



<b>REPORT OF:</b>	HEAD OF PLACES & PLANNING
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<b>TO:</b>	EXECUTIVE
<b>DATE:</b>	7 January 2016
<b>EXECUTIVE MEMBER:</b>	COUNCILLOR T SCHOFIELD

<b>KEY DECISION REQUIRED:</b>	YES
<b>WARD (S) AFFECTED:</b>	ALL

<b>SUBJECT:</b>	<b>COMMUNITY INFRASTRUCTURE LEVY: APPROVAL AND IMPLEMENTATION</b>
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**RECOMMENDATIONS that:**

- (i) The Examiner’s Report (Annex 1) be noted and the Community Infrastructure Levy Charging Schedule (Annex 2) be approved and brought into effect from 1 April 2016**
- (ii) The Regulation 123 List, Instalments Policy and Payment In-Kind Policy (Annex 3) be approved and brought into effect from 1 April 2016**
- (iii) The draft Developer Contributions Supplementary Planning Document (Annex 4) be approved for statutory public consultation and the Head of Places and Planning in consultation with the Executive Member for Planning and Development, be authorised to make any necessary minor amendments to the document prior to public consultation**
- (iv) The approach to the allocation and spending of the Community Infrastructure Levy (set out in paragraphs 22-45) be endorsed and the Head of Places and Planning be authorised to establish detailed arrangements and criteria to support the spending process**
- (v) A Community Infrastructure Levy Fund earmarked reserve be established to properly account for the new funding stream**
- (vi) The amendments to the Officer Scheme of Delegation (Annex 5) be approved**

**REASONS FOR RECOMMENDATIONS:**

Recommendation (i): The Examiner’s Report concludes that, subject to one modification, the Council’s Community Infrastructure Levy Charging Schedule can be approved. Approval will enable the Council to begin charging the levy, following a short transitional period, and thus generate funding towards local infrastructure.

Recommendation (ii): Approval of the Regulation 123 list is a statutory requirement to enable CIL to be implemented

Recommendation (iii): Approval of the Instalments policy and progression of the Developer

Contributions SPD will help ensure that guidance is in place to support the smooth operation of CIL and provide clarity to stakeholders. Approval of the payment in kind policy will provide flexibility to enable the Council to accept provision of land or infrastructure in lieu of CIL where this would be beneficial.

Recommendation (iv): This will allow for appropriate arrangements and processes to be put in place to ensure CIL is spent in a robust and transparent manner and will ensure that CIL helps deliver projects which support growth and offer the greatest benefit to the borough and its residents.

Recommendation (v): This will ensure CIL monies are held and accounted for in accordance with the relevant Code of Practice for Local Authority Accounting.

Recommendation (vi): This will ensure that the Officer Scheme of Delegation reflects the Council's powers and duties under the 2010 CIL Regulations (as amended) and enable day to day administration of the levy to be carried out in an effective, efficient and proportionate way.

#### **EXECUTIVE SUMMARY:**

Following independent examination, the Examiner has concluded that the Council's Community Infrastructure Levy (CIL) Charging Schedule can be approved subject to one modification.

Approval of the Schedule, and supporting policies including the Regulation 123 list, will enable the Council to begin securing contributions to help fund and deliver important local infrastructure.

The Schedule and supporting policies are recommended to take effect as of 1 April 2016, allowing a short transitional period to finalise implementation arrangements and avoid undue delay to planning applications already in the system.

To support the smooth implementation of the levy, updated planning guidance in the form of a Supplementary Planning Document (SPD) is also needed. This would replace existing SPDs which have become out of date following the introduction of CIL and changes to planning legislation. Executive is asked to agree the draft SPD for a period of public consultation, in accordance with local planning regulations.

Through CIL, the responsibility for deciding how money is allocated is placed almost entirely in the Borough Council's remit. The majority of income will be available for strategic projects across the borough; however, a proportion of money collected must be spent on at the neighbourhood level and in consultation with local communities.

Decisions on the spending and allocation of CIL need to be taken in a robust manner. This report proposes the approach to be taken to the identification, selection and agreement of projects for both the neighbourhood element and strategic element in order to maximise the benefits of CIL for infrastructure delivery at the local level and ensure transparency. Executive is requested to endorse these arrangements.

Introduction of CIL brings with it a number of new obligations, duties and powers for the Council. This includes responsibility for determining liability, serving notices, collecting funds and enforcing non-payment, the process for which is prescribed in the CIL Regulations. To ensure the levy can be administered effectively, efficiently and properly, delegation of a number of the Council's duties and powers to officers is sought.

**Executive has authority to approve recommendations (ii), (iii) and (iv).  
Recommendations (i), (v) and (vi) are subject to approval by Full Council.**

## **STATUTORY POWERS**

1. The Council has discretionary powers under the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended) to introduce a levy on new development for the purpose of funding infrastructure.
2. The Council is a charging authority and a collecting authority as defined by regulation 10 of the Community Infrastructure Levy Regulations 2010 (as amended) ('the CIL regulations').
3. Powers exist under section 101 of the Local Government Act 1972 to enable the Council to arrange for the discharge of its functions by officers.

## **BACKGROUND**

4. The Community Infrastructure Levy (CIL) is a standardised charge, levied at the local level, on new development. Its purpose is to help fund and deliver the infrastructure needed to support growth in the borough.
5. CIL will not replace individual legal agreements on planning applications (such as section 106 agreements). Legal agreements will still have an important role in securing infrastructure which is critical to the grant of planning permission for, or the release of, a specific development site(s) (such as a new road connection or play areas) and for affordable housing.
6. However, the CIL regulations have restricted the Council's ability to use legal agreements to secure funding for general infrastructure needs since April 2015. In practice, this has prevented the Council from securing tariff style contributions – such as in Horley – and has meant the Council has secured little in the way of infrastructure contributions since April.
7. Once adopted, CIL is non-negotiable and cannot be challenged on individual planning applications through the planning appeal process. It can also be spent in a more flexible way subject to it being used to fund the provision, improvement, replacement, operation or maintenance of infrastructure to support development.
8. The Council agreed in principle to introduce a CIL in the borough in May 2011. Consultation was initially carried out on a preliminary draft charging schedule (PDCS) in late 2012 and again on a revised version in late 2014. The Draft Charging Schedule (DCS) was agreed for consultation and submission in March 2015.

## **KEY INFORMATION**

### **Charging Schedule Examiner's Report – TO BE CONFIRMED**

9. The Draft Charging Schedule was submitted to the Planning Inspectorate for independent examination in June 2015. Ms Louise Nurser BA (Hons.) Dip UP MRTPI was appointed to conduct the examination and a public hearing was held for one day on 8 September 2015.
10. The Examiner's Report (**Annex 1**) was formally received by the Council on 2 December 2015. The report concludes that, subject to one modification, the

Schedule is an appropriate basis for collection of the levy in the borough and can be approved.

11. The modification recommended by the Examiner is to reduce the proposed residential charge in Zone 1 (i.e. covering Redhill and Horley town centres) from £20 per sqm to £0 per sqm to reflect the viability evidence. This change will have only a modest impact on potential income from CIL and is considered to be acceptable.
12. Approval of the Charging Schedule (**Annex 2**) taking account of this modification is therefore recommended to enable the Council to begin implementing and collecting the levy.
13. It is proposed that the Charging Schedule takes effect at 1 April 2016, thus applying to relevant planning applications determined thereafter. A transitional period is common practice as it allows time to ensure implementation arrangements are in place and fully operational and also avoids delay and unnecessary complication for planning applications already in the system. The planned implementation date also aligns with the beginning of the new financial year.

### **Regulation 123 List**

14. Upon adoption of CIL, the CIL regulations require the Council to publish a Regulation 123 list. This sets out the infrastructure which the Council intends to fund using money secured through the levy. Any projects or types of infrastructure on this list cannot subsequently be funded through section 106 agreements. It should be noted that this list is not a commitment to fund the projects identified therein and this list can be amended at any time following a period of consultation.
15. In line with Practice Guidance, the Regulation 123 list (**Annex 3**) for which approval is sought is consistent with that agreed at Draft Charging Schedule stage, except for one minor amendment to clarify its operation in relation to development outside the current urban area (for example urban extension developments). The Examiner's report also urges the Council to make this amendment to ensure clarity.

### **Instalments Policy**

16. The Council is permitted to allow for CIL to be paid through instalments. The proposed policy (**Annex 3**) links the number of instalments to the total amount of money due and – in doing so – balances the need to ensure that contributions are received in a timely way with the effect of CIL payments on developer cashflow. The instalments policy has previously been considered, and supported, by the LDF Scrutiny Panel.

### **In kind payments**

17. The CIL regulations also allow for the Council to allow for developers to provide land or a piece of infrastructure in lieu of all or part of their CIL liability. Whilst this is only likely to occur in a small number of instances, most notably on larger sites, it may be beneficial in certain circumstances. Adopting an in kind payments policy now (**Annex 3**) does not commit the Council to accept payment in kind in every case where it is offered but provides flexibility to consider the benefits of any such offers on a case by case basis.
18. There is also scope for the Council to introduce a number of discretionary reliefs from CIL in addition to the mandatory reliefs set out in the CIL Regulations. This includes exceptional circumstances relief for instances where to pay the full CIL charge would

make a development unviable, as well as a range of additional reliefs for charitable developments and discounted market housing. At this stage it is not recommended that any of the discretionary reliefs are introduced; however, this can be reviewed at any time.

### **Draft Developer Contributions SPD**

19. To support the smooth implementation of the levy, updated planning guidance in the form of a Supplementary Planning Document (SPD) is needed to replace the Council's existing Planning Obligations and Infrastructure SPD (adopted in April 2008) and the Horley Infrastructure SPD (adopted in July 2008), both of which have become out of date as a result of the changes brought about by the CIL Regulations and introduction of the levy.
20. A draft Developer Contributions SPD is included at **Annex 4**.
21. The purpose of the Developer Contributions SPD will be to provide guidance to developers and stakeholders on the processes which they will be expected to follow when submitting applications where infrastructure contributions are required. It is also proposed that the SPD sets out additional detail as to how the Council will use other developer contributions – such as section 106 agreements – to secure site specific infrastructure once CIL is in place. Much of the content of the draft SPD reflects the Council's existing practice and best practice elsewhere in relation to the use of section 106 agreements post adoption of CIL.
22. As part of the process for preparing a SPD, the local plan regulations<sup>1</sup> require a period of public consultation on a draft document. Following this, the document – incorporating any changes made as a result of consultation responses – will be brought back to Executive for adoption. At this point, it will become a material consideration when determining planning applications.

### **Approach to the allocation and spending of CIL**

23. Traditionally, the Council has secured funding through section 106 contributions for pre-defined infrastructure types or projects. This gave a clear framework for expenditure and also meant that, for a large part, money was passed to Surrey County Council to spend.
24. Unlike s106, CIL income accumulates in a single pot which is not ring-fenced for specific schemes and responsibility for spending is placed almost entirely in the Borough Council's remit. This gives flexibility over spending but requires new arrangements to be put in place to provide a framework for the allocation and spending of funds. These arrangements will ensure CIL spending decisions are taken in a robust and transparent manner.
25. Spending of CIL falls within following three "pots":
  - a. Up to 5% of total income per annum can be retained for administration costs<sup>2</sup>.
  - b. At least 15% of income generated in a particular part of the borough (increasing to 25% in areas where a neighbourhood plan is in place ) must be passed to the relevant Parish/Town Council (where one exists) or (where

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<sup>1</sup> Regulation 12 of the Town and Country Planning (Local Planning) (Regulations) 2012

<sup>2</sup> Regulation 61 of the Community Infrastructure Levy Regulations 2010 (as amended)

there is no Parish/Town Council) spent by the Council in that area and in consultation with the local community<sup>3</sup>. This is referred to in the rest of this report as the “neighbourhood element”.

- c. The remainder of income is retained by the Council to spend on the “provision, improvement, replacement, operation or maintenance of infrastructure”<sup>4</sup> (Regulation 59 of the CIL regulations). This is referred to in the rest of this report as the “strategic element”.

26. The proposed approach and principles for allocation and spending of both the “neighbourhood element” and the “strategic element” are summarised below.

#### **Administration allowance**

27. The Council will be responsible for the administration and collection of CIL: this will have cost implications for the Council.
28. To ensure that CIL administration is self funding in the long-run, it is proposed that the maximum allowance of 5% will be retained each year, subject to monitoring of actual administration spend. In the event the monitoring indicates administration costs fall below 5% of income, the surplus would be re-directed to the strategic element.

#### **Neighbourhood element**

29. As set out above, the CIL Regulations require a proportion of CIL to be spent at the neighbourhood level on infrastructure or any other project deemed necessary to address the demand placed on the area by new development.
30. The amount of money available in each area will depend on the scale of development that occurs in each particular area. Based on percentages specified in the Regulations and summarised above, it is estimated that the funding available could range from £1,000 to over £10,000 per year depending upon the ward.
31. In Town/Parish Council areas – in this borough Salfords & Sidlow and Horley – the Regulations require the Council to transfer the neighbourhood element to the relevant council who will then be responsible for spending. Regular engagement between the Council and these bodies will be important to establish shared priorities, ensure spending proposals are complementary and to ensure regulatory compliance around spending and reporting.
32. For non-parished areas, it is proposed that wards are used as the basis for distribution of the neighbourhood element. In these areas, funding will be held by the Council but must be spent in the relevant area and in consultation with the local community.
33. This consultation will take two forms. An up-front targeted consultation exercise – supported by the Corporate Engagement Team – will be used to generate an initial understanding of local priorities for each neighbourhood. This is proposed to be carried out initially in early 2016, but could be repeated subsequently if necessary. On-going engagement with communities on projects and priorities will then primarily be co-ordinated through Ward Councillors.

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<sup>3</sup> Regulations 59A, 59C and 59F of the Community Infrastructure Levy Regulations 2010 (as amended)

<sup>4</sup> Regulation 59 of the Community Infrastructure Levy Regulations 2010 (as amended)

34. A list of potential projects would be established for each neighbourhood, drawn from those projects suggested directly by the local community or complementary schemes identified by the Council or partner organisations. All projects will be reviewed against a number of guiding principles to ensure consistency with the requirements of the CIL Regulations and also evaluate fit with local priorities, the nature of community benefit and deliverability of the project.
35. Ward Councillors would then be jointly responsible for selecting and agreeing which projects they wish to support in their area. Projects could be funded at any point during the year (subject to the availability of funding); however, Ward Councillors would also be approached at the end of each year to confirm whether they wish to spend or roll-over any residual funding which might be available in their neighbourhood.
36. As projects are most likely to be lower value, approval of spending on neighbourhood projects would be subject to appropriate delegation - as proposed in **Annex 5** - consistent with existing arrangements for both core funding and spending of section 106 funds. This will ensure decisions can be taken without unnecessary delay and enable the benefit of CIL at the local level to be felt more quickly.
37. The proposed approach to, and principles for, the use of the CIL neighbourhood element aligns with arrangements for the Neighbourhood Improvement Fund which was approved by Executive in December. This effectively provides an opportunity to “pilot” the consultation and governance arrangements around CIL and also means that, in time, there is scope for CIL to become the sustainable long-term funding source for the Neighbourhood Improvement Fund.

