



Planning and Economic Development Policy Advisory Group

Wednesday, 8 January 2020 at 6.45 pm – Please note change of time

Room 9 - Capswood, Oxford Road, Denham

A G E N D A

This Policy Advisory Group meeting is not open to the public

Item

1. Evacuation Procedure
2. Apologies for Absence
3. Minutes (*Pages 3 - 8*)

To approve the minutes of the Planning and Economic Development PAG held on 9 September 2019.

4. Declarations of Interest
5. Updates from Members/ Senior Officers on Current Issues
6. Community Infrastructure Levy Charging Schedule (*Pages 9 - 14*)

Appendix 1 - Charging Schedule (Pages 15 - 38)

Appendix 2 - Examiners report (Pages 39 - 48)

7. Urgent item - Heathrow Joint Spatial Planning Framework

8. Exempt Information

To resolve that under Section 100(A)(4) of the Local Government Act 1972 the following item(s) of business is not for publication to the press or public on the grounds that it involves the likely disclosure of exempt information as defined in Part 1 of Schedule 12A to the Act.

Note: All reports will be updated orally at the meeting if appropriate and may be supplemented by additional reports at the Chairman's discretion.

Membership: Planning and Economic Development Policy Advisory Group

Councillors: J Read (Chairman)
G Hollis
J Jordan
M Lewis
G Sandy

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PLANNING AND ECONOMIC DEVELOPMENT POLICY ADVISORY GROUP

Meeting - 9 September 2019

Present: J Read (Chairman)
J Jordan, M Lewis and G Sandy

Also Present: Dr W Matthews and R Sangster

Apologies for absence: G Hollis

139. MINUTES

The minutes of the Planning and Economic Development PAG held on 4 April 2019 were approved.

140. DECLARATIONS OF INTEREST

There were no declarations of interest.

141. UPDATES FROM MEMBERS/ SENIOR OFFICERS ON CURRENT ISSUES

The Head of Planning and Economic Development reported that the Regulation 19 process, which was the second stage of the consultation process when forming a Local Plan had now finished. This phase of the consultation process provides local communities, businesses and other interested stakeholders with the opportunity to comment on the policy content of a draft Local Plan, within a specific remit. The remit for public consultation relates to the 'Tests of Soundness' and also includes legal compliance, as set out in National Planning Policy Framework.

Once Regulation 19 was complete, an independent Planning Inspector would then undertake a 'public examination' of the draft Local Plan where recommendations could be made to further improve it. There had been approximately 2,700 responses with over 6,000 comments in total. The Planning Inspectorate were expected to sit in early to mid-December. Members congratulated the Team on their work in getting the Local Plan to this stage.

The Community Infrastructure Levy consultation had now closed and 36 people had responded with 40 comments. The response to consultation was expected to be low due to the technical nature of the document. Following this stage of consultation, the charging schedule will then be submitted for an independent Public Examination to be arranged in which a Planning Inspector would consider evidence from the Councils and from developers, planning agents, stakeholders, Parish Councils, residents' groups, the County Council, infrastructure providers and other likely interested parties. The IPE would be used for this purpose rather than the Planning Inspectorate as they would be able to undertake this more quickly. Hearing sessions were

expected to take place in early November with a report submitted before Christmas. The Charging Schedule would then need to be adopted by both Councils early in 2020 and hopefully be implemented by mid-February 2020.

The Strategic Planning Consultant reported that information forwarded to the Planning Inspectorate would be summarised. An analysis would be made of issues raised on particular policies. No modifications would be made to the Plan.

The Portfolio Holder clarified that the CIL would be sent to the Parish Council for smaller projects that would make a difference to the community. In terms of the new Buckinghamshire Council funding would be put into one budget and allocated according to infrastructure needs, which may not be geographically balanced.

142. **RESPONSE TO HEATHROW AIRPORT CONSULTATION**

The PAG received a report that identified the key planning and environmental issues extracted from Heathrow Airport's recent consultation relating to South Bucks District Council which is summarised as follows:-

- The Heathrow expansion would have implications for residents of South Bucks District and the response of the Council would be considered by the Planning Inspectorate through their determination of the Development Consent Order (DCO) application in 2020. It was the largest DCO application to date proposing a major expansion of the airport with consequences for the District in terms of land use, transport and quality of life due to noise and pollution all of which need to be mitigated against.
- The Council was not the determining authority for the DCO application. Heathrow Airport Holdings Limited (HAL) proposed to submit the DCO application to the Planning Inspectorate (PINS) in mid 2020 with its examination due in 2020/21 and a decision in 2021. The Council's views were matters of interest to PINS in their determination of the DCO.
- The Airport Expansion Consultation (AEC) was being held separately to the consultation on air space. On the AEC only 4,000 responses had been received so far but the deadline was 13 September 2019. For Chiltern the air space consultation was more significant. There was a concern that each consultation was being held separately.
- Currently there were 80 million passengers at Heathrow and this was expected to increase to 142 million by 2050.
- The construction period was critical with a completion date of 2026 which was an extremely optimistic deadline bearing in mind the realignment of the M25, moving of A4 (and rivers), new flood surge ponds.

During discussion the following points

- There were significant gaps in the proposals put forward by HAL despite the 38 consultation documents covering 17,000 pages. Benefits had been put

forward by HAL which covered mainly business opportunities. There were gaps in information for example in management arrangements, HGV routes, alternative routes for the realignment of the M25, the impact of the new railhead, surface access strategy etc. The relocation of the M4 and M25 during construction was a cause for concern as the timetable for these projects was not in line with similar projects completed elsewhere in the country.

- The Strategic Planning Consultant identified areas of the proposed transport model in the Development Consent Order (DCO) that lacked detail. Members referred to the impact on the roads, particularly HGV routes and the robustness of the Preliminary Environmental Information Report. The Strategic Planning Consultant reported that the transport model required further work. This included doubled freight and its impact on the surrounding transport infrastructure. Members identified that the proposed routes of HGV's were problematic due to the existence of low-weight bearing bridges on the routes. Members emphasised the need for a relief road.
- Members raised concerns regarding the proposed Flood Storage and its effect on surrounding communities. It was identified that residents were not able to access the Heathrow airport expansion compensation scheme as they did not qualify due to geography, even though there would be blight and difficulties obtaining house insurance. Members were also concerned that many of the Flood Storage areas were being built on top of former landfill sites. The lack of detail on how the gravel extraction sites would be managed was noted by Members as HGV's would affect traffic.
- The new flood storage ponds were proposed south of Richings Park with significant landscape features proposed. Bunds need to be secured to provide a noise and visual barrier to Richings Park and the Ivers from the third runway to the south of the M4. Solutions had not been presented that address the groundwater and alluvial flooding risks. A Member referred to the fact that the storage pond would be surrounded on three sides by residential properties. The Strategic Planning Consultant reported that he had discussed this issue with the County Council who also had concerns about flooding and adequate mitigation. In addition Members asked whether any benefit could be made from the storage ponds in terms of recreational facilities.
- The effect of flightpaths on communities was also raised and the Strategic Planning Consultant advised that it was contained in a different DCO and consultation. The Airspace decision would be finalised after the DCO was granted which was not considered to be good practice. The plans for airspace were yet to be finalised, but their aims were to spread the impact to minimise the possibility of it affecting only one area. A Member emphasised the need for respite and the need to provide alternative routes.
- It was reported that air quality in Iver was far below the national average, and emphasised the importance of monitoring through the Air Quality Action Plan in place to address air quality issues. Information should be accessible by local councils and available in real-time.

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- A Member asked for clarification on the use of the airspace and noise factors. Reference was made to private jets taking off from Northolt and the need to clarify any changes in airspace relating to the expansion. Reference was made to the need to use monitoring equipment. Aircraft from Heathrow rise quickly and noise from aircraft tends to be under 3,000 feet. If planes were overloaded and the air thin this could have an impact on noise. Members also commented on night flights and the penalties for breaking any regulations. Complaints can be made to the Airports Authority and fines could be issued if regulations were breached.
- The Grundons facility was proposed for relocation in the Slough Green Belt and the Colne Valley Regional Park across from the SBDC boundary. The existing facility would be displaced as a result of the expansion proposal and therefore its relocation should be considered as part of the DCO. Emissions would have a further impact on residents.

RESOLVED:

- 1) That the detailed report and appended table, which addressed issues and concerns for each chapter of the Preliminary Environmental Impact Report and other documents contained within the raft of consultation material be noted, including the fact that Bucks County Council would be addressing the subject matters which fall within their remit to a larger extent.
- 2) That the comments made by the PAG be incorporated into the consultation response submitted by the Acting Chief Executive and Director of Services on behalf of the Council in consultation with the Cabinet Member for Planning and Economic Development.
- 3) That the Council response be shared with Heathrow Spatial Planning Group (HSPG), to form part of the HSPG joint Council response (a recommendation made by the Planning Inspectorate to the HSPG, which was consistent with Minister of Housing, Communities and Local Government guidance.

143. EXEMPT INFORMATION

RESOLVED that under Paragraph 3, Section 100(A)(4) of the Local Government Act 1972 the following item(s) of business is not for publication to the press or public on the grounds that it involves the likely disclosure of exempt information as defined in Part 1 of Schedule 12A to the Act.

144. HS2 PROJECT UPDATE

The HS2 Consultant provided an update on the HS2 Project. The Project remained in Stage 1 which was the design, stakeholder engagement, delivery proposals, supply chain engagement and final design proposals. In August 2019 the Government announced a review of the Project to be chaired by Douglas Oakervee, before making

a final decision as to whether or not to proceed with the project as planned or whether to amend or totally abandon the Project. Notice to Proceed had already been delayed and was expected to be announced in December 2019, if the Government decided to proceed then the project would move into its construction phase. HS2 had recently advised the Council that the Department of Transport had committed a large budget for the project to move to the next phase of the project including procurement for equipment and construction and therefore the Council needed to continue to work on the Project until any such final decision was issued.

