

Welwyn Hatfield Community Infrastructure Levy Preliminary Draft Charging Schedule May 2017

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Introduction

- 1.1** The Community Infrastructure Levy (CIL) Regulations came into force in 2010 and brought in a new system of planning charges that local authorities can levy on new building projects. The Regulations enable an authority to implement a tariff on new development in order to fund infrastructure required to support the housing and commercial growth identified in an up to date Local Plan.
- 1.2** The purpose of CIL is to fund infrastructure which will support the development of a place, rather than to make individual developments acceptable in planning terms. As a result, planning obligations may still be required to address some site specific impacts of development, without which planning permission would not be granted. However, in order to ensure that planning obligations and CIL can work in a complementary way, the government has also introduced new statutory restrictions upon the use of planning obligations to clarify their purpose and to ensure that the two mechanisms can work effectively together.
- 1.3** As set out in Policy SP 13 (Infrastructure Delivery) of the Welwyn Hatfield Draft Local Plan Proposed Submission (August 2016), it is the intention of the Council to implement the Community Infrastructure Levy. The contributions raised through CIL will support the delivery of sustainable communities by helping secure the provision of new or improved infrastructure that is required to meet the levels of growth identified in the Local Plan.
- 1.4** This Preliminary Draft Charging Schedule, which has been published for consultation, is the first step in setting a CIL charge for Welwyn Hatfield. The primary purpose of the document is to set out the Council's preliminary draft charging rates. It also details the background to CIL, the process for implementing CIL, the Council's justification for charging CIL, how the proposed charging rates were set, the Council's proposed approach to collecting CIL including the relationship between CIL and S106 as well as specifying what the Council might choose to fund using CIL.
- 1.5** The accompanying Community Infrastructure Levy Viability Study (November 2016) and Strategic Sites Testing Update (December 2016) details the methodology/evidence base used in calculating the levels of the charge and the Initial Draft Regulation 123 List sets out all infrastructure projects or types of infrastructure that the Council intends will be, or may be, wholly or partly funded by CIL.

Background to CIL

- 2.1** The Community Infrastructure Levy (CIL) is a locally set planning charge, introduced by the Planning Act 2008 (as amended), which local authorities in England and Wales can choose to implement to raise contributions from new development towards the delivery of necessary supporting infrastructure.
- 2.2** The full legislative framework for CIL is comprised of:
- The Planning Act 2008 (as amended by the Localism Act 2011)
 - The CIL Regulations 2010 (as amended in 2011, 2012, 2013, 2014 and 2015)
 - National Planning Practice Guidance (NPPG) on CIL issued under s221 of the Planning Act 2008
- 2.3** Local Planning Authorities are the charging authority for CIL and are responsible for setting CIL charges. Councils that wish to charge the Community Infrastructure Levy must prepare a Community Infrastructure Levy Charging Schedule which sets out the charges per square metre that will apply to new development.
- 2.4** The CIL Regulations provide that CIL may be charged on new development of more than 100 square metres floorspace or developments of less than 100 square metres which result in the creation of one or more new dwellings. The amount of CIL that is chargeable on a development is based on the net additional (internal) floorspace created and the relevant locally set charge(s). The formula for calculating CIL is set out in Regulation 40 of the CIL Regulations 2010 (as amended). The CIL regulations contain a range of exemptions where development is not subject to CIL. These are summarised in Appendix 1.
- 2.5** The CIL regulations allow the Council as charging authority to set differential charging rates according to the use of development, scale of development and location of development or a combination of these. Rates can only be differentiated on the basis of viability evidence.
- 2.6** When setting charges, the Council is required by the CIL regulations to strike an appropriate balance between 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 into account other actual and expected sources of funding and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.
- 2.7** Before implementation, the Council's charging schedule must be examined in public and approved by an independent Planning Inspector. The date the charging schedule comes into effect will be chosen by the Council and will be specified within the approved charging schedule. Planning permissions which first permit development on a day when the charging schedule is in effect will be liable for the levy. The levy may also be payable on permitted development and development subject to a lawful development certificate.