### **Strategic element**

38. Once the administration allowance and neighbourhood element discussed above have been top-sliced, the remainder of CIL income is retained by the Council to be spent on infrastructure across the borough. Through this strategic element, the Council will in effect become a commissioning body for infrastructure.
39. The key principle for the allocation of the strategic element of CIL is that it should support, and provide certainty about the funding of, those projects which are most critical to support growth or which are otherwise strategically/corporately important. This certainty will also enhance the value of CIL as a “match funding” tool to leverage in money from other sources.
40. To provide a framework for allocating this element, it is proposed that the Council develops and approves a Strategic Infrastructure Programme. This would be a forward looking programme which sets out the specific projects to which the Council will commit CIL funding over the following 5 year period and the amount of CIL funding which it is willing to contribute to them.
41. The Programme will be tightly defined and take account of the anticipated CIL income over the relevant period to ensure it is realistic. Projects would be identified based on evidence in the Council’s Infrastructure Delivery Plan as well as ongoing engagement with infrastructure providers who would be expected to demonstrate the business case for particular projects.
42. As with the neighbourhood element, projects will be reviewed and prioritised against a series of criteria designed to appraise the relative need for, and benefit of the

project, as well as its deliverability, including the necessity of CIL as a funding source.

43. As the Programme is likely to include contributions of a higher value, and projects of particular importance to the borough, the Programme will be reported to the Council's Executive for approval. Once agreed, it would then be used as the framework for allocating and releasing monies collected. Appropriate delegated authority would also be sought for officers to release money in accordance with the Programme, enabling key projects to be moved forward swiftly when they become ready for implementation.
44. The release of money for an individual project is proposed to be subject to the provider demonstrating to the Council's satisfaction that the project is ready for imminent delivery. This will ensure the Council remains in control of spending and reduce the risk of money being passed to others and remaining unspent. Additional measures – such as the use of funding agreements – will ensure money is spent on the agreed projects, within a certain timeframe and ensure regular progress reporting by the provider. Arrangements to enable unspent monies to be repaid or reclaimed will also be put in place.
45. It is proposed that the first Strategic Infrastructure Programme will be developed during the second half of 2016 and will be brought to Executive for approval in early 2017. Significant income from CIL is not anticipated to be generated before 2017, and no allocation will be made from the strategic element prior to adoption of the Strategic Infrastructure Programme. The Programme will thereafter be closely monitored and reviewed annually to ensure it continues to capture high priority and deliverable projects and enable monies to be redirected where it becomes apparent that a project is no longer deliverable or necessary.
46. Any income not needed for projects on the Programme could be made available for infrastructure providers to bid for on an ad hoc basis to fund windfall projects.
47. To enable the CIL funding stream to be accounted for in accordance with the Code of Practice on Local Authority Accounting, it is proposed to establish a specific earmarked reserve within which to hold CIL funds until such time as they are ready to be released.

### **Changes to the Officer Scheme of Delegation**

48. Introduction of CIL brings with it a number of new obligations, duties and powers for the Council. This includes responsibility for determining liability, serving notices, collecting funds and enforcing non-payment as set out in the CIL Regulations.
49. Whilst the current scheme of officer delegation includes a wide range of provisions relating the operation of the Planning and Development function, it does not cover the specific activities set out in the CIL regulatory framework. To enable the levy to be administered effectively, efficiently and properly, delegation of a number of the Council's duties and powers to officers is recommended.
50. **Annex 5** lists each of the recommended additions to the Officer Scheme of Delegation to reflect the introduction of CIL. These duties and powers focus on the day-to-day implementation of CIL, particularly:
  - a. Charging, including determination of liability, applications for relief and the issuance of statutory notices



b. Collection and enforcement

51. The use of these powers is clearly prescribed by the CIL Regulations and as such the volume of discretion in each case is relatively limited. Additionally, the Regulations require either a response within a set timeframe (e.g. reviews of chargeable amounts) or decisive action (in the case of enforcement) for a number of the duties proposed for delegation.
52. Powers involving elements of policy discretion, such as whether or not to make various reliefs available, and the Council's responsibilities in relation to submission, approval and review of the Charging Schedule itself, are not proposed to be delegated.
53. To ensure the spending of the neighbourhood element can be managed in a proportionate and flexible manner, a delegation to Officers for CIL spending, consistent with the existing provision for section 106 at line 2.24 of the Scheme of Delegation, is also recommended.

## OPTIONS

54. The following options are available to the Executive:

Recommendation (i):

- a. Approve the Charging Schedule incorporating the modifications recommended by the Examiner: This will enable the Council to progress to implementation. It is important that the Schedule moves forward quickly as delays will result in lost revenue. **This option is recommended.**
- b. Approve the Charging Schedule with alternative modifications: This option would mean that CIL could still progress to implementation; however, any alternative proposals would need to be within the scope of the existing evidence or may require additional evidence work to be undertaken. Alternative proposals not supported by evidence could attract legal challenge. All of the above would potentially delay implementation and revenue. This option is not recommended.
- c. Do not approve the Charging Schedule: Formal approval is required if the Council is to implement the levy. This option would therefore effectively mean that the Council could not progress any further with CIL, or would need to start afresh with a new Schedule. This option is not recommended.

Recommendation (ii):

- a. Approve the Regulation 123 List, Instalments Policy and Payment in-kind policy: This will ensure that the policies necessary to support implementation are in place in good time and that the Council's approach is clear and transparent. **This option is recommended.**
- b. Do not approve the Regulation 123 List, Instalments Policy and Payment in-kind policy: This option would undermine the transparent and smooth implementation of the levy. Failure to adopt a Regulation 123 list will also prevent the Council from using section 106 obligations at all once CIL is adopted, even if site specific infrastructure and mitigation is required. This option is not recommended.

Recommendation (iii):

- a. Approve the draft SPD for consultation: The SPD will be an important tool in ensuring CIL and other developer contributions are operated in a clear and efficient manner. A statutory period of public consultation must be carried out before it can be adopted. **This option is recommended.**
- b. Do not approve the draft SPD for consultation: The Council's existing guidance on developer contributions is dated and does not reflect current practice or regulations. This could result in delay and confusion for stakeholders. This option is not recommended.

Recommendation (iv):

- a. Endorse the proposed approach to allocation and spending: This will ensure that the Council has a clear approach and framework within which to take decisions on the allocation and spending of CIL. It will enable the Council to move forward with the identification of projects and will support effective delivery of infrastructure, maximising the benefits of CIL at the local level. **This option is recommended.**
- b. Do not endorse the proposed approach to allocation and spend: This would mean that there is no clear overarching framework or principles within which to progress with the allocation and spending of CIL. This option is not recommended.

Recommendation (v):

- a. Approve the establishment of an earmarked reserve for CIL: This will enable CIL income to be held and accounted for in accordance with best practice. **This option is recommended.**
- b. Do not approve establishment of an earmarked reserve: This option would result in a lack of compliance with the Code of Practice for Local Authority Accounting and may prevent CIL receipts being spent on the full range of infrastructure projects envisaged in the CIL Regulations. This option is not recommended.

Recommendation (vi):

- c. Approve the proposed amendments to the Officer Scheme of Delegation: This will enable day-to-day administration of the CIL process to be carried out in an effective, efficient and proportionate manner, avoiding unnecessary delay or legal risk. **This option is recommended.**
- d. Do not approve the proposed amendments to the Officer Scheme of Delegation: This option would effectively mean that even routine day-to-day tasks or powers needed to administer CIL would be subject to approval by Council – this would be impractical, or, where actions are carried out without appropriate delegations, could lead to legal challenge. This option is not recommended.

## LEGAL IMPLICATIONS

55. Charging schedules for CIL do not require a Sustainability Appraisal or Habitats Regulations Assessment.

56. Following receipt of an Examiner's Report, the Planning Act 2008 and the CIL Regulations require the Council – as the charging authority – to formally approve the Charging Schedule if it is to take effect.
57. Since April 2015, the Council's ability to use section 106 agreements to secure infrastructure from new development has been restricted. In practice, this has meant the Council has not been able to apply generic tariffs (such as the Horley Infrastructure Tariff). As a result, contributions towards infrastructure from new development have been limited. Approval and implementation of CIL will address this.
58. It is not possible for officers to act without correctly delegated powers. Therefore, failure to have a correct scheme of delegation in relation to CIL means that any actions relating to undelegated matters – even for day to day administration, duties and powers, must be approved by the Full Council. This would be impractical. Were action to be taken without satisfactory delegations, the Council could be liable to legal challenge and potentially incur substantial legal costs.
59. The draft Developer Contributions SPD (**Annex 4**) will form part of the policy framework for the borough once adopted and will be a material consideration in determining planning applications.

## **FINANCIAL IMPLICATIONS**

60. The preparation and examination of the CIL Charging Schedule has been funded from existing Planning Policy budgets. Preparation and consultation on the draft SPD will also be funded from existing Planning Policy budget and resources.
61. Based on the charges proposed in the Charging Schedule and the level of development proposed in the adopted Core Strategy, it is estimated that CIL has the potential to raise approximately £20-24 million towards infrastructure in the period up to 2027.
62. The Council will be responsible for the administration and collection of CIL: this will result in some ongoing revenue costs. In order to ensure that the day to day administration of CIL is adequately resourced, the creation of a new full time equivalent post is proposed. In addition, work is ongoing to procure an IT system to manage and record the CIL charging and collection process in the most efficient and robust way.
63. The Council is permitted to use up to five per cent of annual CIL receipts to cover administration costs: in the long run, it is therefore expected to be self-funding. However, as income from CIL will take time to accumulate, set up costs and administration in the early years of implementation are likely to exceed income. This net cost – approximately £100,000 over the period from 2016/17 to 2018/19 will be the subject of a separate Corporate Plan Delivery Fund bid as set out in the draft business plan for Planning Policy and Economic Prosperity.
64. The Strategic Infrastructure Programme will act as a framework for allocating CIL funding. The need for separate, specific approval through the Capital Programme will remain for capital projects which would be delivered by the Council itself. This will ensure that existing processes are observed and the financial commitment and any risks are acknowledged.

65. The establishment of a Community Infrastructure Levy Fund earmarked reserve to hold CIL receipts until such time as they are ready to be released will ensure compliance with best practice in local authority accounting.

### **EQUALITIES IMPLICATIONS**

66. An equalities impact screening assessment was undertaken to support the PDCS which came before Executive in November and no equalities implications were identified. This assessment has been reviewed in the context of the DCS and it is considered that there is no change to this conclusion.

### **RISK MANAGEMENT CONSIDERATIONS**

67. The following risk management considerations have been identified:
- a. Strategic – Objective Failure/Governance and Resource Management: Introduction of a CIL is a key outcome of Our Five Year Plan. Formal approval of the Charging Schedule is required to enable to Council to begin charging. Proposing alternative modifications to those recommended by the Examiner risks legal challenge. Any delay in approving the Schedule would result in lost future income.
  - b. Reputational/Legal – If CIL is not administered, enforced and spent in transparent way and fully in accordance with the Regulations, there is a risk of legal challenge. Failure to engage local communities adequately in spending of the neighbourhood element could also have adverse reputational risks. A clear and transparent approach and framework within which to take decisions, along with appropriate delegation arrangements, is therefore essential.

### **OTHER IMPLICATIONS**

68. No other implications have been identified.

### **CONSULTATION**

69. The Council's Legal and Finance teams, and the Corporate Governance Group, have been consulted on this report.
70. Subject to Executive approval, a period of public consultation will be held on the draft Developer Contributions SPD in accordance with the relevant regulations. Feedback from this consultation will inform the final version which will be brought to Executive for approval. A consultation statement setting out how this will be conducted (as required by local planning regulations) is included as a background paper.
71. The Charging Schedule has been subject to consultation throughout its preparation.

### **POLICY FRAMEWORK**

72. Delivering planned growth in a way which benefits the borough is part of the Five Year Plan 2015-2020. Securing funding for infrastructure across the borough is a key outcome of this objective, and adoption and implementation of CIL is a specific success measure.

73. CIL is identified as a delivery mechanism for a number of policies within the Council's Core Strategy. Specifically, money collected through CIL will aid the delivery of the infrastructure needed to support planned levels of growth.

**Background Papers:** Draft Developer Contributions SPD: Consultation Statement



Reigate and Banstead Borough Council Draft CIL Charging Schedule, Examiners Report December 2015



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# **Report to Reigate and Banstead Borough Council**

**by Louise Nurser BA (Hons) Dip UP, MRTPI**

**an Examiner appointed by the Council**

**Date: 2 December 2015**

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

## **REPORT ON THE EXAMINATION OF THE DRAFT REIGATE AND BANSTEAD BOROUGH COUNCIL COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

Charging Schedule submitted for examination on 16 June 2015

Examination hearings held 8 September 2015

File Ref: PINS/L3625/429/8

### **Non Technical Summary**

This report concludes that with one modification the Reigate and Banstead Borough Council Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area.

The Council has sufficient evidence to support the schedule and can show that the levy is set at a level that will not put the overall development of the area at risk.

One modification is needed to meet the statutory requirements. This can be summarised as follows:

- That the CIL charge for 'Residential development falling within Use Class C3 and situated within Charge Zone 1' is reduced from £20 to £0 per square metre (psm).

The specified modification recommended in this report is based on matters discussed during the public hearing sessions and does not alter the basis of the Council's overall approach or the appropriate balance achieved.

### **Introduction**

1. This report contains my assessment of the Reigate and Banstead Borough Council draft Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008. It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance (Community Infrastructure Levy Guidance –June 2014).
2. To comply with the relevant legislation the local charging authority has to submit a charging schedule which sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the borough. The basis for the examination, on which hearing sessions were held on the 8 September 2015 is the submitted schedule of June 2015, which is the same as the document published for public consultation on 13 April 2015.
3. The Council proposes CIL charges for residential development (including retirement housing), and convenience retailing.
4. The proposed CIL charges for 'residential' development relate to five residential market zones defined on a map in the Draft Charging Schedule. These are based on a number of Value Levels derived from residential value



Reigate and Banstead Borough Council Draft CIL Charging Schedule, Examiners Report December 2015

points which have been tested<sup>1</sup>. Zone 1<sup>2</sup> relates to the low value market areas that include the town centres of Redhill and Horley; a CIL charge of £20 per sq metre (psm) is proposed in this zone. Zone 2<sup>3</sup> covers the high value northern and western urban areas of the Borough (including Banstead, Reigate and the smaller settlements to the north); a CIL charge of £140 psm is proposed in this zone. Zone 3<sup>4</sup> includes the remaining urban areas running from Merstham down to Horley; a CIL charge of £80 psm is proposed in this zone. Zone 4 relates to the Horley North West Sector, which is an area of major housing development for which there is an extant planning permission and whose infrastructure requirements have been agreed through a signed S106 obligation; a CIL charge of £180 psm is proposed in this zone. Zone 5 relates to the rest of the Borough outside of the urban areas. This includes the broad areas in which a number of Sustainable Urban Extensions (SUE's) are promoted through the Reigate and Banstead Local Plan: Core Strategy (CS) adopted in July 2014, and for which there is developer interest; a CIL charge of £200 psm is proposed in this zone.

5. Retail CIL charges would apply only to convenience stores, that is developments which are wholly or predominantly for the sale of convenience goods, including supermarkets and superstores; a charge of £120 psm is proposed throughout the borough.
6. For completeness, the Draft Charging Schedule lists zero rated CIL charges for 'all other development'.

