

Sandwell MBC CIL

Consequences of non-payment of CIL

Unlike Section 106 obligations, CIL is non-negotiable. The Government recognises it is important that collecting authorities are able to penalise late payment and discourage future non-compliance. Therefore the regulations provide for a range of proportionate enforcement measures, such as surcharges and interest on late payments.

A summary of the provisions for surcharges and late payments interest is below. Note Sandwell MBC is the relevant collecting authority in this case.

Please note that while surcharges etc will be imposed, the loss of exemptions and relief, and the ability to pay in instalments are significant penalties which also arise for failure to comply with the relevant notices.

| Surcharge | Details based on CIL Regulations |
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| Surcharge for failing to assume liability before commencement of development | The collecting authority may impose a surcharge of £50 on each person liable to pay CIL in respect of a chargeable development if:- (a) nobody has assumed liability to pay CIL in respect of the chargeable development; and (b) the chargeable development has been commenced. Reg 80 |
| Surcharge for apportionment of liability (where no party has assumed liability prior to commencement of development) | Where the collecting authority is required to apportion liability to pay CIL between each material interest in the land, it may impose a surcharge of £500 in respect of each of those interests. Reg 81 |
| Surcharge for failing to complete a Notice of Chargeable Development CIL Form 5: Notice of Chargeable Development | The collecting authority may impose a surcharge equal to 20 per cent of the chargeable amount payable or £2500, whichever is the lower amount for failing to complete a Notice of Chargeable Development Reg 82 |
| Surcharge for failure to submit a commencement notice | Where a chargeable development is commenced before the collecting authority has received a valid commencement notice, the authority may impose a surcharge equal to 20 per cent of the chargeable amount payable or £2500, whichever is the lower amount Reg 83 |
| Surcharge where a disqualifying event occurs | This regulation applies where a person who is required to notify the authority of a disqualifying event fails to do so before the end of the period of 14 days beginning with the day on which the disqualifying event occurs. The collecting authority may impose a surcharge equal to 20 per cent of the chargeable amount |

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| | <p>payable in respect of the chargeable development to which the disqualifying event relates, or £2500, whichever is the lower amount.</p> <p>Where the disqualifying event occurs before commencement of the chargeable development, the surcharge is payable on commencement of that chargeable development.</p> <p>Reg 84</p> |
| Late payment surcharge | <p>Where the CIL amount is not received in full after the end of the period of 30 days beginning with the day on which payment is due, the collecting authority may impose a surcharge equal to Five per cent of the amount outstanding, or £200, whichever is the greater amount.(ie minimum £200)</p> <p>Five per cent of the outstanding amount where payment is still overdue after six months, subject to a £200 minimum</p> <p>Five per cent of the outstanding amount where payment is still overdue after 12 months, subject to a £200 minimum</p> <p>Reg 85</p> |
| Late or non-payment | <p>Late payment interest must be calculated and added to the relevant amount—</p> <p>(a) for the period starting on the day after the day payment was due and ending on the day the unpaid amount is received; and</p> <p>(b) at an annual rate of 2.5 percentage points above the Bank of England base rate.</p> <p>Reg 87</p> |
| Surcharge for failure to comply with an information notice | <p>The collecting authority may impose a surcharge equal to 20 per cent of the relevant amount or £1000, whichever is the lower amount</p> <p>Reg 86</p> |

In cases of persistent non-compliance, the Collecting Authority/ Council may take more direct action to recover the amount due under the CIL Regulations. For example, the authority may issue a Community Infrastructure Levy Stop Notice, which prohibits development from continuing until payment is made and the stop notice is withdrawn.

The Council may, after issuing a reminder notice to the party liable for the levy, apply to a magistrates' court to make a liability order allowing it to seize and sell assets of the liable party. The Council may also apply for a charging order if there is at least £2,000 owing. The court can issue an order imposing a charge on a relevant interest to secure the amount due. In extreme cases of persistent non payment, the Courts have the ability to send a liable person to prison for up to three months.