walls at each floor level.

### **Does CIL apply to existing buildings?**

2.4 CIL will be charged on additional floorspace, i.e. proposed new floorspace minus existing floorspace. However, in order to be eligible, existing buildings must have 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 development. This test is known as the Vacancy Test.

2.5 CIL will be payable on the entire floorspace of the new development if the demolished site does not pass the Vacancy Test.

### **Will I have to pay CIL on a new residential dwelling if I don't require planning permission (i.e. permitted development)?**

2.6 Some development permitted under the General Permitted Development Order (GPDO) will be liable to pay CIL. If you intend to develop under the GPDO and your development meets the criteria for CIL liability (i.e. not less than 100 sq.m or creates 1 or more new dwellings), you must submit a Notice of Chargeable Development to the Council before you commence the development. Any existing floorspace can be discounted from the CIL liability if it meets the vacancy test.

2.7 Regulation 64 of the CIL Regulations refers to the Notice of Chargeable Development needing to be submitted before the development commences, or change of use occurs.

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

2.8 No. Unless additional new build floorspace is provided as part of the scheme in

which case the additional floorspace may be liable.

### **What if my development has more than one use?**

2.9 CIL in Gosport Borough is only payable on C3 residential development, supermarkets and retail warehouses. Therefore, you only need to calculate the proposed floor space associated with these types of development. The floorspace of existing buildings, of any use, can be taken into account in calculating the chargeable amount.

### **As the threshold for CIL is 100sqm, if a new retail unit is 110sqm in size, is CIL payable on the 110sqm or the 10sqm above the threshold?**

2.10 As soon as the threshold is reached, the whole building is chargeable. So CIL would be payable on the 110sqm. New dwellings are an exception to this rule as CIL is chargeable on the entire development even if it is under 100sqm in size.

### **Can I negotiate how much I have to pay?**

2.11 The CIL liability has been set at a level which has been calculated to be viable. The CIL charge on the majority of schemes is therefore anticipated to be affordable. CIL liabilities are legally binding under the regulations and are non-negotiable.

### **When will I know how much I will have to pay?**

#### **2.12 Before planning permission is granted:** Indicative estimate

- It is possible to take an estimate of the likely CIL at this stage.
- However, as the floorspace and the permission date are not fixed at this stage, the figure may change.

#### **2.13 After planning permission is granted:** or a Notice of Chargeable Development has been received, the Council will issue a "liability notice". This notice will include:

- The amount that would be payable should the development be commenced immediately and the correct payment process followed;
- The amounts of any relief or exemption that has been granted;
- Information on the payment procedure;
- Penalties for not following the procedure; and
- Other information for liable parties.

### **What reliefs or exemptions are available from CIL?**

2.14 The government's CIL guidance provides more detailed explanation and includes some requirements that have to be met by persons if they are to qualify for a relief/exemption. The following table below shows the forms of relief and exemption set at the national level. CIL is only chargeable on residential, supermarket and retail warehouse development in Gosport Borough. All other types of development are exempt from paying a CIL charge.

Table 2 Types of CIL Relief/ Exemption

Type of Relief/Exemption	Criteria
<b>National Relief</b>	
Minor Developments (e.g. small extensions)	Relief available for: <ul style="list-style-type: none"> <li>• Developments of less than 100sqm GIA</li> <li>• Do not involve the creation of a new dwelling</li> <li>• No need to submit a claim for relief, just complete the relevant section of the CIL additional Information form</li> </ul>
Self build - Large Residential extensions / annexes	Relief available for: <ul style="list-style-type: none"> <li>• Developments over 100sqm GIA</li> <li>• Development must be in the curtilage of the principal residence and comprise up to one new dwelling</li> <li>• Any relief must be granted before works commence.</li> <li>• Self Build Annex or Extension Claim Form needs to be completed</li> </ul>
Self-build - Whole house	Relief available for: <ul style="list-style-type: none"> <li>• Self-build exemption is available to individuals who build or commission their own home for their own occupation.</li> <li>• An application (Part 1) needs to be made and granted before development commences.</li> <li>• On completion (Part 2), the supporting evidence required under the regulations and guidance must be provided</li> <li>• The property must remain their principal residence for a minimum of three years.</li> </ul>
Vacant Buildings brought back into the same use	<ul style="list-style-type: none"> <li>• Where the intended use following completion is a use that is able to be carried on lawfully and permanently without further planning permission.</li> </ul>
For the following forms of relief Form 2: Claiming Exemption or Relief should be used	
Social housing	Developments eligible for this relief are: <ul style="list-style-type: none"> <li>• Let by a local housing authority; or</li> <li>• Occupied in accordance with shared ownership arrangements; or</li> <li>• Let by a private registered provider of social housing</li> </ul>
Charitable development on charitable land	Relief available for: <ul style="list-style-type: none"> <li>• Charities for development of land within their ownership.</li> <li>• The development would have to be used wholly or mainly for charitable purposes and only be occupied or under the control of one or more charitable institutions.</li> <li>• This is not available if the land or part of the land is jointly owned by a non-charity.</li> </ul>

