

Hull Community Infrastructure Levy Protocol, 2018 (revised November 2019)



'Place shaping with planning gain benefits'

1. Introduction

1.1 This protocol details the implementation of Community Infrastructure Levy (CIL) in Hull as from 1 February 2018 which has been updated taking into account revisions to the CIL Regulations 2019. It takes forward the Protocol agreed by the Council in November 2017 and updated Charging Schedule. It is designed to assist the proper management of funds as set out in the Community Infrastructure Levy Regulations, 2010 (as amended). It is a guide for the development industry or those where projects are procured in using Community Infrastructure Levy funds. It identifies who needs to do what and when, to aid understanding for all involved.

1.2 The guide sets out the following advice:

- Background – rationale for CIL in the city including statutory provisions and what is meant by ‘place shaping infrastructure’
- The charge – what the charge is (including any surcharges for non-payment or in not meeting the prescribed process) and how it applies to development along with the relationship of S106 planning obligations
- Process for paying the charge – explains the process in helping applicants through providing CIL funds as required by the regulations and forms are provided to be completed
- Infrastructure programme – explains how the funds to be collected will be used and outlines how CIL funds can be procured and the process for spending contributions

2. Background

2.1 The Planning Act 2008 makes provision for the introduction of the Community Infrastructure Levy (CIL). Regulations governing the operation of CIL were first introduced in April 2010, and have subsequently been amended a number of times. Part 6, Chapter 2 of the Localism Act 2011 has the effect of amending parts of the Planning Act 2008 as it relates to CIL.

2.2 CIL is a charge levied on new buildings and extensions according to their floor area. Money is raised from this to help the Council pay for infrastructure to ensure the city grows sustainably. CIL does not replace S106 planning obligations as these will still be used specific to the site in order to make development acceptable in planning terms. The Council has a protocol for s106 planning obligations.

2.3 Unlike S106, CIL is non-negotiable. Applying and collecting it is set out by regulation. Funds received from a particular scheme can be spent on any infrastructure required to support growth as defined in a schedule (termed the regulation 123 list) to be agreed by the Council so it is not tied to the planning permission as with S106’s. Liability for funding is calculated when planning permission is issued and trigger for payment is on development commencement.

2.4 The charge is also underpinned by a charging schedule, a viability assessment and on an infrastructure gap plan. The charging schedule sets out the rate of charge that has been formally endorsed and consulted on. A viability assessment has also concluded that charge to be set on application does not make certain forms of development in the city commercially unviable.

- 2.5 An infrastructure gap plan assesses the amount, type and cost of infrastructure needed to support growth and the ability of the council to fund these. Over £41m has been estimated as being needed to fund necessary infrastructure in the city, although £12m has been identified as the gap over the plan period (to 2032) for place-shaping related infrastructure. Although CIL is not intended to raise all this money the Council will need to rely on other sources to meet these needs.
- 2.6 Hull City Council has followed the procedures and requirements set out in the Act and Regulations to produce and introduce its CIL Charging Schedule. The Revised Draft Charging Schedule was subject to Public Examination in June 2017, and the Examiner's report was received in October 2017. The Council's Charging Schedule and Regulation 123 List were considered by the Council's Cabinet on October 2017 will resolve to adopt the Charging Schedule, with it coming into effect after the January 2018 Full Council meeting.
- 2.7 CIL contributions will be used to pay for projects on the regulation 123 list, *although this has now been replaced by a new Infrastructure Funding Statement, required by changes to CIL regulations coming into force on the 1 September 2019*. In general terms these projects relate to 'place shaping infrastructure'. This is defined in the draft charging schedule as:
- Urban greenspace (or green areas) demonstrably of importance to local communities (for example because of its beauty, historic significance, or recreational value, tranquillity or richness of its wildlife, or it operates as a flood mitigation) but reasonably close to, and accessible for, the community it serves. This can include public parks, allotments and children's play areas that are maintained for such purpose, but excludes private gardens or highway verges.
 - Children's play space involves well defined secure and safe play areas, that in combination make up a neighbourhood equipped (minimum 1,000 sq m activity zone) or local equipped play area (minimum 400 sq m activity zone), related to the scale and nature of residential development, and are well maintained.
 - Playing pitches, marked and/or equipped for sports use (in-line with Sports England standards) including changing facilities and ancillary parking or other informal recreation facilities that are maintained for public use.
 - Public realm including civic spaces involving hard or soft landscaping (including related street furniture) that is well maintained, beyond the private space of buildings but excluding highway or transport related works such as roads, junctions, cycle routes, bus provision or on/off-street parking.

3. The charge

- 3.1 The charging schedule for Hull, based on the viability assessment findings, provides for variable rates across the city but mainly for housing proposals, as well as retail proposals as defined in the Hull Local Plan. Other uses are not deemed suitable for a charge.
- 3.2 The charge is calculated on the net increase in gross internal floor area (GIA) to be developed (including all internal circulation space) but excludes building conversions. Allowance is made for any existing floor area that is to be demolished provided this is in active use at the time of grant of planning permission (vacant and unused buildings do not count). The charge does not apply to proposals less than 100 sq m (excluding dwellings) or if the total amount of CIL is £50 or less. A

charge is also applicable to permitted development or to proposals within Enterprise Zones or to proposals the subject of Local Development Orders.