Background to CIL

- 2.8** The owner of land which is subject to chargeable development is ultimately liable for the levy, but anyone involved in a development may take on the liability to pay. Payment of the levy will usually be in the form of a cash contribution, however the CIL regulations do provide for payment in kind in appropriate circumstances. The payment will be due on commencement of the development unless the Council has an adopted instalment policy in place.
- 2.9** CIL contributions received by the Council must be spent on infrastructure. The Council is required by CIL regulations to produce a list of all infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL. This is known as the Regulation 123 List. The Council can decide to spend CIL income on any infrastructure project or type it wishes provided that it is set out on this list.

3 Implementation of CIL

3.1 The stages of preparation and consultation for implementing CIL are set out in the following table:

Table 1 CIL implementation process

	Stage	Key outcomes	Timeframe
Stage 1	Infrastructure evidence	Identify additional infrastructure needed to support development, the extent to which other funding sources are available and therefore whether there is an infrastructure funding gap to which CIL would be expected to contribute.	Completed August 2016 Reviewed February 2017
Stage 2	Viability evidence	Identify proposed CIL charge(s) through preparation of a viability study involving a broad test of viability across the Borough as the evidence base to underpin the charge(s) and an indication of the potential effects of the proposed levy rate or rates on economic viability of development within the Borough. Carry out detailed testing of strategic development sites with substantial site-specific infrastructure requirements to ensure that the recommended CIL charges are appropriate.	Completed November and December 2016
Stage 3	Preliminary Draft Charging Schedule	Consultation period of six weeks on a Preliminary Draft Charging Schedule, which has been prepared consistent with appropriate available evidence from Stages 1 and 2.	May to June 2017

Implementation of CIL

Stage 4	Draft Charging Schedule	Consultation period of a further six weeks following the formal publication of a Draft Charging Schedule, which has been prepared taking account of responses to Preliminary Draft Charging schedule consultation and up-to-date evidence relating to Stages 1 and 2.	Anticipated September to October 2017
Stage 5	Submission to Secretary of State	Following consultation on the Draft Charging Schedule, it is submitted to the Secretary of State for examination.	Anticipated November to December 2017
Stage 6	Examination in Public	Examination in public and approval by an independent Planning Inspector	Anticipated February to March 2018
Stage 7	Adoption and Implementation	Formal approval by a resolution of full council, including an appropriate commencement date, following or on approval.	Adoption April 2018 Implementation July 2018

Justification for charging CIL

- 4.1 The implementation of the Community Infrastructure Levy offers key benefits as follows:
- 4.2 • **Funding** – CIL has the potential to deliver funding from new development to carry out a wide range of infrastructure projects that support growth and benefit the local community, which otherwise would be beyond the scope of restrictions on planning obligations (i.e. Section 106).
- 4.3 • **Flexibility** – CIL gives local authorities the flexibility and freedom to set their own priorities for what the money should be spent on – as well as providing a predictable funding stream that allows them to plan ahead more effectively;
- 4.4 • **Certainty** – CIL provides developers with much more certainty ‘up front’ about how much money they will be expected to contribute, which in turn encourages greater confidence in delivery and has potential to deliver higher levels of inward investment;
- 4.5 • **Transparency** – CIL ensures greater transparency for local people, because they will be able to understand how new development is contributing to their community and have opportunities to engage in the allocation of a share of the levy raised in a neighbourhood to deliver infrastructure the neighbourhood wants.
- 4.6 To comply with the CIL regulations and justify the implementation of CIL, the Council is required to have evidence of an infrastructure funding gap. As part of the preparation of the emerging Welwyn Hatfield Local Plan the Council prepared a Draft Infrastructure Delivery Plan (DIDP). This identifies all relevant infrastructure needs that are anticipated over the whole plan period and which can be clearly related to growth. The DIDP August 2016 assessed the funding available to deliver necessary infrastructure and indicated a significant infrastructure funding gap. The Council reviewed the infrastructure funding gap in February 2017. The findings are set out in Table 2 below.
- 4.7 Since April 2015, local authorities have been subject to restrictions on how they collect and spend Section 106 planning obligations. The CIL regulations only allow for a maximum of five Section 106 planning agreements to be pooled for specific infrastructure projects. Having regard to this and to the substantial extent of the infrastructure funding gap, CIL is a key mechanism for raising contributions towards the delivery of infrastructure to support growth. Significantly CIL can be pooled without restriction and spent on any identified infrastructure need (unlike Section 106 agreements which require a direct link between the development and any infrastructure project).

