

To: Liam Jones, Head of Planning, Cheltenham Borough Council

From: Paul Hardiman, CIL Manager for the JCS Authorities

Date: 31 March 2022

SUBJECT: Request to consider exercising discretion under Regulation 83 of the Community Infrastructure Levy Regulations 2010 (as amended) to waive the surcharge for failure to submit a valid Commencement Notice, confirm that a Regulation 80 surcharge for failure to assume liability prior to commencement is not necessary and to re-instate the right to pay by instalments .

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Liable Party: [REDACTED]

Agent: None

Planning Application Reference Number: 21/02749/FUL

Site: 15 Gristmill Close, Cheltenham, Gloucestershire. GL51 0PZ

Description of Development: Erection of two storey dwelling on land adjacent to 15 Grist Mill Close.

#### SUBMISSION

The liable party was unaware of the requirement to submit a 'commencement notice' having not previously dealt with CIL.

Under Regulation 83 (attached as [Appendix 3](#)) failure to submit a valid commencement notice results in a surcharge of "20 per cent of the chargeable amount payable in respect of D or £2,500, whichever is the lower amount". In this case this would result in a penalty of £682.72 and the loss of the right to pay in accordance with the Council's adopted Instalments Policy (attached as [Appendix 4](#)), making a total of £4,096.30 payable immediately.

However as a result of the wording in the legislation and in the relevant policy the Charging Authority (Head of Service acting as duly appointed) does have the discretion to both waive the surcharge and re-instate the right to pay according to the October 2018 Policy on Payment by Instalments.

The request to waive the surcharge and re-instate the payment by instalments is therefore respectfully submitted on behalf of [REDACTED].

#### Background

Planning Application 21/02749/FUL sought permission for the erection of a new two storey dwelling on land adjacent to 15, Grist Mill Close.

The permission was granted on the 14 February 2022 to the applicant, [REDACTED] (Decision Notice attached as [Appendix 5](#)).

CIL Form 1 'Additional Information' was originally received, undated, on 13 December 2021. A default Liability Notice, LN00000389 for £5,736.09 was issued on the 17 March 2022. An email providing revised measurements for Form 1 and CIL Form 2 'Assumption of Liability' were submitted on the 17 March 2022.

Confirmation of sufficient in-use of the existing building (conservatory) to be demolished, to satisfy the requirements of Regulation 40 / Schedule 2, was obtained from the Council's Revenues and Benefits Department on 21 March 2022.

However on the 22 March 2022 the list of developments that had commenced in the period 07 March to 13 March 2022 was received, revealing a commencement date of 11 March 2022 (attached as [Appendix 2](#)).

As a result a revised Liability Notice, LN00000395, for £3,413.58; a Deemed Commencement Notice and a Demand Notice for £4,096.30, with the surcharge added and the right to pay by instalment withdrawn were issued on 22 March 2022.

██████ is asking whether we can exercise our statutory discretion to waive the £682.72 surcharge for failing to notify us of commencement and re-instate the right to pay according to the Council's adopted Instalments policy. The reasons given are that:

1. ██████ was not aware of the rules, having never done any CIL payment applications before; and
2. That ██████ is not disputing the CIL charge or trying to avoid payment but that requiring immediate payment would effect the cash flow for the project and may undermine it.

(see [Appendix 1](#) – Correspondence)

Regulation 83(1) of the Community Infrastructure Levy Regulations 2010 (as amended) provides us with the authority to waive the surcharge for failure to submit a Commencement Notice stating that the Charging Authority 'may' impose a surcharge equal to 20 per cent of the chargeable amount payable in respect of D or £2500, whichever is the lower amount.

#### Legal Advice on Decision Taking

Whilst we do have a statutory discretion (Regulation 81(3)) it sits with the Local Charging Authority (CBC) and not with any individual officer, such as myself.