3.3 Planning applications determined after 1st February 2018, and involving new build of at least 100m² gross internal floorspace may be liable to Hull City Council's Community Infrastructure Levy (CIL) charges, although the Council's charges will, until such time as they are revised, apply only to residential development (but excluding apartments, flats and student accommodation), and to the development of retail units but only involving supermarkets/superstores or retail warehouses. Except for applications for outline planning consent, *all* planning applications must now be accompanied by the 'Planning Application Additional Information Requirement Form', available at the following link:

http://www.planningportal.gov.uk/uploads/1app/forms/cil_questions.pdf

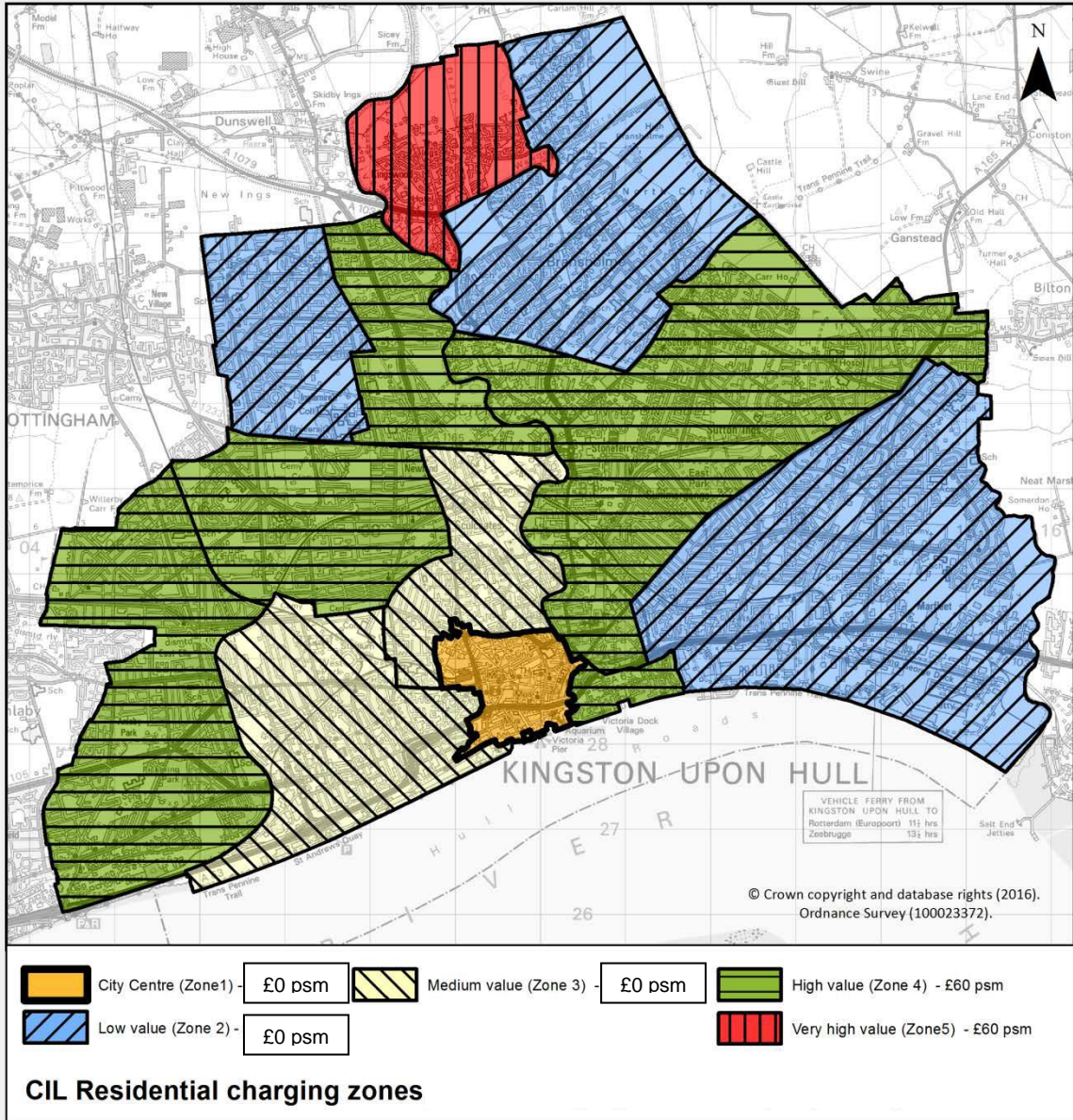
3.4 The Council's CIL Charging Schedule identifies which types of development are liable to pay CIL. The Charging Schedule at the above link also includes a CIL payment Instalments Policy. The Council's Instalments Policy provides for CIL payments to be spread over the course of almost two years depending on the scale of the CIL liability. The Instalments Policy was similarly subject to formal approval by the Council on, and came into effect at the same time as the CIL Charging Schedule.

3.5 The Council has developed a ready reckoner to enable developers to gauge their CIL liabilities as part of developing proposals and submitting planning applications. Calculations may also be useful to help inform land transactions. The Council will send a formal liability calculation, in the form of a 'Liability Notice' once planning permission is granted.