Justification for charging CIL

Table 2 Infrastructure Funding Gap

Infrastructure Need	
Total Infrastructure Cost	£309.961m
Infrastructure Funding Contributions	
HCC as funder 'of last resort' for education provision	£20.00m
Residual Section 106 on non-strategic sites	£6.37m
Section 106 on Strategic Development Sites	£128.00m
Total Contributions	£154.37m
Infrastructure Funding Position	
Infrastructure Funding Gap	£155.591m

Setting the CIL rates

- 5.1** In order to set a CIL charge, a charging authority is required to have evidence that the proposed charges are viable. The CIL Regulations specify that charging authorities need to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the imposition of the levy upon the economic viability of development across their area.
- 5.2** To inform the approach the Council should take to CIL within the Preliminary Draft Charging Schedule, specialist consultants BNP Paribas were commissioned to prepare a CIL Viability Study. The Welwyn Hatfield CIL Viability Study November 2016, which is published as evidence alongside this consultation document, has been produced consistent with the Government's guidance on preparing evidence to support a levy charge as set out in the National Planning Practice Guidance.
- 5.3** The CIL Viability Study builds upon previous viability work that has been prepared for the Council, most particularly, the Welwyn Hatfield Combined Policy Viability Update August 2016, which examined the viability of the policies and proposals contained within the Welwyn Hatfield Draft Local Plan Proposed Submission August 2016.
- 5.4** The CIL Viability Study tests the ability of a range of development types through the Welwyn Hatfield area to yield contributions to infrastructure through CIL. Levels of CIL have been tested in combination with the Council's other planning policy requirements including affordable housing and Section 106 planning obligations. The assessment methodology compares the residual land values of a range of developments to a range of benchmark land values. If a development incorporating a given level of CIL generates a higher value than the benchmark land value, then it can be judged that the proposed level of CIL will be viable. The residual land valuation method is commonly used by developers when determining how much to bid for land and involves calculating the value of the completed scheme and deducting development costs (construction, fees, finance and CIL) and developer's profit. The residual amount is the sum left after these costs have been deducted from the value of the development, and guides a developer in determining an appropriate offer price for the site.
- 5.5** A broad range of development types were chosen for viability testing based upon the policies and proposals contained in the Welwyn Hatfield Draft Local Plan Proposed Submission August 2016. Twelve residential development typologies were tested together with representative development schemes for student accommodation, retirement and care homes, extra care housing, hotel development, supermarkets/superstores and retail warehousing, all other retail, office, and industrial and warehousing development.
- 5.6** In addition to the broad residential typologies, detailed testing was carried out on four strategic development sites proposed in the Draft Local Plan Proposed Submission August 2016. Owing to the significant scale of these sites it is expected that the costs of delivering them will be materially different from smaller developments. For example, there will be additional costs to open up the

Setting the CIL rates

strategic sites for development as well as higher infrastructure costs in the form of Section 106/Section 278 planning obligations to enable the delivery of necessary supporting infrastructure such as additional education capacity and highways improvements. The Strategic Sites Testing Update December 2017 is published as evidence alongside this consultation document.