The Head of Planning and Economic Development informed the PAG that an agreement had been reached with regards to the viaduct, but a formal response had not been received. In response to questions from Members, it was clarified that the perspex used on construction of HS2 should not cause glare but this needed to be clarified. Members requested more detail on the state of projects for the Colne Valley Regional Park Panel enhancements. With regards to biodiversity, it was reported that the HS2 Masterplan would aim for a net gain in biodiversity. A Member asked for further information on how much funding had been spent on wildlife improvements.

RESOLVED that the report be noted.

The meeting terminated at 7.30 pm

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8 January 2020

SUBJECT:	<i>Community Infrastructure Levy (CIL) Draft Charging Schedule</i>
REPORT OF:	<i>Councillor John Read, Portfolio Holder for Planning & Economic Development, South Bucks District Council</i>
RESPONSIBLE OFFICER	<i>Cathy Gallagher, Interim Head of Planning & Economic Development</i>
REPORT AUTHOR	<i>Simon Meecham, Lead Local Plan Consultant, E: simon.meecham@chilternandsouthbucks.gov.uk T: 01494 721753</i>
WARD/S AFFECTED	<i>All</i>

1. Purpose of Report

1.1 To recommend the Community Infrastructure Levy (CIL) Charging Schedules, attached as Appendix 1, are adopted for publication and implementation by Full Council. This follows the successful examination in public which took place on 5 November 2019 and the Examiners report, attached as Appendix 2, which was received on 13 December 2019.

RECOMMENDATIONS

That the Planning & Economic Development Planning Advisory Group agrees the following recommendations to Cabinet:

- 1. Cabinet recommends that Council adopts the Charging Schedule and implements the Community Infrastructure Levy on 17 February;**
- 2. Delegates to the Acting Chief Executive in consultation with the Portfolio Holder for Planning and Economic Development the decision on whether to accept an offer of transfer of land in payment or part payment of a CIL liability;**
- 3. Delegates to the Acting Chief Executive in consultation the Portfolio Holder for Planning and Economic Development any decisions required for Parts 7 Application of CIL, Part 8 Administration of CIL, Part 9 Enforcement of CIL and Part 10 Appeals;**
- 4. Delegates to the Acting Chief Executive in consultation with the Portfolio Holder for Planning and Economic Development and the Head of Legal and Democratic Services the decision to take proceedings in relation to any CIL offence; and**
- 5. That these delegations novate to the relevant officers and Portfolio Holders of Buckinghamshire Council.**

2. Reasons for Recommendations:

2.1 The Councils are required to adopt and publish the Community Infrastructure Levy Charging Schedules in order to implement the charge. The Councils need to authorise officers of the Council to ensure that the implementation and of CIL is effective. These

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delegations will also be required to implement CIL in the former Chiltern and South Bucks Councils' geographies from vesting day for Buckinghamshire Council -1 April 2020.

3. Content of Report

Background

- 3.1 The Community Infrastructure Levy (CIL) is a charge levied on new buildings and extensions to buildings according to their floor area and the money raised from the development helps to pay for the infrastructure to ensure the Districts grow sustainably. CIL applies to all development of 100 square metres or more and to all net new homes.
- 3.2 The CIL Draft Charging Schedule (DCS) consultation ran from 7 June to 23 August 2019 and attracted a total of 50 representations. These were submitted by members of the public, parish councils, charities, developers and public service providers. The representations were summarised by the Councils for the Independent Planning Examiner, Mr Geoff Salter.

The representations can be viewed in ED015 [here](#).

- 3.3 The Councils, as required by the CIL regulations, also took account of those representations and provided comments to the examiner on whether the Councils considered if any modifications should be made to the DCS. The Councils' officers, in consultation with the Portfolio Holders for Planning and Economic Development, determined that no modifications should be made to the DCS. The representations, summaries, comments and the DCS evidence base were subsequently submitted by the councils to the Examiner through the Programme Officer, Mr Ian Kemp on 20 September 2019.
- 3.4 The Examiner called an Examination in Public hearing which took place on 5 November 2019. At this hearing the Councils proposed a clarification to the definition of the category 'large sites' within the DCS. On receipt of this the Examiner invited all 50 representors to comment on the clarification. This consultation ran from 11 November to the 25 November 2019 and attracted a total of 5 comments as follows:
- a - Denham Parish Council stated that they had no issue with the clarification but raised a matter on S106 planning obligations which has been forwarded to the appropriate Development Management officers;
 - b- Lichfields for Berkeley Homes provided support for the clarification;
 - c- Natural England stated that the clarification did not pose any risk or opportunity in relation to their statutory purpose;
 - d- Troy Planning and Design for Chalfont St Peter Parish Council which provided some challenges to the concept of zero rating, viability and related matters; and
 - e- The Department for Education welcomed the removal of the 4,000 / 40,000 square metre criteria through the clarification but retained their objection to the charge of £35 per square metre for education development.

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The representations can be viewed in ED019 a, b, c, d, e [here](#).

3.5 Following receipt of these comments the Examiner issued his report on 13 December 2019, attached as Appendix 2, which included agreement for the insertion of the clarification of 'large sites' into the final Charging Schedules. The final Charging Schedules are required to go to the Planning and Economic Development Policy Advisory Groups and Cabinets to seek adoption for implementation by both Councils. The clarification on 'large sites' has been inserted and the DCS has been updated to reflect it will be the 'Charging Schedules' rather than a DCS upon adoption; the Charging Schedules are attached as Appendix 1.

The Charging Schedules

3.6 CIL is intended to sit alongside Section 106 planning obligations and other legal agreements in order to fund new infrastructure to support development. CIL and other means of securing developer contributions will operate together, on the basis that, generally, Section 106 agreements would be used to secure new infrastructure that is required to support individual development schemes (including on-site facilities) and CIL would be used to fund new infrastructure that is required to support a number of developments.

3.7 The introduction of CIL has been closely aligned to the progress of the Joint Local Plan. In order to justify the introduction of CIL, it is a requirement for the Local Planning Authority to prepare up to date infrastructure evidence. This evidence has been prepared jointly in support of both the CIL and the Local Plan. The progression of the Charging Schedules has been in parallel with the production of the Local Plan and the successful introduction of CIL prior to the Local Plan Examination in Public is sound underpinning evidence for the new National Planning Policy Framework requirements for Local Plan allocations to be considered viable at the Plan making stage.

3.8 The benefits of implementing CIL include:

- There is no time limit to spend the Council's proportion of CIL receipts and funds can be deployed with a degree of flexibility in supporting delivery of infrastructure across a wider area than S106 contributions, which are usually tied to site specific mitigation matters;
- Except for certain exemptions, contributions from CIL will be received from all residential schemes, not just those of 10 homes or more;
- A proportion of CIL receipts must be spent within the relevant town or parish where the CIL liable development takes place. In all parishes 15% of CIL receipts will be passed to the relevant town or parish council for them to spend on local infrastructure projects. Where these town or parish councils have a made Neighbourhood Plan, they will receive 25% of relevant CIL receipts.

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3.9 Councils are required by government to publish an Annual Funding Statement. This requires the co-operation of town and parish councils because the statement declares how much money has been received, how much has been spent and what item of infrastructure it has been spent on. In terms of town and parish council receipts these need to be spent within 5 years of receipt or the levy proceeds will need to be returned to the levy collecting authority. The first funding statement will be due in December 2020 and will be the responsibility of Buckinghamshire Council as the levy collecting authority to produce.

3.10 CIL receipts can be spent on strategic infrastructure and local infrastructure. In addition, the district councils can retain up to 5% of the levy received to fund and meet the establishment costs and on-going administration of CIL. It is unlikely that the Councils will receive significant levy receipts in first few years of operation, this is not un-typical, the funds will grow over time to be used, for example, to deliver or match fund capital projects.

Instalment Policy and Payment in Kind Policy

3.11 The CIL liability will be confirmed when planning permission is granted. Therefore, sites that already have the benefit of planning permission, both Outline and Full, will not be liable to pay CIL. The trigger for payment is within sixty days of the commencement of development, however if agreed by the Council payments can be made through instalments. The Councils CIL *Payments Installments* policy is set out in Appendix 4 of the Charging Schedules. The Councils *Payments in Kind* policy is set out in paragraph 4.4.4 of the Charging Schedules.

4. Options

4.1 The adoption of CIL by the Council will enable developments that currently do not pay an infrastructure contribution, to be subject to a CIL charge.

4.2 The alternative option is not to introduce CIL, which will forego this source of infrastructure funding.

5. Corporate Implications

5.1 Financial

Once CIL is adopted and introduced by the Council it will lead to developments needing to pay a sum of money equivalent to their CIL liability, which can be used to support infrastructure investment across the area. The CIL Regulations also allow 5% of CIL receipts to be used by the Council to recover CIL establishment costs and ongoing administrative costs, once implemented.

5.2 Legal

5.2.1 The introduction of CIL is a prescribed statutory process, so must be developed and implemented in accordance with the Government's CIL Regulations. There are rights of appeal against the Councils decisions in

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relation to CIL Charges to the Valuation Office Agency and to the Planning Inspectorate regarding surcharges.

- 5.2.2 The decision to adopt CIL would vest in and transfer to Buckinghamshire Council on vesting day and CIL would continue to be administered by Buckinghamshire Council in accordance with the CS. The new Council's Constitution would make provision for the relevant Officer decision making powers.