Hull CIL ready reckoner

Charge	Net floor area	Total charge
Residential		
Zone 1 or 2 (low value) including flats/apartments city wide		
£0 per sq m		
Zone 3 (medium value)		
£0 per sq m		
Zones 4 and 5 (higher value)		
£60 psm	50 sq m	£3,000
	100 sq m	£6,000
	150 sq m	£9,000
Retail warehousing city wide		
£25 psm	600 sq m	£15,000
	1,200 sq m	£30,000
	1,500 sq m	£37,500
	2,000 sq m	£50,000
Large supermarket proposals over 500 sq m		
£50 psm	1,200 sq m	£60,000
	1,500 sq m	£75,000
	2,000 sq m	£100,000
Small supermarket proposals less than 500 sq m		
£5 psm	250 sqm	£1,250
	500 sqm	£2,500

3.6 Details concerning the zones are set out below:



3.7 Developers should be aware that, depending on the nature, scale and location of the development, the Council may seek planning obligations through the Section 106 mechanism, in addition to the payment of CIL. It is likely that Section 106 agreements will be negotiated to ensure that other on-site infrastructure requirements are met. In some cases, Section 106

agreements may be negotiated to deliver strategic infrastructure where the development gives rise to, or contributes to, the need for that infrastructure.

3.8 Certain sites within the Local Plan are allocated for housing where on-site open space is required, under Policy 42, because they are large enough to accommodate this and/or these already have planning consent detailing open space provision. Other housing schemes may well require on-site open space. CIL will be charged for housing regardless of the need for on or off-site provision in satisfying Local Plan open space standards.

4. Process for CIL Payment

Forms are available to download from the City Council web site by following the links.

4.1 The default position as set out in the CIL Regulations, is for the whole of the amount to be paid within 60 days of the development commencing although instalments are allowed for, particularly for larger proposals. There are surcharges if payments do not occur. Payments will be inclusive of a 5% charge to cover administrative costs, also as allowed for by the regulations.

4.2 The requirements for payment are detailed below, and involve the following formal stages:

A. Developer to determine whether planning permission is needed. If planning permission is required, follow the process below. If not but the development is nonetheless a CIL liable development (i.e. the development constitutes 'permitted development' on which CIL is chargeable), a '**Notice of Chargeable Development**' needs to be submitted to the Council. Other general consents involving permitted development, proposals within Enterprise Zones or the subject of Local Development Orders, are required to provide a Notice of Chargeable Development to the Council. The form can be found at the following web link:

http://www.planningportal.gov.uk/uploads/1app/forms/form_5_notice_of_chargeable_development.pdf

B. Developer should seek pre-application advice by contacting the Council if you need advice on your CIL liability or on the CIL payment process. Contact the Development Management Team if your development is of a scale where you expect there to be on or off-site impacts which need to be mitigated, and where there is therefore the possibility that a Section 106 agreement will need to be negotiated.

C. The planning application is assessed to see if it is eligible to pay CIL. In Hull only residential or supermarket/retail warehouse proposals would apply in these circumstances. In applying for planning permission applicants are required to supply details about Gross Internal Area (GIA) of buildings:

- on the site prior to development;
- to be demolished; and
- once the site has been completed.

Using this information the Council calculates the net increase in GIA which is then multiplied by the CIL tariff to give what is payable. Adjustment should also be made for inflation.

NOTE that your planning application will not be validated if the Additional Information form is not submitted alongside it.

The party or parties responsible for paying CIL must also submit an 'Assumption of Liability Form' to the Council, to be copied to the responsible bodies indicated in the letter, which can be found at the following web link:

https://ecab.planningportal.co.uk/uploads/1app/forms/form_2_assumption_of_liability.pdf

D. When an eligible application is approved we tell the people concerned who will pay CIL and how much is liable. A **Liability Notice** will be issued by the Council with the Decision Notice for planning permission. This will specify how much CIL must be paid to the Council, but is not a demand for payment of CIL, i.e. a Demand Notice. A default position is that land owners are liable to pay CIL.

Once issued, the notice will appear on local land charges as a 'general financial charge'. This is so that if the land is sold with planning permission in place the CIL liability will be apparent to potential purchasers.

If a developer wishes to claim an exemption from CIL, or relief from CIL because, for example, they are providing social housing, a 'Claiming Exemption or Relief Form' will need to be submitted. The Council envisages applicants submitting this after it has issued them with a CIL Liability Notice, although applicants can choose to submit this form with their planning application or at any point subsequently. The form can be downloaded at the following web link:

http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf

E. Before an eligible development is about to commence the applicant must submit a **Commencement Notice** to the Council and copy it to the responsible officers indicated in the letter. This will indicate when the development will proceed and trigger a bill based on the Liability Notice. The Council will also register the CIL charge as a Local Land Charge so that if the land is sold with planning permission in place the CIL liability will be apparent to potential purchasers. The commencement notice form can be found at the following web link:

http://www.planningportal.gov.uk/uploads/1app/forms/form_6_commencement_notice.pdf

If development occurs without this happening then the Council can request full payment of CIL and a surcharge.

F. The Council will acknowledge receipt of 'Commencement Notices' and will subsequently issue a CIL Demand Notice, setting out CIL payment terms in line with its Instalments Policy if needed.

The total charge payable contained in the demand notice will be adjusted including Index changes and when this is due, it will be sent to the applicant. Once issued, the notice will appear on local land charges as a 'specific financial charge'.