**Is the charging schedule supported by background documents containing appropriate available evidence?**

*Infrastructure planning evidence*

7. The Reigate and Banstead Local Plan: Core Strategy (CS) was adopted in July 2014. This sets out the main elements of growth that will need to be supported by further infrastructure in the charging area. The CS is supported by an Infrastructure Delivery Plan (IDP). An Addendum to the IDP was produced which was updated in March 2015 to support the consultation relating to the Draft Charging Schedule. I appreciate that specific infrastructure<sup>5</sup> requirements may be refined in tandem with the emerging Development Management Plan which will set out allocations for development. However, there is no evidence before me to suggest that the projects contained within both documents do not represent an accurate, up to date assessment of the range of needs to support development across the Borough.

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<sup>1</sup> RBBC04 Community Infrastructure Levy Revised Viability Assessment Report Table 6

<sup>2</sup> RBBC05 Value Level 1

<sup>3</sup> RBBC05 Value Level 4

<sup>4</sup> RBBC05 Value Level 2 & 3

<sup>5</sup> RBBC07 IDP Addendum paragraph 1.4.

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8. The housing strategy contained within the Core Strategy has two strands. Firstly, the CS directs development of around 5,800 homes into the urban areas. This includes the Horley North West Sector (HNWS) which has outline planning permission and a signed S106 agreement. Secondly, if adequate levels of housing are not built to provide a 5 year supply of deliverable housing, Sustainable Urban Extensions (SUEs) are to be developed to provide around 1100 dwellings, in as yet, undefined locations. In these circumstances, the SUEs would be critical to the delivery of the Council's five year housing supply through the life of the development plan. Therefore, it is vital that CIL rates are set at a rate so as not to prejudice their development, nor that of the housing planned to come forward as part of the urban first approach which makes up the biggest proportion of the Council's housing supply.
9. The costs of the key infrastructure requirements, estimated at over £200 million, along with expected sources of funding are set out in the appendices to the IDP and the recent Addendum. The proposed infrastructure includes: highways, transport and public realm; education; community facilities; flooding; green infrastructure and open space; health and public safety; and other miscellaneous requirements<sup>6</sup>. The Council has clearly set out in its appendices to the IDP, and its more recent Addendum, how the infrastructure is envisaged to be funded, and the priority it attaches to each element of infrastructure. The Council expects that funding from existing S106 agreements, grant funding, (including New Growth Points, Pinch Point and Local Sustainable Transport Fund, together with core funding such as Education Basic Needs, Integrated Transport Scheme), and other sources of private and public funding will contribute around £145 million over the plan period. This leaves a funding gap of around £55 million or around a 28% shortfall between the cost of forecast infrastructure required and income. The two costliest draws on funding are the requirements identified for highways, transport and public realm; and education, which together are forecast to cost over £134 million over the plan period. The funding gaps for these are 20% and 38% respectively.
10. At the CIL rates set within the Draft Charging Schedule, it is estimated by 2027 that CIL receipts would generate up to £24 million<sup>7</sup> towards the funding gap, or around 43%. However, this figure appears to be a conservative estimate given that elsewhere in the Council's evidence CIL receipts are forecast to raise between £2.3- 2.8 million per annum, over the life time of the Core Strategy<sup>8</sup>. These forecast receipts would be higher than that achieved at the peak of S106 receipts prior to the enactment of CIL regulations and before

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<sup>6</sup> RBBC08 Community Infrastructure Levy- Explanatory Document page 5

<sup>7</sup> ibid

<sup>8</sup> RBBC09 Community Infrastructure Levy- Background evidence of recent section 106 contributions and affordable housing: paragraph 13.

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the economic down turn<sup>9</sup>. In the light of the information provided, the proposed charge would therefore make a significant contribution towards filling the likely funding gap. The figures demonstrate the need to levy CIL.

*Economic viability evidence*

11. The Council undertook its own CIL Viability Assessment to support the Council's Preliminary Draft Charging Schedule 2014, which was updated to accompany the Draft Charging Schedule. A number of notional residential and commercial developments were tested. As a result of my questions, prior to, during, and following, the hearings the Council made further amendments to the testing.
12. The assessment uses a standard residual valuation approach for the sites within the urban areas, but for the Strategic Urban Extensions, including North West Horley, a discounted cash flow model was used to enable the relatively long period between outgoings and receipts in large developments to be better reflected in the financial calculations.
13. Economic viability evidence requires broad assumptions to be made relating to appraisal inputs. Development scenarios require assumptions about land costs, construction costs, marketing fees, sales, profit levels, acquisition costs, finance, and specific assumptions relating to continuing financial obligations such as S106 or S278 agreements.
14. The Council has used reasonable standard assumptions for a range of factors such as building costs (including Code for Sustainable Homes requirements), profit levels, fees etc. The model for construction costs was adapted by tailoring the BCIS build costs to the Reigate and Banstead location and supplemented by specific further data where appropriate. The Government has removed the requirement for buildings to be built to the Code for Sustainable Homes standards. However, the Council has continued to provide an allowance against this within the development costs. This is partially to offset the costs associated with the more stringent building regulations and as a means of providing additional 'headroom' within the viability calculations.
15. Urban benchmark land values have been set using a 10% discount over market values. Greenfield land values have been based on a benchmark land value of £800,000 per net hectare. This is around 20 times the typical agricultural land values for the south east. I consider this, in common with the Council, to be at the 'life changing'<sup>10</sup> level which would encourage land to be sold. I note that anecdotal evidence has been submitted suggesting higher sales have been realised, however this evidence has not been tested. In

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<sup>9</sup> Ibid Table 2.

<sup>10</sup> RBBC04 Community Infrastructure Levy- Revised Viability Assessment Report March 2015 page 36

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addition, concerns have been raised that the implementation of CIL would result in a hangover of historic land values into future developments. However, this is unavoidable whenever CIL is brought into force. Nonetheless, this does not justify a 'do nothing' approach.

16. The profit assumptions used by the Council of 20% Gross Development Value (GDV) for open market housing, and 6% for affordable housing were challenged by representors. However, I have concluded such profits reasonable for these types of development and nothing that I have read demonstrates that they are inappropriate in this case.
17. For retail uses, similar assumptions are made but rather than sales values determining possible levels of CIL, it is the assumed rents and yields that impact on viability.
18. The Council set proxy figures for site specific S106/ S278 costs based on historic contributions and in the case of the HNWS on the basis of the known site specific infrastructure costs. The Draft Charging Schedule is also supported by the Council's draft Regulation 123 list<sup>11</sup>. The list includes a wide variety of infrastructure types and makes clear within the Horley North West Sector (HNWS) that particular projects would be funded through S106 agreements. Concerns were raised at the hearings that in the other SUE's, these would be expected to fund primary school facilities via S106 agreements. The Council has since clarified that it intends to redraft the CIL list to exclude primary schools from S106 agreements other than those within the HNWS. Amending the Regulation 123 list to achieve this clarity is important and I urge the Council to do so. However, the Regulation 123 list is not part of the Charging Schedule and so is not before me.
19. The Council has explicitly stated that, where the provision of affordable housing would impact on the viability of development within Zones 1, and Zone 3 negotiations could take place to reduce the levels of affordable housing<sup>12</sup>. I note that Policy CS15 of the Core Strategy refers to the viability of developments when negotiating affordable housing. However, the Planning Practice Guidance is clear that development costs should include the financial implications of planning obligations set out in policies in the relevant Plan<sup>13</sup>. Therefore, there is no justification within the PPG to offset affordable housing provision against CIL revenues as promoted within the Council's Revised Viability Assessment Report and reiterated at the Hearing. This has particular relevance in Zone 1 and I will return to this later in my report.

### *Conclusion*

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<sup>11</sup> RBBC02 Community Infrastructure Levy- Draft Infrastructure List 2015

<sup>12</sup> RBBC04 pages 41& 45

<sup>13</sup> Planning Practice Guidance ID 25-020-20140612

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20. The Draft Charging Schedule is supported by detailed evidence of community infrastructure needs. I consider following my examination that the inputs, detail, and geographical distribution of the sites which have been tested and used as comparator evidence are proportionate, broadly reasonable and robust subject to my conclusions relating to affordable housing within Zone 1.<sup>14</sup>

### **Is the charging rate informed by and consistent with the evidence?**

#### *CIL rates for residential development*

##### *Zone 1- £20 psm*

21. In Zone 1, which equates to Redhill and Horley Town Centres, the Council anticipates that most new housing will be in the form of flats rather than houses. Accordingly it has tested the viability of this type of housing. This is reasonable.
22. These assessments show that flats would not be viable when the full affordable housing requirements sought by Policy CS15<sup>15</sup> are factored in. I appreciate that the Council considers that the levels of affordable housing that might be lost would not be significant. However, I have already concluded above that CIL should be based on an assessment of full policy costs. In this case it is clear that if such costs are included much housing development would not be capable of viably sustaining a charge of £20. Accordingly, setting a rate at this level would not be consistent with the viability evidence<sup>16</sup>. Furthermore, it is a strategic objective of the CS<sup>17</sup> to direct housing to this area and so it would not be appropriate to put development here at risk.
23. I therefore recommend that the rate should be reduced to nil **(EM1)**. According to the Council's estimates this would reduce CIL income by around £400,000. However, this would not fundamentally affect the overall balance referred to in para 2 of my report.

##### *Zone 2- £140 psm*

24. Zone 2<sup>18</sup> includes the most affluent areas of the Borough. The VA that has taken place demonstrates strong viability with a consistent cushion of over 50% on the CIL at £140 psm. Some objectors considered that the build costs

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<sup>14</sup> RBBC05 Community Infrastructure Levy- Revised Viability Assessment Report- Appendices March 2015 and RBBC18 Council's Response to Examiner's Post hearing Information Requests.

<sup>15</sup> RBBC10 Reigate and Banstead Local Plan: Core Strategy Adopted July 2014

<sup>16</sup> Planning Practice Guidance ID 25-021-20140612

<sup>17</sup> RBBC10 Reigate and Banstead Local Plan: Core Strategy Adopted July 2014 CS5: Allocation of land for development and CS13: Housing Delivery

<sup>18</sup> RBBC05 Value Level 4

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based on the use of BCIS estate data, albeit with a 20% uplift for the smaller sites, did not accurately reflect the costs of high specification and low density housing typical of the area. However, I was not provided with detailed evidence. In any case, the values that are likely to be realised, which appear to be much higher<sup>19</sup> than the conservative figure of £4000 psm, demonstrate the limited risks involved in the construction and marketing of such housing. Therefore, I conclude that the viability of development is unlikely to be threatened by the proposed CIL rate.

### *Zone 3- £80 psm*

25. Zone 3 makes up the rest of the existing urban area and includes an amalgam of Value Areas 2 and 3. The sensitivity testing<sup>20</sup> evidence indicates that only schemes of 7 houses or more and developments of flats of 25 units or more would be viable.
26. However, developments of 1-3 houses<sup>21</sup> and flats<sup>22</sup> are likely to make only a negligible contribution to the supply of housing in the Zone. Consequently, the proposed rate would not significantly constrain housing development in the Zone and there would be no justification to reduce the levy. In addition, the PPG advises that there is no requirement for rates to directly mirror the evidence.

### *Sustainable Urban Extensions*

27. Prior to the hearings the Council and a consortium representing a number of developers put together a Statement of Common Ground which provided a clear analysis of areas of continued disagreement. At the hearing participants representing other developers confirmed that they agreed in general to the position set out in the Statement of Common Ground.
28. Areas of continued disagreement included build costs. Developers suggested that these, together with sales values, should be tested using the most up to date values. However, I consider it reasonable that costs and sales values should be derived from a particular point in time. The level at which CIL rates are set, should be sufficiently robust so that changes in costs or sales values would not seriously undermine the viability of development. Consequently, I consider the Council's approach to be appropriate.
29. The use of the discounted cash flow model was criticised by the development

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<sup>19</sup> RBBC05 Table A1-9 p 14

<sup>20</sup> RBBC05 Table 16 p 40

<sup>21</sup> RBBC21 Letter to Examiner 17 November 2015

<sup>22</sup> RBBC04 page 45

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industry as being opaque. However, as it is the same model that had been agreed for use by developers in negotiating the S106 which relates to the Horley North West Sector I see no reason to query its efficacy, albeit, not all the developers involved consider it to be an appropriate model. Moreover, in the interests of transparency the Council reran its figures using the residual land valuation model.

30. The Council has included abnormal costs within its appraisals. In addition, it included *opening up, external, commercial contingency, other contingency as well as residual site specific costs* (S106 and S278) within the SUEs of over 300 units. The rate at which CIL is set does not normally take into account the cost of abnormals as it is usual practice for this to be offset from the value of land when it is sold. The fact that the Council has made an allowance for abnormals when setting the CIL levy rate demonstrates a degree of caution in establishing costs. Similarly, providing for a 7.5% contingency cost over and above that allowed within the profit margin demonstrates a cautious approach in establishing costs.
31. The Council has assessed developments of 300 and 500 units. Although, a site allocation development plan document has not been prepared the Council's SHLAA<sup>23</sup> evidence suggests that it would be unlikely that a larger site would come forward as a SUE. However, even if it did, from the evidence submitted by the Council in its VA at this quantum of development the overage available would still support a CIL rate at £200 psm<sup>24</sup>.
32. The CIL rates of nearby Councils were used as a comparator to those within the Draft Charging Schedule. However, I have considered the Draft Charging Schedule on the basis of the viability evidence before me, and drawn my conclusions from this.

#### *Zone 4- £180 psm North West Horley Sector*

33. CIL is levied on the basis of a development's ability to absorb the charge taking into account relevant costs, including a reasonable developer's profit. The levy rate is not set as a means to contribute to the funding of the public infrastructure limited to the requirements of a particular scheme. The level at which the CIL rate is set is dependent solely on the viability evidence. I appreciate that in some charging areas, strategic sites have been nil rated where the viability evidence demonstrated that this was appropriate. Conversely, where the economic evidence demonstrates viability, strategic sites can sustain a charge.
34. It has been suggested that the CIL should be nil rated as the site has already been granted planning permission. The developers are concerned that they

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<sup>23</sup> RBBC14 Annex 4

<sup>24</sup> RBBC17 Appendix 2

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may be double charged through CIL and the planning obligation, were any future amendments to the scheme to take place. However, S128a of CIL Regulations sets out the transitional arrangements that prevent this from happening<sup>25</sup>. Conversely, if a nil charge CIL were to be fixed for the strategic site without compelling viability evidence, there could be a risk that it might confer a selective financial advantage to a particular developer or site<sup>26</sup>.

35. I consider that the assumptions that the Council has made relating to the costs and returns for the site are reasonable and would result in a viable development. This is confirmed by a simple sense check where I have compared the cost of the extant S106 of £39 million to the figure of £43 million, which is the sum of the residual S106 costs for the site at £21.6 million and the cost of the CIL at £180 psm. Whilst the latter figure is marginally larger I conclude that it would be within the same broad range.
36. Therefore given the viability cushion of around 30%, together with the generous head room inherent in the Council's assumptions I am confident that the evidence is clear that the CIL rate of £180 psm would be economically viable over the HNWS.

#### *Zone 5- £200 psm*

37. The exact geographical location and size of the SUEs have yet to be defined and there is disagreement between the Council and the developers as to the appropriate levels at which a notional S106 rate per dwelling should be set. Given the inclusion of abnormal costs within the VA together with a comprehensive list of development costs and a restricted list of infrastructure which is expected to be funded from S106/S278 as set out in the Reg 123 list, I consider that a £10,000 per dwelling as promoted by the Council is a reasonable working figure. This conclusion is supported by the evidence set out demonstrating that on average large scale residential developments have been required to provide £9000 of financial contributions relating to site specific S106/S278 infrastructure.<sup>27</sup>
38. Even were the £15,000 input for the residual S106 obligations to be correct, this would still result from my calculations in a viability cushion of between 22% - 30% dependent on the numbers of units proposed. This is in contrast to the viability cushions ranging from 50%- 60% derived from the rerun of the viability assessments undertaken by the Council prior to the hearings<sup>28</sup>.
39. Consequently, I consider that the CIL rate of £200 psm is appropriate.