## Applying for relief/exemption

2.15 Exemptions and reliefs need to be applied for and granted before works start. If you start before a decision for relief or an exemption is issued your development ceases to be eligible for that relief. The forms you are required to complete to apply for relief are on the government's Planning Portal website and on the GBC web page.

## Can relief/exemption be cancelled?

2.16 If you commence development before informing the Council using the Commencement Notice form, any relief or exemption that has been granted will be cancelled and the full CIL liability will become payable immediately.

2.17 The CIL Regulations sets out the disqualifying events for each type of relief/exemption. An example of a disqualifying event for self-build/affordable housing relief would be if the dwelling was sold on the open market and no longer used for the purpose for which the relief was granted. For self-build/residential annex relief the clawback period is 3 years, for charitable/social housing relief the clawback period is 7 years.

## Will future occupiers and owners of the development be aware of this risk?

2.18 The full CIL liability will remain on the Local Land Charges Register until the end of the clawback period. This will allow prospective purchasers of land within the development to be aware of the implications of triggering a disqualifying event.

2.19 The applicant can apply for exemption or relief using form 2. The Council will issue a revised liability notice if the chargeable amount changes in the following circumstances:

- Following a review of the chargeable area (e.g. following amendments to plans);
- A successful appeal on the Council's calculated floor space;
- Following any successful application for relief or exemption (floorspace is no longer eligible for CIL).
- Any earlier liability notices will then cease to have effect.

## Commencement: Confirmed amount, payment and the "demand notice".

2.20 Once the Council is aware of commencement on a development, a "demand notice" will be sent to the liable party which will set out:

- The total amount payable by that party;
- Any surcharges or late payment interest;
- The dates when payments will be due;
- Advice on payment instructions.

## What is shown as a Local Land Charge?

2.21 The chargeable amount that is set out in the liability notice will be registered as a local land charge. The charge will be registered against the property until all remaining

CIL liabilities have been paid and will show up on all land searches for the property.

2.22 Where a relief or exemption applies the charge will remain registered until the end of the period within which the relief can be cancelled due to a disqualifying event.

### What is defined as commencement?

2.23 Development is commenced when material operations begin. These are defined within Section 56 of the Town and Country Planning Act 1990. Operations include any construction work, demolition, digging of a trench for foundations, laying of underground pipes or mains to the foundations, laying of construction of roads or any change of use in the land.

## 3.0 How is CIL Paid?

### When do I have to pay CIL?

3.1 CIL is payable within a minimum of 60 days of commencement of development and a demand notice will be issued to you as soon as you inform the Council of your intended start date.

### Can I pay CIL through Instalments?

3.2 Yes. You can pay CIL in full as soon as you receive your demand notice, however, depending on the CIL liability it may be possible to pay CIL in either 2, 3 or 4 instalments. However, if the correct CIL forms are not submitted, then the full amount is due within 60 days.