G. If the party or parties liable to pay the CIL charge change, either prior or subsequent to the grant of planning permission, the Council can be informed through the submission of further forms available on the website at the following links:

http://www.planningportal.gov.uk/uploads/1app/forms/form_3_withdrawal_of_assumption_of_liability.pdf

http://www.planningportal.gov.uk/uploads/1app/forms/form_4_transfer_of_assumed_liability.pdf

Failure to obtain consent from the Council for any exemption prior to starting on-site (regardless of a Commencement Notice being provided), or the provision of the incorrect information in terms of the commencement date will result in the Council determining the 'deemed commencement date', in which case the entire CIL liability becomes payable immediately. A further surcharge is payable should a Commencement Notice not be provided. Failure to pay in accordance with the Demand Notice which the Council issues in response to its receipt of a correctly submitted Commencement Notice will also result in the forfeit of the right to pay in accordance with the Council's CIL Instalments Policy. Other actions available to the Council are detailed in the publication at the following web link:

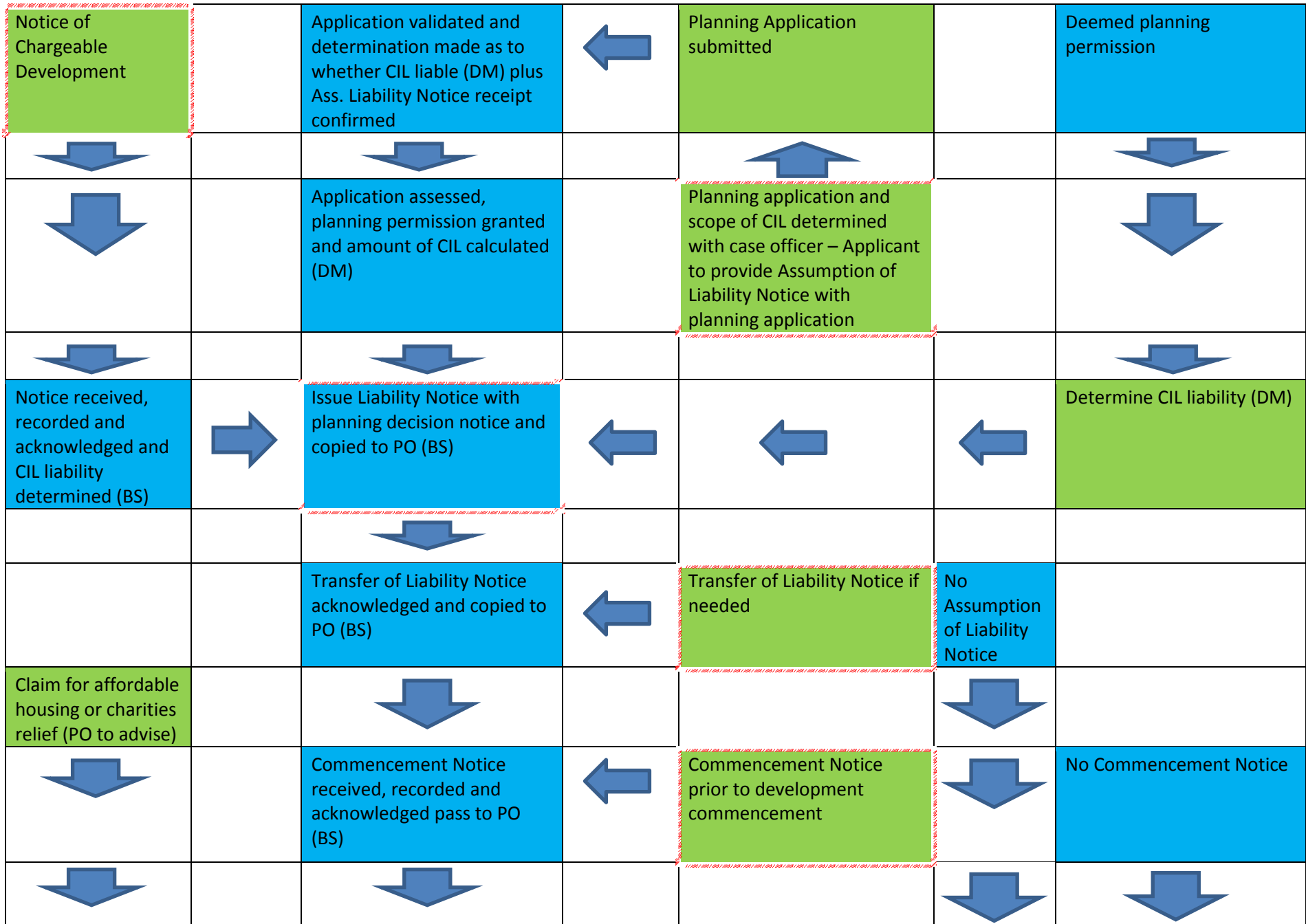
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6312/1995794.pdf

