
Review of Enforcement of Community Infrastructure Levy Exemptions for Householders

Committee considering report:	Executive
Date of Committee:	23 May 2024
Portfolio Member:	Councillor Jeff Brooks
Report Author:	Clare Lawrence
Forward Plan Ref:	EX4533

1 Purpose of the Report

- 1.1 The Community Infrastructure Levy (CIL) is a charge that can be levied by local authorities on new development in their area. This is an important tool to support local authorities to deliver infrastructure to support development in the local area, such as schools, roads and flood defences.
- 1.2 The Council commissioned a review into the CIL Customer Journey which was undertaken by the Planning Officers Society (POS) and this has identified a number of opportunities to improve the CIL process in West Berkshire. There are a number of priority recommendations included in the POS report and this report proposes the adoption of a CIL Enforcement Policy - Householder Applications, which will be applied with immediate effect.
- 1.3 It also proposes a process by which the Council will undertake a discretionary review of CIL payments for Householder applications previously made against the new CIL Enforcement Policy - Householder Applications. Such a review will only take place following a request by the householder who made the CIL payment. The Council will consider making refunds of CIL previously collected, together with late payment interest and surcharges if appropriate to do so.

2 Recommendations

- 2.1 It is recommended that the Executive:
 - a) Adopt the CIL Enforcement Policy – Householder Applications (Appendix 2) which will apply with immediate effect to future householder cases and any current householder cases awaiting a decision on exemption.
 - b) Approve the Discretionary CIL Householder Review Scheme at Appendix 3.

- c) Delegate to the Executive Director – Place, in consultation with the Leader or Deputy Leader delegated authority to consider requests received between 1st June 2024 and the 31st May 2025, that the Council undertake a discretionary review of CIL liabilities that have previously been paid by householders. Where appropriate having regard to the CIL Enforcement Policy – Householder Applications, the Executive Director, Place may agree to cancel CIL Liability Notices and refund CIL payments made.
- d) Delegate to a Member Panel comprised of three Members of the Administration (including at least two Members of the Executive), to determine In-Person Reviews of a discretionary review of CIL Liabilities, where a householder is not satisfied with the outcome of the initial discretionary CIL review. Where appropriate having regard to the CIL Enforcement Policy – Householder Applications, the Member Panel may agree to cancel CIL Liability Notices and refund CIL payments made.

3 Implications and Impact Assessment

Implication	Commentary
<p>Financial:</p>	<p>The adoption of a CIL Enforcement Policy – Householder Applications should have a neutral financial impact on the Council.</p> <p>The reimbursement of CIL, together with surcharges and any late interest paid in accordance with the Discretionary CIL Householder Review Scheme will be funded through the CIL balances held by the Council. The current CIL reserve balance is £17 million. It is estimated that householder applications have delivered approximately £2million in CIL receipts since the introduction of CIL. It is considered that the total number of cases that may be eligible for a refund following a discretionary review will be limited, and the financial impact of this proposal will therefore be significantly lower.</p> <p>Any additional costs are not payable from the CIL balance or from the 5% CIL admin charge and will need to be found from revenue.</p>
<p>Human Resource:</p>	<p>The introduction of the CIL Enforcement Policy – Householder Applications should have a positive impact on resources as it is likely that this will result in less queries from customers and a reduction in the number of complaints.</p> <p>There may be some impact on those involved in administering any discretionary reviews that are undertaken. This will be</p>

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	mitigated by the use of digital forms where possible, and the adoption of a clear, well managed process.			
Legal:	<p>A written CIL Enforcement Policy – Householder Applications will help to ensure that the Council operates in an open and transparent manner when collecting CIL.</p> <p>Under the Community Infrastructure Levy Regulations 2010 (as amended) there is no mechanism to return monies once the development has commenced. However, if the Council has accrued monies and/or holds monies that it should not be holding then the equitable remedy is to return those monies.</p> <p>The Council has a discretion to review any decision to off-set CIL liability if there has been an existing use and no change in floorspace.</p> <p>The Council should be consistent in the decision making on any discretionary reviews that are undertaken to minimise the risks of challenge by way of judicial review. The adoption of the CIL Enforcement Policy – Householder Applications will reduce this risk.</p>			
Risk Management:	The Enforcement Policy will provide improved information and clarification to householders regarding the Council’s procedures for dealing with planning applications. This should result in an improved customer experience which will reduce the risk of challenge and complaints regarding the processing of CIL exemptions.			
Property:	N/A			
Policy:	The proposal relates to the CIL Charging Schedule adopted March 2014 and effective from 1 April 2015.			
	Positive	Neutral	Negative	Commentary
Equalities Impact:				