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<sup>25</sup> Planning Practice Guidance ID: 25-007-20140612

<sup>26</sup> Planning Practice Guidance ID: 25-021-20140612

<sup>27</sup> RBBC14 Statement in Response to Matter 3: Residential Levy Rates- Annex 1: Cost of S196/S278 Contributions on Large Residential Sites.

<sup>28</sup> RBBC 17 Appendix 2



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### *Specialist retirement housing*

40. The Council considers that specialist retirement housing that falls within Use Class C3 is sufficiently viable to be able to absorb the CIL rate appropriate to the zone in which the development takes place. Following criticism of the limited initial viability testing, the Council undertook further viability testing. The size of the units were reduced, the marketing and sales costs increased, and the allowance for the time period for sales to take place was extended reflecting the particular circumstances of the sector. Where possible, data was cross checked with real cases.
41. I conclude, given the comfortable viability margin of between 31%- 40%<sup>29</sup>, that the proposal to mirror conventional housing levy rates would be appropriate and would not impact adversely on this specialist sector of housing development.

### *Commercial rate*

#### *Zero-Rated commercial development*

42. The VA testing of industrial/ warehouse, office, leisure and hotel developments demonstrated that currently there would be negative residual land values. From the limited evidence before me I conclude that none of the development types would be able to support any form of CIL.

#### *Retail development*

##### *Comparison retailing*

43. The VA tested a range of town centre comparison retail developments. Whilst the smaller unit showed limited viability for CIL once a viability cushion of a 5% fall in rental levels or 5% increase in build costs was factored in this resulted in a negative value. Consequently, given the testing that was undertaken, I conclude that currently the comparison retailing sector would be unable to support any form of CIL.

##### *Convenience Retailing*

44. The Council tested a number of scenarios ranging from an 'Express' store to a large supermarket of up to 4500 sqm net floorspace. Each VA testing demonstrated viability, even in the context of sensitivity testing, with the

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<sup>29</sup> RBBC14 Table 4

Reigate and Banstead Borough Council Draft CIL Charging Schedule, Examiners Report December 2015

medium store being the healthiest<sup>30</sup>. An objector representing a Limited Assortment Discounter (LAD) contested the Council's approach of not differentiating CIL rates by size and suggested that the 2500 sqm threshold set out in the National Planning Policy Framework<sup>31</sup> be used to set different rates. Each of the scenarios tested demonstrated viability at different sizes. Therefore, in the absence of alternative VA's, I conclude that the figure set at £120 psm which includes a viability cushion of 50% is appropriate and would not create a serious risk to the delivery of the retail strategy set out in the Core Strategy.

#### *All other uses*

45. In order to achieve clarity and to avoid undue complexity the Council has not tested or considered further uses. Moreover, there is no evidence that such uses would make up a significant component of planned development. I conclude that this is the appropriate approach.

#### **Does the evidence demonstrate that the proposed charge rate would not put the overall development of the area at serious risk?**

46. The Council's decision to set the rates set out within the Draft Charging Schedule is broadly based on reasonable assumptions about development values and likely costs, subject to making the modification set out in Appendix A.
47. The evidence suggests that residential and commercial development will remain viable across most of the area if the charge is applied subject to the proposed modification.

#### **Conclusion**

48. In setting the CIL charging rate the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in Reigate and Banstead. The Council has tried to be realistic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that a range of development remains viable across the authority area. It may be an appropriate time to consider any revision to the charge once the emerging Development Management Plan has been adopted.

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<sup>30</sup> RBBC04 Community Infrastructure Levy (CIL) Revised Viability Assessment Report Table 23

<sup>31</sup> Paragraph 26 of the National Planning Policy Framework

Reigate and Banstead Borough Council Draft CIL Charging Schedule, Examiners Report December 2015

<b>LEGAL REQUIREMENTS</b>	
National Policy/Guidance	The Charging Schedule subject to the recommended modification complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended)	The Charging Schedule subject to the recommended modification complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Core Strategy and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

49. I conclude that subject to the modification set out in Appendix A the Reigate and Banstead Borough Council Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved.

*Louise Nurser*

Examiner

This report is accompanied by:

Appendix A (attached) – Modification that the examiner specifies so that the Charging Schedule may be approved.

### **Appendix A**

Modification recommended by the examiner so that the charging schedule may be approved.

Examiner Modification (EM) Number	Reference	Modification
EM1	Draft Charging Schedule Proposed CIL Charging	Amend from £20 to £0 and make consequential changes to the key.

Reigate and Banstead Borough Council Draft CIL Charging Schedule, Examiners Report December 2015

	Zone 1	
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# Community Infrastructure Levy Charging Schedule

**December 2015**

## 1. Introduction

- 1.1 This Charging Schedule has been approved and published in accordance with:
  - Part 11 of the Planning Act 2008 (as amended)
  - The Community Infrastructure Regulations 2010 (as amended)
- 1.2 For the purposes of the Community Infrastructure Levy, Reigate and Banstead Borough Council is a charging authority in respect of development the administrative area of the Borough of Reigate & Banstead.
- 1.3 This Charging Schedule was approved by the Borough Council on 11 February 2016 in accordance with Section 213 of the Planning Act 2008 and regulation 25 of the Community Infrastructure Levy Regulations 2010 (as amended).
- 1.4 The Charging Schedule will take effect from **1 April 2016**.

## 2. Calculation of the chargeable amount

- 2.1 The amount of CIL payable (the “chargeable amount”) in respect of a development will be calculated in accordance with regulation 40 of the Community Infrastructure Regulations 2010 (as amended).
- 2.2 As stipulated in the Regulations, the calculation of the chargeable amount is based on gross internal area (GIA). The definition of gross internal area is not specified in the Regulations; however, the generally accepted method of calculation is set out in the RICS Code of Measuring Practice (6<sup>th</sup> edition, 2007). This calculation method will be used by the charging authority subject to the specific provisions of regulation 6 of the Community Infrastructure Regulations 2010 (as amended).

### 3. CIL rates

3.1 CIL will be charged at differential rates (set at pounds per square metre) according to the type and location of development as shown in the following table:

Development Type	CIL Charge (£ per square metre)
Residential development falling within Use Class C3 and situated within the <b>Charge Zone 1</b>	Nil
Residential development falling within Use Class C3 and situated within the <b>Charge Zone 2</b>	£140
Residential development falling within Use Class C3 and situated within the <b>Charge Zone 3</b>	£80
Residential development falling within Use Class C3 and situated within the <b>Charge Zone 4</b>	£180
Residential development falling within Use Class C3 and situated within the <b>Charge Zone 5</b>	£200
Retail development which is wholly or predominantly <sup>1</sup> for the sale of convenience goods <sup>2</sup> , including superstores and supermarkets <sup>3</sup> , throughout the borough.	£120
All other development throughout the borough	Nil

3.2 In accordance with Section 211 (7A) of the Planning Act 2008 (as amended), the charging authority has used appropriate available evidence<sup>4</sup> to inform the rates set out in this Charging Schedule.

3.3 In setting the CIL rates above, the charging authority considers that – in accordance with regulation 14 of the Community Infrastructure Levy Regulations 2010 (as amended) – an appropriate balance has been struck between the desirability of funding infrastructure from CIL and the potential effects (taken as a whole) of imposing CIL on the economic viability of development within the borough of Reigate and Banstead.

### 4. Charging zones

4.1 In accordance with Regulation 12 of the Community Infrastructure Levy Regulations 2010 (as amended), the following maps identify the location and boundaries of the charging zones identified in the table above:

- Plan 1 identifying the zones for residential charges as set out in this charging schedule
- Plan 2 identifying the borough-wide zone relating to wholly or predominantly convenience retail development and all other development as set out in this charging schedule

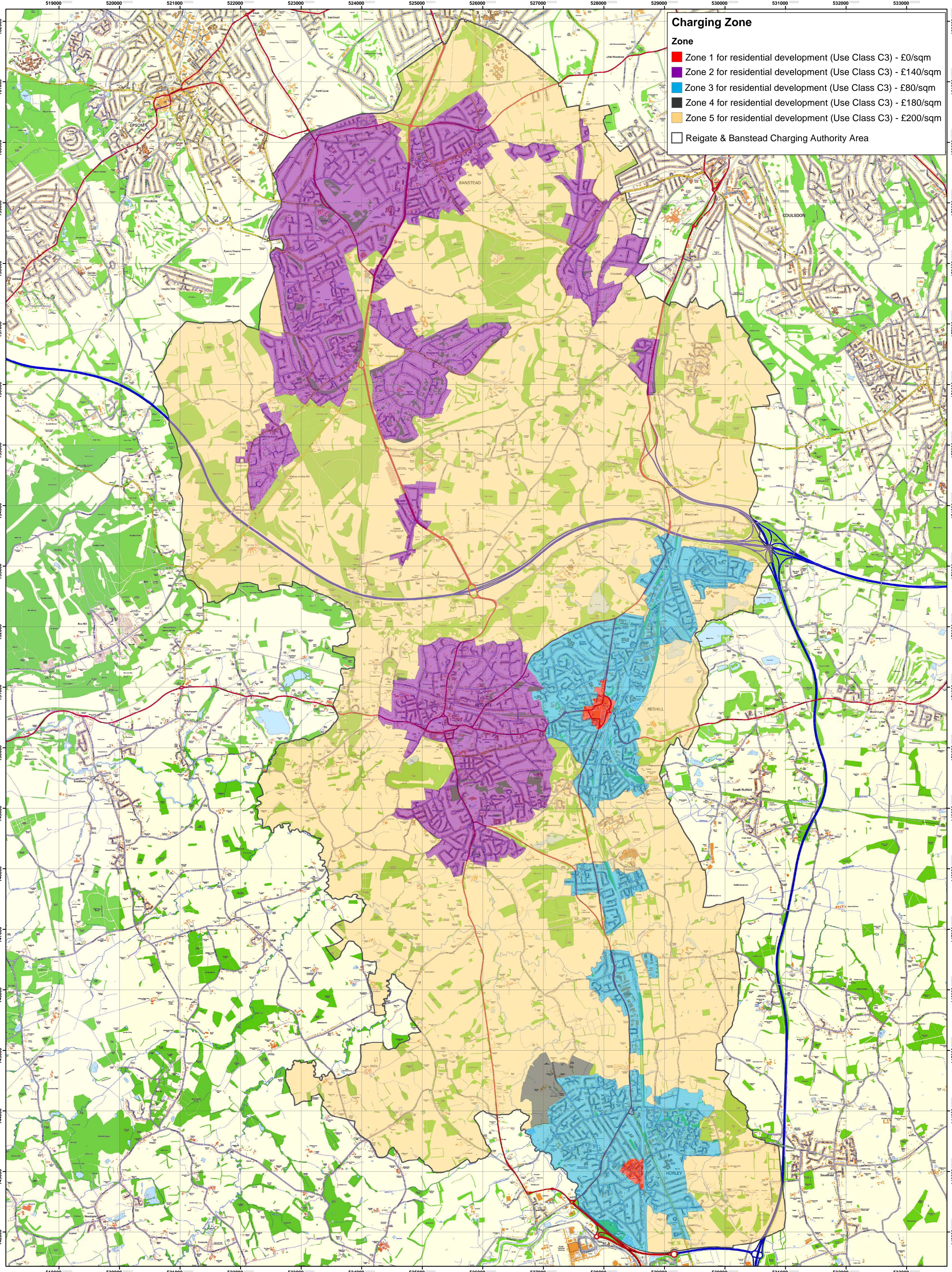
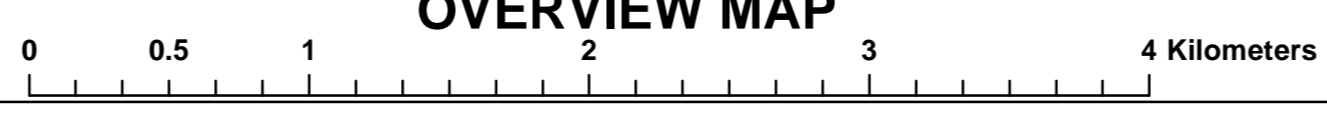
<sup>1</sup> For the purposes of CIL, a development is considered to be predominantly for the sale of convenience goods where more than 50% of the net sales area is given over to the sale of such goods.

<sup>2</sup> Defined as everyday essential items including but not limited to food, alcoholic and non-alcoholic beverages, confectionary, tobacco, newspapers and periodicals and non durable household goods.

<sup>3</sup> Superstores/supermarkets are defined as self-service stores which provide either weekly or top-up shopping needs and which sell mainly convenience good but can also include a proportion non-food, comparison floorspace as part of the mix.

<sup>4</sup> Comprising the Reigate & Banstead Infrastructure Delivery Plan (updated March 2015) which was originally examined in support of the Council's sound Core Strategy and the Reigate & Banstead Community Infrastructure Levy Viability Assessment Report (March 2015).