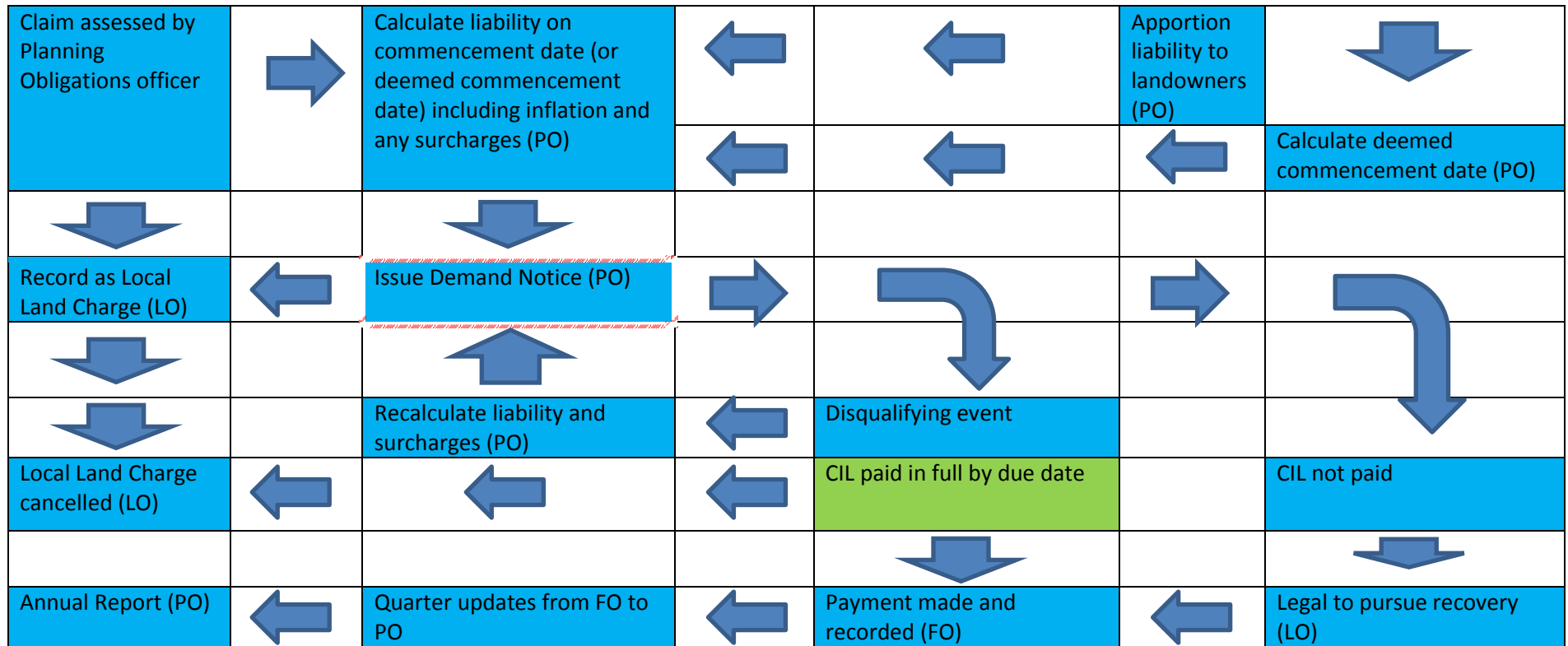
H. The Charging Authority must also publish an *Infrastructure Funding Statement* indicating:

- how much CIL has been collected;
- how much of that money has been spent;
- the items of infrastructure on which it has been spent;
- the amount of expenditure on each item of infrastructure;
- any amount used to repay money borrowed;
- the amount of CIL used to cover administrative expenses; and
- the amount of CIL retained at the end of the reported year.

4.3 The table below provides a shorthand version of what is required and who does what, when.

CIL Flow chart





	Third party responsibility
	Council responsibility
	Formal CIL Notice

DM – Development management case officer
BS – Business Support
FO – Finance officer

PO – Planning Obligations officer
LO – Legal officer

5. Instalments, surcharges and exemptions

5.1 An instalments policy was agreed as part of the Charging Schedule and comes into effect at the same time. The CIL Instalments Policy calculates payment days from commencement of development on the site. The commencement date will be taken to be the date advised by the developer in the commencement notice submitted under regulation 67. Where there is a breach in payments, the total CIL liability will become payable in full immediately (Regulation (70) (8)).

5.2 The following table provides the basis for instalments:

Chargeable amount	Payment trigger from commencement date
Less than £15,000	<ul style="list-style-type: none">• Full payment within 90 days.
Between £15,000 to £60,000	<ul style="list-style-type: none">• First instalment representing 25% of the chargeable amount will be required within 90 days.• Second instalment representing 50% of the chargeable amount will be required within 270 days.• Third instalment representing 25% of the chargeable amount within 360 days.
Between £60,000 and £200,000	<ul style="list-style-type: none">• First instalment representing 25% of the chargeable amount will be required within 90 days.• Second instalment representing 50% of the chargeable amount will be required within 360 days.• Third instalment representing 25% of the chargeable amount within 540 days.
Over £200K	<ul style="list-style-type: none">• First instalment representing 25% of the chargeable amount will be required within 90 days.• Second instalment representing 25% of the chargeable amount will be required within 270 days.• Third instalment representing 25% of the chargeable amount within 540 days.• Fourth instalment representing 25% of the chargeable amount within 720 days.

Surcharges

5.3 Surcharges will be applied by the Council (based on the regulations) to be retained by Planning Services to cover costs, including those circumstances involving:

- £50 on each liable person if the development has commenced and no Commencement Notice has been received;
- £500 on each owner where the Council has to apportion liability between owners;
- Up to £2,500 or 20% of chargeable development (whichever is the greater) for failure to submit a notice of chargeable development or Commencement Notice; and

- £200 or 5% of the chargeable amount (whichever is the greater) for late payments after 30 days and again after 6 months plus interest beginning the day payment was due at rate 2.5% above BoE base rate.

Exemptions

5.4 The City Council introduced an Exceptional Circumstances Relief Policy at the same time as the Charging Schedule in accordance with Regulations 55 to 57 of the Community Infrastructure Levy Regulations 2010 (as amended).

5.5 Exceptional Circumstances Relief (ECR) will be offered where individual sites with specific and exceptional cost burdens would not be viable due to the payment of the CIL charge (See CIL Regulations 55 to 57). The Regulations state that the Council may grant relief from liability to pay CIL if it appears to the Council that there are exceptional circumstances which justify doing so and the Council consider it so expedient. Each case will be considered individually by the Council, which retains the discretion to make judgements about the viability of the scheme and whether the exceptional circumstances policy applies. Schemes can also be made viable by phasing payments (see CIL Guidance paragraph 56) and/or by use of the Council's Instalments Policy).