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A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		X		
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		X		
Environmental Impact:		X		
Health Impact:		X		
ICT Impact:		X		
Digital Services Impact:		X		
Council Strategy Priorities:	X			<p>Priority 1 – Services we are proud of</p> <p>1C Treat our residents with respect, be transparent in our decision-making and accountable for our actions.</p> <p>1.12.3. Carry out a full review of West Berkshire's Community Infrastructure Levy process (2024)</p>
Core Business:		X		Administration of CIL is governed by legislation
Data Impact:		X		See Appendix 4
Consultation and Engagement:	Clare Lawrence – Executive Director Place; Sharon Armour – Legal Services Manager; Shannon Coleman-Slaughter – Acting Head of Finance & Property; Laura Callan – Planning Policy, Infrastructure & Place Manager			

4 Executive Summary

- 4.1 The Community Infrastructure Levy (CIL) Charging Schedule was adopted by the Council with effect from April 2015. CIL is a charge on certain types of development (residential and retail), calculated on a £ per sqm basis, intended to be used to fund infrastructure to support the local area. Town and parish councils receive a proportion of CIL collected from this kind of development in their areas to fund their own projects.
- 4.2 The CIL legislation is complex and allows for some development to be exempt from CIL so long as the exemption is applied for using a process prescribed by the regulations. In most cases, development must not be commenced until the exemption has been granted by the local authority. This applies to individual householders as well as large developers. In accordance with the regulations, where no exemption has been applied for, or has not been granted, the development remains CIL liable, and this is recorded on the Land Charges Register.
- 4.3 There are three different types of householder developments on which the landowner(s) are liable to pay CIL unless they apply for and are granted exemption. In strict accordance with the regulations, an application for exemption can only be made after liability has been accepted by an individual or individuals. The three types of householder developments are (1) residential extensions over 100 sqm, (2) residential annexes and (3) self-build dwellings for personal use. CIL exemption is also available for off-setting, where there has been an existing residential use and no change in floorspace. Further information is available on the Council's [website](#).
- 4.4 The Council commissioned an independent review of the CIL Customer Journey by the Planning Officers Society (POS) and received their report in April 2024 (produced at Appendix 1). The review makes several recommendations to the Council, including five priority areas for consideration and action. This report focusses on two priority recommendations as follows:
- Report to Executive on the benefits of not processing CIL liable domestic extension applications, taking account of the risks for the Authority of noncompliance with the regulations.
 - Report to Executive on taking a more lenient approach to self-build claims for genuine self-builders.

5 Supporting Information

Background

- 5.1 The POS review was instigated following a significant number of complaints regarding the way that CIL had been processed since the CIL POLICY was adopted in 2015. The POS review stated that there was no evidence that the Council had acted contrary to the legislative framework, but it did make a number of recommendations that would enable the Council to adopt a more customer friendly approach to CIL.
- 5.2 The POS review proposed 27 recommendations for the improvement in the CIL customer journey. Many of these relate to the operational delivery and the CIL process and do not require a decision from Executive. Examples include improved information

being made available for planning applicants, and greater communication and support for applicants through the CIL process.

5.3 Five priority recommendations were made as follows:

1. As a matter of urgency, a prominent note should be posted on the website, clarifying that the exemptions set out in the Charging Schedule must be applied for by the applicant as per the regulations, and spelling out the repercussions of not doing so.
2. Report to Executive on the benefits of not processing CIL liable domestic extension applications, taking account of the risks for the Authority of noncompliance with the regulations.
3. Report to Executive on taking a more lenient approach to self-build claims for genuine self-builders.
4. Review the current website content to give CIL matters better signposting and greater prominence for residents and applicants.
5. Introduce a training programme for officers, members, parishes and agents to improve the understanding and implications of CIL.