5.3 And where appropriate: Crime and Disorder, Environmental Issues, ICT, Partnership, Procurement, Social Inclusion, Sustainability

After adoption and when enough funds have been collected, CIL receipts can be used to fund a range of infrastructure requirements in accordance with the Councils' priorities, including community cohesion, health and wellbeing, environmental improvements and sustainability.

8. Links to Council Policy Objectives

- 8.1 The introduction of CIL will contribute to the achievement of Chiltern and South Bucks Councils business plans for 2019/2020, by providing resources to help conserve the environment and promote sustainable economic growth.

9. Next Steps

- 9.1 Following consideration by the Planning and Economic Development Advisory Groups and the Portfolio Holder and if the recommendations are agreed, the CIL Charging Schedules will be reported to both Cabinets and both Full Councils with a recommendation for approval and the Constitution updated accordingly.

Background Papers:	<p><u>Appendices</u></p> <p>1) CIL Charging Schedule.</p> <p>2) Examiners Report</p>
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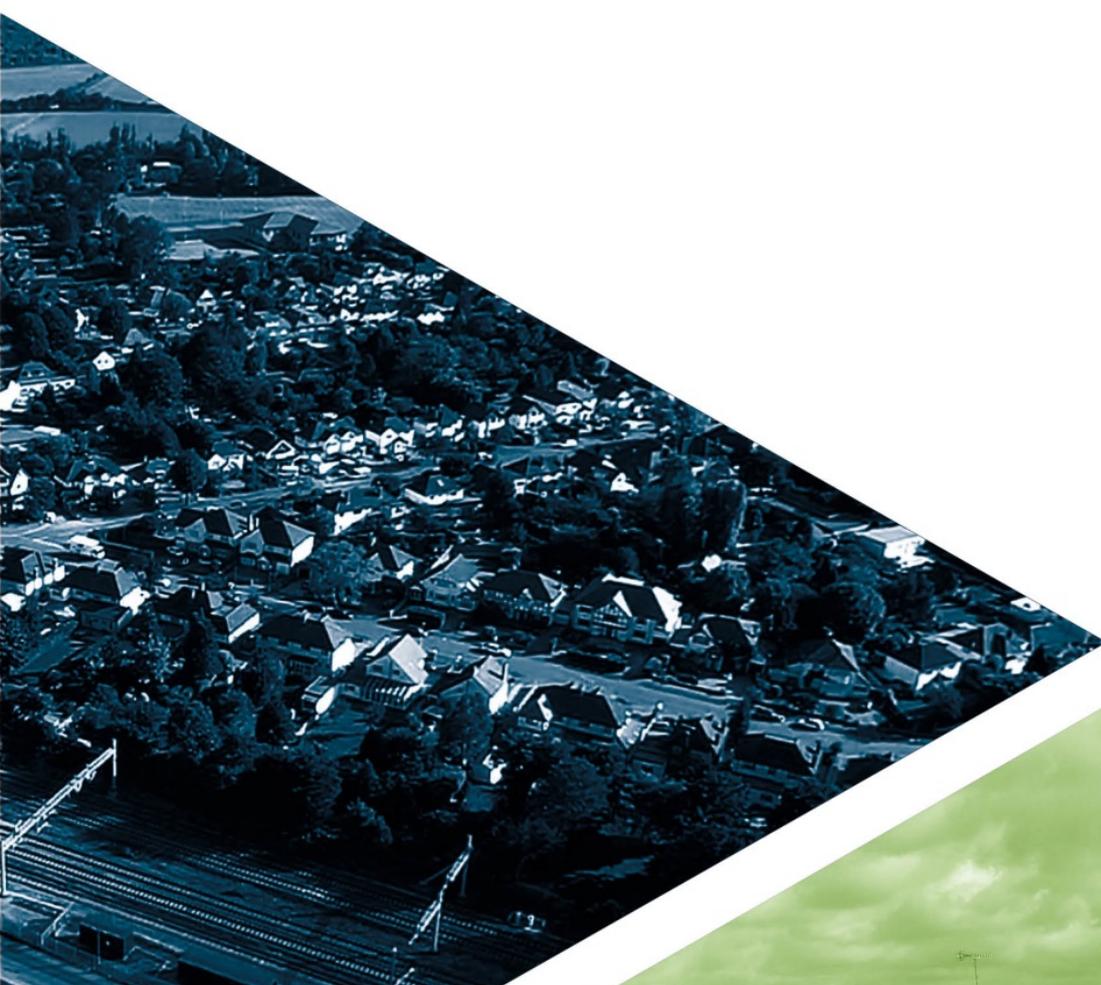


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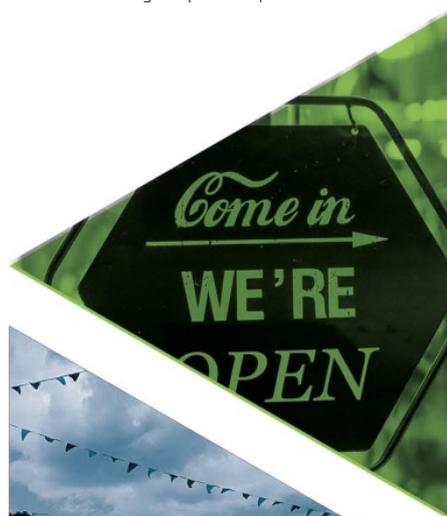
Stronger in partnership



Community Infrastructure Levy (CIL)

Chiltern and South Bucks District Councils

Charging Schedules



Adopted
South Bucks District
Council 15 January 2020
Chiltern District Council
7 January 2020

Community Infrastructure Levy (CIL)

June 2019

Chiltern and South Bucks District Councils

Draft Charging Schedule

Consultation Document

Charging Schedule

The Community Infrastructure Levy (CIL) Charging Schedule (CS) was adopted by South Bucks District Council 15 January 2020 and Chiltern District Council 7 January 2020.

CIL became effective on 17 February 2020.

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Charging Authorities - Charging Areas

The two charging authorities are Chiltern District Council and South Bucks District Council. The charging schedule for the administrative area of Chiltern is set out in Table 1. The charging schedule for the administrative area for South Bucks is set out in Table 2. Both schedules contain the same charges.

CIL is a charge on development; it is tariff-based and enables local authorities to raise funds to pay for infrastructure. The CIL Charging Schedules set out the CIL rates that the Councils propose to charge on development within their administrative areas. Charges are set out as '£s per square metre' and are only chargeable on developments set out in Tables 1 and 2 of this document.

Statutory Compliance

The provisions for CIL are set out by Part 11 of the Planning Act 2008, the Localism Act 2011, and the CIL Regulations 2010 (as amended).

The Government's guidance on CIL and the CIL Regulations can be accessed via the following web link: <https://www.gov.uk/guidance/community-infrastructure-levy#introduction>

About the Community Infrastructure Levy

Most new development has an impact on infrastructure and therefore it is reasonable to expect developers to contribute to the cost of providing or improving that infrastructure. CIL in conjunction with S106 and S278 planning obligations provides a mechanism to collect funds to ensure this happens. Unlike S106 which focuses on affordable housing and site specific infrastructure, CIL charges can be collected on a wider range of developments and be spent on strategic infrastructure.

When setting rates, CIL Regulation 14 requires Councils to strike an appropriate balance between the desirability to fund infrastructure through CIL and the potential effect (taken as a whole) of the levy, on the economic viability of development in the geographical area in which CIL charges apply. When looking at infrastructure, the Councils also needed to estimate the cost of the infrastructure required to support development and consider sources of funding, including CIL that could be available.

Regulation 14 of the CIL Regulations 2010 (as amended) provides:

'14. - (1) In setting rates (including differential rates) in a charging schedule, a charging authority must strike an appropriate balance between:

- (a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking account of other actual and expected sources of funding; and*
- (b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.*

Local authorities must spend the levy on infrastructure needed to support the development of their area, and they will decide what infrastructure is needed. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development.

The levy can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities. This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, healthcare facilities, academies and free schools, district heating schemes and police stations and other community safety facilities. This flexibility gives local areas the opportunity to choose what infrastructure they need to deliver their relevant Plan (the Local Plan in England). Charging authorities may not use the levy to fund affordable housing.

The levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support development.

CIL Regulation 13 makes provision, where relevant, for the setting of differential rates for different geographical areas /zones, different development types/uses, and scale of development size; or a combination of these factors. Any differential rate needs to be justified by viability assessments and evidence.

CIL Geographic Charging Differentials

The viability assessment for both Chiltern District Council and South Bucks District Council has established a uniform charge across both administrative geographies. This means that the CIL liability in Tables 1 and 2 applies across both districts without any differentials in geography.

By contributing to investment in the infrastructure of the area and combining this with other funding sources, CIL is expected to have a positive effect on growth, development and the environment.

CIL Liable Developments

CIL is charged on a £s per square metre basis according to the rates set out in Tables 1 and 2. The charging schedule for Chiltern District Council and South Bucks District Council collects the levy based on:

- the net additional gross internal floor space of all new residential units, regardless of their size;
- the erection of, or extensions to, other buildings creating over 100 square metres net new additional gross internal floor space; and
- the conversion of a building which is no longer in lawful use, and which has not been in use for a continuous period of 6 months over the last 3 years.

Liability to pay CIL on qualifying developments applies whether development requires planning permission or is enabled through permitted development orders (General Permitted Development Order, Local Development Orders, Neighbourhood Development Orders, and Enterprise Zones).

Once the CIL charging schedule is adopted by Chiltern District Council and South Bucks District Council, the levy charged is non-negotiable. CIL collection is triggered when the developer notifies the Council that the development due to commence.