5.6 The Government and the Council expect that exceptional circumstances will be rare, as the CIL rates have been set at a level where most development can afford to pay the charge and include significant margins for flexibility.

5.7 **Standard exemptions** from the CIL rates, covered by the regulations include development involving:

a. the gross internal area of a new buildings or extensions to buildings will be less than 100 sqm (other than where the development will comprise one or more dwellings);

b. a building into which people do not normally go;

c. a building into which people go only intermittently for the purposes of maintaining or inspecting fixed plant or machinery;

d. a building for which planning permission was granted for a limited period;

e. development by charities of their own land to be used wholly or mainly for their charitable purposes;

f. social housing;

g. vacant buildings brought back into the same use;

h. floorspace resulting from change of use of development where part of the building has been in continuous lawful use for at least six months in the three years prior to the development being permitted;

i. houses, flats, residential annexes and residential extensions which are built by 'self-builders'; and

j. mezzanine floors of less than 200 square metres inserted into an existing building, unless they form part of a wider planning permission that seeks to provide other works as well.

6. Infrastructure procurement and delivery

6.1 It is proposed that all contributions received will be used to fund projects targeted at infrastructure improvements as *identified in the Infrastructure Funding Statement (available separately) and formerly Schedule 123 list*. Projects outside of this Statement are not able to be funded by CIL as these are outside of the scope of the Regulations, or until such times as the list is amended, usually every 3 years. Projects must also be covered under the general definition of 'place shaping infrastructure' as outlined in para. 2.7 or unless otherwise determined through a Neighbourhood Plan, should these be relevant to the charging area.

6.2 The Council has agreed a long term programme of projects, with funds aligned, and as outlined in the Local Plan. Consultation has occurred between respective Portfolio Holder and Area Committees, in terms of the programme and prioritised projects based on anticipated funds. Should a Neighbourhood Plan be adopted, consultation and agreement should occur with any respective Neighbourhood Forum, about use of CIL funds, relating to priorities determined as part of the Neighbourhood Plan. This is provided such proposals fall within the CIL eligible areas, although there is nothing preventing projects to be funded via CIL, subject to the Infrastructure Funding Statement list being amended.

6.3 All project sponsors are required to submit quarterly progress reports to the Principal Planning Officer, in start of January, April, July and October. This enables compliance with the Regulations by monitoring expenditure and delivery of anticipated outcomes in meeting the infrastructure gaps set out in the Infrastructure Funding Statement.

6.4 It is further anticipated within the next 2 years, that 70% of any CIL receipt will be managed by Cabinet and 25% CIL receipt will be able to be retained locally by the Area Committee, subject to compliance with the Infrastructure Funding Statement. 5% will be used to cover administration costs. *This position will be reviewed in November 2021 depending on the extent of contributions received.*

6.5 Project details to be submitted to the Principal Planning Officer include:

- Brief description of the project and location
- Key outputs and benefits
- Cost breakdown and feasibility and any succession plans after funding has occurred e.g. maintenance
- Funding sources and why CIL is necessary
- Relationship to Reg 123 list
- Existing nearby provision and whether a local surplus or deficit

- Cross local area boundary implications
- Who is responsible for delivery and timescales
- Project plan or business case details
- Project time frame start/end
- Risk management details including how these can be addressed and/or mitigated along with succession planning
- Community consultation
- Elected member endorsement and minute

6.6 The evaluation of programmes and the release of funds will follow the process outlined below. The aim of the process is to identify and agree priorities for the use of CIL over a three year programme, and to agree the release of funds on an annual basis. Funds may be released for project development work in advance of funds for specific projects if necessary and where justified.

6.7 Developer contributions will be released when robust evidence is provided for each individual scheme for which the charge has been requested. This should include evidence of existing demands (including demands from permitted developments), additional demands likely to arise from the proposed development, the extent to which relevant existing infrastructure or services are capable, (in terms of location, capacity and suitability), of meeting those additional demands and the estimated costs of providing new improving existing infrastructure to meet these additional demands. Where practicable and in most cases this should be based upon a clear costed scheme and where delivery of that scheme is identified for implementation within agreed timescales.

6.8 It is important to recognise that CIL contributions are intended to fill funding gaps and are not expected to provide 100% of delivery costs or indeed to pay for what might be considered "historical deficits" of infrastructure provision. With regard to release of CIL payments by charging authorities monies should only be released when it can be reasonably demonstrated that there are no other funding mechanisms or streams available that could deliver the scheme being proposed. This will require transparency in looking at agreed capital programmes, for example, and a reasonable exploration and assessment by other potential resource/ funding sources.

Frequently Asked Questions

Q: When do the Council's CIL charges come into effect?

A: The Council intends that its CIL charges will come into effect on 1st February 2018.

Q: If I submit my planning application before then will my development be liable to pay CIL?

A: The liability of a development to pay CIL is not determined by whether a planning application is submitted before or after the CIL Charging Schedule comes into effect. What matters is whether the application is *determined* before or after the CIL Charging Schedule comes into effect. Generally speaking, if an application is granted prior to the CIL charges coming into effect, it will not be liable to CIL. If it is granted after the CIL charges come into effect it will be liable to CIL. This is the effect of

the general transitional provision in CIL Regulation 128. *However, it is important to note some subtleties as follows:* Where a Section 106 agreement is being negotiated in relation to the development, planning permission is not granted until that agreement has been signed. In other words, if the Section 106 agreement is not signed before the CIL charges come into effect, the development will be liable to CIL (assuming of course that CIL charges apply to the types of development in question) *unless there is some other proxy such as signing of a s111 agreement between parties.* Planning applications which are subject to outstanding appeals at the time at which the CIL charges come into effect will also be liable to pay CIL, insofar as planning permission has not been granted to permit the chargeable development until such time as the appeal has been resolved.