However One Legal have previously provided the following advice:

"it is possible that the Lead Officer/Lead Member may feel that they can take the ad hoc decision on the particular case under those parts of the Constitution whereby they can respectively "Take all steps reasonably necessary to facilitate the effective and efficient delivery of services within their portfolio" and "Take all steps reasonably necessary for the effective and efficient delivery of services for which they are responsible" (Chief Planning Lawyer, Email, 31 January 2020)

#### The amounts referred to are:

- CIL Liability of £3,413.58 based on 31.37sqm minus 9sqm demolition leaving a chargeable area of 22.37sqm
- Surcharge for failure to submit a Commencement Notice £682.72

#### Relevant Dates are:

- 14 February 2022 - Decision Date
- 17 March 2022 – Default Liability Notice Issued
- 17 March 2022 - Charge Registered as Local Land Charge reference CV1000232
- 21 March 2022 – Confirmation of 'in-use' for existing building received from Revenues and Benefits Team

- 22 March 2022 – Commencement of Development Notification, stating 11 March 2022, received from Building Control
- 22 March 2022 - A revised Liability Notice, LN00000395, for £3,413.58; a Deemed Commencement Notice applying the surcharge; and a Demand Notice for £4,096.30, with the right to pay by instalment withdrawn, were issued.
- 22 March 2022 – Request for help regarding surcharge and instalments received.

### Summary

By [REDACTED] own admission [REDACTED] made an error in not submitting the required CIL Form 6 'Commencement Notice' but [REDACTED] states that this was as a result of a genuine mistake as this is the first CIL application [REDACTED] has made and [REDACTED] therefore feels like not only the surcharge but also the loss of the right to pay by instalments is a very high penalty for this omission.

### Recommendation

As this is a small builder I believe the case for waiving the surcharge and allowing payment in line with the instalment policy is strong. I would include with this the decision not to retrospectively apply a £50 surcharge under Regulation 80 for failure to assume liability prior to commencement as by the 22 March 2022, when deemed commencement was discovered, [REDACTED] had already assumed liability (on the 17 March 2022).

Doing this would mean forgoing £682.72 + £50.00 but would avoid the time and cost in defending appeals under Regulations 117 against the surcharges and Regulation 118 against the deemed commencement date, even though my opinion is that such appeals would be dismissed and that 'some' of the costs may be recoverable. Unrecoverable costs of officer time, including legal advice would outweigh the benefit. The CIL charge will also be secured as payable, again avoiding the time and cost of requests for review of the chargeable amount under Regulation 113, for which no costs are recoverable, and appeal under Regulation 114.

## Appendix 1 - Correspondence

From: [REDACTED] <[REDACTED]@aol.com>

Sent: 22 March 2022 16:56

To: Paul Hardiman <Paul.Hardiman@cheltenham.gov.uk>

Subject: Re: Community Infrastructure Levy (CIL) 21/02749/FUL

Hi Paul , thanks for your email , yes you have my consent on behalf of Rowanfield Road ltd as the director to ask for the surcharge to be removed please if possible.

Many Thanks

[REDACTED]

Sent from my iPhone

On 22 Mar 2022, at 3:44 pm, paul.hardiman@cheltenham.gov.uk wrote:

[REDACTED],

I am sorry about the surcharge, however as the systems have highlighted the date of commencement I am unable to remove it. Only the Charging Authority are able to waive the surcharge for failure to submit a Commencement Notice.

There is a process where I am able to provide evidence to the Head of Service, who has delegated authority to act as Charging Authority, for a decision.

However, this process is only able to review the application of the Surcharge and is unable to overturn the CIL charge itself.

I am able to do this with your consent so if you want me to do this I would be grateful if you could send me confirmation.

