**Community Infrastructure Levy: Frequently Asked Questions (January 2017)**

1. **Introduction**
   1. South Somerset approved a Community Infrastructure Levy Charging Schedule on the 17th November 2016[[1]](#footnote-1). At the same time as approving the Charging Schedule, it was agreed that the levy would be implemented from the 3rd April 2017 onwards. For clarity, the approved Charging Schedule is set out in Table 1.

**Table 1: South Somerset Charging Schedule**

|  |  |  |
| --- | --- | --- |
| Type of Development | Levy Rate | Geographical Extent |
| Yeovil Sustainable Urban Extensions[[2]](#footnote-2) | £0 (zero) per square metre | See Appendix 1 |
| Chard Eastern Development Area[[3]](#footnote-3) | £0 (zero) per square metre | See Appendix 2 |
| All Other Residential Development | £40 per square metre | District-wide. See Appendix 3 |
| Convenience-based Supermarkets and Superstores, and Retail Warehouse Parks (outside of defined Town Centres and Primary Shopping Areas)[[4]](#footnote-4) [[5]](#footnote-5) | £100 per square metre | District-wide, excluding those areas defined in Appendices 1, 2, and 4 – 15 |
| All Other Uses | £0 (zero) per square metre | District-wide. See Appendix 1 – 15 |

* 1. A number of internal changes within the Council are required to ensure that the Charging Schedule and the levy are implemented effectively. This includes adopting new IT software; integrating working practices between planning, legal, and finance teams; and establishing new governance arrangements for the management and spending of monies accrued via the levy.
  2. To help smooth the transition to when the levy is in place, answers to a series of *“Frequently Asked Questions”* have been set out below.

1. **Key Stages to Managing and Charging the Levy**

From the 3rd April 2017, once the levy is in place, the following steps will be required from applicants, landowners, and the Local Planning Authority (LPA).

The main process steps relating to charging the levy are:

* Applicants for planning permission should submit an *“Additional CIL Information”* form alongside their planning application. This will help the LPA to calculate the amount payable.
* If and where planning permission is granted for development by way of a general consent – such as via the General Permitted Development Order – the developer or landowner submits a *“Notice of Chargeable Development”* to the LPA.
* If and where planning permission is necessary, the LPA will expect the developer, landowner or another interested party to assume liability for the levy by submitting an *“Assumption of Liability”* form. This can be submitted at the same time as when a planning application is submitted to speed up the process.
* Based upon the scale of chargeable development, the LPA then issues a *“Liability Notice”* to the applicant, the developer, and whoever has assumed liability for the scheme, which sets out the charge due and details of the payment procedure.
* Based upon the development progressing, the relevant person(s) then submits a *“Commencement Notice”* to the LPA setting out when development is going to start.
* The LPA issues a *“Demand Notice”* to the landowner, or whoever has assumed liability, setting out the payment due dates in line with the payment procedure. For South Somerset, this will be in accordance with the Instalments Policy.
* On commencement of the development, the landowner, or whoever has assumed liability, should follow the correct payment procedure as set out in the demand notice and as defined by the South Somerset Instalments Policy.
* The LPA must issue a receipt for each payment received.

The following sections set out further detail on the various stages, clarifying what is required from the respective parties involved, and when.

1. **Frequently Asked Questions**

**Q. When will the South Somerset levy be implemented?**

South Somerset has decided to start charging a levy from the 3rd April 2017. This date was chosen to allow the Council’s internal processes to be changed to cater to the new requirements of implementing and managing the levy. It also means the monitoring of the levy will coincide with the financial year.

The time between the levy being approved and the levy being implemented (November 2016 to April 2017) also allows the development industry to adjust to the different regime.

**Q. What is the Additional CIL Information Form?**

This is a separate form that the LPA will expect an applicant to submit at the same time as the planning application documentation. It will set out additional details that will allow the LPA to determine whether a development may be liable for the levy charge.

The form asks specific questions linked to the whether the proposed scheme generates additional floorspace (over 100m2), or proposes a new dwelling, which would trigger the levy. It also asks the applicant to be more specific amount the scale of new floorspace (where possible) and set out any details about existing buildings/floorspace on site.

**Q. What is the definition of “Chargeable Development”?**

Chargeable development is the development for which *"planning permission"* is granted. Planning permission, for the purposes of the operation of the levy, covers a planning permission granted by the LPA (or by the Secretary of State, e.g. on appeal).