CIL Exemptions

The Regulations exempt some development from CIL liability, including:

- Development of less than 100 square metres new build floor space measured as gross internal area (GIA), unless it results in the creation of one or more dwellings (Regulation 42);
- The conversion of any building previously used as a dwelling house to two or more dwellings, which doesn't create net additional new floor space, and which has been in use for 6 months continuous use in the last 3 years
- Development of buildings and structures into which people do not normally go into, or enter under limited circumstances (for example an electricity sub-station, or wind turbine, or for the purpose of inspecting or maintaining fixed plant or machinery) (Regulation 5(2));
- Buildings for which planning permission was granted for a limited period;
- Full relief is applied on all those parts of chargeable development that are to be used as social/affordable housing, subject to an application by a landowner for CIL relief (criteria set out in Regulation 49/49A);
- Development by charities for charitable purposes subject to an application by a charity landowner for CIL relief (CIL regulation 43-48) (mandatory charitable relief);
- Houses, flats, residential annexes and residential extensions, which are built by self-builders, subject to an application for exemption by homeowners (CIL regulations 42A, 42B, 54A and 54B);
- The conversion of or works to a building in lawful use that affects only the interior of the building;
- Mezzanine floors of less than 200 square metres inserted into an existing building, unless they form part of a wider planning permission, which seeks to provide other works;
- Vacant buildings brought back into use (Regulation 40), where there is no net gain in floor space, provided a building has been in use for 6 continuous months during the last 3 years; and
- When a CIL charge is calculated as £50 or less, a CIL payment will not be charged by a Charging Authority.

CIL and Existing Planning Permissions

CIL only applies to developments in the relevant district when the charging schedule is adopted by Chiltern District Council or South Bucks District Council. Development proposals that already have planning permission when a CIL Charging Schedule comes into force are not liable for CIL. This includes any subsequent reserved matters applications following the granting of outline planning permission.

However, if proposed developments with planning permission are not started within the time limit stipulated on the decision notice, any subsequent application which in effect seeks a renewal may be liable to CIL where the Charging Schedule has been adopted.

Where an application is made under Section 73 of the Town and Country Planning Act 1990 for development without compliance with conditions which govern a planning permission, CIL is only chargeable on any additional floorspace over and above that approved by the original permission.

CIL Preliminary Charging Schedule (PDCS) and Draft Charging Schedule (DCS) Consultations

The Councils consulted on a CIL PDCS during November and December 2018. The Councils then consulted on the CIL DCS during June to August 2019.

Comments on both consultations were received from Town & Parish Councils, residents' groups, agents, landowners, developers, statutory bodies and residents.

An Examination in Public took place on 5 November 2019 and the Examiners report was published on the xx December.

Infrastructure Delivery Plan & Funding Gap

An Infrastructure Delivery Plan has been prepared which sets out the infrastructure likely to be required to support the delivery of housing and commercial growth to 2036. This is a live document and will be occasionally updated.

An Infrastructure Funding Gap statement identifies that the likely CIL receipts from the anticipated new developments will be less than the costs of the infrastructure identified in the draft Infrastructure Delivery Plan. It confirms that CIL would contribute to, but not by itself, generate enough funds to pay for all the major infrastructure needs identified in the Infrastructure Delivery Plan.

CIL and Local Plan Viability Assessment

Chiltern District Council and South Bucks District Council commissioned consultants to undertake a CIL viability assessment for housing and commercial development in Chiltern and South Bucks. The findings have informed the residential and commercial CIL rates set out in Tables 1 and 2, the Councils charging schedule.

The viability assessment indicates that it is appropriate for large sites to be CIL zero rated and should continue to rely on S106 planning obligations; this is due to the scale of site-specific development mitigation and infrastructure requirements from large sites, such as new schools and roads.

The assessment also considers that uniform CIL charging rates across both Chiltern and South Bucks should be levied at £150 per square metre for residential uses; £150 per square metre for retail and related uses; and £35 per square metre for commercial and other specific development categories.

Adopted Charging Schedules

Tables 1 and 2 detail the residential, commercial and other CIL rates for Chiltern District Council and South Bucks District Council.

The CIL rates are presented for each Council area in accordance with the Government's CIL Regulations, which requires rates to be attributed to an individual Charging Authority. The administrative areas of the districts can be viewed in appendices 1 and 2. For Tables 1 and 2 below, see appendix 3 for a guide to the Use Classes.

Table 1: Chiltern District Council area CIL Rates

Table 1: Chiltern District Council area CIL Rates	
Development type (Use Class)	CIL Rate/square metre
A1 Shops	£150
A2 Finance and professional services	£150
A3 Restaurants and cafés	£150
A4 Drinking establishments	£150
A5 Hot food takeaways	£150
B1 Business	£35
B2 General industrial	£35
B8 Storage or distribution	£35
C1 Hotels	£35
C2 and C2A Residential institutions and Secure Residential Institutions	£35
C3 Dwelling homes*	£150
C4 Homes in multiple occupation	£150
D1 Non-residential institutions	£35
D2 Assembly and leisure	£35
Sui Generis	£35
All development types unless stated otherwise in this table	£35
Large sites of 400 homes or more (gross) or 10 hectares or more (gross) irrespective of land use**	£0
*C3 includes all self-contained accommodation, including elderly and sheltered accommodation and self-contained student accommodation.	
**Large sites are defined as any site allocated in an emerging /adopted Local Plan or a windfall site with 400 homes or more (gross) or 10 hectares of land or more (gross). This definition will be applied to any planning application for the whole or part of any such allocation.	

Table 2: South Bucks District Council area CIL Rates

Table 2: South Bucks District Council area CIL Rates	
Development type (Use Class)	CIL Rate/square metre
A1 Shops	£150
A2 Finance and professional services	£150
A3 Restaurants and cafés	£150
A4 Drinking establishments	£150
A5 Hot food takeaways	£150
B1 Business	£35
B2 General industrial	£35
B8 Storage or distribution	£35
C1 Hotels	£35
C2 and C2A Residential institutions and Secure Residential Institutions	£35
C3 Dwelling homes*	£150
C4 Homes in multiple occupation	£150
D1 Non-residential institutions	£35
D2 Assembly and leisure	£35
Sui Generis	£35
All development types unless stated otherwise in this table	£35
Large sites of 400 homes or more (gross) or 10 hectares or more (gross) irrespective of land use**	£0
*C3 includes all self-contained accommodation, including elderly and sheltered accommodation and self-contained student accommodation.	
**Large sites are defined as any site allocated in an emerging / adopted Local Plan or a windfall site with 400 homes or more (gross) or 10 hectares of land or more (gross). This definition will be applied to any planning application for the whole or part of any such allocation.	

Annual Index linking of CIL Rates

CIL Regulation 40 enables charging authorities to make an annual index linked increase to their CIL rates at a set time of the year, which is normally from 1 January.

The CIL Regulations current method is to use the All-in Tender Price Index, published by the Building Cost Information Service (BCIS).

Discretionary Relief from CIL

A charging authority can choose to offer discretionary relief to a charity landowner where the greater part of the chargeable development will be held as an investment, from which the profits are applied for charitable purposes (CIL regulation 44).

It can choose to offer exceptional circumstances relief (CIL regulation 55) where the charging of CIL would have an unacceptable impact on the economic viability of a development, and where the exemption of a charitable institution from liability to pay CIL would constitute State Aid (CIL regulation 45) and would otherwise be exempt from liability under regulation 43.

Chiltern and South Bucks District Councils are not proposing to make available either discretionary charity relief or the exceptional circumstances relief (CIL regulations 44, 45 and 55).

Payments in kind

In circumstances where the liable party and the Councils agree, payment of the levy may be made by transferring land or conducting works to an equivalent value. The agreement cannot form part of a planning obligation, and must be agreed before the chargeable development is commenced and is subject to fulfilling the following:

- the acquired land or works, is used to provide or facilitate the provision of infrastructure within the Districts;
- the land is acquired, or works are conducted, by the Councils or a person nominated by the Councils;
- the transfer of the land, where relevant, must be from a person who has assumed liability to pay CIL;
- the land must be valued by an independent person agreed by the Councils and the party liable to pay CIL, whereby the party liable to pay CIL meets the cost of the land valuation; and
- 'Land' includes existing buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over the land.

The Councils intend to consider payments in kind on a discretionary basis within the terms set out above.

Payment of CIL and Instalments Policy

The CIL Regulations default position is that CIL payment is due within 60 days of the commencement of development. Charging Authorities can however set out an appropriate CIL payments instalments policy.

The Councils intend to operate a CIL Instalments policy according to the schedule set out by Appendix 4.

CIL Administration Fee

The CIL Regulations allow the Councils to use up to 5% of total CIL receipts to refund and meet the costs associated with the establishment and on-going administration of CIL.

Parish & Town Councils' Neighbourhood Portion

At least 15% of CIL receipts are allocated to Parish and Town Councils where CIL liable developments have taken place. This is known as the Neighbourhood Portion. If a Parish or Town Council area is covered by a 'made' Neighbourhood Plan, then the amount increases to 25% of CIL receipts from the area covered by the Neighbourhood Plan.

There is a cap of £100 (indexed) per council taxed home within a Parish or Town Council area per financial year, in areas without a made Neighbourhood Plan, but no cap if one is in place.

All Councils must pass over the Neighbourhood Portion of levy receipts from development to Parish or Town Councils if they are the accountable body. As the Chiltern and South Bucks areas are fully covered by Parish or Town Councils, the money (subject to any cap) will be passed to the relevant Parish or Town Council. CIL guidance recommends however that Charging Authorities and receiving Parish or Town Councils should engage and work closely to agree how best to spend these funds.