5.4 Recommendations 1 and 2 above have already been implemented and recommendation 5 will be addressed through an action plan.

5.5 It is proposed that recommendations 2 and 3 are addressed through the adoption of a new CIL Enforcement Policy - Householder Applications (extensions, annexes and self-build) which is detailed at Appendix 2. This policy enables greater flexibility in the Council's approach to enforcing CIL liabilities where the strict process set out in the regulations has not been correctly followed due to a genuine mistake of the homeowner.

5.6 An action plan will be developed and implemented to address the full recommendations of the CIL Customer Journey Review. The majority of these are operational in nature and can be addressed without Executive approval. An update report will however be provided to Executive later this year to detail the full Department response to the POS recommendations. This will provide assurance that the Council is implementing positive improvements resulting from the recommendations detailed in the POS report.

Proposals

5.7 The Enforcement Policy – Householder Applications sets out how the Council will approach CIL enforcement for residential extensions, annexes and self-build applications.

Residential extensions

5.8 The POS report acknowledges that some authorities exclude all residential extensions from CIL and do not require the statutory forms to be completed ('blanket exemption') but this is not universal practice. Some householders want formal confirmation that their development is not CIL liable, often with a view to selling their property. For this reason, blanket exemption is not recommended.

5.9 Instead, the recommended approach is that the Council supports applicants to complete the forms and follow the process set out by the regulations. The enforcement policy states that the Council will not normally pursue CIL liability for householder development in circumstances where the liability would arise because forms haven't been submitted and/or the process has not been followed in strict accordance with the regulations due to error or oversight.

Residential annexes and self-build dwellings

5.10 Residential annexes and self-build dwellings differ from residential extensions in that there is potential for abuse of the system by developers purporting to be self-builders or by individuals seeking to gain financially by letting a residential annex as a separate dwelling or by selling on the property within a short space of time. The CIL Regulations allow the authority to 'claw back' CIL in the event that an annex is let or a self-build property is sold within 3 years of commencement ('disqualifying event').

5.11 There is a clear statutory process in place for dealing with exemptions for these types of development, and the recommendation is that the Council continue to follow the statutory process but to allow the exercise of discretion where appropriate.

5.12 The CIL customer journey for householder applicants will be improved so that genuine self-builders are better supported in the process by the Council, which will provide assistance so that exemptions are granted for qualifying development.

CIL Enforcement Policy – Householder Applications

5.13 The CIL Enforcement Policy – Householder Applications sets out the Council's new approach to the enforcement of CIL in the case of householder developments. This will be available on the Council's website and be applied with immediate effect. This means that householder cases awaiting a decision on any exemption will be reviewed and assessed against the new policy to enable the Council to re-issue CIL Liability Notices to householder developers who have not yet paid where appropriate.

5.14 The POS review recommended that the risks and benefits of a changed approach should be considered, and these are set out below:

(a) The benefits of not normally pursuing CIL liability for residential extensions, are:

- The eligibility criteria to qualify for residential extension exemptions is low and exemption is granted for the vast majority of householders who follow the correct procedures;
- Pursuing CIL liability is costly, time consuming and bureaucratic for both the Council and applicants, especially when time has elapsed between planning permission being granted and commencement of development. Officer time could be used more effectively on applications which produce CIL income and other benefits to the community.

(b) The risks of the new approach are:

- The Council could be challenged legally regarding its approach to enforcement. It is considered that the risk of challenge is low, but any litigation would have cost

and resource implications for the Council. The costs of any litigation could not be met from the CIL 'pot'.

- Those who have made retrospective applications are normally disqualified from exemption. This is not considered to be a significant risk.