It also covers general consents, namely, planning permissions deemed to be granted resulting from a development order – for example, permitted development rights.

It is the scale of chargeable development which sets the levy calculation.

**Q. When does a planning permission first permit chargeable development?**

In the case of a full detailed planning permission, the day on which it is granted, unless it is subject to a condition requiring further approval to be obtained before development can begin. In that situation, the date is postponed until final approval is given.

In the case of outline planning permission, it is the date when final approval is given to the last reserved matter.

With a general consent, it is the date on which the LPA receives a Notice of Chargeable Development. If no such notice is submitted, it is the date on which the last person, who is an owner of the land, has been served by the LPA with a Notice of Chargeable Development.

**Q. What is a Notice of Chargeable Development?**

The purpose of the notice is to give the LPA enough information to calculate the amount of the charge due. The procedural requirements are set out in Regulation 64 (as amended by the 2011 Regulations and the 2014 Regulations).

Where the LPA does not receive a Notice of Chargeable Development but is aware that development has started, it must prepare the notice and serve it on each person known to them as an owner of land – Regulation 64A (as amended by the 2014 Regulations) covers this situation.

**Q. What is a Liability Notice? And when is it issued?**

The LPA must issue a liability notice as soon as practicable after the time at which the planning permission first permits chargeable development. The notice specifies the amount of the levy (the chargeable amount) that is payable for the chargeable development. The chargeable amount is a local land charge.

In the case of an outline planning application, planning permission first permits development on the day of the final approval of the last reserved matter associated with the permission.

A revised Liability Notice will be issued every time the levy charge changes, e.g. if the floor area changes, or if a surcharge is applicable.

**Q. What is an “Assumption of Liability Notice”?**

Anyone may assume liability to pay the levy for a proposed development scheme. For example, this may be the developer who has applied for planning permission or the development’s landowner.

If no party assumes liability to pay the levy before development commences, the owners of land will be liable to pay the levy and will not be able to benefit from South Somerset’s Instalment Policy – see Regulation 33 for further details.

If no party comes forward to assume liability, collecting authorities may wish to contact potential persons who may wish to assume liability and point out the benefits of assuming liability.

Any party wishing to assume liability should submit an Assumption of Liability form to the LPA. Once the form has been received, the LPA must send an acknowledgement to the liable person(s).

Where a party has assumed liability yet failed to pay all its charge (despite the LPA making all reasonable efforts), the LPA may issue a default liability notice to the owners of any material interest in the land within the chargeable development.

Parties may transfer liability to pay at any time up to the day before the date when final payment is due. This is done by submitting a ‘Transfer of Assumed Liability’ form to the LPA. The LPA must send an acknowledgement to both the person liable to pay, and the person applying for the transfer of liability.

**Q. Default of Liability Notices**

Where a person assumed liability to pay the levy and the LPA has been unable to recover an amount, it may determine that liability to pay that amount is transferred to the owners of the relevant land.

However, a LPA may not make a determination before it has made all reasonable effort to recover that amount using one or more of the remedies provided for in Chapter 3 of Part 9 of the 2010 Regulations.

A LPA, which makes a determination, must issue and serve a Default of Liability Notice and apportion liability to pay that amount between each material interest in the relevant land, such apportionment adopting the same approach as specified above under Where no assumption of liability notice. A LPA, which has made a determination, may not impose a surcharge or serve a levy stop notice before the end of the period of seven days beginning with the day on which the default of liability notice is issued.

**Q. What is a “Commencement Notice”?**

The Commencement Notice must identify the liability notice (see above) issued for the chargeable development and state the intended commencement date of the development. A copy of the Commencement Notice must be served on the owner(s) (with a material interest as defined below) of the relevant land by the person who submitted the Commencement Notice. The notices have a prescribed form and notices submitted can be withdrawn before the chargeable development commences by notifying the LPA.

**Q. What classifies as the “Commencement” of development?**

A person becomes liable for the levy when the development is commenced. Development is to be treated as commencing on the earliest date on which any material operation begins to be carried out on the relevant land, subject to certain exceptions. "Material operation" has the same meaning as in Section 56(4) of the Town and Country Planning Act 1990 (time when development begun). This includes constructing or demolishing a building, digging foundations or laying pipes, constructing a road or any material change in the use of the land. The levy charge may, therefore, fall due, even though construction of the buildings on site may not have started.