The CIL Regulations allow for the Neighbourhood Portion of levy receipts to be used for:

- The provision, improvement, replacement, operation or maintenance of infrastructure; or
- Anything else that is concerned with addressing the demands that development places on an area.

Provisions for the recovery of CIL monies by a Charging Authority are available, if Parish or Town Councils do not spend the Neighbourhood Portion of CIL receipts within five years of receiving it.

Councils CIL Fund

The remaining funds, after administration and neighbourhood portion deductions will be allocated by the Councils to infrastructure projects. The Councils are required to publish on their website an Infrastructure Funding Statement; no later than the 31 December each calendar year which includes:

- a statement of the infrastructure projects or types of infrastructure which the charging authority intends will be, or may be, wholly or partly funded by CIL (other than CIL to which regulation 59E or 59F applies) ("the infrastructure list");
- a report about CIL, in relation to the previous financial year ("the reported year"), which includes the matters specified in paragraph 1 of Schedule 2 ("CIL report");
- a report about planning obligations, in relation to the reported year, which includes the matters specified in paragraph 3 of Schedule 2 and may include the matters specified in paragraph 4 of that Schedule ("section 106 report").

CIL and Section 106 Planning Obligations

CIL funds can be used to provide infrastructure to support the development of a whole area, whereas S106 obligations are used to make individual planning applications acceptable in planning terms.

Section 106 agreements and Section 278 highways agreements will continue to be used to secure site-specific mitigation and affordable housing.

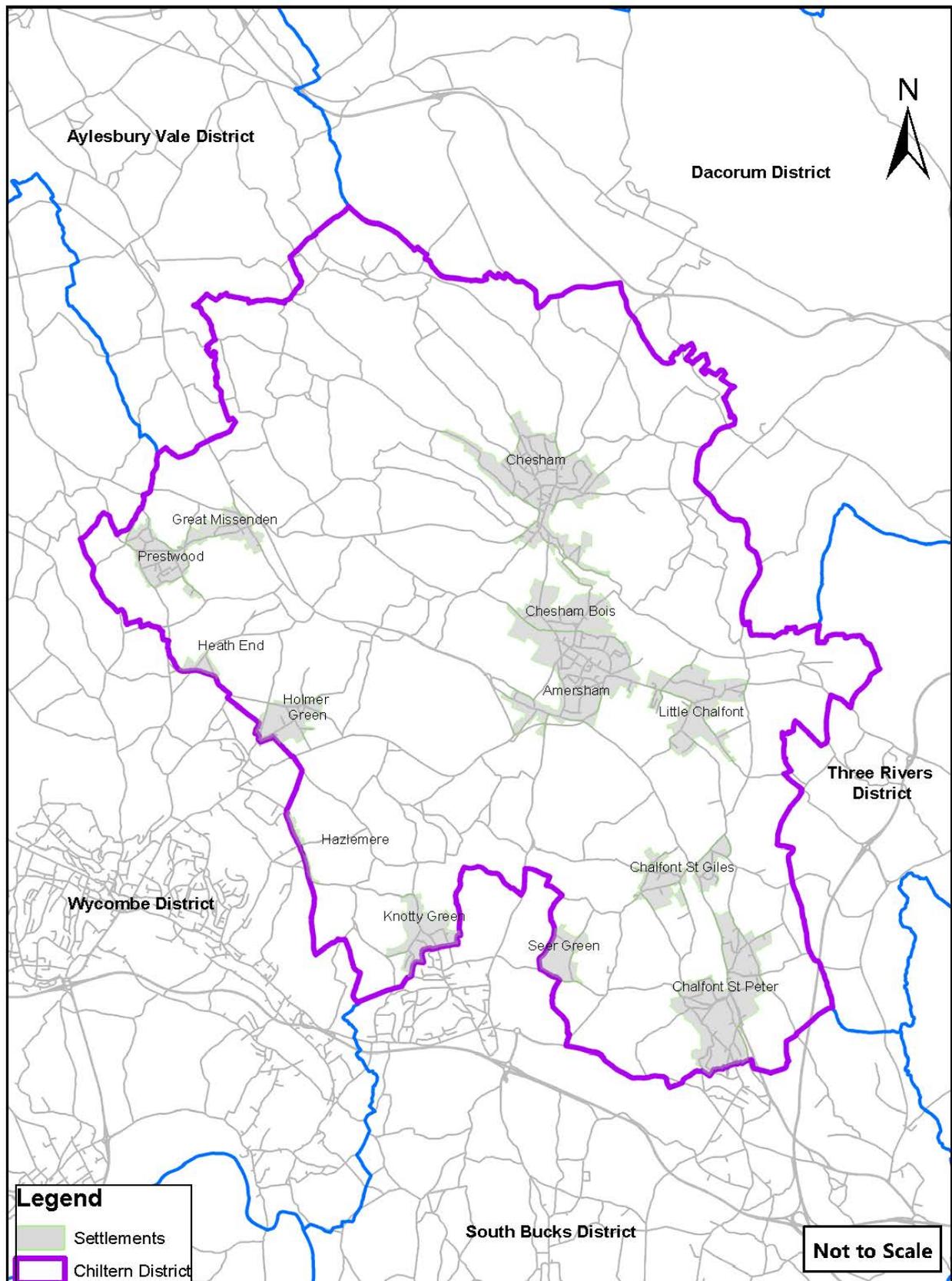
There are advantages and disadvantages in both S106 and CIL regimes. On the plus side, S106 contributions can be used to support the timely delivery of essential infrastructure, in support of specific developments. CIL funds can on the other hand be deployed with a greater degree of flexibility in supporting delivery of infrastructure across a wider area.

The Council is setting a threshold whereby developments of 400 homes or more or on sites of 10 hectares or more will be CIL zero rated. On these developments, financial contributions will be negotiated and legally bound through S106 and S278 agreements. Below these thresholds CIL will apply to all relevant development and the financial contributions will be based on the Charging Schedules. An exception to this is affordable housing which is legally required to be agreed through S106 agreements.

CIL Administration

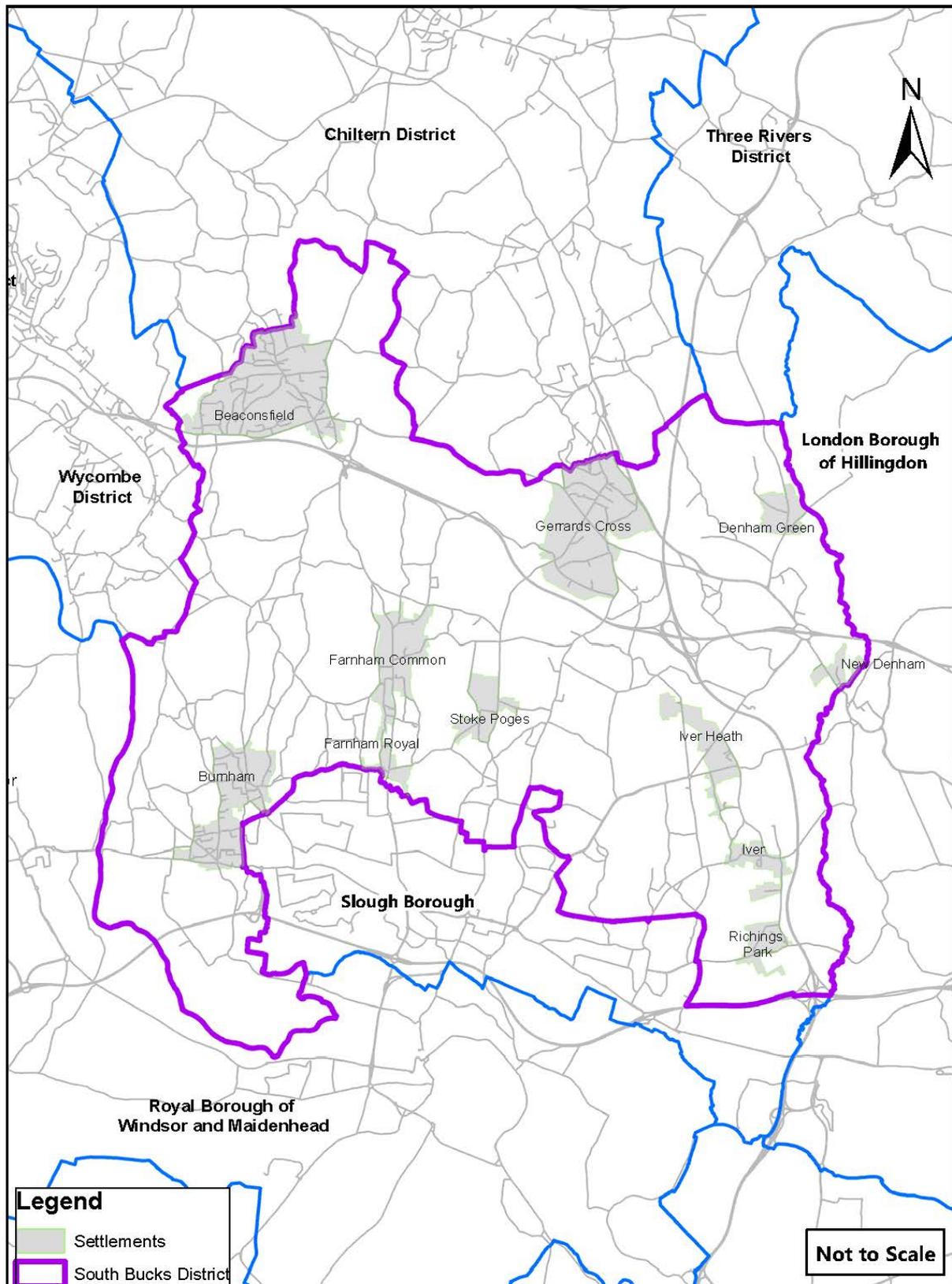
Appendix 5 provides further information on CIL administration and information for developers on some of the implementation issues that they will need to be aware of, in relation to CIL liable planning consents and permitted developments.