Many thanks,

Paul

From: [REDACTED] <[REDACTED]@aol.com>

Sent: 22 March 2022 12:32

To: Paul Hardiman <Paul.Hardiman@cheltenham.gov.uk>

Subject: Re: Community Infrastructure Levy (CIL) 21/02749/FUL

Hi Paul , thanks for your email to which I explained to you before that I was not aware of the rules, having never done any Cil payment applications before and so to see that not only have i been fined £682.72 but also that the whole amount is due now of £4096.30 to which I think is completely unfair. I did respond to you quickly acknowledging that I was liable for the Cil and clearly if I had been aware of a Cil form 6 needed to be put in first I would have done it . Obviously the appeals process will be a waste of time and take forever so is there any chance you can reconsider this as this is a genuine mistake and not an avoidance of trying to pay . If you will waive the fine I will pay

the £3413.58 if I have too now but obviously I would prefer the 18 months to pay this as this does effect my cash flow for the project.

Many Thanks

[REDACTED]

Sent from my iPhone

From: CIL@cheltenham.gov.uk

Date: 22 March 2022 at 9:51:39 am GMT

To: [REDACTED]@aol.com

Subject: Community Infrastructure Levy (CIL) 21/02749/FUL

21/02749/FUL

15 Gristmill Close, Cheltenham, Gloucestershire, GL51 0PZ

CIL Notices - Deemed Commencement

Please find attached a revised Liability Notice for the above development following receipt from our Revenue and Benefits Team that the dwelling has been in lawful use for the period of time required by Regulation 40 to make the deduction for the conservatory to be demolished.

As a result of being informed by our Building Control Team that development commenced on the 11 March 2022 (see attached weekly list of commencements) also attached are:

A Deemed Commencement Notice which states that the CIL liability for the above development is now due; and

A Demand Notice setting out the charges levied and instructions for making payment.

All CIL forms and guidance is available on the Planning Portal website at [https://www.planningportal.co.uk/info/200126/applications/70/community\\_infrastructure\\_levy/5](https://www.planningportal.co.uk/info/200126/applications/70/community_infrastructure_levy/5)

If you have any queries, please contact us by email at: [cil@cheltenham.gov.uk](mailto:cil@cheltenham.gov.uk).

Kind Regards,

Paul Hardiman

<000006851-Liability Notice LN00000395 [REDACTED].pdf>

<000006855-Demand Notice CIL00469-LP01224.pdf>

<000006857-Enforcement - Deemed Commencement - [REDACTED].pdf>

<000006828-220316 weekly reports - commenced.pdf>

## **Cheltenham Borough Council Building Control - Commenced Applications**

APPLICATION C22/00001/OTHBND

ADDRESS 104 Nettleton RoadC heltenhamG loucestershireG L51 6NS

DESCRIPTION OF WORK Removal of ground floor wall to create kitchen/diner

COMMENCED 07/03/2022

APPLICATION C22/00198/OTHBND

ADDRESS 4 York RowP restburCy heltenhamG loucestershireG L52 3EW

DESCRIPTION OF WORK Garage conversion

COMMENCED 07/03/2022

APPLICATION C22/00196/OTHI

ADDRESS Unit KC hosen View RoadC heltenhamG loucestershireG L51 9LT

DESCRIPTION OF WORK Part demolition/height extension to front 4 bays, new cladding, 2 x roller doors

COMMENCED 07/03/2022

APPLICATION C22/00206/OTHBND

ADDRESS 49 Church RoadS t MarksC heltenhamG loucestershireG L51 7AW

DESCRIPTION OF WORK Conversion of garage to living accommodation

COMMENCED 08/03/2022

APPLICATION C22/20087/DEXBN

ADDRESS 3 Withyholt ParkC heltenhamG loucestershireG L53 9BP

DESCRIPTION OF WORK Single storey extension

COMMENCED 09/03/2022

APPLICATION C22/20075/OTHBND

ADDRESS 9 Skillicorne MewsQ ueens RoadC heltenhamG loucestershireG L50 2NJ

DESCRIPTION OF WORK Installation of fittings to form wc and basin in bedroom

COMMENCED 09/03/2022

APPLICATION C22/00151/DOMBN

ADDRESS 15 Gristmill CloseC heltenhamG loucestershireG L51 0PZ

DESCRIPTION OF WORK New one bed, two storey dwelling.

