

To: [REDACTED], Head of Development Management, Enforcement & Compliance

From: [REDACTED], CIL Officer for the JCS Authorities

Date: 11th June 2025

SUBJECT: Request to consider exercising discretion under the Community Infrastructure Levy Regulations 2010 (as amended) to waive the surcharges for the failure to submit a valid commencement notice, failure to assume liability, apportionment of liability, surcharges for late payment, late payment interest and seek an alternative payment schedule.

Liable Party: [REDACTED] (Apportioned)

Agent: N/A

Planning Application Reference Number: 22/00072/FUL & 24/01313/AMEND

Site: 2 Charlton Court Road, Charlton Kings, Cheltenham, Gloucestershire, GL52 6JB

Description of Development: Construction of a new detached dwelling house with associated parking and amenity space. Technical details stage of the PIP process. (Ref: 21/01642/PIP).

Background & Submissions

Planning Application 22/00072/FUL sought permission for the erection of a new dwelling, 2A Charlton Court Road, Charlton Kings, Cheltenham, GL52,5JB.

- 13 January 2022 Application validated
- 03 February 2022 First request made for CIL Form 1 (Additional Information Form)
- 11 August 2022 Request for CIL Form 1 sent via signed-for delivery
- 18 November 2022 development permitted by Case Officer
- 03 February 2023 Liability apportioned and Liability Notice, LN00000481 for £14,681.29 issued.
- 31 October 2023 Land purchased by [REDACTED]
- 01 September 2024 deemed commencement date
- 07 April 2025 Deemed Commencement and Demand Notice issued (£17,731.29)
- 12 May 2025 Revised Demand and Overdue Payment Notice issued (£18,560.38)

Non-material amendment 24/01313/AMEND was permitted to increase the gross internal area (GIA) of the property, with the addition of an enclosed porch. This is measured at 2.97sqm but is not currently included on the liability or demand notices issued. The additional GIA will be added to the revised notices following this review.

For simplicity, the figures marked * do not include the additional GIA added by the non-material amendment.

Changes

On the 9th of April 2025, ██████████ contacted the CIL Team to discuss the CIL payment requests. Unfortunately, the initial email was marked as junk on receipt in the CIL inbox. It was not until the 28th of May, after discussions with ██████████, that the request for an officer decision was made, **Appendix A**.

The email submitted by ██████████ includes a request to waive all surcharges and overdue payment interest in relation to the development. ██████████ has since advised that the reinstatement of payment via instalments may also help aid the completion, marketing and sale of the new property.

The first surcharge for consideration is the surcharge for the failure to assume liability. Regulation 80 states that 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 chargeable development; and*
- b) the chargeable development is deemed to have commenced.'*

This surcharge (£50) was imposed upon ██████████, who were identified as the landowner once the collecting authority became aware of commencement of the development. The CIL Team automatically imposes this surcharge to ensure consistency, albeit it is not mandatory under the CIL regime, as regulations state it 'may' be imposed.

To decide on waiving this surcharge, the collecting authority must consider the circumstances that led to the breach of the CIL regulations, and implications of any changes considered.

Whilst several attempts were made to contact the applicant on the planning permission, these were not responded to until October 2023 after the registration of the Liability Notice. At this time, the CIL Team resent the liability notice, on the basis that this would be presented to the purchaser of the property, who would assume liability and complete the CIL process. It is unclear if this information was provided by the vendor, although the liability notice would have appeared on any Con29 report by ██████████ solicitors, had they been undertaken. The date of this breach was the date of deemed commencement (1st September 2024), 11 months after the ownership change.

The second surcharge for consideration is the surcharge for apportionment of liability. CIL Regulation 81(1) states a '*collecting authority is required to apportion liability to pay CIL between each material interest in the relevant land, it may impose a surcharge of £500 in respect of each of those interests.'*

This surcharge (£500) was also imposed on ██████████, as they did not assume liability. On review, this was erroneous. The regulation only refers to the surcharge for apportionment, not the failure to assume liability. The Valuation Office for Agency's (VOA) technical manual for

Community Infrastructure Levy (CIL) further clarifies this¹. As the sole owner of the land subject to the charge, no apportionment under Regulation 34 was necessary.

CIL Regulation 83(1)A states *'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 that **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'*.