**Q. When is a “Deemed Commencement Notice”?**

If a LPA -

(a) has not received a Commencement Notice in respect of the chargeable development, but has reason to believe it has been commenced; or

(b) has received a Commencement Notice in respect of the chargeable development, but has reason to believe that it was commenced earlier than the intended commencement date;

it must determine the day on which a chargeable development was commenced (the "Deemed Commencement Date").

**Q. When will a “Demand Notice” be issued?**

The LPA must serve a Demand Notice on each person liable to pay the levy.

The required information for the notice includes:

* the intended commencement date or, where the LPA has determined a deemed commencement date, the deemed commencement date;
* the amount payable by the person on whom the notice is served (including any surcharges imposed in respect of or interest applied to the amount); and
* the day on which payment is due.

In the case of a general consent, a Demand Notice will be issued on receipt of a Notice of Chargeable Development.

**Q. Can CIL be paid in instalments?**

Yes, Please read the South Somerset Instalments Policy:

However:

* Where no-one has assumed liability but a commencement notice has been received, payment is due immediately upon commencement.
* Where the Council has determined a ‘deemed commencement’ date (because no valid Commencement Notice was provided), payment is due on the deemed commencement date.
* There are also special provisions under Regulation 71 where the Council has to transfer liability to the land owners or where charitable or social housing relief has been granted and a ‘disqualifying event’ has taken place. These will be unusual events.

**Q. Will the levy be charged on conversions and change of use?**

The levy will be charged where the change of use or conversion would result in a new dwelling. This is unless the building is already in a lawful residential use (i.e. subdivision into multiple flats, for example).

The overall liability can be reduced by counting the existing floor space against the new floor space proposed, but only where the existing floor space can be proven to have been in a lawful use for a continuous period of at least 6 months within the last 3 years.

**Q. Can I count demolished floor space to reduce the amount of levy on my development?**

Yes - demolished floor space can be counted to reduce the overall levy amount. However, the building that is being demolished must still be on site on the day that firsts permits development, and must be proven to have been in lawful use for a minimum of six continuous months within the last three years.

As set out above, the date that first permits development is the date of grant of permission for a full permission, and the date of the approval of the last reserved matters for an outline permission.

**Q. What if only a small part of a building to be demolished has been in use over the last 6 months?**

Regulation 40 (11) of the CIL Regulations 2010 (as amended) states that a building is in use if a part of the building is in 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. Therefore, all the floorspace in the building would be deductible from the floorspace of the new buildings. The legal definition of building and planning unit will be important.

**Q. How is the amount of chargeable development measured?**

The amount of levy payable by a development is measured using m² in Gross Internal Area (GIA). Gross internal floorspace is the internal area of the building, and should include rooms, circulation, and service space such as lifts and floorspace devoted to corridors, toilets, storage, ancillary floorspace (e.g. underground car parking) etc. Further guidance on measuring gross internal floorspace is available from RICS in “RICS Property Measurement” (<http://www.rics.org/uk/knowledge/professional-guidance/professional-statements/rics-property-measurement-1st-edition/>)

**Q. Are residential garages included in the CIL calculation?**

Yes, because this falls within the RICS Code of Measuring definition of GIA.

**Q. If outline permission has been granted before the charging schedule was approved, but the details are submitted after the implementation date, can the levy be charged following the grant of consent on the details?**

No, the levy cannot be collected on ‘reserved matters’ planning permissions if they have been granted outline planning permission prior to levy coming into force locally.

Therefore, outline planning permissions that have been granted prior to 03 April 2017 will not be liable for the levy.

Reserved matters approvals granted after 03 April 2017 will not trigger any liability under CIL Regulation 42.

**Q. What if I amend my outline permission gained before the levy was in place, after the levy comes in to force?**

If a Section 73 application to vary the original permission takes effect after the charging schedule is implemented then there will only be a levy charged if there is an increase in chargeable floorspace by virtue of the Section 73 application. So, the original floorspace, with outline consent, will fall outside of the scope of the levy.

**Q: If a large scheme has outline planning permission, is the whole development due to pay the levy at the time the first phase/reserve matter of the outline commences?**

If a large scheme has outline permission, then each phase is a separate chargeable development (As set out in CIL Regulation 9(4)). Each phase is regarded as having a permission which 'first permits' when the last reserved matter is approved for that phase (see CIL Regulation 8(5)).