COMMENCED 11/03/2022

*Report Date Range - Between 07 March 2022 and 13 March 2022 Page 1 of 3*

### **Appendix 3 – The Community Infrastructure Levy Regulations 2010 (as amended)**

#### Surcharge for failure to submit a commencement notice

Regulation 83.— (1) Subject to paragraph (1A), Where a chargeable development (D) is commenced before the collecting authority has received a valid commencement notice in respect of D, the collecting authority **may** impose a surcharge equal to 20 per cent of the chargeable amount payable in respect of D or £2500, whichever is the lower amount.

(1A) Subject to paragraph (1B), where a relevant development is commenced before the collecting authority has received a valid commencement notice in respect of the development, then instead of any surcharge which may be imposed under paragraph (1) the collecting authority **must** impose a surcharge equal to 20 per cent of the notional chargeable amount or £2,500, whichever is the lower amount.

(1B) A collecting authority is **not required** to impose a surcharge under paragraph (1A) where it is satisfied that the amount of the surcharge is less than any reasonable administrative costs which it would incur in relation to the surcharge.

(2) Where a person has assumed liability to pay CIL in respect of D, the collecting authority must notify in writing each person known to it as an owner of the relevant land of the imposition of the surcharge.

(3) Where the collecting authority is required to apportion liability between each material interest in the relevant land in respect of D—

(a) the surcharge must be apportioned on the same basis; and

(b) the owner of a material interest must pay the part of the surcharge apportioned to that interest.

(4) In all other cases the surcharge is payable by the person liable to pay CIL in respect of D.

(5) In this regulation—

“notional chargeable amount” means the amount of CIL that would have been payable, calculated in accordance with regulation 40 and Schedule 1, in relation to the development, as if the relief had not been granted;

“relevant development” means a chargeable development in relation to which a person has been granted—

(a) an exemption for residential annexes;

(b) an exemption for self-build housing;

(c) charitable relief; or

(d) social housing relief.

Surcharge for failure to assume liability

Regulation 80. A 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.



## Appendix 4 – Cheltenham Borough Council’s Adopted ‘Payment by Instalments’ Policy

### Community Infrastructure Levy (CIL) Instalments Policy

In accordance with Regulation 69B of the Community Infrastructure Levy Regulations 2010 (as amended), Cheltenham Borough Council have produced this Instalments Policy for publication.

This policy allows persons liable to pay CIL to do so by instalments. As required by regulations, the time the first payment is due is calculated from the date the development is commenced at which time a demand notice will be issued setting out the Instalments Plan in detail.

**Failure to submit the assumption of liability form (CIL Form 1 – CIL Form 2 since 2019), prior to commencement of development, will disqualify an applicant from paying by instalments and the total amount liable will become payable within 60 days of commencement of development.**

In accordance with Regulation 83, failure to notify the charging authority of commencement through the submission of a statutory commencement notice (CIL Form 6) will result in the total amount liable, along with any surcharges and interest specified in the regulations, becoming payable immediately.

Failure to pay an instalment on or before the due date identified in the statutory demand notice will result in the total outstanding amount liable, along with any surcharges and interest specified in the regulations, becoming payable immediately.

INSTALMENTS POLICY:

This Instalments Policy will take effect from 1st January 2019.

Table 1: Schedule of Instalments

Total Amount of CIL Liability	Number of Instalments	Payment periods and Proportion of CIL Due			
		1 <sup>st</sup> Instalment	2 <sup>nd</sup> Instalment	3 <sup>rd</sup> Instalment	4 <sup>th</sup> Instalment
£100,000 or less	One	100% payable within 18 months of commencement of development			
£100,001 to £1,000,000	Three	10% payable within 60 days of commencement of development	45% payable within 6 months of commencement of development	45% payable within 12 months of commencement of development	
£1,000,001 and above	Four	10% payable within 60 days of commencement of development	30% payable within 6 months of commencement of development	30% payable within 12 months of commencement of development	30% payable within 24 months of commencement of development

**Appendix 5 – Decision Notice**

.pdf attached