**PLAN 1: CHARGING ZONES FOR RESIDENTIAL DEVELOPMENT  
OVERVIEW MAP**



**Charging Zone**

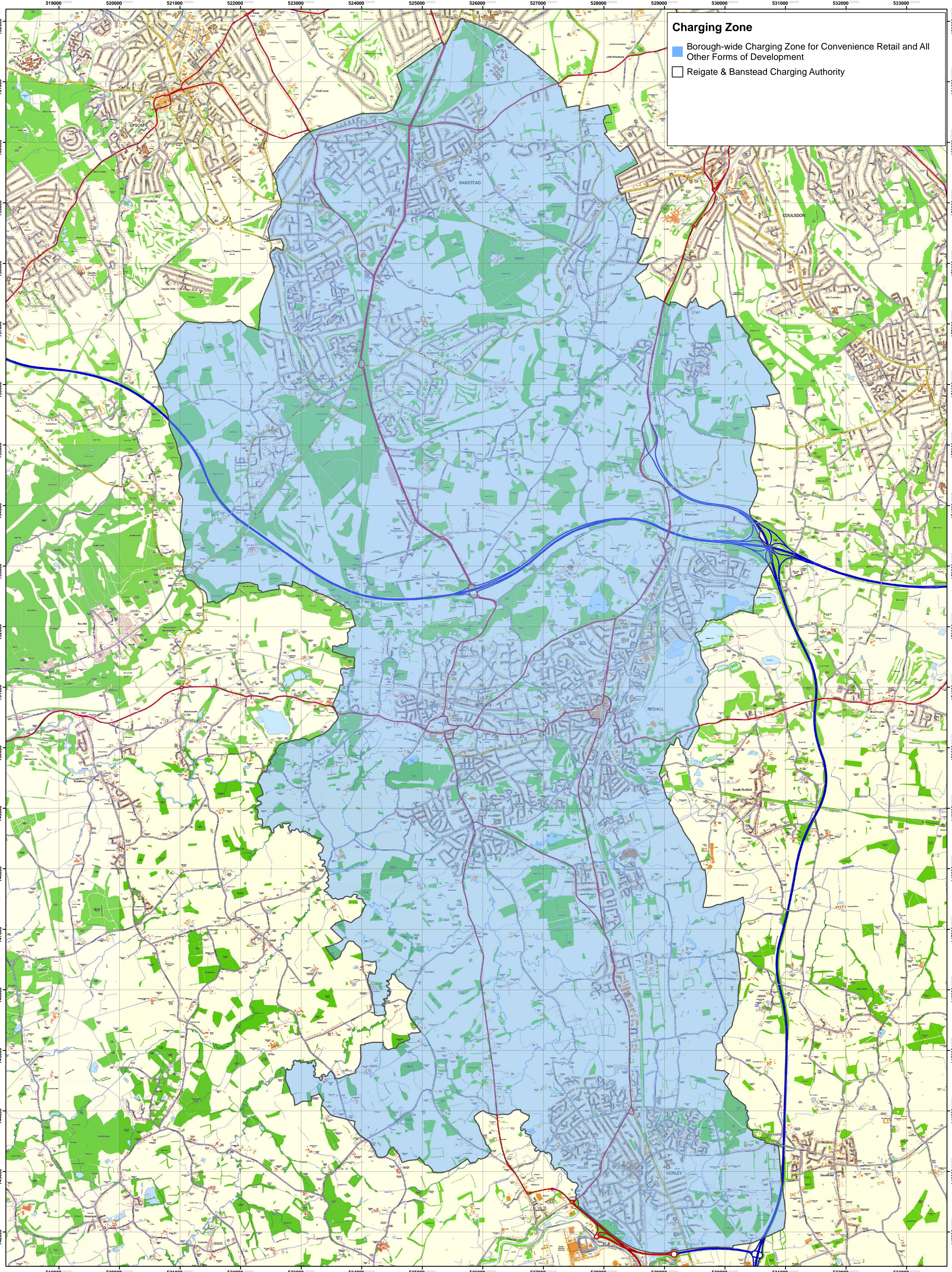
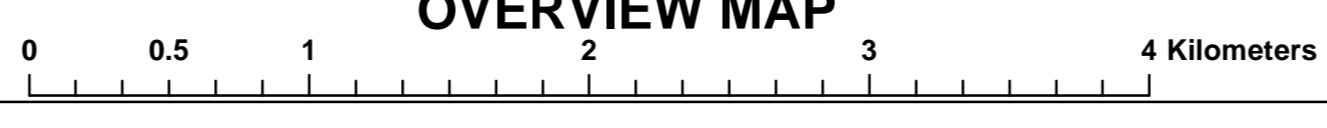
**Zone**

- Zone 1 for residential development (Use Class C3) - £0/sqm
- Zone 2 for residential development (Use Class C3) - £140/sqm
- Zone 3 for residential development (Use Class C3) - £80/sqm
- Zone 4 for residential development (Use Class C3) - £180/sqm
- Zone 5 for residential development (Use Class C3) - £200/sqm



□ Reigate & Banstead Charging Authority Area



**PLAN 2: CHARGING ZONES FOR CONVENIENCE RETAIL AND ALL OTHER FORMS OF DEVELOPMENT DEVELOPMENT  
OVERVIEW MAP**



**Charging Zone**

-  Borough-wide Charging Zone for Convenience Retail and All Other Forms of Development
-  Reigate & Banstead Charging Authority



Executive  
7 January 2016

Agenda Item: 5 Annex 3  
Community Infrastructure Levy:  
Instalment Policy

# Community Infrastructure Levy

## Instalment Policy

December 2015

## Instalment Policy

1. In accordance with Regulation 69B of the Community Infrastructure Levy Regulations 2010 (as amended), Reigate & Banstead Borough Council will allow the payment of CIL by instalments in accordance with the provisions of this Policy.
2. As set out overleaf, the instalments permitted will be linked to the amount payable (the chargeable amount) as recorded on the Demand Notice.
3. As permitted under Regulation 9 (4) of the Community Infrastructure Levy Regulations 2010 (as amended), where outline planning permission which permits development to be implemented in phases has been granted, each phase of the development as agreed by Reigate & Banstead Borough Council may be treated as a separate chargeable development. The instalment policy set out overleaf will therefore apply to each separate phase of development and its associated separate chargeable amount.
4. This policy will not apply if any one or more of the following circumstances arises:
  - a) On the intended date of commencement:
    - i. Nobody has assumed liability to pay CIL in respect of the chargeable development; and
    - ii. A commencement notice has been received by Reigate & Banstead Borough Council in respect of the chargeable development; and
    - iii. Reigate & Banstead Borough Council has not determined a deemed commencement date for the chargeable development;and, therefore, payment is required in full on the intended date of commencement, as required by Regulation 71(1) of the Community Infrastructure Levy Regulations 2010 (as amended);
  - b) Reigate & Banstead Borough Council has determined a deemed commencement date for the chargeable development and, therefore, payment is due in full on the deemed collection date as required by Regulation 71(2) of the Community Infrastructure Levy Regulations 2010 (as amended)
  - c) Reigate & Banstead Borough Council has transferred liability to pay an amount to the owners of the relevant land and, therefore, payment of that amount is due in full immediately as required by Regulation 71(3) of the Community Infrastructure Levy Regulations 2010 (as amended)
  - d) Reigate & Banstead Borough Council has received notification of a disqualifying event and therefore, the amount due is payable within seven days beginning on the date which the demand notice requiring payment is issued, as required by Regulation 71(4)(a) of the Community Infrastructure Levy Regulations 2010 (as amended)
  - e) A person has failed to notify Reigate & Banstead Borough Council of a disqualifying event before the end of 14 days beginning with the day on which the disqualifying event occurs and therefore, payment of that amount is due immediately as required by Regulation 71(4)(b) of the Community Infrastructure Regulations 2010 (as amended)
  - f) An instalment payment has not been made in full on or before the day on which the instalment payment was due, the unpaid balance is due in full immediately, as

required by Regulation 70(8)(a) of the Community Infrastructure Levy Regulations  
2010 (as amended)

Total CIL liability	Number of instalments	Payment period and amount payable
Amount less than £50k	Single instalment	100% payable within 60 days of commencement date
Amount above £50k but less than £200k	Two instalments	50% payable within 60 days of commencement date 50% payable within 240 days of commencement date
Amount above £200k but less than £500k	Three instalments	25% payable within 60 days of commencement date 50% payable within 240 days of commencement date 25% payable within 480 days of commencement date
Amount above £500k	Three instalments	25% payable within 60 days of commencement date 50% payable within 360 days of commencement date 25% payable within 720 days of commencement date
If the chargeable development is completed before the chargeable amount has been paid in full, the outstanding amount will be due IN FULL within the instalment time given above or within 60 days of the date of completion, whichever is the lesser, unless otherwise agreed in writing with the Council PRIOR to commencement of development.		

This policy will come into effect on 1 April 2016, the date on which the Reigate & Banstead Community Infrastructure Levy Charging Schedule takes effect.

# Community Infrastructure Levy

## Payment in Kind Policy

December 2015

## Payment in Kind Policy

1. In accordance with Regulations 73, 73A, 73B and 74 of the Community Infrastructure Levy Regulations 2010 (as amended), Reigate & Banstead Borough Council will allow the payment of all or part of a CIL liability through the provision of land and/or infrastructure to the Council, or a party(ies) nominated by the Council.
2. **This mechanism is offered at the Council's discretion: this policy does not oblige the Council to accept any such offer or application.**
3. Payment in kind will be subject to the following conditions:
  - a. The person offering in kind payments must have assumed liability to pay CIL, have completed the relevant forms and these must have been formally acknowledged by the Council.
  - b. The chargeable development must not have commenced before a written agreement has been obtained from the Council to accept the in kind payments offered.
  - c. Any agreement for payment in kind must clearly state the value of land or infrastructure to be provided, as valued by an independent assessor in accordance with Regulations 73 and 73A. Any agreement must also specify the timescales for delivery.
  - d. The land and/or infrastructure being offered must not:
    - i. Be otherwise necessary to make the application acceptable in planning terms or ensure compliance with local plan policy requirements
    - ii. Represent an intrinsic element of the design of the scheme
    - iii. Have previously been promoted as an additional benefit over and above CIL contributions during the allocation or application process
  - e. Any land provided as 'payment in kind' must be used for the delivery of infrastructure identified within the Council's Regulation 123 list of relevant infrastructure.
  - f. Any infrastructure provided as 'payment in kind' must be in accordance with those projects and types of infrastructure identified within the Council's Regulation 123 list of relevant infrastructure.
  - g. The land must be fit for the relevant purpose<sup>1</sup> and there must be sufficient prospect of achieving the relevant permissions to use the land for the purposes intended.
  - h. The land subject to transfer must be free from any other interest in land and any encumbrance to the land, building or structures.
  - i. The infrastructure provided must be fit for the relevant purpose and its provision as in kind payment must represent a time or cost efficiency to the Council and its partners, or be otherwise more practical than such parties delivering the infrastructure themselves.
4. The decision to accept land and/or infrastructure as payment in kind is at the discretion of the Council. Any parties interested in paying CIL in this manner are therefore strongly

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<sup>1</sup> In order to satisfy this provision, applicants may be required to provide surveys demonstrating the physical/technical suitability of the site including but not limited to issues such as ground conditions, archaeology, access and services/utilities, ecology and environmental (e.g. noise).



encouraged to enter discussions with the Council before any application is submitted in order to establish whether the principle of payment in kind is likely to be suitable in that instance.

5. The value of any land or infrastructure offered by way of payment has to be determined by a suitably qualified, independent assessor. This will determine how much liability the in-kind payment will offset. The Council will require the costs of any such valuation to be met by the applicant.
6. Payments in kind may only be made with the agreement of the liable party, Reigate & Banstead Borough Council and any other relevant authority that will need to assume responsibility for the land or infrastructure.
7. This policy will come into effect on 1 April 2016, the date on which the Reigate & Banstead Community Infrastructure Levy Charging Schedule takes effect.



# Community Infrastructure Levy

## Regulation 123 Infrastructure List

**December 2015**

## Regulation 123 Infrastructure List

1. This infrastructure list has been prepared in accordance with Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended).
2. This list identifies those infrastructure types and projects which the Council may, either wholly or partially, fund through the collection of CIL. It does not signify a commitment from the Council to fund a particular listed project or type of infrastructure or that CIL will be the only source of funding used to support delivery. The order of the list does not imply and preference or priority.
3. The exclusions denote infrastructure which does not form part of the Regulation 123 list and which will therefore be secured through, or funded by, other mechanisms including section 106/section 278 agreements. Planning obligations secured through s106 agreements will continue to be used in accordance with the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and any other relevant guidance published by the Council.

Project or type of infrastructure intended to be funded through CIL	Exclusions to be secured or funded through other means
<p>Education facilities</p> <ul style="list-style-type: none"> <li>- Primary schools including within the areas of search for sustainable urban extensions</li> <li>- Secondary schools</li> <li>- State-funded early years provision</li> </ul>	<p><i>General: Site-specific facilities whose need is directly and wholly created by a specific development and therefore necessary to make it acceptable in planning terms.</i></p> <p><i>Specific:</i></p> <ul style="list-style-type: none"> <li>- The primary school, early years provision and associated facilities to be located within the Horley North West Sector</li> </ul>
<p>Highways and transport</p> <ul style="list-style-type: none"> <li>- Strategic road network</li> <li>- Local road network</li> <li>- Public transport</li> <li>- Pedestrian and cyclist facilities</li> <li>- Public realm</li> </ul>	<p><i>General: On and off-site works to highways, pedestrian and cyclist facilities and public transport provision required to serve a new development and necessary to make it acceptable in planning terms</i></p> <p><i>Specific:</i></p> <ul style="list-style-type: none"> <li>- The A217 and A23 spine roads serving the Horley North West Sector</li> <li>- Pedestrian and cycle route works between the Horley North West Sector and Horley Town Centre</li> <li>- Physical works and service running costs to enable the provision of a bus service between the Horley North West Sector and Horley Town Centre</li> </ul>
<p>Healthcare facilities</p> <ul style="list-style-type: none"> <li>- Primary care (GPs)</li> <li>- Acute care</li> <li>- Healthy living initiatives</li> </ul>	<p><i>General: Site-specific facilities whose need is directly and wholly created by a specific development and therefore necessary to make it acceptable in planning terms</i></p>

<p>Community facilities and community safety</p> <ul style="list-style-type: none"> <li>- Community, youth or adult centres</li> <li>- Neighbourhood halls</li> <li>- Libraries</li> <li>- Policing, fire and rescue and other community safety measures</li> </ul>	<p><i>General: Site-specific facilities and measures whose need is directly and wholly created by a specific development or otherwise required to make a development proposal acceptable in planning terms</i></p> <p><i>Specific:</i></p> <ul style="list-style-type: none"> <li>- Places of worship</li> <li>- Privately operated cultural facilities</li> </ul>
<p>Leisure, open space and green infrastructure</p> <ul style="list-style-type: none"> <li>- Leisure centres</li> <li>- Parks and recreation grounds</li> <li>- Cemeteries</li> <li>- Allotments</li> <li>- Children and young people's play</li> <li>- Biodiversity and habitat protection/enhancement</li> <li>- Outdoor sport and recreation</li> </ul>	<p><i>General: Open space, sport, recreation and play provision required by policies within the Local Plan to be provided on-site for a particular development (and any maintenance provisions). Any relevant on or off-site environmental mitigation necessary to make a development proposal acceptable in planning terms</i></p> <p><i>Specific:</i></p> <ul style="list-style-type: none"> <li>- Provision of the Riverside Green Chain to the north east and north west of Horley</li> <li>- Requirements for on-site public open space and play provision set out in policies in the Local Plan</li> <li>- Privately operated leisure facilities</li> <li>- Privately operated facilities for sport and recreations</li> </ul>
<p>Flood risk management and flood defence</p> <ul style="list-style-type: none"> <li>- Strategic flood defence and management</li> <li>- River corridor enhancement</li> </ul>	<p><i>General: On and off-site flood risk management and flood defence measures (such as the installation of SUDS) and any other flood resistant design necessary to make a development proposal safe and acceptable in planning terms.</i></p>
<p>Sustainability and Waste Management</p>	<p><i>General: Site-specific sustainable construction, emission and resource efficiency measures, waste and recycling provision required to make a development proposal acceptable in planning terms.</i></p>

4. This list will be reviewed periodically as part of the Council's monitoring of CIL and infrastructure delivery, taking account of any updates to the Council's Infrastructure Delivery Plan, progress in delivering development set out in the Core Strategy and any changes to CIL regulations. Revisions to the list will subject to appropriate local consultation.