Discretionary review of previous CIL liable householder development

- 5.15 It is estimated that there are a limited number of cases going back to 2015, where householders have paid CIL after being disqualified from exemption due to genuine mistakes in their paperwork or for not following the CIL process in strict accordance with the regulations.
- 5.16 In order to adopt an equitable approach, it is proposed that any householder who has previously been subject to a CIL Liability in West Berkshire, will have the opportunity to request that the Council undertake a discretionary review of that liability. The review will consider liability having regard to the CIL Enforcement Policy – Householder Applications, and if the CIL would not be payable under the that policy, the CIL liability will be cancelled, and any payment made to the Council in connection with that will be refunded.
- 5.17 Any request that the Council undertake a discretionary review, must be received by the Council by the 31st May 2025. Any request or application for a discretionary review received after that date will not be accepted. The review process will be undertaken in accordance with the Discretionary CIL Householder Review Scheme 2024 – 2025, contained in Appendix 3.
- 5.18 As noted in the POS report, the Council has previously collected CIL in strict accordance with the legislation. Therefore, if a CIL liability is cancelled under the Discretionary CIL Householder Review Scheme, only the charges that have been paid by the householder will be refunded such as the CIL Liability, surcharges, and interest. This is a discretionary refund, and additional payments will not be made in respect of other costs that may have been incurred by householders.
- 5.19 A percentage of CIL collected is paid to town and parish councils twice a year, reflecting CIL collected for development in their parish. In the event that a CIL liability is cancelled under the Discretionary Review Scheme, there is no proposal to seek to recover from town or parish councils the CIL payments that have previously been passed to them. Any repayments of CIL including any surcharges and late payment interest will be funded from the CIL balance held by West Berkshire Council.
- 6.13 The full details of the Discretionary CIL Householder Review Scheme 2024 – 2025 will be published on the Council's website prior to formal commencement of the review process, which will open on the 1st June 2024.

6 Other options considered

- 6.1 **Do nothing** – this would be contrary to the outcome of the CIL Customer Journey Review and is not therefore recommended.

- 6.2 **Wait until CIL Charging Schedule is amended to adopt a flexible approach to CIL enforcement and the CIL refund process** - This requires statutory consultation and examination, before making changes to the Charging Schedule. It is considered that the adoption of a CIL Enforcement Policy – Householder Applications will deliver immediate benefits to householders subject to CIL and should therefore be adopted.
- 6.3 **Adopt a revised approach for current and future CIL applications only** – this is not recommended as it will prevent householders who have already paid from benefitting from the new Policy.

7 Conclusion

- 7.1 Further to the POS review of the CIL Customer Journey, it is recommended that the Council adopts the CIL Enforcement Policy – Householder Applications to allow a more flexible approach to enforcing CIL liability where the strict process set out in the regulations has not been correctly followed due to a genuine mistake.
- 7.2 It is proposed that the CIL Enforcement Policy – Householder Applications will be available on the Council's website and applied with immediate effect to the householder cases awaiting decision on exemption to existing CIL cases and to future CIL cases.
- 7.3 A process undertaking a discretionary review of historic cases where CIL payments have been made by householders should be adopted, where the Council receives a request to undertake such a review between 1st June 2024 and 31st May 2025 is also recommended.

8 Appendices

- 8.1 Appendix 1 – POS CIL Customer Journey Review, April 2024
- 8.2 Appendix 2- Part 1- CIL Enforcement Policy – Householder Applications
- 8.3 Appendix 3- Protocol for West Berkshire Council Discretionary CIL Householder Review Scheme (1st June 2024 to 31st May 2025)
- 8.4 Appendix 4 - Data Protection Impact Assessment

Background Papers:

CIL information available on the Council's website -

<https://www.westberks.gov.uk/community-infrastructure-levy>

CIL Guidance – Government

<https://www.gov.uk/guidance/community-infrastructure-levy>

Subject to Call-In:

Yes: No:

- The item is due to be referred to Council for final approval
- Delays in implementation could have serious financial implications for the Council
- Delays in implementation could compromise the Council's position
- Considered or reviewed by Scrutiny Commission or associated Committees, Task Groups within preceding six months
- Item is Urgent Key Decision
- Report is to note only

Wards affected: ALL WARDS

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