3.3 Gosport Borough Council has adopted a CIL Instalment policy. This policy is set out below.

Total Amount of CIL Liability	Number of Instalments	Payment period and proportion of CIL due			
		1st instalment	2 <sup>nd</sup> instalment	3 <sup>rd</sup> instalment	4 <sup>th</sup> instalment
Less than £20,000	1	Full payment within 60 days of commencement of development			
£20,000 to £100,000	2	Half to paid within 60 days of commencement of development	Second half to paid within 180 days of commencement of development		
£100,001 to £250,000	3	One third to be paid within 60 days of commencement of development	Second third to be paid within 180 days of commencement of development	Final third to be paid within 270 days of commencement of development	
Over £250,000	4	One quarter to be paid within 60 days of commencement of development	Second quarter to be paid within 180 days of commencement of development	Third quarter to be paid within 270 days of commencement of development	Final quarter to be paid within 360 days of commencement of development

### **How do I pay CIL in a phased development?**

3.4 If a CIL liable development is granted planning permission with conditions relating to separate phases of development, then for CIL purposes, each phase can be treated as a separate development. Payment of CIL on a particular phase only becomes due upon commencement of works on that phase. Liability notices, reliefs and exemptions are issued in relation to the individual phase to which they relate.

### **Is it possible to pay all or some of the CIL liability in the form of land or infrastructure?**

3.5 Yes. The CIL Regulations make provision for payment in kind to be made in the form of land and/or infrastructure. The Council has published a notice indicating that this type of payment may be acceptable. If you are contemplating the possibility of making such payment in kind you should initiate early, pre-application discussion with the Council to determine whether such payment in kind might be acceptable. The CIL Regulations require independent valuation and legal contractual processes prior to permission being granted to be followed if such payment in kind was to be acceptable.

### **What happens if the commencement date of the development changes?**

3.6 The Council will issue a demand notice based on your commencement date, so if this changes you need to let us know. Simply re-submit a new commencement notice with the new date provided. We will acknowledge this new date.

### **Can I challenge the decision on CIL liability?**

3.7 Yes. Appeals can be made against the Council's CIL decision on the level of calculated CIL liability, the Regulations set out clear timescales for when appeals can be made. Further details on when an appeal can be made can be found on the planning portal: <http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/cil-appeals/>

3.8 You can also appeal against:

- the apportionment of liability;
- charitable relief decision;
- self-build exemptions decision;
- surcharges imposed;
- commencement of development; and
- Stop Notice issued.

### **What happens if I don't pay?**

3.9 If CIL is not paid, the Council has the power to take any of the following actions in order to recover the debt including penalties and surcharges. There are also strong enforcement powers including:

- Removal of the instalments facility
- Surcharges and late payment interest
- Issuing of a CIL Stop Notice
- Apply to the courts for a Liability Order

The charge will also continue to show as a Local Land Charge which will be highlighted to any potential purchasers should the property be sold.

## **4.0 The relationship between CIL and planning obligations?**

4.1 Developers may be asked to provide contributions for infrastructure in several ways. This may be through CIL or by planning obligations in the form of agreements under Section 106 of the Town and Country Planning Act 1990. Section 106 agreements play an important role in helping to make individual developments acceptable.

4.2 From April 2015 the use of planning obligations to secure wider infrastructure benefits is restricted. CIL is intended to fund infrastructure to support the development of an area rather than to make individual planning applications acceptable in planning terms. As a result, there may still be some site specific requirements without which a development should not be granted planning permission and the Council will work proactively with developers to ensure it is clear what developers will be expected to pay for through which route. The Council's Planning Obligations and Developer Contributions Strategy provides more advice on this matter.

### **If I have to pay a Section 106 contribution, will I be paying for the same infrastructure twice?**

4.3 No. The Council has published a Regulation 123 List which sets out the infrastructure that will be funded wholly or in part by CIL. The Council will not seek contributions through Section 106 Planning Obligations in relation to such infrastructure.

## **5.0 How does the Council spend CIL?**

### **How will CIL money be spent?**

5.1 The Council will spend CIL money on the infrastructure needed to support the development in the area. CIL money can only be spent on projects that provide new or improved infrastructure.

5.2 The Council has published on its website the types of projects that it intends to spend the CIL on. This is called the Regulation 123 list.

### **Can the Council pass CIL money to other organisations?**

5.3 The Council may choose to pass money to other organisations that deliver infrastructure within the Borough Council area, such as Hampshire County Council and the Environment Agency, to provide infrastructure that will benefit the area.

**How will CIL be monitored?**

5.4 To ensure that the levy is open and transparent, the Council will prepare reports on the levy for the previous financial year and these will be placed on the website. These reports will set out how much revenue from the levy has been received, what it has been spent on and how much remains to be spent.