**Q. What types of development are exempt from the levy?**

The following types of development are exempt from CIL:

* Where there is no extension of floorspace as a result of the development.
* Any development where the gross internal area of the new build is less than 100 square metres. This might, for example, include a small extension to a house. It should be noted that this exemption does not apply to the creation of one or more dwellings.
* Development resulting from a change of use, where the building has been in continuous use for at least six months in the three years prior to the development being permitted and no new floorspace is created.
* Any development which is zero rated on the approved charging schedule for South Somerset.
* Any development where the total chargeable amount is less than £50 (this is deemed as zero rated).
* Reserved matters planning permissions where outline planning permission was granted prior to 03 April 2017.
* Retail mezzanines.
* Structures or buildings that people only enter for the purpose of inspecting or maintaining fixed plant or machinery.

**Q. What happens if the levy charges are not paid?**

The LPA has a large number of enforcement powers under Chapter 3 of Part 9 of the 2010 Regulations. They include:

* Surcharges of varying amounts depending on the nature of the failure to comply with the legislation.
* Late payment interest at an annual rate of 2.5% above the Bank of England base rate.
* Levy stop notices- a procedure ultimately to stop any activity connected with the chargeable development. A person convicted of contravening a CIL stop notice is liable on summary conviction to a fine not exceeding £20,000, or on conviction on indictment to a potentially unlimited fine- in determining the amount of the fine, the court must have regard in particular to any financial benefit which has accrued or has appeared to accrue to the person convicted in consequence of the offence. An injunction to restrain an apprehended breach of a CIL stop notice can also be applied for. A local search will reveal a CIL stop notice.
* Service of a "reminder notice" followed by an application to a magistrates' court for a "liability order" in respect of the outstanding amount plus costs. If the liability order is made, the remedy of distress is available.
* Charging orders where at least £2,000 is outstanding under liability orders.
* Commitment to prison, where the debtor is an individual, the amount could not be recovered through the distress or charging order routes and the court is of the opinion that the failure to pay the debt was due to the debtor's wilful refusal or culpable neglect;.
* Enforcement of local land charges if outstanding CIL amount is £2,000 or more.
* Powers to require information and of entry and there is an offence for supplying false information with a punishment of a possible fine and/or imprisonment.

**Q. Surcharges and Late Interest**

Surcharges and interest may be imposed as follows:

* If the development has commenced and no Commencement Notice has been received - £50 on each liable person.
* Where the Council has to apportion liability between different owners - £500 on each owner.
* For failure to submit a Notice of Chargeable Development – 20% of the chargeable amount up to a maximum of £2,500.
* For failure to submit a Commencement Notice – 20% of the chargeable amount up to a maximum of £2,500.
* For failure to notify the Council of a disqualifying event within 14 days – 20% of the chargeable amount up to a maximum of £2,500.
* For late payment – 5% of the chargeable amount or £200 (whichever is greater) may be imposed after 30 days and again after 6 months and then after 12 months on any outstanding amount.
* Failure to comply with an information notice within 14 days – 20% of the chargeable amount up to a maximum of £1,000.
* Late payment interest must be paid starting on the day payment was due at a rate 2.5 percentage points above the Bank of England base rate.

1. South Somerset Approved Charging Schedule (November 2016): <http://modgov.southsomerset.gov.uk/ieListDocuments.aspx?CId=137&MId=1805&Ver=4> [↑](#footnote-ref-1)
2. As defined in Policy YV2 in the South Somerset Local Plan (2006 – 2028): North-East Sustainable Urban Extension and South Sustainable Urban Extension. [↑](#footnote-ref-2)
3. As defined by Policy PMT1 & PMT2 in the South Somerset Local Plan (2006 – 2028). [↑](#footnote-ref-3)
4. Supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix. The majority of custom at supermarkets arrives by car, using the large adjacent car parks provided.

   Superstores are self-service stores selling mainly food, or food and non-food goods, with supporting car parking.

   Retail warehouses are large stores specialising in the sale of comparison and household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering mainly for car-borne customers. [↑](#footnote-ref-4)
5. Town Centres as defined through Policy EP11 of the South Somerset Local Plan (2006 – 2028). Primary Shopping Areas in Yeovil and Chard as defined through Policy EP11 in the South Somerset Local Plan (2006 – 2028). [↑](#footnote-ref-5)