Q: Which developments will be liable to pay CIL? Which will not? What are the Council's CIL charges?

A: Generally speaking, the CIL Regulations identify the following types of development as being liable to pay CIL:

- development comprising 100m² or more of new build floorspace;
- development of less than 100m² of new build floorspace that results in the creation of one or more dwellings; and
- the conversion of a building that is no longer in lawful use.

In practice, only the types of development referred to in the Council's adopted CIL Charging Schedule will be liable to pay CIL.

The Charging Schedule indicates that a £0m² CIL charge will apply to other forms of development.

The CIL Regulations exempt certain types of development from CIL, as follows:

- minor development – i.e. development of less than 100m² of new build floorspace, provided that it does not result in the creation of a new dwelling. (If the development results in a new dwelling, CIL is payable irrespective of whether the floorspace is less than 100m²); and
- development of buildings and structures into which people do not normally go (e.g. electricity sub-stations, wind turbines).

The 2011 Amendment Regulations (amendment to regulation 6) specify that the change of use of any building previously used as a single dwelling house to use as two or more separate dwelling houses does not result in liability to pay CIL. It is important to note that there is scope for the Council to revise its Charging Schedule in future.

Q: Which types of development are eligible for relief from CIL?

A: Social housing, and development by charities for charitable purposes. CIL Regulations 49 and 43 provide for such relief. It is important to note that if affordable housing which benefits from relief from CIL reverts to market housing, the CIL Regulations provide for the Council to claw back the relief given if the change to market housing occurs within a period of seven years beginning with the day on which the development commenced. Developers apply for relief from CIL for Affordable

Housing – a form is available for this purpose on the Planning Portal website. Relief from CIL can only be claimed prior to commencement.

Q: How much CIL will I have to pay?

A: CIL is calculated on the basis of the net increase in gross internal floor area. The formulae in CIL Regulation 40 (as amended) are used to determine the CIL liability. The charges in the Council's Charging Schedule feed into the calculation. The Council has developed a calculator that you can use. The calculator gives an indication of the CIL liability. The Council will send a formal liability calculation, in the form of a 'Liability Notice' once planning permission is granted. Note that CIL charges will increase in line with the Retail Prices Index.

Q: Is there scope to make 'payment in kind' instead of making the required cash CIL payment?

A: The CIL Regulations do make provision for payment in kind to be made, but only where the payment in kind is in the form of land. The Council does not anticipate this provision being utilised frequently, if at all, and advises any developers who might be contemplating the possibility of making such payment in kind to initiate early, pre-application discussion with the Council to determine whether such payment in kind might be acceptable.

Q: Can demolished floorspace be subtracted from the floorspace which is liable to CIL?

A: Yes. Where planning permission is granted for a new development that involves the demolition of a building in lawful use, the level of CIL payable will be calculated based on the net increase in floorspace. This means that the existing floorspace contained in the building to be demolished can be deducted from the total floorspace of the new development when calculating the CIL liability. *However, it is important to note CIL Regulation 40 (10). If the demolished floorspace is to be subtracted from the floorspace which is liable to CIL, at least part of the demolished building must have been in use for a continuous period of at least six months within the period of 12 months ending on the day planning permission first permits the chargeable development.*

Q: Do I have to pay CIL if I convert existing premises into a use which is subject to a CIL charge, for example if I convert an existing space above a shop into residential units?

A: CIL is only payable on the net increase in gross internal floor area. Floorspace to be converted or demolished can be taken into account in calculating the CIL liability. It does not matter if the floorspace to be converted or demolished is a different use to the end use to which the floorspace is to be put, or to the floorspace to be constructed. In other words, changes of use are not liable to a CIL charge provided there is no net increase in gross internal floor area. As noted above, the 2011 Amendment Regulations (amendment to regulation 6) specify that the change of use of any building previously used as a single dwelling house to use as two or more separate dwelling houses does not result in liability to pay CIL.

Q: Do I have to pay CIL if I am renewing an expired / lapsed planning permission?

A: Yes, assuming that the Council's CIL charges apply to the type/s of development in question.

Q: Do I have to pay CIL if I am extending the life of a planning permission granted before the CIL Charging Schedule came into effect (in accordance with the provision for me to do that under article 18 of the Town and Country Planning (Development Management Procedure) (England) Order 2010?

A: Yes, applications to extend the life of extant planning permissions do trigger CIL liability, again assuming that the Council's CIL charges apply to the type/s of development in question. If the extant planning permission is subject to a Section 106 agreement, developers are encouraged to seek pre-application advice through the Council's Planning Service to determine whether it is appropriate to revisit that agreement and therefore the application in light of the CIL liability.

Q: Do I have to pay CIL if I seek to revise an existing permission through a Section 73 application (i.e. to remove or vary a condition)? ('Section 73' refers to section 73 of the 1990 Town and Country Planning Act).

A: If a variation is sought to a planning permission which was granted before the Charging Schedule came into effect, only any additional floorspace created through the variation to that permission will be liable to pay CIL. When making the S73 application, developers will therefore need to provide floorspace figures for the development as originally proposed and as proposed in the S73 application, assuming there is a change in the floorspace proposed.