Appendix 1: Chiltern District Council's CIL Charging Areas



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Appendix 2: South Bucks District Council's CIL Charging Areas



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Appendix 3: Guide to the Use Classes Order & Definitions

The Town and Country Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categories known as 'Use Classes'. The following list is based on the Government's guide to Use Classes. It is not a definitive source of legal information. The list gives an indication of the types of use which may fall within each use class. Please note it is for local planning authorities to determine the use class a particular use falls into.

Part A

- **A1 Shops** - Shops, retail warehouses, hairdressers, undertakers, travel and ticket agencies, post offices, pet shops, sandwich bars, showrooms, domestic hire shops, dry cleaners, funeral directors and internet cafés.
- **A2 Financial and professional services** - Financial services such as banks and building societies, professional services (other than health and medical services) and including estate and employment agencies. It does not include betting offices or pay day loan shops - these are now classed as "sui generis" uses (see below).
- **A3 Restaurants and cafés** - For the sale of food and drink for consumption on the premises - restaurants, snack bars and cafes.
- **A4 Drinking establishments** - Public houses, wine bars or other drinking establishments (but not night clubs) including drinking establishments with expanded food provision.
- **A5 Hot food takeaways** - For the sale of hot food for consumption off the premises.

Part B

- **B1 Business** - Offices (other than those that fall within Class A2), research and development of products and processes, light industry appropriate in a residential area.
- **B2 General industrial** - Use for industrial processes other than those falling within Class B1 (excluding incineration purposes, chemical treatment or landfill or hazardous waste).
- **B8 Storage or distribution** - This class includes open air storage.

Part C

- **C1 Hotels** - Hotels, boarding & guest houses where no significant element of care is provided (excludes hostels).
- **C2 Residential institutions** - Residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres.
- **C2A Secure Residential Institution** - Use for a provision of secure residential accommodation, including use as a prison, young offenders' institution, detention centre, secure training centre, custody centre, short term holding centre, secure hospital, secure local authority accommodation or use as a military barracks.
- **C3 Dwelling houses** - this class is formed of three parts:
 - C3 (a) covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child.
 - C3(b): up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or

mental health problems.

- C3(c) allows for groups of people (up to six) living together as a single household. This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger.
- **C4 Houses in multiple occupation** - small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.

Part D

- **D1 Non-residential institutions** - Clinics, health centres, crèches, day nurseries, day centres, schools, art galleries (other than for sale or hire), museums, libraries, halls, places of worship, church halls, law courts. Non-residential education and training centres.
- **D2 Assembly and leisure** - Cinemas, music and concert halls, bingo and dance halls (but not night clubs), swimming baths, skating rinks, gymnasiums or area for indoor or outdoor sports and recreations (except for motor sports, or where firearms are used).

Sui Generis

- Certain uses do not fall within any use class and are considered 'sui generis'. Such uses include betting offices/shops, pay day loan shops, theatres, larger houses in multiple occupation, hostels providing no significant element of care, scrap yards. Petrol filling stations and shops selling and/or displaying motor vehicles. Retail warehouse clubs, nightclubs, launderettes, taxi businesses and casinos.

Appendix 4: CIL Payments Instalments Policy

This policy is made in line with Regulation 69B of the CIL (Amendment) Regulations 2011. The Councils will allow the payment of CIL as outlined in the points below:

1. Where the chargeable amount is less than £200,000, the chargeable amount will be required within 60 days of commencement.
2. Where the chargeable amount is between £200,000 and £2 million, the chargeable amount will be required as per the following four instalments:

1 st instalment	2 nd instalment	3 rd instalment	4 th instalment
25% within 60 days	25% within 160 days	25% within 260 days	25% within 360 days

3. Where the chargeable amount is over £2 million, the chargeable amount will be required as per the following four instalments:

1 st instalment	2 nd instalment	3 rd instalment	4 th instalment
25% within 60 days	25% By end of year 1	25% By end of year 2	25% By end of year 3

Commencement will be taken to be the date advised by the developer in the commencement notice under CIL Regulation 67.

Notes:

N1: When the Councils grant an outline planning permission which permits development to be implemented in phases, each phase of development is a separate chargeable development and the instalment policy will apply to each separate phase.

N2: This policy will not apply, and will be superseded by a default payment position allowed by the CIL Regulations, if:

- a) A commencement notice is not submitted prior to commencement of the chargeable development.
- b) Nobody has assumed liability to pay CIL in respect of the chargeable development prior to the intended day of commencement.
- c) Failure to notify the Council of a disqualifying event before the end of 14 days beginning with the day the disqualifying event occurs.
- d) An instalment payment has not been made in full after the end of the period of 30 days beginning with the day on which the instalment payment was due.

Calculating the chargeable amount

The Councils will calculate the amount of CIL chargeable using the locally set rates multiplied by the gross internal area of the new buildings and enlargements to existing buildings, taking demolished floor space into account. The formal calculation methodology is set out by CIL Regulation 40, as follows:

**PART 5
CHARGEABLE AMOUNT**

Calculation of chargeable amount

40.—(1) The collecting authority must calculate the amount of CIL payable (“chargeable amount”) in respect of a chargeable development in accordance with this regulation.

(2) The chargeable amount is an amount equal to the aggregate of the amounts of CIL chargeable at each of the relevant rates.

(3) But where that amount is less than £50 the chargeable amount is deemed to be zero.

(4) The relevant rates are the rates, taken from the relevant charging schedules, at which CIL is chargeable in respect of the chargeable development.

(5) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

$$\frac{R \times A \times I_p}{I_c}$$

where—

A = the deemed net area chargeable at rate R, calculated in accordance with paragraph (7);

I_p = the index figure for the year in which planning permission was granted; and

I_c = the index figure for the year in which the charging schedule containing rate R took effect.

(6) In this regulation the index figure for a given year is -

(a) the figure for 1st November for the preceding year in the national All-in Tender Price Index published from time to time by the Building Cost Information Service of the Royal Institution of Chartered Surveyors(1); or

(b) if the All-in Tender Price Index ceases to be published, the figure for 1st November for the preceding year in the retail prices index.

(7) The value of A must be calculated by applying the following formula—

$$G_R - K_R - \left(\frac{G_R \times E}{G} \right)$$

where—

G = the gross internal area of the chargeable development;

G_R = the gross internal area of the part of the chargeable development chargeable at rate R;

K_R = the aggregate of the gross internal areas of the following—

- (i) retained parts of in-use buildings, and
- (ii) for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development;

E = the aggregate of the following—

- (i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development, and
- (ii) for the second and subsequent phases of a phased planning permission, the value E_x (as determined under paragraph (8)), unless E_x is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

(8) The value E_x must be calculated by applying the following formula—

$$E_P - (G_P - K_{PR})$$

where—

E_P = the value of E for the previously commenced phase of the planning permission;

G_P = the value of G for the previously commenced phase of the planning permission; and

K_{PR} = the total of the values of K_R for the previously commenced phase of the planning permission.

(9) Where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building.

(10) Where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish—

(a) whether part of a building falls within a description in the definitions of K_R and E in paragraph (7); or

(b) the gross internal area of any part of a building falling within such a description, it may deem the gross internal area of the part in question to be zero.

(11) In this regulation—

“building” does not include—

(i) a building into which people do not normally go,

(ii) a building into which people go only intermittently for the purpose of maintaining or inspecting machinery, or

(iii) a building for which planning permission was granted for a limited period;

“in-use building” means a building which—

(i) is a relevant building, and

(ii) contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development;

“new build” means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings;

“relevant building” means a building which is situated on the relevant land on the day planning permission first permits the chargeable development;

“relevant charging schedules” means the charging schedules which are in effect—

(i) at the time planning permission first permits the chargeable development, and

(ii) in the area in which the chargeable development will be situated;

“retained part” means part of a building which will be—

(i) on the relevant land on completion of the chargeable development (excluding new build),

(ii) part of the chargeable development on completion, and

(iii) chargeable at rate R.”

Appendix 6: Measuring CIL liable floor space

Calculating CIL liability depends on the amount of CIL liable floor space that forms part of a proposal, using Gross Internal Area (GIA) measured in accordance with the Royal Institute of Chartered Surveyors (RICS) Code of Measuring Practice. The table below is based on the RICS's Code of Measuring Practice (6th edition, with amendments). The full Code of Measuring Practice is available on the RICS website at www.rics.org

GIA is the area of a building measured to the internal face of the perimeter walls at each floor level.