Executive  
7 January 2016

Agenda Item: 5 Annex 4  
Community Infrastructure Levy:  
Developer Contributions

# Developer Contributions

## Supplementary Planning Document

**Draft for consultation**

**December 2015**

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## Executive Summary

- I. This Supplementary Planning Document (SPD) forms part of the Reigate and Banstead policy framework. It provides more information on the Council's approach to securing developer contributions towards the provision of infrastructure needed to support development or make it acceptable in planning terms.
- II. This SPD focusses on the main mechanisms for securing contributions to, or a commitment to deliver infrastructure. The SPD explains the relationship between the various mechanisms, including the Community Infrastructure Levy, in the funding of infrastructure improvements. It provide guidances as to the circumstances under which planning conditions may still be imposed or planning obligations and highways agreements may still be required in addition to CIL contributions in order to deliver improvements to infrastructure or fulfil policy requirements. In doing so, it is intended to make developers, landowners and others aware at the earliest stage of the likely developer contributions which could apply to their scheme so that they can take them into account when negotiating for land and in formulating development proposals.
- III. The SPD also explains the procedural process which applicants and the Council will normally follow when negotiating and completing any agreements and obligations associated with a particular development. This process will ensure agreements planning applications can be dealt with in an expedient manner.
- IV. This SPD replaces the Planning Obligations and Infrastructure SPD previously adopted in April 2008 and the Horley Infrastructure Provision SPD adopted in July 2008. This SPD should also be read in conjunction with the Affordable Housing SPD adopted in July 2015 which sets out the Council's expectations in respect of the delivery of, and contributions towards, affordable housing as set out in Core Strategy Policy CS15.
- V. The SPD comprises the following:
  - Section One - Introduction
    - Role, purpose and status of the SPD
    - Legislative and policy framework
  - Section Two - Securing Developer Contributions
    - What are developer contributions
    - Mechanisms available
    - Relationship between the mechanisms – general principles
    - Using the most appropriate mechanism
  - Section Three – Implementation
    - Procedural information
    - Viability

# 1. Introduction

## Purpose of the SPD

### Background

- 1.1 Delivering development sustainably is a key theme of the Council's Core Strategy. In order to do this, it is important that the necessary infrastructure is put in place to meet the needs of existing and future communities and that any adverse impacts of development on the local environment and/or residents' quality of life are adequately mitigated.
- 1.2 To deliver this, the Council will expect new developments to fund or contribute directly to the necessary infrastructure improvements in accordance with Core Strategy Policy CS12: these measures are known as 'Developer Contributions'. The Council may also require developments to be designed or used in a certain way.

### Scope of the document

- 1.3 This Supplementary Planning Document (SPD) is intended to provide guidance to all interested parties about the different mechanisms the Council will use to secure contributions, in-kind works and other mitigation from new developments. Specifically, the SPD includes:
  - An explanation of the mechanisms available to the Council, including the Community Infrastructure Levy, and the relationship between them in the context of delivering infrastructure
  - Guidance to developers as to the circumstances in which contributions or works may be secured through planning conditions or obligations
  - An explanation of Council's procedures when negotiating and securing agreements and the material which should be submitted by applicants to accompany planning applications
  - An overview of how the Council will monitor, review and spend contributions.

## Status and use of the SPD

- 1.4 In accordance with the relevant legislation, this document will be subject to consultation and will then be formally adopted by the Council. Once complete, the document will be a material consideration in the determination of planning applications: it should therefore be taken into consideration when undertaking initial feasibility, when negotiating for site acquisition and during the preparation of proposals for new residential and non-residential developments.

- 1.5 This SPD contains detailed advice and guidance to support the implementation of the Local Plan, particularly Core Strategy Policy CS12. It should also be read alongside the Community Infrastructure Levy Charging Schedule and related documents.
- 1.6 This SPD should also be read in conjunction with the Affordable Housing SPD which sets out the Council's expectations in respect of the delivery of, or contributions towards, affordable housing as set out in Core Strategy Policy CS15.
- 1.7 It is intended that this SPD will replace the Planning Obligations and Infrastructure SPD previously adopted in April 2008 and the Horley Infrastructure Provision SPD adopted in July 2008.

## Legislative and policy context

### Planning legislation

- 1.8 The statutory framework for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990 as amended by Section 12 (1) of the Planning and Compulsory Purchase Act 1991.
- 1.9 The Planning Act 2008 provides the enabling powers for local authorities to apply a Community Infrastructure Levy (CIL) to development in order to support the provision of infrastructure in an area.
- 1.10 These enabling powers came into force in April 2010 through the introduction of the CIL Regulations 2010 which provide the detail on the implementation of CIL.
- 1.11 The CIL Regulations also introduce new statutory restrictions upon the use of planning obligations (under s106 of the Town and Country Planning Act 1990) so that they work fairly and transparently with CIL. These restrictions include:
  - ***Placing into law the policy tests on the use of planning obligations set out in the NPPF para 204 (and historically in Circular 05/2005)***

CIL Regulation 122 sets out that, for a planning obligation to be used as a reason to grant planning application for development, or any part of a development, the obligation must be:

    - i. Necessary to make the development acceptable in planning terms
    - ii. Directly related to the development, and
    - iii. Fairly and reasonably related in scale and kind to the development
  - ***Ensuring the local use of CIL and planning obligations does not overlap***

Through CIL Regulation 123, it is anticipated that local planning authorities will publish a list of infrastructure which they intend to fund through the CIL. Where an element of infrastructure is included on this list, contributions towards it through a planning obligation cannot constitute a reason for granting planning permission for a development proposal.
  - ***Limiting the pooling of contributions from planning obligation towards a specific infrastructure project or type of infrastructure***

CIL Regulation 123 sets out that a planning obligation cannot be a reason to grant planning permission where five or more other planning obligations already exist which provide funding for, or the provision of, the same project or provide for the funding or provision of the same type of infrastructure.

### **National Planning Policy Framework**

- 1.12 The National Planning Policy Framework (NPPF) provides guidance to local planning authorities on the use of planning conditions and obligations in paragraphs 203 to 206. The document encourages local planning authorities to use obligations only where a condition cannot adequately address any unacceptable impacts. The NPPF repeats the three tests originally set out in Circular 05/2005.
- 1.13 The NPPF also sets out that where obligations are being sought or revised, account should be taken of changes in market conditions and that local planning authorities should be flexible to avoid development being stalled or delayed. Paragraph 176 also encourages planning authorities – through discussions with applicants – to explore options for keeping the costs of any necessary mitigation or compensation to a minimum.

### **Planning Practice Guidance**

- 1.14 The National Planning Practice Guidance sets out further detail about the use of planning obligations. It reiterates the expectation that the combined impact of conditions, obligations and CIL should not threaten viability. Where a CIL is in place, the NPPG also encourages local planning authorities to be clear about what developers will be expected to pay and through which route to ensure that actual or perceived 'double dipping' is avoided.

### **Local Plan: Core Strategy**

- 1.15 Delivering development sustainably is the main theme of the Core Strategy. It is therefore essential that new development where possible avoids, or otherwise mitigates its own adverse effects and in the process secures the necessary infrastructure benefits for our existing communities who should not simply suffer the burden and additional pressures of new development.
- 1.16 This SPD specifically relates to Policy CS12: Infrastructure Delivery which is the primary mechanism in the Core Strategy for securing the delivery of new or improved infrastructure. However, the SPD is also relevant to the implementation of Policy CS10: Sustainable Development, Policy CS11: Sustainable Construction and Policy CS17: Travel Options and Accessibility.

### **Affordable Housing SPD**

- 1.17 The Affordable Housing SPD – which was adopted in 2014 – sets out the Council’s approach to securing on-site provision and financial contributions for affordable housing. It provides detail on the implementation of Core Strategy Policy CS15.
- 1.18 In particular, the SPD explains how to calculate financial contributions on sites of 14 net additional units or less and the Council’s expectations in terms of unit type and tenure for on-site provision. The document also provides an overview of the application process, including the Council’s approach to assessing financial viability.
- 1.19 For reference, planning obligations under Section 106 of the Town and Country Planning Act 1990 will continue to be used to secure on-site provision of, or financial contributions towards, affordable housing.

## 2. Securing Developer Contributions

### What are developer contributions?

- 2.1 Developer contributions are requirements associated with the grant of planning permission intended to ensure that the development proposals are acceptable in planning terms and that they deliver necessary improvements to, or contributions towards, supporting infrastructure.
- 2.2 Historically, planning conditions and obligations have been the standard mechanisms for securing these requirements; however, CIL is now available to secure infrastructure and mitigate the impacts of developments and growth more generally. As a result, the role and intended use of the existing mechanisms, particularly planning obligations, has changed.
- 2.3 This section explains each of the mechanisms, their intended role and how the Council intends to use them together in future to ensure fairness and deliver sustainable development.

### Mechanisms available

#### Community Infrastructure Levy (CIL)

- 2.4 The Community Infrastructure Levy (CIL) is a local charge which Councils can set on new development to raise funds for the delivery of infrastructure to support growth.
- 2.5 CIL also provides a fairer, more certainty and transparent mechanism for securing the majority of financial contributions.
- 2.6 CIL is a non-negotiable, standard charge which is predominantly based on the ability of different types of development to pay CIL (i.e. viability) rather than the costs of addressing the specific infrastructure needs arising from a particular development.
- 2.7 Through CIL, the link between contributions and specific infrastructure projects is broken and as a result there is greater scope to “pool” contributions from a number of sites (and even with other Councils) to support the delivery of strategic, borough-wide infrastructure. CIL also provides greater certainty and transparency for developers early in the process as to the likely costs they will face.
- 2.8 CIL takes the form of a charge per square metre of net additional floorspace and, once adopted, will apply to most new developments. The level of charge depends on the size, type and location of new development as set out in the Council’s Charging Schedule.

## **Planning conditions**

- 2.9 Planning conditions are imposed by the Council on a grant of planning permission and require actions that are needed in order to make development acceptable in planning terms. Power to impose conditions is set out in Section 70 and 72 of the Town and Country Planning Act 1990.
- 2.10 Whilst conditions cannot be used to secure financial contributions or monies to be paid, they can be used to ensure that certain elements of a development are carried out in a particular way. Conditions may relate to phasing of development, timely (or up front) delivery of infrastructure, site-specific environmental or physical issues or the appearance of development, all of which can help to mitigate and manage the adverse impacts or additional pressures of development.
- 2.11 In some cases, it may be possible to overcome the same issue or achieve the same objective by using either a condition or planning obligation. In these circumstances, the Council will prefer to use a planning condition as per national policy.

## **Planning obligations**

- 2.12 Planning obligations (known as “section 106 agreements”), are legal agreements between local authorities, landowners and developers, usually negotiated in the context of planning applications. They can also be in the form of a unilateral undertaking made by a developer.
- 2.13 Planning obligations can be both financial and non-financial obligations. They provide more scope for the Council to address and mitigate the impact of development and require the “in-kind” provision of specific infrastructure (either on or off-site) where this cannot be achieved through a planning condition. Such agreements can also require the payment of financial contributions or commuted sums to deliver and maintain specific pieces of infrastructure. Planning obligations can be used to:
- Prescribe the nature of a development (e.g. by requiring a proportion of affordable housing)
  - Secure a contribution from a developer to compensate for loss of damage created by a development (e.g. loss of open space)
  - Mitigate the impact of a development (e.g. through enhanced infrastructure)
- 2.14 In accordance with regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended), planning obligations should only be used where they meet the following three tests:
- They are necessary to make the proposed development acceptable in planning terms;
  - They are directly related to the proposed development;
  - They are fairly and reasonably related in scale and kind to the development.

## Highways agreements

- 2.15 Highways agreements (known as “section 278 agreements”) are legal agreements which provide an alternative mechanism for ensuring developers deliver or fund improvements or alterations the public highway which are necessary to mitigate the impacts of a specific development and make it acceptable in planning terms. This could include works such as roundabouts, turning lanes, traffic signals or cycleways.
- 2.16 These agreements are not the responsibility of the Local Planning Authority but are made with the Department for Transport/Highways England or Surrey County Council (as the Highway Authority). Pre-application engagement with these bodies on development proposals, particularly large scale, is recommended in order to identify any likely requirements for highways agreements.

## Relationship between the mechanisms – general principles

- 2.17 To some extent, CIL replaces planning obligations. Since April 2015, the CIL regulations have restricted local planning authorities from pooling together contributions towards a particular project or type of infrastructure from more than five development schemes.
- 2.18 In general, it is therefore the Council’s intention to use CIL to fund and deliver the strategic or borough-wide infrastructure required to support the cumulative growth of the borough and the quality of life of its communities as a whole.
- 2.19 However, there will still a legitimate role, on a case-by-case basis, for additional site-specific infrastructure or impact mitigation without which a development would be unacceptable or unsustainable. This will continue to be secure through the other mechanisms available (in addition to CIL payments).
- 2.20 The table below provides a summary of the general purpose and principles of each mechanism as well as where to find further detail.

Mechanism	Purpose	Policy Links	Negotiable?
<b>CIL</b>	General borough-wide and strategic infrastructure as set out on Regulation 123 list	CS12	<b>No</b> – only limited exemptions and exceptions available in accordance with statutory reliefs
<b>Planning Obligations</b>	Site-specific infrastructure necessary to make development acceptable or mitigate adverse impacts	CS10 CS11 CS12	<b>Yes</b> - subject to viability. Negotiable insofar as it does not compromise achieving an acceptable form of development
	Affordable housing	CS15	<b>Yes</b> - subject to viability
<b>Planning</b>	Site-specific actions necessary to make development acceptable or	CS10	<b>Yes</b> - insofar as it does not compromise achieving an



<b>Conditions</b>	mitigate adverse impacts	CS11	<i>acceptable form of development</i>
		CS12	

### **Approach to use of CIL**

- 2.21 Under the Community Infrastructure Levy Regulations 2010, monies collected under CIL can be spent on a wide range of projects including the provision, improvement, replacement, operation or maintenance of infrastructure require to support growth in the borough.
- 2.22 It is the Council's intention to use CIL to fund and deliver the infrastructure required to support the growth of the borough and its communities as a whole rather than that required to make an individual development scheme acceptable. In essence, this means the expenditure of CIL will be focussed on more strategic, borough-wide projects, those which address the cumulative effects of development and/or those with a specific benefit to the wider community/neighbourhood.
- 2.23 The types of infrastructure and, where relevant, specific projects which the Council intends to fund wholly or partly through CIL will be published in the Council's list of relevant infrastructure (Regulation 123 List). Infrastructure providers will be engaged in the process of establishing priorities for spending, although the Council will ultimately be responsible for allocating funding.
- 2.24 To further ensure that both mechanisms (i.e. CIL and planning obligations) are complementary and to avoid 'double dipping', the Council has published a list of relevant infrastructure in accordance with Regulation 123 of the Community Infrastructure Regulations 2010. This list (often referred to as a "Regulation 123 List") sets out the infrastructure types, and where relevant specific projects, that the Council intends will be, or may be, wholly or partly funded through CIL. Contributions via a planning obligation towards any item of infrastructure on this list cannot be used as a reason to grant planning permission.
- 2.25 The Council and its partners may, and indeed are likely to, pool funding from CIL or use it to leverage in other sources of funding, both internal and external (such as from central government or Local Enterprise Partnerships) in order to deliver strategic infrastructure.

### **Approach to the application of planning obligations and other mechanisms**

- 2.26 Whilst CIL will address the general contributions towards wider infrastructure needed to support growth, developers will be expected to provide any site-specific infrastructure or impact mitigation and ensure any specific policy requirements are met in order to make the development acceptable in planning terms.
- 2.27 Requirements of this nature will inevitably vary in scale and type depending upon the individual development and the specific pressures which it creates on surrounding

infrastructure (e.g. it could range from the need for provision of a new school (including land) on a strategic housing site to small scale junction improvements/crossovers to access a development). They may also arise from specific policy commitments within the Local Plan. These requirements – which are directly related to development – are more appropriately secured and delivered through a planning obligation or section 278 agreement in addition to the CIL charge.