Proposed Charging Schedule

6.1 The Preliminary Draft Charging Schedule is outlined below. The charges reflect the viability evidence which has been gathered and tested in compliance with the CIL Regulations 2010 (as amended).

Proposed CIL Charging Rates

Development type	CIL rate (per square metre)			
	Residential Zone 1	Residential Zone 2	Residential Zone 3	Identified sites
Residential development of 11 or more dwellings	£50	£100	£230	£0
Residential development of under 11 dwellings	£230			
Supermarkets, superstores and retail warehouses	£85			
All other uses (excluding healthcare, emergency services facilities and education)	£20			

6.2 Evidence within the CIL Viability Study identifies three zones where viability is materially different for residential uses. The schedule therefore proposes three charging zones for residential development. Residential Zone 1 applies to most of Hatfield. Residential Zone 2 applies to West Hatfield, Welwyn Garden City and Welham Green. Residential Zone 3 applies to the rest of the borough including Welwyn, Woolmer Green, Oaklands, Mardley Heath, Digswell, Cuffley, Essendon, Brookman's Park and Little Heath. The boundaries of the proposed residential zones are shown in Figure 1.

6.3 Residential developments of under 11 dwellings do not have to provide any affordable housing. As a result the viability is significantly better than residential developments of 11 or more dwellings. Small sites across the Borough can afford to contribute the level of CIL proposed in the highest value residential zone (zone 3). The proposed charge for residential developments of under 11 dwellings is therefore the same across the whole borough.

6.4 The Strategic Sites Testing Update December 2016 concluded that Symondshyde (Hat 15), Panshanger Aerodrome (WGC 4) and Birchall Garden Suburb (WGC 5) could viably contribute the recommended CIL charge for the residential zone that they are located in (zone 2). The analysis found that is not viable for North West Hatfield (Hat1) to contribute the recommended CIL charge for the zone that it is located in. The viability of North West Hatfield is impacted by the large scale of Section 106 planning obligations that will be sought to mitigate the impacts of the development, principally towards education and