Including:

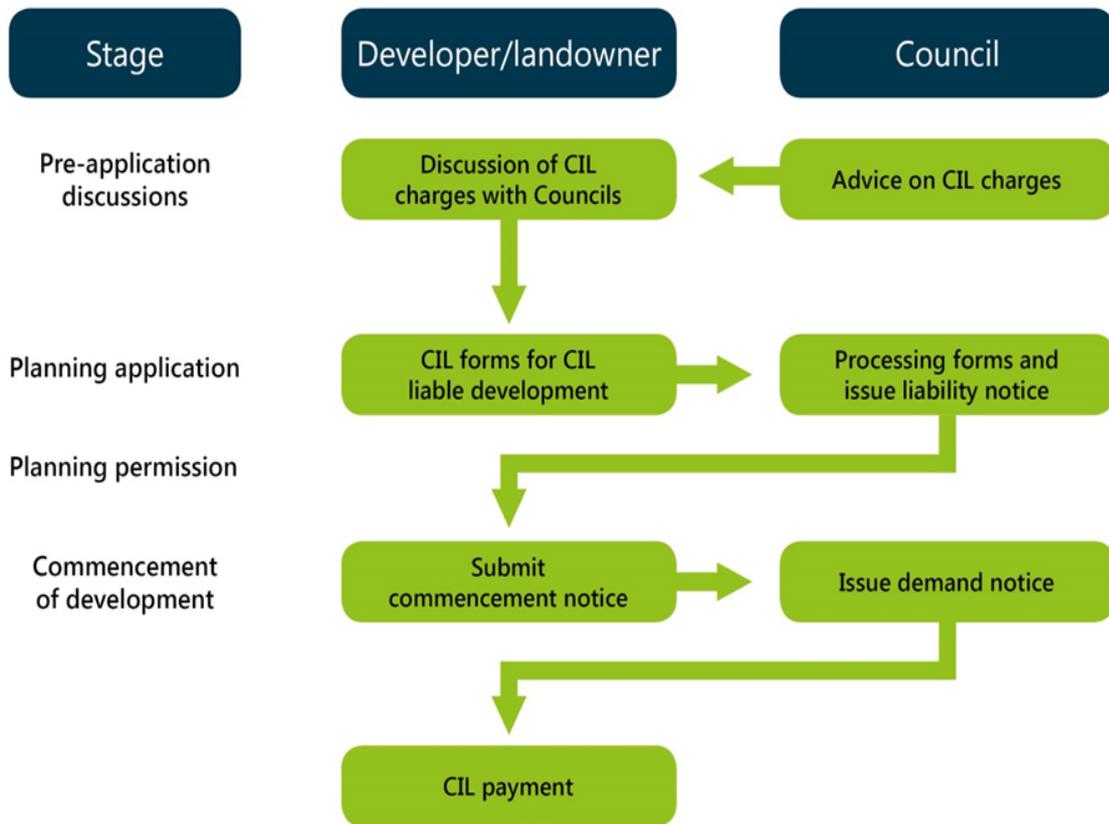
- Areas occupied by internal walls and partitions
- Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
- Atria and entrance halls, with clear height above, measured at base level only
- Internal open-sided balconies, walkways, and the like
- Structural, raked or stepped floors are property to be treated as a level floor measured horizontally
- Horizontal floors, with permanent access, below structural, raked or stepped floors
- Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
- Mezzanine floor areas with permanent access
- Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level
- Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms, and the like
- Projection rooms
- Voids over stairwells and lift shafts on upper floors
- Loading bays
- Areas with a headroom of less than 1.5m*
- Pavement vaults
- Garages
- Conservatories

Excluding:

- Perimeter wall thicknesses and external projections
- External open-sided balconies, covered ways and fire escapes
- Canopies
- Voids over or under structural, raked or stepped floors
- Greenhouses, garden stores, fuel stores, and the like in residential

GIA is the basis of measurement in England and Wales for the rating of industrial buildings, warehouses, retail warehouses, department stores, variety stores, food superstores and many specialist classes valued by reference to building cost (areas with headroom of less than 1.5m being excluded except under stairs).

Once planning permission is granted, the CIL Regulations encourage any party, (such as a developer submitting a planning application, or a landowner), to assume liability to pay the CIL charge. CIL liability runs with the land. If no party assumes liability to pay before development commences, land owners will be liable to pay the levy. The Councils will put in place procedures that relate to establishing CIL liability and making the relevant payments, modelled on the flow-chart diagram below.



Collection of CIL

The Councils are to be the collecting authority for the purpose of Part 11 of the Planning Act 2008 and the CIL Regulations 2010 (as amended).

When planning permission is granted, the Councils will issue a liability notice setting out the amount of CIL payable, and the payment procedure.

In the case of development enabled under permitted development orders, the person(s) liable to pay will need to consider whether their proposed development is chargeable, and to issue the Councils with a notice of chargeable development.

The diagram above provides a summary of the collection process. A key trigger for collection of CIL is commencement of a development on site, with payment due thereafter in accordance with the Council’s CIL instalments policy.

Appeals

A liable person can request a review of the chargeable amount by the charging authority within 28 days from the issue of the liability notice. The CIL Regulations allow for appeals on:

- The calculation of the chargeable amount following a review of the calculation by the Councils.
- Disagreement with the Councils' apportioned liability to pay the charge.
- Any surcharges incurred on the basis that they were calculated incorrectly, that a liability notice was not served or the breach did not occur.
- A deemed commencement date if considered that the date has been determined incorrectly.
- Against a stop notice if a warning notice was not issued or the development has not yet commenced.

DOCUMENT END



AN EXAMINATION UNDER SECTION 212
OF THE PLANNING ACT 2008 (AS AMENDED)

CHILTERN DISTRICT COUNCIL
SOUTH BUCKS DISTRICT COUNCIL

REPORT ON THE DRAFT
COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULES

Independent Examiner (appointed by the Councils): Geoff Salter BA MRTPI

Charging Schedule Submitted for Examination: 20 September 2019

Date of Report: 13 December 2019

Intelligent Plans and Examinations (IPE) Ltd, 29 Monmouth Street, Bath BA1 2DL
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Main Findings - Executive Summary

In this report I have concluded that the draft Chiltern and South Bucks District Councils Community Infrastructure Levy Charging Schedules provide an appropriate basis for the collection of the levy in the areas.

The Councils have provided sufficient evidence that shows the proposed rates would not undermine the deliverability of the Local Plan.

A modification is necessary to meet the drafting requirements. This can be summarised as follows:

- Clarification of the definition of Large Sites, which are not subject to a charge.

The specified modification recommended in this report does not alter the basis of the Councils' overall approach or the appropriate balance achieved.

Introduction

1. I have been appointed by Chiltern District Council and South Bucks District Council, the charging authorities, to examine their draft Community Infrastructure Levy (CIL) Charging Schedules. I am a chartered town planner with more than 20 years previous experience inspecting and examining Development Plans and CIL Charging Schedules as a Government Planning Inspector and a planning consultant with IPE.
2. This report contains my assessment of the Charging Schedules in terms of compliance with the requirements in Part 11 of the Planning Act 2008 as amended ('the Act') and the Community Infrastructure Levy Regulations 2010 as amended ('the Regulations').¹ Section 212(4) of the Act terms these collectively as the "drafting requirements". I have also had regard to the National Planning Policy Framework (NPPF) and the CIL section of the Planning Practice Guidance (PPG).²
3. To comply with the relevant legislation, the submitted Charging Schedules must strike what appears to the charging authorities to be an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the districts.

¹ The Regulations have been updated through numerous statutory instruments since 2010, most recently through the Community Infrastructure Levy (Amendment) (England)(No. 2) Regulations 2019, which came into force on 1 September 2019 (subject to a transitional arrangement in relation to Part 3 of the 2010 Regulations).

² The CIL section of the PPG was substantially updated on 1 September 2019.

4. The PPG states³ that the examiner should establish that:
- the charging authority has complied with the legislative requirements set out in the Act and the Regulations;
 - the draft charging schedule is supported by background documents containing appropriate available evidence;
 - the charging authority has undertaken an appropriate level of consultation;
 - the proposed rate or rates are informed by, and consistent with, the evidence on viability across the charging authority's area; and
 - evidence has been provided that shows the proposed rate or rates would not undermine the deliverability of the plan (see NPPF paragraph 34).
5. The basis for the examination, which took place through written representations and a hearing session held on 5 November 2019, is the Submitted Schedules of 20 September 2019, which are effectively the same as the draft Schedules published for public consultation in June 2019.
6. In summary, the Councils propose a matrix approach, with development in Classes A1-5, C3 and C4 subject to a charge of £150 per square metre (sq m) and all other development subject to a charge of £35 per sq m, with the exception of Large Sites (essentially those with more than 400 dwellings or a gross area of more than 10 hectares (ha)), which are not subject to a charge.

Has the charging authority complied with the legislative requirements set out in the Act and the Regulations, including undertaking an appropriate level of consultation?

7. Regulation 13 of the Community Infrastructure Levy (Amendment) (England)(No. 2) Regulations 2019 ('the 2019 Regulations') provides a transitional arrangement, whereby Part 3 of the 2010 Regulations continues to apply in relation to a draft charging schedule which has been published in accordance with regulation 16(1) of the 2010 Regulations before 1 September 2019, as if the amendments in Regulation 3 (of the 2019 Regulations) had not been made. Given the Charging Schedules' Regulation 16 consultation took place prior to 1 September 2019, Part 3 of the Regulations continues to apply unamended. However, it should be noted that in all other respects, where relevant, the amendments made by the 2019 Regulations to the 2010 Regulations apply to this examination.

³ See PPG Reference ID: 25-040-20190901.

8. Accordingly, in line with the 2010 Regulations, a Regulation 15 preliminary draft CIL Charging Schedules consultation took place between 2 November and 14 December 2018. Consultation under Regulation 16 on the final draft CIL Schedules took place between 7 June and 23 August 2019. 50 responses were received.
9. The Charging Schedules comply with the Act and the Regulations, including in respect of the statutory processes, the levels of public engagement and consultation, consistency with the draft Local Plan and the Infrastructure Delivery Plan, and are supported by an adequate financial appraisal. I also consider them compliant with the national policy and guidance contained in the NPPF and PPG respectively.