- 2.28 The precise scope of these requirements will be negotiated with developers on a case-by-case basis with input from relevant infrastructure providers (such as the County Council) and taking account of the specific circumstances of the development, including financial viability where appropriate. In all instances, planning obligations will only be sought where they satisfy the relevant statutory tests set out in the Community Infrastructure Levy Regulations 2010 (as amended) and any other relevant guidance.
- 2.29 In addition, affordable housing, which falls outside of the definition of “infrastructure”, will continue to be secured through planning obligations in accordance with Policy CS15 and the Affordable Housing SPD.
- 2.30 Planning conditions will be used to address site-specific requirements where possible to minimise the need for complex legal agreements. There will however, continue to be cases – particularly where complex works or financial contributions are required – where it is necessary and appropriate to use a planning obligation.

## Using the most appropriate mechanism

### Introduction

- 2.31 Following on from the general principles set out above, the table and subsections below outline examples of what the Council considers likely to be the most appropriate mechanism for securing different types of infrastructure or policy requirements which are not infrastructure.
- 2.32 This is intended to provide guidance as to when CIL is likely to be used and where planning obligations or other mechanisms may be applied. Whilst this list cannot be exhaustive and exceptional circumstances may arise, it seeks – as far as is practical – to provide transparent, up-front guidance to developers and other interested parties as to the most common situations where additional financial contributions or in-kind works may be sought through other mechanisms.
- 2.33 It is recognised that large scale developments – particularly strategic residential proposals – are likely to attract more significant site-specific measures, works or contributions to be provided by developers in order to make them acceptable in planning terms. The potential for such schemes to attract more significant non-CIL contributions has been factored into the viability evidence underpinning CIL charge levels to ensure that such expectations would not prevent schemes from coming forward.

2.34 It should be noted that the ordering of infrastructure types within the table does not represent any priority and that any thresholds and calculations mentioned in the discussion may be updated when it is deemed necessary.

Requirement	Most Likely Mechanism(s)	Potential Applications of Planning Obligations	Relevant Plan Policies
<b>Housing</b>			
Affordable Housing	Planning obligation (exceptionally through planning condition)	<ul style="list-style-type: none"> <li>– Developments involving a net gain in housing</li> <li>– Developments resulting in a loss of existing affordable units</li> </ul>	CS15
Traveller Accommodation	Planning obligation	<ul style="list-style-type: none"> <li>– Strategic scale housing developments such as Urban Extensions</li> </ul>	CS16
Specialist/Adapted Housing	Planning condition	<ul style="list-style-type: none"> <li>– Larger housing developments (for example)</li> </ul>	CS14
<b>Highways and Transport</b>			
General highway capacity and safety works, transport and sustainable travel	CIL		CS12 CS17
Development specific highway works, access and transport arrangements	Planning obligation and/or section 278 agreement and/or planning condition	<ul style="list-style-type: none"> <li>– Any development (subject to the assessment of the Highway Authority)</li> </ul>	CS10 CS12 CS17
Travel Plans and associated measures	Planning obligation and/or planning condition	<ul style="list-style-type: none"> <li>– Housing developments exceeding 10 units and commercial schemes exceeding 1,000sqm</li> </ul>	
<b>Education and Training</b>			
Primary Schools	CIL		
Secondary Schools	CIL (exceptionally planning obligations may be used to secure land/buildings for education facilities)	<ul style="list-style-type: none"> <li>– Strategic scale housing developments such as Urban Extensions</li> </ul>	CS12
Other education facilities			
Employment and training initiatives (including apprenticeships)	Planning obligation and/or planning condition	<ul style="list-style-type: none"> <li>– Larger housing developments and commercial schemes (for example)</li> </ul>	CS5
<b>Community Facilities and Community Safety</b>			
<b>Healthcare</b>			
Community, youth and adult centres	CIL (exceptionally planning obligations may be used to secure land/buildings community facilities)	<ul style="list-style-type: none"> <li>– Strategic scale housing developments such as Urban Extensions</li> </ul>	CS10 CS12
Libraries			
Neighbourhood halls			
Policing and fire and rescue			
General community safety measures			
Development specific community safety measures	Planning obligation/and or planning condition	<ul style="list-style-type: none"> <li>– Strategic scale housing developments such as Urban Extensions</li> <li>– Housing and commercial</li> </ul>	CS10

developments in town/local centre locations			
<b>Leisure, Open Space and Green Infrastructure</b>			
Leisure centres	CIL		CS12
Cemeteries	CIL		CS12
Allotments	CIL (exceptionally planning obligations may be used to secure land for allotments)	– Strategic scale housing developments such as Urban Extensions	CS12
<b>Leisure, Open Space and Green Infrastructure (cont)</b>			
Local amenity space and areas for children and young people's play	Planning obligation/and or planning condition	– Larger housing developments (for example)	CS10 CS12
Outdoor sport and recreation grounds	CIL (exceptionally planning obligations may be used to secure land for outdoor sport)	– Strategic scale housing developments such as Urban Extensions	CS12
<b>Sustainability, Flood Risk Management and Flood Defence</b>			
Strategic flood attenuation and defence	CIL (exceptionally planning obligations may be used to secure specific corridor enhancements)	– Housing and commercial developments with watercourses within or adjoining the site	CS10
River corridor enhancements			
Development specific flood attenuation, mitigation and resilience	Planning obligation and/or planning condition	– Housing and commercial developments at risk of flooding where measures are necessary to deliver a safe scheme	CS10
Sustainable Urban Drainage Systems (and arrangements for long term maintenance)	Planning obligation and/or planning condition	– Housing developments exceeding 10 units and commercial schemes exceeding 1,000sqm	CS10
Resource efficiency measures	Planning obligation and/or planning condition	– All housing developments and commercial schemes	CS10 CS11

## Housing

2.35 Delivering housing to meet the varied needs of the community is a key objective of the Core Strategy. In certain circumstances, planning conditions or obligations may be used to secure the delivery of particular type of provision in advancement of this objective. This could include, subject to local policy requirements:

- On-site provision of, or financial contributions towards, affordable housing units
- Securing the replacement or re-provision of affordable housing lost as a result of the development
- Provision or re-provision of specialist, adapted or special needs housing (such as wheelchair accessible units)
- Securing land for the provision of traveller accommodation (particularly as part of larger development proposals).

## **Transport, Highways and Travel**

- 2.36 The Core Strategy sets an overarching approach to travel options and accessibility focussed on three key strands: managing demand; improving the efficiency of the network; improving transport choice.
- 2.37 General improvements to the strategic and local highway network, public transport services and sustainable travel options (e.g. cycle routes) designed to provide sufficient and safe capacity to address the cumulative demands arising from growth will be funded through CIL. However there may be instances where, in consultation with the County Council, planning obligations or section 278 agreements are required to address a specific issue arising from an individual development. This could include the following development specific measures:
- Improvements or remodelling of junctions on-site and/or in the immediate locality or the site required as a direct consequence of traffic generated by a particular development
  - Creation of safe access routes/servicing for a development proposal including link/spine roads, local traffic calming, vehicular crossovers, deceleration/turning lanes, lay-bys and the introduction of, or amendments to, traffic signalling and signage
  - Diversion/extension of existing public transport/bus routes through or in proximity to a site including any associated road alterations and the provision or enhancement of any user infrastructure (such as stops etc.)
  - Giving over of land to provide widened footway, cycleway, bus-stop, lay –by or for other purposes
  - Maintenance costs to cover subsidy for new/extended bus routes until the point at which a privately run service could reasonable be considered to become self-sustaining
  - Implementation of, or amendment to parking restrictions, waiting restrictions, controlled parking zones, resident parking zones required as a consequence of the development including payments to cover costs of progressing necessary Traffic Regulation Orders
  - Introduction of, or improvement to, on and off-site pedestrian facilities (e.g. footways, footpaths, refuge points) and cycle facilities (e.g. cycleways, cycle storage)
  - Preparation and implementation of travel plans and on-going monitoring
  - Offers of sustainable travel incentives (such as bus/train vouchers, cycle shop vouchers, car clubs)

## **Education and training**

- 2.38 Improvements to, the expansion of, or the development of new schools and state-funded education facilities needed to address the cumulative effect of growth will normally be funded through CIL.

- 2.39 However, provision for education facilities may exceptionally be required from strategic housing sites where there are no realistic expansion opportunities within the existing network of schools to meet the specific uplift in school place demand arising from such developments.
- 2.40 This could include provision of a serviced site for a school, offered at nil cost, secured through a planning obligation, to help ensure that future education provision is not constrained by a lack of available land. In exceptional instances<sup>1</sup> where a single development generates demand for a whole school on its own, this may also include meeting the construction/commissioning costs of an appropriately sized new school, (calculated by reference to the pupil yield of the development). This approach will provide more confidence to residents that key education needs can be provided for and certainty to developers that facilities which are likely to be critical to the attractiveness of their developments (particularly schools) will be delivered.
- 2.41 Planning conditions or obligations may also be used to secure local employment and training opportunities from new developments during both construction and end-use. This could include initiatives to support local construction apprenticeships or training to ensure the local labour force has the right skills to compete for job opportunities created by the development.

### **Leisure, Open Space and Green Infrastructure**

- 2.42 Ensuring new development provides a high quality, safe and inclusive environment underpins the Core Strategy. General improvements to the borough's open spaces, sport and recreation facilities to meet the needs of a growing population and provide access to high quality open space will be funded through CIL, as will strategic projects to enhance biodiversity.
- 2.43 However, new developments also need to protect and contribute to the borough's network of green infrastructure and ensure existing and future residents can access sufficient local open space. This is driven by Policies CS10 and CS12. To support this, planning obligations may be used for the following purposes:
- Provision of land, equipment and the laying out of on-site local open space and children and young people's play areas in accordance with local policy standards
  - Securing mechanisms (including any necessary commuted sums) for the on-going maintenance and management of on-site open space, play and recreation that the developer would like another body to adopt
  - Securing the replacement of any non-surplus open space lost as a result of the development
  - Improvements, remodelling and/or replacement of public realm on-site or within the immediate locality

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<sup>1</sup> As an indicative guide, it is envisaged that such a requirement may only become necessary on individual housing developments of 800 units or more for a single form of entry (1FE) primary school and approximately 4,000 units or more for a secondary school.

- Mitigation of adverse impacts on, or improvements to, biodiversity assets/habitats within or in the immediate locality of the site (including river corridors)
- Creation of replacement habitats lost or reduced as a result of the development

### **Community Facilities and Community Safety**

- 2.44 The provision of new or improved community facilities (such as community centres, neighbourhood halls and libraries) and measures to increase the capacity of healthcare provision, community safety and policing to meet the needs of an increased population will generally be funded through CIL. In exceptional circumstances, land may be required from strategic housing sites to ensure such facilities can be provided in locations which are most accessible to new residents: provision of this land would be secured through a planning condition or obligation and would be protected for the purposes of community provision. In addition, where a single development generates demand for the facility on its own, contributions to cover the cost of construction may also be required.
- 2.45 However, alongside these general improvements, new developments also need to contribute to creating safe and secure communities. To support this, planning conditions and obligations may be used in limited circumstances for the following purposes:
- Ensure particular crime prevention measures or standards are met within the physical design and construction of development
  - Provision of community safety equipment, including the installation of, or where necessary relocation of, CCTV within and immediately adjacent to the development
  - Securing provision of local shops or neighbourhood centres as part of larger housing developments

### **Sustainability, Flood Risk Management and Flood Defence**

- 2.46 The Core Strategy incorporates a strong commitment to ensuring that development is achieved in a sustainable way, protecting and mitigating its impact on the natural environment and ensuring it is resilient to future climate change. In line with national policy, the Core Strategy also seeks to ensure that flooding risks associated with, and arising from, new developments, are appropriately managed.
- 2.47 To support delivery of these objectives, the use of planning conditions and planning obligations could include:
- Securing use of low emission/cleaner fuel technology and/or the creation of, or connection to, district heating networks
  - Secure provision of appropriate waste and recycling facilities (such as neighbourhood bring sites) to serve a new development

- Implementation of measures to mitigate the effect of increased emissions as a consequence of development on local air quality (particularly in AQMAs) including any necessary air quality monitoring
- Implementation of on-site flood risk management, resistance and resilience measures and the provision of sustainable drainage systems including mechanisms (and any necessary commuted sums) for the on-going maintenance and management of such assets



## 3. Implementation

### Introduction

- 3.1 This section provides guidance to applicants on the process which the Council will follow in securing developer contributions through CIL and in negotiating and agreeing planning obligations. Also outlined is the Council's approach to financial viability.
- 3.2 The procedures set out below are intended to provide clarity and certainty to parties involved in the development process, enabling issues and potential requirements to be identified at the earliest stage possible. The process is also designed to ensure that matters relating to developer contributions can be progressed smoothly thus avoiding unnecessary delays in the application process.

### Procedure for securing contributions through CIL

- 3.3 A large proportion of new developments will be liable to pay CIL. The level of charge depends on the size, type and location of new development as set out in the Council's Charging Schedule.
- 3.4 This section provides a brief explanation of the CIL charging and collection process. More detailed guidance notes setting out the responsibilities of the Council and the applicant at different stages will be made available separately.

### Introduction

- 3.5 CIL is charged per square metre on the net additional increase in floorspace of a particular development. It will be collected as a financial contribution; however, as set out below, there may be some exceptional instances where land or infrastructure could be provided by a developer in lieu of part, or all, of the CIL amount.
- 3.6 The process for calculating and securing the amount of contribution to be paid through CIL is laid out in the Community Infrastructure Levy Regulations 2010 (as amended) and the Council will implement the levy in accordance with this.
- 3.7 The amount of CIL payable on a development scheme is non-negotiable. There are however some specific exemptions and mandatory reliefs for affordable housing and for developments by charities for the purposes of charitable activity. Self-build housing, residential extensions and annexes are not liable to pay the levy. There are also a small number of discretionary reliefs: should the Council decide to offer these at any point, a policy will be published on the Council's website.

### **Charging and collecting CIL**

- 3.8 In accordance with the Council's local list requirements, applicants must provide the necessary information to enable the Council to determine whether the development is liable for CIL and calculate CIL liability correctly.
- 3.9 As discussed above, relief from CIL can be claimed in certain circumstances. Any claims for relief must be approved prior to commencement of development.
- 3.10 It is the responsibility of the developer, or person who will ultimately pay CIL to assume liability. Liability can be transferred to another party at any time prior to commencement of the development. Where liability is not assumed, it defaults to the owners of material interests in the land and where liability is not assumed by any party prior to commencement, penalties and surcharges may be imposed. As such, applicants are strongly encouraged to submit the assumption of liability form alongside their application.
- 3.11 A Liability Notice will be issued to the landowner(s) or parties who have assumed liability as soon as practicable once planning permission has been granted. Interested parties will also be sent a copy of the notice.
- 3.12 Before development starts, liable parties must notify the Council and all owners of the land of the intended commencement date on the appropriate form. Once the Council has been notified of commencement, a Demand Notice will be sent to liable parties. Where the Council has not been notified of commencement prior to works starting on site, the total CIL liability must be paid in full immediately (irrespective of whether a payment policy is in force) and a penalty of up to £2,500 may be imposed.
- 3.13 Payment is due following the commencement of development. Provided the Council has been notified of commencement prior to works starting on site, payments can be made in accordance with the Council's adopted instalments policy. Financial penalties/surcharges may be imposed and/or legal action carried out in the event of non-payment.

### **Payment in kind**

- 3.14 In accordance with the Regulations, the Council can choose to accept payment of CIL 'in kind' rather than in cash. This can include agreements to transfer land (to be used for a relevant purpose) or provide completed infrastructure, the monetary value of which will be independently assessed and used to off-set the overall CIL liability.
- 3.15 The Council's adopted policy for 'in kind' payment of CIL, including the conditions and circumstances in which the Council may accept in kind payments, will be made available on the Council's CIL webpages. Please note, the adopted policy does not oblige the Council to accept any such offer or application and the decision will remain at the Council's discretion on a case-by-case basis.