This regulation does not have the same discretion as to whether this surcharge is imposed. Unfortunately, no commencement notice was submitted. This is not disputed by the liable party, as they did not believe they were required to pay CIL as the new build floorspace is under 100sqm **Appendix B**. This is incorrect as CIL is charged on new dwellings of any size. The maximum charge of £2,500 has been applied.

CIL Regulation 85 (1) is applicable where the amount payable is *'not received in full after the end of the period of 30 days beginning with the day on which payment of the amount is due, the collecting authority **may** impose a surcharge on P equal to five per cent of the amount or £200, whichever is the greater amount.'*

Due to the failure to submit a commencement notice, payment was due in full and immediately from the date of the demand notice (7th April 2025). In accordance with this regulation, the surcharge (£734.06*) was calculated on the 12th of May 2025, once the 30-day period had passed from the demand notice date.

Consideration can be given to whether this surcharge is applied, as the diction of this regulation allows discretion to be used by collecting authority. Furthermore, email contact was initiated on the 9th of April 2025 by [REDACTED] which was not acknowledged by the CIL Team until after the 30-day period.

A further surcharge of 5% is required six months and one year after non-payment.

In accordance with CIL Regulation 87, late payment interest was calculated at 2.5 percentage points above the Bank of England base rate, from the period starting on the day after the day payment was due. The regulations require this period to end on the date the payment is received, currently an unknown date. The amount of interest calculated for 35 days overdue (latest demand notice date) is £95.03*.

If the regulation 85 surcharge is upheld, late payment interest also *'must be calculated'* (regulation 87(2)).

Implications

¹ <https://www.gov.uk/guidance/community-infrastructure-levy-manual/section-4-regulation-115-appeals-apportionment-of-liability>

The main implication is reduction in the amount of CIL received by the collecting authority, totalling £3,784.06* in surcharges if are all waived.

The changes would also result in the avoidance of further surcharges and interest if the payment is not made within six months and a year after the demand notice.

As imposed in error, the apportionment of liability surcharge may be removed via a revised demand notice, regardless of this review. The collecting authority is permitted to issue a revised demand notice any time (Regulation 69(3)).

As surcharges are not apportioned to the Neighbourhood Fund, the requested changes in the payment schedule would not impact parish CIL payments.

Under CIL regulation 59D, the collecting authority must make payment in respect of the CIL it receives from 1st April to 30th September in any financial year to the local council by 28th October of that financial year.

For CIL received from 1st October to 31st March in any financial year, payment must be made to the local council by 28th April of the following financial year, unless the collecting authority and the parish agree an alternative timetable of payments.

As Charlton Kings Parish Council does not have an adopted Neighbourhood Development Plan (NDP), it is eligible for 15% of the CIL received (subject to a cap of £100 plus indexation per existing Council Tax paying property). The cap is redundant due to the small scale of development and number of existing properties in Charlton Kings.

Currently, the amount of CIL payable to Charlton Kings would be £2,202.19*, rising to £2,270.18 with the NNA floorspace added. With immediate payment, this would be credited to the parish in October 2025.

The reintroduction of an instalments would be effective in reducing the impact of development contributions for smaller firms as in this case. This would help [REDACTED] to complete the development and raise additional funds to pay CIL liability, especially considering the surcharge applied. This notion is supported by the Small Firms' Impact Test contained within the Explanatory Memorandum to the Community Infrastructure Levy Regulations 2010².

Such change would have no impact on the timing of parish payments, providing payment is made before October 2025.

By virtue of the failure to submit a commencement notice, the payment would be received by the parish earlier than if a valid commencement notice had been received (1st March 2026).

² https://www.legislation.gov.uk/ukdsi/2010/9780111492390/pdfs/ukdsiem_9780111492390_en.pdf

Actions recommended as a result of review

1. Consider waiving the surcharges for Regulation 80, 81,83 & 85.

Legal Advice on Decision Taking –

One Legal have previously provided the following advice: “it is possible that the lead officer may feel that they can take the ad hoc decision on the particular case under those parts of the Constitution whereby they can “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).

Although the ownership transferred after permission, the council did provide additional forewarning of CIL requirements. **Appendix C** is an extract of the planning decision notice for the development. This includes a CIL informative which stresses the importance of notification prior to the commencement of development and the surcharges that may incur if the process is not followed.