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

Infrastructure Planning Evidence

10. The Councils are preparing a joint Local Plan (LP), which was intended to be advanced at the same time as the CIL Charging Schedules. The LP has been submitted to the Planning Inspectorate for examination but the dates of any hearings or timescale for reporting have not been fixed. The draft Plan does set out the proposed main elements of growth that will need to be supported by further infrastructure in the period up to 2036 and provides the most up to date evidence for the purposes of this examination. Whilst this is a joint examination under the terms of Regulation 22(1), it is not so in relation to Regulation 22(2)(a).⁴ Regulation 22(2)(a), for example, facilitates the potential to formally combine the CIL and LP hearing sessions. At this juncture, I do not see it would be helpful to place this CIL examination in abeyance pending more progress on the LP examination. Even though some elements of the strategy may change, it is clear that development, in particular new housing and supporting infrastructure, will be required. In this context I note that PPG Reference ID 25-012-20190901 states that "Where practical, there are benefits to undertaking infrastructure planning for the purpose of plan making and setting the levy at the same time. A charging authority may use a draft plan if they are proposing a joint examination of their relevant plan and their levy charging schedule". I am satisfied the approach in this instance reflects the spirit of the PPG advice and I see no statutory impediment to progressing the CIL examination at this stage.
11. The main elements of growth set out in the submitted draft LP are about 5,000 new homes, some 11,000 sq m of retail floorspace and some 56,000 sq m of employment floorspace. The Councils' draft Infrastructure Delivery Plan (IDP) June 2019 identifies a number of infrastructure requirements needed to support the development proposed in the draft LP. These include:

⁴ Regulation 22(5) requires that the charging authority and Secretary of State must agree to a joint examination under Regulation 22(2)(a).

healthcare facilities; works provided by statutory undertakers to prevent flooding and provide services such as water supply, waste treatment, electricity etc; improved transport networks and new education facilities. A Funding Gap Analysis statement (June 2019) indicates a shortfall of between approximately £180-230 million over the whole LP area. The Councils estimate that the proposed CIL rates would generate about £21 million, leaving a significant shortfall through Section 106 obligations with developers, government funding, or service or utility providers. In the light of the information provided, the proposed charge would therefore make only a modest contribution towards filling the likely funding gap. The figures demonstrate the need to levy CIL.

Economic Viability Evidence

12. The Councils commissioned a CIL Viability Assessment (VA), dated June 2019. The assessment uses a residual valuation approach, using reasonable standard assumptions for a range of factors such as building costs, profit levels, fees etc. The model was adapted by a detailed assessment of relevant local data on existing land values, likely sale prices based on a range of sites across the area, housing densities and gross to net ratios. A range of different CIL values were applied to a range of commercial uses and various sizes of residential development to test what level of CIL would be at the margins of viability, so the rate could be set within a suitable buffer. The residential tenure split was in accordance with draft LP policy and an allowance was made for provision of 10% 'affordable home ownership', in accordance with the advice in the NPPF. Another point to note is the assumption that all new homes will be built to an energy efficient standard at least equivalent to the former Code for Sustainable Homes (CfSH) Level 4. The VA indicates that costs and values for many types of development have changed little over the past year or so and it remains up to date.
13. The Councils' Draft Infrastructure Plan and its associated appendices clearly show that the draft Charging Schedules are supported by detailed evidence of community infrastructure needs. The Viability Assessment shows that the proposed rates will not prevent development coming forward. On this basis, the evidence which has been used to inform the Charging Schedules is robust, proportionate and appropriate.

Are the proposed rates informed by and consistent with the evidence on viability across the charging authority's area?

Residential Development

14. It seems likely that the bulk of development in the Councils' areas is likely to be new residential development. The VA used a standard methodology to assess viability over a variety of residential site typologies, ranging from 3 to 100 dwellings, and also tested the site allocations in the draft LP specifically. Likely sales values were considered in a number of sub areas across both districts. In general, the costs of development are likely to show very little

variation; whilst there were some differences, there was nothing of such significance as to affect outcomes in any particular part of the two Councils' areas. I consider the bench mark values to be realistic, as are the potential development values and costs. I have no doubt from the evidence of the VA that a rate of £150 per sq m across both districts would not affect the viability of residential development.

15. The VA makes an appropriate allowance for such infrastructure based on the proposals contained in the draft IDP and also takes account of affordable housing provision at 40% across all sites of 10 or more units (or 5 or more units on non-allocated sites in the Area of Outstanding Natural Beauty), in accordance with the draft LP. The results of the VA for large scale residential development in the draft allocations suggest a varied picture, with some proposals unable to support both CIL at £150 per sq m and significant site specific Section 106 contributions for infrastructure and others with minimal viability buffer. I agree with the Councils that provision for major infrastructure within such areas is likely to be more effectively secured through Section 106 planning obligations. The zero rating of Large Sites or major allocations has been widely accepted in many areas where CIL is being levied, including on those sites where there are multiple developers. The amount of contributions or provision of infrastructure in defined Large Sites is likely to be at least as much, if not greater, than potential CIL levies at £150 per sq m.
16. All but two of the proposed LP residential allocations would fall within the Councils' definition of Large Sites of more than 400 dwellings or 10 ha (gross). This definition was subject to a revision during the hearing and subsequently refined further after the hearing, and I recommend an Examiner Modification set out in **EM1** (in the Appendix to this Report) to insert the revised definition into the Charging Schedules. Having taken into account all supplementary representations, I consider that the revised Schedules provide sufficient clarification of the residential and mixed use sites where a zero rate would apply. The Councils confirmed that on this basis a higher level of infrastructure provision is likely to result than that obtained through the CIL mechanism alone.
17. The VA indicates that extra care (specialist) housing in developments of apartments is likely to incur higher construction costs for community facilities, adversely affecting viability at £150 per sq m. However, those developments falling within Classes 2 and 2A of the Use Classes Order would certainly be viable at a rate of £35 per sq m, as proposed. The potentially higher costs of such schemes with self-contained units can be offset by higher values and some lower costs for external works, and the higher rate of £150 per sq m can be justified.

Commercial Rate

18. Large retail units, particularly convenience stores and retail warehouses are still amongst the most clearly viable forms of development throughout the Council areas and are able to support a charge of £150 per sq m. At

present, there appears to be significant over trading throughout both districts but no major new proposals are expected to come forward in the short term. Given the rapid changes and viability challenges currently being experienced in the sector and the nature of development patterns in the Council areas, it seems unlikely that any major new comparison schemes will come forward. Smaller retail development appears unlikely to come forward in any significant quantity but viability may be less certain. The Councils should therefore consider setting a lower rate for smaller retail schemes after an early review if there is evidence that the CIL is preventing new development.

19. The VA found that there was little variation in viability for other types of commercial development in different parts of the Councils' areas. Generally, the viability of many other forms of commercial development is likely to be 'challenging', although some business park and hotel development appears viable at low yields and high value assumptions. On that basis, the proposed rate of £35 per sq m is considered to be 'nominal' and would not have any significant impact on the likelihood of development being pursued.

Other Uses

20. As the education authority and the Buckinghamshire NHS Trust argued, it is clear that charging CIL on uses for community facilities such as education and healthcare premises would merely add to the costs of development that would have to come from the public purse. However, in practice the additional costs on the small amount of development likely to come forward in this way could possibly be funded through the use of the levy itself or through other grant funding. More significantly, the charge would be appropriately levied on a number of private developments falling within Use Class D1, such as private hospitals, care homes and schools. Other institutions may have charitable status and would be exempt from CIL. Clearly, it would not be possible to have differential rates for uses in public or private sectors, which would be likely to be construed as 'State Aid' conferring a selective advantage on a particular undertaking. The major facilities are likely to fall within the boundaries of the Large Sites and would not be subject to charge. The Councils' stated indication to use CIL receipts to reimburse community facilities, such as schools, would appear to be an appropriate way forward in these cases.
21. Although the Councils intend to impose a rate of £35 per sq m on all development, some of which may well be at the margins of viability, the key point here is that CIL charges would be unlikely to exceed 1.5% of development costs for most non-residential uses, as Appendix 1 to the Councils' hearing statement indicates. In these circumstances, I consider it unlikely that the proposed rate for all other uses would prove to be a critical factor in preventing development from coming forward in the Councils' areas overall. However, given the acknowledged marginal or lack of viability for some uses, I consider that the application of the £35 per sq m rate across the board should be reviewed after 12 months.

Other Matters

22. The application of CIL regulations such as those relating to exceptional circumstances relief are for the Councils to administer and are outside the scope of the examination of the proposed charging rates themselves.

Has evidence been provided that shows the proposed rate or rates would not undermine the deliverability of the plan (see National Planning Policy Framework paragraph 34)?

23. The Councils' decision to set a matrix approach is based on reasonable assumptions about development values and likely costs.

24. In setting the CIL charging rate, the Councils have had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in Chiltern and South Bucks. The Councils have 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 areas. The draft LP is about to undergo examination and I consider it would be appropriate to consider any revision to the charge after it has been in place for 12 months.

25. I consider the viability assessment to be robust and conclude that the residential and retail rates proposed would not undermine the deliverability of the draft Local Plan. The proposed rates are justified therefore.

Overall Conclusion

26. I conclude that the draft Chiltern and South Bucks Councils' Community Infrastructure Levy Charging Schedules, subject to the making of the modification set out in **EM1**, satisfy the drafting requirements and I therefore recommend that the draft Charging Schedules be approved.

Geoff Salter

Examiner

Attachments:

Appendix – Modifications that the examiner specifies so that the Charging Schedules may be approved.

Appendix

Examiner Modifications (**EM**) recommended in order that the Charging Schedules may be approved.

Examiner Modification(EM)	Page no./ other reference	Modification
EM1	Table 1 and Table 2	*Large Sites are defined as any site allocated in an emerging/adopted Local Plan with 400 homes or more (gross) or 10 hectares or more (gross), irrespective of land use and include any parcel within a Large Site irrespective of the size of the parcel.

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