## Procedure for negotiating and completing planning obligations

### Introduction

- 3.16 This subsection explains the procedure which the Council and applicants will normally follow for completing planning obligations.
- 3.17 The completion of necessary legal agreements is a critical part of ensuring that a development scheme is acceptable in planning terms. In line with guidance in the NPPG and to provide certainty to all parties, the Council will not normally grant planning permission until any necessary agreements are in place.

### Pre-application

- 3.18 It is important that applicants have as much clarity as possible regarding potential planning obligations prior to submitting planning application. Developers are therefore advised to enter into discussions with the local planning authority (and where appropriate other infrastructure providers such as the County Council) as early as possible regarding potential planning obligations.
- 3.19 Applicants are therefore strongly recommended to use the Council's formal pre-application process<sup>2</sup>, in particular for complex schemes. The County Council also operates a formal pre-application process in respect of transport/highways advice<sup>3</sup> and it may be advisable to arrange joint advice. Having regard to this SPD, applicants should provide any available information to support such discussions.
- 3.20 Entering these discussions prior to the acquisition of land will also enable developers to more accurately anticipate the financial implications of planning obligations and CIL on their development proposal. This understanding may be of critical importance to determining an appropriate value for the site and ultimately the achievement of a viable proposal.
- 3.21 This approach provides an opportunity for potential issues which may lead to the need for a planning obligation (such as infrastructure requirements) to be established and any requirements for supporting documentation to be identified as fully as possible up-front to minimise delays in determining planning applications. It should however be appreciated that it will not always be possible to identify with clarity all issues or potential costs at pre-application stage
- 3.22 Where sites have already been purchased, any potential issues with viability should also be flagged at pre-application stage.

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<sup>2</sup> [http://www.reigate-banstead.gov.uk/planning/planning\\_advice\\_and\\_guidance/before\\_you\\_apply/charging\\_for\\_pre\\_application\\_planning\\_advice/index.asp](http://www.reigate-banstead.gov.uk/planning/planning_advice_and_guidance/before_you_apply/charging_for_pre_application_planning_advice/index.asp)

<sup>3</sup> <http://new.surreycc.gov.uk/environment-housing-and-planning/planning/transport-development-planning/charging-for-transport-development-pre-application-advice>

### **Application submission**

- 3.23 In accordance with the Council's local list requirements, planning applications must be supported by appropriate documentation. Applications made without the required information/documents may not be registered.
- 3.24 Where it is known from the outset that a section 106 agreement or unilateral undertaking will be required for the proposal, the Council will expect applicants to submit either a draft signed unilateral undertaking or draft heads of terms for a section 106 agreement to accompany their planning application. Applicants should also provide proof of title, details of the solicitor acting on their behalf and an agreement to pay the Council's reasonable legal costs in checking, negotiating and preparing the agreement/undertaking whether or not the matter proceeds to completion.
- 3.25 For affordable housing contributions/provision, applicants will be expected to follow the procedures set out in the Council's Affordable Housing SPD.

### **Application assessment**

- 3.26 Once a valid application is submitted, the investigation and negotiation on any necessary conditions or obligations will proceed as part of the consideration of the application. This process is without prejudice to the determination of the application.
- 3.27 In conjunction with the Council's legal team, the Planning Case Officer will manage the negotiation process. They will consult internally and with all relevant external stakeholders, in particular County Council, to confirm the full extent and scope of obligations necessary to make the development acceptable. Any draft heads of terms submitted to accompany the application will also be reviewed in conjunction with infrastructure providers and will be publicly available alongside other planning documentation for residents and other parties to comment on.
- 3.28 Once all relevant consultation responses have been received, the detailed requirements and justification for them will be relayed to the applicant with a view to negotiating and agreeing the precise nature, scale and trigger for matters to be included as obligations. These negotiations are undertaken without prejudice to the final determination but should be approached positively by the applicant with a view to progressing matters as far as possible in order to ensure timely decision-making. The Council's legal department will be instructed to liaise with the applicant (or their legal representatives) to progress drafting and/or checking of the formal agreement.
- 3.29 Where an application is to be refused on other grounds, a decision will be made as to whether it is prudent to pursue completion of an agreement prior determination of the application or whether to add this as an additional reason for refusal.
- 3.30 The applicant will be expected to pay the Council's reasonable legal costs associated with drafting, checking and sealing the agreement. The applicant will be advised of the likely costs and, depending upon the scale of the application, this may be

required up front or in stages, and will be payable irrespective of whether permission is subsequently granted.

### Viability and Negotiation

- 3.31 Whilst the combined impact of all policy requirements, including CIL, affordable housing and other planning obligations on development viability has been tested through the plan-making process, the Council is cognisant of the fact that, in some exceptional circumstances, a proposal may generate insufficient value to support the full range of developer contributions.
- 3.32 In such instances, applicants will need to demonstrate that the site is clearly unviable by submitting a Financial Viability Assessment (FVA) which should adopt an “open book” approach. As set out above, any viability issues should be flagged at the pre-application stage and an FVA must be submitted as part of the application.
- 3.33 If a FVA is submitted, it must meet the requirements outlined below and in Appendix 3, which are consistent with those set out in the Council’s Affordable Housing SPD:
- A FVA should be in two parts:
    - i. A **Summary** clearly stating the exceptional reasons that make the site unviable, a request to vary the usual affordable housing and/or other planning obligations requirements, and a summary of the main costs, revenues and assumptions etc.
    - ii. A **Detailed Appraisal** containing the information in Appendix 3 as a minimum together with supporting evidence
- 3.34 The minimum requirements to be provided by the applicant are outlined in Appendix 1, but the following should also be noted:
- Each cost, value, revenue, assumption, etc. must be evidence from an independent expert or source, and any assumptions will need to be explained and justified in detail.
  - The Council will assume that:
    - i. The land value to be used in the calculation should be the current market value, not the amount paid for the land
    - ii. The cost of meeting the affordable housing requirements in policy CS15 should be reflected in the price paid, or price to be paid, for the land, and should be based on:
      - No public subsidy or grant
      - Payment by the providers of the affordable housing should meet current HCA guidance, i.e. less than market value
    - iii. The cost of meeting other policy requirements, including developer contributions, should be reflected in the price paid, or to be paid, for the land.

- iv. Site abnormalities should be reflected in the price paid, or to be paid, for the land.
- 3.35 The Council will carry out an assessment of the Financial Viability Appraisal to determine whether the information and data submitted supports the Applicant's request to vary the affordable housing requirements on the basis of financial viability.
- 3.36 The Council may use its own in-house experts, or may (particularly on larger sites) instruct external consultants. If external consultants are to be instructed the Applicant will be required to pay the fees. The applicant will be advised of the fees payable and the amount will need to be paid to the Council prior to the FVA being assessed.
- 3.37 The application process, including any FVA must be open and transparent; however, the Council recognises that some of the information or data in a FVA may be commercially sensitive.
- 3.38 The applicant must make clear which, if any, information is commercially sensitive: the Council will then make a judgement as to which information is placed in the public domain. Generally, the Council may place the summary in the public domain with the detailed appraisal treated as confidential. Provisions relating to Freedom of Information and Environmental Information Regulations may also mean that confidentiality cannot be guaranteed.
- 3.39 A Financial Viability Appraisal is only current at the time it is prepared. Financial viability will change over time and with the changing economic and property markets. As such, on large sites that are expected to build or sell over a number of years, and particularly where the application is in Outline, a FVA may be required for each phase which will need to be updated when the Reserved Matters application is made or prior to the commencement of each phase.
- 3.40 Where the Council is satisfied that the combined developer contributions cannot be met in full due to financial viability, the Council will choose to either:
- Negotiate the affordable housing requirement in accordance with Core Strategy Policy CS15 and the Affordable Housing SPD. This could include:
    - Reduced or revised affordable housing requirements (including adjustments to tenure mix) and/or
    - A mechanism for the clawback of an affordable housing financial contribution in the event that the completed development proves to be more financially viable than anticipated in the FVA
  - Negotiating other planning obligations. This could include:
    - As a priority, the provision of site specific infrastructure in phases or with deferred timing/trigger points to ease cashflow
    - Reducing the scope of contributions or in-kind requirements provided the scheme would still remain acceptable in planning terms. This could be through altering the scope/specification of a particular piece of infrastructure or negotiating reduced commuted sums.

### **Determination and post determination**

- 3.41 Where an application to be determined under delegated authority is subject to a planning obligation, a completed and executed planning obligation will need to be submitted to, and approved by, the Council's legal team before a decision is issued. For developments of this scale, it is likely that this will in most cases be through a unilateral undertaking rather than by agreement.
- 3.42 For applications to be decided by Planning Committee, at the very least, all matters which are to be included in any obligations must be known and agreed with the applicant in detail, by the time the proposal is brought before committee. These requirements will be set out as part of the committee report and recommendation, which is a public document.
- 3.43 Any resolution to grant planning permission will be made subject to the completion of a satisfactory legal agreement or undertaking within a specified time period and will authorise the relevant Head of Service to accept such an undertaking. The Committee will decide whether the proposed obligations are appropriate.
- 3.44 Ideally, the legal agreement should be drafted prior to Committee resolution; however, if this has not proved possible, this should be progressed immediately following the Committee resolution in order to meet the timescale specified in the resolution. Whilst it is recognised that negotiations on, and the preparation of, legal agreements can take time, where it appears that an agreement will not be successfully concluded in the specified timescale and/or progress from the applicant in doing so is unnecessarily slow, the Council may refuse the application.
- 3.45 At the earliest possible opportunity, and certainly prior to completion of the legal agreement, the Council's legal services will ensure that all financial and title matters are in order. If the land to which the proposal relates is mortgaged or charged to other third parties, it will be necessary for these interests to be party to the section 106 agreement or unilateral undertaking. Applicants are encouraged to liaise as early as possible with lenders/charges about their proposals to ascertain whether approval is likely and to avoid lengthy delays in the signing/execution process.
- 3.46 Planning permission and any other consent will be issued at the point that the legal agreement is completed.

### **Post completion and monitoring**

- 3.47 The agreement or undertaking, along with relevant consents, will be registered as local land charges and the applicant will be required to register the agreement as a charge against the title of the property at HM Land Registry. A copy of the completed agreement will be held by the Council and will be made publicly available to ensure the process is open and transparent.

- 3.48 Obligations which require financial contributions will normally be subject to indexation from the date of the agreement to ensure that the contribution received keeps pace with the actual cost of the project to be delivered.
- 3.49 Compliance with the agreement will be tracked and enforced as the development proceeds. No action will take place in respect of a legal agreement until the specific triggers have passed.
- 3.50 In the event the developer fails to comply with any terms in the agreement regarding financial payments, a penalty rate of interest – above and beyond normal indexation – may be incurred until the point the payment is received. This will be written into the agreement as a standard condition.
- 3.51 If it is evident through on-going monitoring that an agreement is not being complied with, the Council has powers to instigate legal and planning enforcement action. This could include injunctions to prevent development proceeding further. The Council also has the power to enter land to carry out required works and to recover costs for this action from the developer, subject to prior notice.



## Appendix 1: Financial Viability Appraisals

Background information on financial viability and Financial Viability Appraisals is given in Section 3. The following requirements should to be read in conjunction with that section.

The Detailed Financial Viability Assessment should contain as a minimum the following information and data:

- The methodology used for the appraisal and details of any appraisal software or toolkits used
- Land values, both current and at the time of purchase (if different)
- Residual Land Values (RLV) and Gross Development Value (GDV)
- Price paid for the land; and costs taken into account when arriving at the price paid for the land (if the land is not owned by the applicant – details of any option agreements or agreements to purchase)
- Gross and net area of development
- Number size and type of units
- Build costs (per square metre), based on a site specific cost plan (and comparison with appropriate published RICS/BCIS data)
- Abnormal or exceptional costs not reflected in the land value/price (and reasons why)
- Other costs (design, legal, consultants, planning etc.)
- Cost of any other planning obligations including infrastructure requirements and financial contributions
- Build programme and phasing
- Interest rates, cap rates, loan costs, cash flows
- Developers profit and an explanation of its make up, and any company or financiers requirements
- Anticipated phasing
- Marketing and legal costs (and as a % of GDV)
- Anticipated sales price for each unit type, and current assumed value of each unit type
- Anticipated phasing of sales
- Ground rents payable; and the capitalised investment value of these
- Service charges payable;
- Proposals for on-site affordable housing meeting the requirements of the SPD
- Anticipated price to be paid by the affordable housing provider, and the assumption on which this is based.
- Substitution values and revenues for less or no affordable housing on site

Depending on individual site circumstances further information may be required, this may include:

- Developers Market Analysis Report
- Details of company overheads

- Copy of financing offer/letter
- Copy of cost plan
- Board Report on scheme
- Letter from Auditors re: land values and write offs
- Sensitivity analysis showing different assumption options (e.g. low, medium & high)

For mixed use schemes similar information and data will be required on the non residential uses.

All information and data should be evidenced from an independent expert or source, and be benchmarked.

	<b>Delegated Function</b>	<b>Acts</b>	<b>Officer(s)</b>	<b>Consultation Required With</b>	<b>Non-Executive/Executive Function</b>	<b>Reason for proposed change</b>
NEW	<p>Subject to Financial Services confirming that sufficient Community Infrastructure Levy funding remains, permit expenditure as follows:</p> <p>(a) Sums up to and including £50,000</p> <p>(b) Sums more than £50,000 up to and including £100,000</p>	-	<p>HOS with responsibility for Planning</p> <p>DCE</p>		<p>Executive</p> <p>Executive</p>	Change to enable CIL regime to be implemented effectively and efficiently
NEW	Exercise the Council's duties and powers in relation to the enforcement of the Community Infrastructure Levy	Planning Act 2008 and Community Infrastructure Levy Regulations 2010	HOS with responsibility for Planning/HOS with responsibility for Legal		Non-executive	To enable CIL regime to be implemented effectively and efficiently
NEW	Exercise the Council's duties and powers in relation to the calculation of the chargeable amount and determination of liability, in respect of the Community Infrastructure Levy	Planning Act 2008 and Community Infrastructure Levy Regulations 2010	HOS with responsibility for Planning		Non-executive	To enable CIL regime to be implemented effectively and efficiently
NEW	Exercise the Council's duties and powers in respect of appeals relating to the Community Infrastructure Levy	Planning Act 2008 and Community Infrastructure Levy Regulations 2010	HOS with responsibility for Planning		Non-executive	To enable CIL regime to be implemented effectively and efficiently

NEW	Exercise the Council's duties in relation to the assessment of claims for exemption and/or relief from the Community Infrastructure Levy, in accordance with any relevant policies adopted by the Council	Planning Act 2008 and Community Infrastructure Levy Regulations 2010	HOS with responsibility for Planning		Non-executive	To enable CIL regime to be implemented effectively and efficiently
NEW	Exercise the Council's duties in relation to administration of CIL, including determination of applications to satisfy CIL through the provision of land and/or infrastructure in-kind, and completion of any associated agreements	Planning Act 2008 and Community Infrastructure Levy Regulations 2010	HOS with responsibility for Planning	Portfolio Holder with responsibility for Planning and Development where value of in-kind payment exceeds £250,000	Non-executive	To enable CIL regime to be implemented effectively and efficiently