As a permitted CIL liable development, the liability notice is registered as a local land charge against the property (03.02.2023). The intention of the registration is to ensure that a purchaser of land is aware of their CIL obligations, considering that the charge is legally binding on the land, regardless of ownership changes. This is especially important where no party has assumed liability.

During the process of land purchases, solicitors or conveyancers commonly request for information held by the council in relation to a property by submitting a Con29 enquiry. These take the form of a series of warning questions for CIL, requesting information on the liable amount, commencement status, appeals, surcharges and whether a party has assumed liability.

Con29 searches are comprehensive and effective in keeping prospective owners abreast of the levy. Therefore, the failure to conduct such a search or failure to act on the search is unfortunate, however, undertaken voluntarily, and contributed to the CIL breaches under regulation 80,83 and 85.

2. Consider permitting an alternative payment schedule

Permitting additional time to pay the CIL amount would help the developer to complete and raise the additional funds to pay the surcharges. A maximum of 90 days from the officer decision would be sufficient to ensure the funds are received by the collecting authority and apportioned as required before October 2025.

Recommendation

It is understood that the site changed ownership after permission, and the details of the CIL charge were not communicated effectively between the previous owner and current owner. However, the Liability Notice was issued in February 2023, after a November 2022 permission, and is therefore deemed to have been issued “as soon as practicable” and valid. Furthermore, the liability would have appeared as a local land charge, had a search been conducted by the liable party.

Although there was a period from November 2022 to February 2023, in which the charge would not have appeared on conveyancing searches, the ownership did not change until the 30th of October 2023, nearly nine months later. It is therefore deemed that the breaches were undertaken voluntarily.

In respect of the forthcomingness of the liable party regarding the CIL process and charges, it is recommended that the collecting authority exercises the discretion afforded to it by waiving the Regulation 80 surcharge of £50, as payment by [REDACTED] has been agreed. In addition, the Regulation 81 surcharge for apportionment will also be removed as erroneous.

The regulation 83 surcharge is recommended to be upheld, as the failure to submit a commencement notice (£2,500) ‘must’ be applied as per the CIL Regulations, and as highlighted above, early commencement was avoidable.

In relation to the late payment surcharge and interest, their removal is recommended. Although the email enquiry was located by the CIL Team after the registration of late payment charges, [REDACTED] contacted the collecting authority within two days of the Demand Notice to cooperate fully, therefore further charges for lateness are deemed unjust.

The reintroduction of payment by instalments is also proposed to help the developer pay the liability and the regulation 83 surcharge. 90 days from the decision date would be effective in maximising the level of assistance to the developer, whilst limiting the impact and risk to the collecting authority, allowing sufficient time to apportion the CIL received.

The recommended changes referred to are:

- Removal of the Regulation 80 surcharge
- Removal of the Regulation 81 surcharge
- Removal of Regulation 85 surcharge
- Removal of Regulation 87 late payment interest
- Payment of £17,634.50 by Thursday 11th September 2025 (90 days)

Appendix A

From: [REDACTED]
Date: 28 May 2025 at 12:13:11 BST
To: [REDACTED]
Subject: 2A Charlton Court Road, Cheltenham GL52 6JB

Hi [REDACTED],

Further to our discussion regarding the CIL levy charge on the above new build dwelling we have recently constructed; you asked that we tabled the events as we understand them for consideration when determining the actual charge.