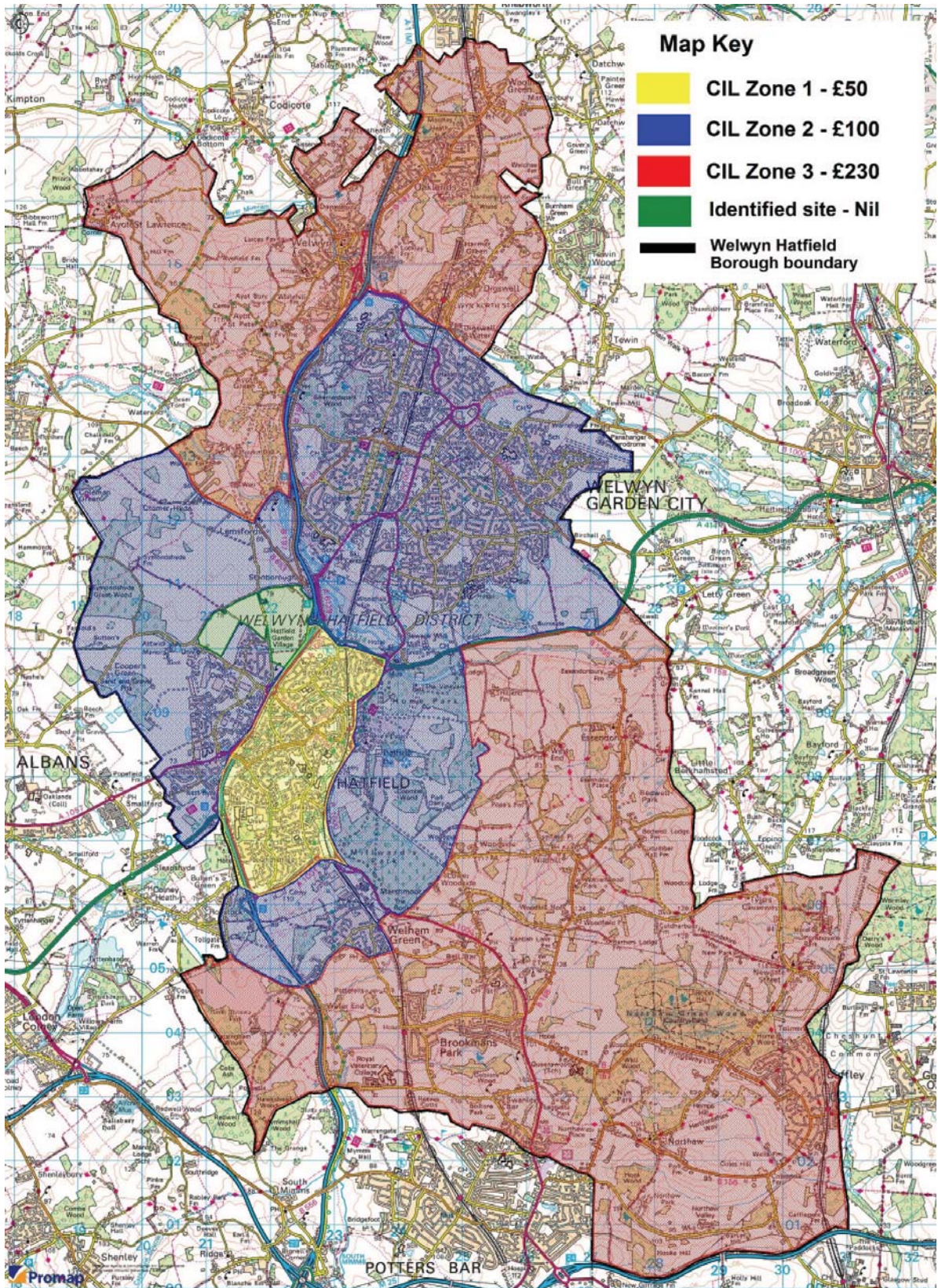
Proposed Charging Schedule

highways/transport. To ensure that North West Hatfield is deliverable it is proposed that it should have a nil CIL charge. North West Hatfield is therefore noted as an “identified site” with a proposed CIL charge of £0.

- 6.5** With the exception of supermarkets, superstores and retail warehouses, the ability of commercial uses to viably contribute to CIL is limited. A charge of £85 per square metre is proposed for supermarkets, superstores and retail warehouses with a nominal charge of £20 per square metre proposed for all other uses (excluding healthcare, emergency services facilities and education). A nominal charge is unlikely to impact significantly upon the viability and subsequent deliverability of these uses. The nominal charge would apply to all of the following uses: retail development, student accommodation, hotels, specialist housing, office, and industrial and warehousing development.
- 6.6** The formula for calculating the CIL charge to be paid is set out in Regulation 40 of the CIL Regulations 2010 (as amended).

Proposed Charging Schedule

Figure 1 Map of CIL Charging Zones



Relationship between CIL and S106

- 7.1** The purpose of CIL is to fund infrastructure which will support the development of a place, rather than to make individual developments acceptable in planning terms. As a result, planning obligations may still be required to address some site specific impacts of development, without which planning permission would not be granted. However, in order to ensure that planning obligations and CIL can work in a complementary way, the government has introduced new statutory restrictions upon the use of planning obligations to clarify their purpose and to ensure that the two mechanisms can work effectively together.
- 7.2** Under powers in the Planning Act, the CIL Regulations 2010 (as amended), changed the use of planning obligations (through Section 278 or Section 106) in three key ways:
- 7.3** 1. Placing into law the policy tests on the use of planning obligations set out in Circular 05/2005: CIL Regulations make it unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, that is capable of being charged CIL, if the obligation is not: (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 (Regulation 122);
- 7.4** 2. Ensuring the local use of CIL and planning obligations does not overlap: Under regulation 123 (2), on the adoption of the levy, the regulations restrict the local use of planning obligations to ensure that individual developments are not charged for the same items through both planning obligations and CIL. Where a charging authority sets out that it intends to fund an item of infrastructure via the levy then that authority cannot seek a planning obligation contribution towards the same item of infrastructure. Furthermore, a charging authority should publish on its website a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by the levy, and consequently the authority would be prohibited from seeking a planning obligation contribution towards the same item of infrastructure.
- 7.5** 3. Limiting pooled contributions from planning obligations towards infrastructure which may be funded by CIL: CIL Regulation 123 (3) has the effect that from 6 April 2015, or the date that a charging authority's first charging schedule takes effect (whichever is earlier) local planning authorities will only be able to pool up to five individual planning obligation contributions towards infrastructure that is capable of being funded by CIL. Pooled contributions may be sought from up to five separate planning obligations for an item of infrastructure that is not locally intended to be funded by the levy. The limit of five applies as well to types of general infrastructure contributions, such as education and transport.
- 7.6** Once CIL is implemented in Welwyn Hatfield, developers will be asked to contribute towards infrastructure in the following ways, where relevant to the application:
- CIL;

Relationship between CIL and S106

- Section 106 agreements;
- Section 278 highways agreements;

7.7 The Initial Draft Regulation 123 list which accompanies this document for consultation sets out all infrastructure projects or types of infrastructure that the Council intends will be, or may be, wholly or partly funded by CIL. Items of infrastructure excluded from the Regulation 123 list (including affordable housing which is not eligible for CIL) will continue to be secured on a site by site basis via planning obligation (Section 106 or Section 278) where these are required to make a development acceptable in planning terms.

Collection of CIL

- 8.1 Welwyn Hatfield Borough Council, as the charging authority, is responsible for collecting payment of the levy.
- 8.2 Where development is CIL liable, CIL will be calculated in accordance with the CIL Regulations 2010 (as amended). The CIL charging formula is detailed in Regulation 40. CIL will be indexed to account for inflation in line with provisions of Regulation 40. To ensure transparency and consistency of the implementation of CIL rates, it is the Council's intention to apply inflation to the CIL rates within an adopted Charging Schedule annually through applying the most recent finalised figure on a specific date each year.
- 8.3 The CIL charge becomes due when development commences. Responsibility for payment rests with the owner(s) of the development site, but a developer may assume liability instead.

Payment in kind

- 8.4 The CIL Regulations include an option for charging authorities to accept payment in kind in the form of provision of land and/or infrastructure to be offset against or satisfy in full a CIL charge liability. The Council intends to publish guidance to accompany the Draft Charging Schedule consultation, which will set out conditions for payment in kind and identify the infrastructure projects, or types of infrastructure, which it will consider accepting as payment.

Instalment policy

- 8.5 The Council proposes to allow payment of CIL charge liability by instalments in accordance with the provision within the CIL Regulations. The Council believes that such an approach will reduce the financial burden on developers by taking account of the viability implications of the need to invest up front in infrastructure and construction before development costs can be recovered.
- 8.6 In addition, the Council is also intending to consider large scale developments of all types when submitted as both detailed and outline permissions in terms of suitability to be treated as phased developments for the purposes of CIL, where appropriate. This means that each phase would be a separate chargeable development and therefore liable for payment in line with any instalment policy that may be in force, where such an approach would support deliverability.
- 8.7 To ensure that the Council's approach is clear, a Draft Instalment Policy will be made available alongside the Draft Charging Schedule and will detail the timing and level of payments and the rationale for the policy.

Exceptional circumstances relief

- 8.8 Liability to pay a CIL charge on chargeable development is a statutory obligation and is non-negotiable. The CIL Regulations do, however, permit the Council to offer discretionary relief from the levy in exceptional circumstances where a specific scheme cannot afford to pay the levy. Offering this relief would provide

Collection of CIL

the Council with some flexibility to deal with complex sites which are proved to have exceptional costs or other requirements which make it unviable to charge CIL on them.