- We purchased the side plot of no.2 Charlton Court Road on 30th October 2023 via an online auction sale.
- The plot had the benefit of planning for what is now 2A Charlton Court Road.
- At the point of purchase we enquired whether there was any CIL Levy to consider to be told by the vendors that it was exempt as we did note there wasn't any reference to CIL in their planning documents. In that exchange it was also clarified that the internal area was purposefully dimensioned to be below 100m2(about 96m2); that further supported our understanding of nil CIL as the last newbuild I was involved with previously was similarly designed for that reason.
- Thereafter, we didn't give CIL further thought and eventually commenced work on the dwelling construction later in 2024 that we are now just about to receive the building control completion certification.
- From what you explained you were in fact pursuing the vendors/owners of no.2 throughout the last 12-18months without any response; they didn't even relay that situation to us and the family/owner still resided in the property!!!
- Our first awareness of anything amiss was your letter issued to our registered office (our accountants), which as soon as they sent it over to us I responded immediately on 9th April and further issued chasers to get that acknowledged. You have made us aware that the initial response was lost in junk mail but have acknowledged our 'immediate' response to your communication on file now.
- Safe to say, not only had we enquired about CIL when purchasing the plot; we were equally unaware of the change in its application as we assumed it was exempt being below 100m2 and not having anything from CBC until recently left us in ignorance unfortunately.
- For this reason can we please be given consideration as to the very minimum of the basic charge and any add on's due to the period lost with the vendors ignoring your contact and most recently due to our immediate response being lost in junk mail being aborted.
- You mentioned you had put a charge on the property due to your frustration with No.2's owners; is that on No.2 presumably?
- We spoke about the porch addition to the planning by us; fyi it is 1.69m2 in area; it was simply to separate the entrance door from being directly into the living room as originally designed by the vendors.

Trusting this meets with your consideration and can I ask you put all correspondence to me on this email.

Yours sincerely,

[REDACTED]
[REDACTED]
[REDACTED]

Appendix B

> On 9 Apr 2025, at 11:37, [REDACTED] <[REDACTED]> wrote:

>

> Good morning,

>

> The attached CIL charge notification has just landed at registered office (our accountants); the first we've been made aware of any possible charge, which we are responding to as soon as aware.

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> When securing the auction purchase of the plot, the side garden of no.2 Charlton Court Road; the documents stated Nil CIL charges; which the internal floor area supports as being below 100m2, as noted within your document too.

>

> Therefore, you can appreciate we would refute this charge and are somewhat confused as to why it's been issued.

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> Please acknowledge this response.

>

> Regards,

>

> [REDACTED]

> [REDACTED]

> [REDACTED]

Appendix C

SCHEDULE 1

This decision relates to the following plans:

Approved Plans

| Reference | Type | Received | Notes |
|------------------------|-------------|---------------------|-------|
| 21-014-A.E.100 Rev 06. | Rev Drawing | 16th September 2022 | |
| 21-014-A.P.001 Rev 06. | Rev Drawing | 16th September 2022 | |
| 21-014-A.P.002 Rev 06. | Rev Drawing | 16th September 2022 | |
| 21-014-A.P.003 Rev 03. | Rev Drawing | 16th September 2022 | |
| 21-014-A.P.004 Rev 03. | Rev Drawing | 16th September 2022 | |
| 21-014-A.P.005 Rev 04. | Rev Drawing | 16th September 2022 | |
| 21-014-A.P.007 Rev 03. | Rev Drawing | 16th September 2022 | |
| 21-014-A.P.008 Rev 04. | Rev Drawing | 16th September 2022 | |
| 21-014-A.P.125 Rev 06. | Rev Drawing | 16th September 2022 | |
| 21-014-A.E.101 Rev 05. | Rev Drawing | 16th September 2022 | |
| 21-014-A.S.150 Rev 04. | Rev Drawing | 16th September 2022 | |
| SK - CO1 Rev B. | Rev Drawing | 16th September 2022 | |

This decision notice should be read in accordance with the Planning Officer's Report which details the material considerations relevant to the proposal and the reasons for the decision made. You can read a copy of this report online at www.cheltenham.gov.uk/publicaccess or in the Municipal Offices Promenade Cheltenham GL50 9SA (please contact Built Environment Reception to arrange this. Tel: 01242 264328)

A person who intends to carry out the development to which this planning permission relates is requested to give a minimum of 7 days notice to the planning authority as to the date on which it is proposed to initiate the development, and, in any event, before commencing the development. You are advised to contact the Compliance Officer at Built Environment 01242 264118.

Cheltenham Borough Council is a charging authority for the Community Infrastructure Levy (CIL). It is important that you ensure that the requirements of the CIL Regulations are met (including notification requirements and those that need to be met prior to commencement of development and/or following completion of development) to ensure that you avoid any unnecessary surcharges and that any relevant relief, exemption or instalment policy is applied. Further information regarding CIL can be found on our website at https://www.cheltenham.gov.uk/planning_and_development or you can contact us at cil@cheltenham.gov.uk.