- 8.9** The ability to make exceptional circumstances relief available would need to be enacted by publication of notice after adoption of the Charging Schedule. The Council would then be able to consider claims for relief on chargeable developments from landowners on a case by case basis, provided the following conditions were met:
- 8.10** • a section 106 agreement must exist on the planning permission permitting the chargeable development, and;
- 8.11** • the charging authority must consider that paying the full levy would have an unacceptable impact on the development's economic viability, and;
- 8.12** • the relief must not constitute a notifiable state aid.
- 8.13** The Council will take into account responses to the consultation on this preliminary draft charging schedule in deciding whether to offer exceptional circumstances relief.

Spending of CIL

9.1 Regulation 59 provides that a charging authority must apply CIL to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area.

Regulation 123 List

9.2 Under Regulation 123 of the CIL Regulation 2010 (as amended) the Council is required to publish on its website a list of infrastructure projects or types of project that it intends will be, or may be, wholly or partly funded by CIL. This will make clear what items will in future fall under CIL rather than S106, but also show contributors and other interested parties what CIL will be spent on. In accordance with Planning Practice Guidance, an Initial Draft Regulation 123 list has been prepared to accompany this Preliminary Draft Charging Schedule.

9.3 The CIL regime allows authorities to respond to changing local circumstances by spending revenue from CIL on different projects from those identified during the rate setting process. Therefore the Regulation 123 list will be regularly reviewed and updated accordingly. In reviewing the Regulation 123 list the Council will work closely with other strategic infrastructure providers. The Regulation 123 List is separate from the Charging Schedule and will be updated from time to time via the Council’s website.

Neighbourhood proportion

9.4 The CIL Regulations require the Council to redistribute a proportion of CIL receipts to Parish and Town Councils where development has taken place. If there is no Parish or Town Council the Council must retain the levy receipts but should engage with the communities where development has taken place and agree with them how best to spend the funding. The amount to be allocated increases if a neighbourhood plan or neighbourhood development order has been made. The diagram below from the Government’s Planning Practice Guidance summarises what the neighbourhood proportion should be in each circumstance:

Town or Parish Council	Neighbourhood Plan	Levy
✓	✓	25% uncapped, paid to town or parish council
✓	✗	15% capped at £100/dwelling, paid to town or parish council
✗	✓	25% uncapped, local authority consults with community
✗	✗	15% capped at £100/dwelling, local authority consults with community

Spending of CIL

Admin charge

- 9.5** The Council intends to utilise the provision within the CIL Regulations (Regulation 61) to use up to 5% of CIL receipts towards the administration and set up expenses incurred relating to the operation and management of the levy.

Appendix 1 – CIL exemptions

- 10.1** The CIL Regulations set out where development will be subject to CIL.
- 10.2** CIL does not apply to temporary planning permissions (Regulation 5).
- 10.3** For the purposes of CIL, buildings into which people do not normally go or go only intermittently for the purpose of maintaining or inspecting machinery are excluded from the meaning of “development” (Regulation 6). These types of development are therefore not subject to CIL. Regulation 6 further provides that the change of use of any building previously used as a single dwellinghouse to use as two or more separate dwelling houses is not to be treated as development.
- 10.4** The CIL Regulations 2010 (as amended) provide for certain types of development to be exempt from CIL. These include:
- Minor development (Regulation 42)
 - This applies where the gross internal area of new build will be less than 100 square metres. It does not apply if one or more new dwellings is created.
 - Residential annexes or extensions (Regulation 42A)
 - Development by a charitable institution (Regulation 43)
 - Social housing (Regulation 49)
 - Self-build housing (Regulation 54A).
- 10.5** The CIL Regulations provide for a range of discretionary CIL reliefs that the Council can choose to implement but these are not mandatory exemptions.