Q: When is CIL payable?

A: CIL is unlikely to be payable immediately upon grant of planning permission, unless development commences instantaneously. As noted above, the formulae in CIL Regulation 40 (as amended) are used to determine the CIL liability, and the charges in the Council's Charging Schedule feed into the calculation. The Regulation 40 calculation of CIL liability is made at the 'time at which planning permission first permits development' (see subsequent question and answer for explanation). The Council's CIL Liability Notice is issued at this point. The CIL Liability Notice is not the same as the CIL Demand Notice, which is issued when the development commences. The Liability Notice details the amount of CIL payable, whereas the Demand Notice specifies payment terms. The Demand Notice will reflect the payment terms provided for in the Council's Instalments Policy. The Instalments Policy provides for phased payment of larger CIL liabilities over longer periods. However, in all cases, 25% of the CIL charge will be payable within 90 days of the commencement of development. If payments are not made in line with the Council's Instalments Policy, the privilege to pay CIL in instalments may be withdrawn and developers will subsequently be liable to pay the entire CIL liability on demand in addition to any RPI changes. *There is no scope for developers to seek the arbitrary application of different payment terms to those specified in the Demand Notice.*

Q: When do I submit my Commencement Notice? What does 'commencement' mean in the CIL context?

A: In CIL terms, development is considered to have commenced when any 'material operation' begins to be carried out on the land subject to the CIL charge. To avoid potential surcharges and forfeit of the right to pay in accordance with the Council's Instalments Policy, developers are required to submit their Commencement Notice to the Council the day before 'material operations' commence. For CIL purposes, 'material operation' is defined in section 56(4) of the Town and Country Planning Act 1990, as follows:

'Material operation' means –

- (a) Any work of construction in the course of the erection of a building;
- (b) Any work of demolition of a building;

- (c) The digging of a trench which is to contain the foundations, or part of the foundations of a building;
- (d) The laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (c);
- (e) Any operation in the course of laying out or constructing a road or part of a road;
- (f) Any change in the use of any land which constitutes material development.

Q: When does planning permission first permit development?

A: The time at which planning permission first permits development depends on the nature of the consent granted. If the permission is not subject to conditions or reserved matters requiring further approval to be obtained before development can commence, the effect of the planning permission is to permit development to commence straight away, in which case the Council can issue a CIL Liability Notice with the planning permission, and a Demand Notice on receipt of the developer's Commencement Notice. In the case of non-outline planning permissions which are subject to conditions requiring further approval to be obtained before development can commence, planning permission first permits development on the day that the last pre-commencement condition is complied with. This is the point at which development could commence without contravening the terms of the planning permission. In the case of outline planning permissions, the CIL Regulations specify that planning permission first permits development on the day of the final approval of the last reserved matter associated with the development. Where the outline planning permission is phased, this principle applies to each separate phase of development.

Q: What CIL related information do I have to submit with my planning application?

A: Except for applications for Outline planning consent, all planning applications must now be accompanied by the 'CIL Additional Information Form', available at the following link:

http://www.planningportal.gov.uk/uploads/1app/forms/cil_questions.pdf

It is a 'Local Validation List' requirement that this form is submitted with a planning application. *The application will not be validated if the form is not submitted.*

Q: Does CIL replace Section 106 planning obligations? If I pay CIL does that mean I won't have to negotiate a Section 106 agreement? In what circumstances will Section 106 planning obligations be negotiated?

A: CIL does not replace Section 106 planning obligations. Subject to the requirements of CIL Regulations 122 and 123, the Council will continue to seek to negotiate Section 106 agreements in appropriate cases. Generally speaking if your development has site specific impacts that need to be mitigated, there will be a requirement for a Section 106 agreement to be negotiated. In some circumstances a S106 agreement will also be required to mitigate developments' impacts on strategic infrastructure, provided this can be justified in terms of the tests in CIL Regulation 122. The Council cannot ask a developer to pay for infrastructure through the Section 106 mechanism if the developer is also required to pay for the same infrastructure through CIL.

Q: What will my CIL contribution be spent on?

A: The Council's Infrastructure Funding Statement (previously Schedule 123 list prior to 1 September 2019) will identify the infrastructure on which CIL receipts will be spent.

Q: What are my procedural (and other) obligations as a developer? What happens for example if I neglect to tell the Council when my development commences?

A: The flowchart above shows the basic process that needs to be followed in order for the CIL liability to be determined and paid without complications or difficulties arising. If the process is not followed correctly, a number of sanctions are available to the Council. For example, if developers fail to submit a Commencement Notice, (meaning that the Council has to determine when the development started), or fail to pay in accordance with the Demand Notice which the Council subsequently issues in response to its receipt of the Commencement Notice, they will forfeit their right to pay in accordance with the Council's CIL Instalments Policy. The Commencement Notice must be submitted to the Council no later than the day before commencement of development.

Q: What recourse to legal action does the Council have at its disposal to deal with non-payment of CIL?

A: The CIL Regulations make numerous sanctions and financial penalties available to the Council in the event that CIL is not paid in accordance with its Charging Schedule or in the event that processes are incorrectly followed. These sanctions and penalties are not detailed here, but can be read in Part 9 of the Regulations (as amended), and Chapter 3 of the Department for Communities and Local Government document entitled 'Community Infrastructure Levy – Collection and Enforcement – Information Document'.

Sanctions include the application of surcharges and interest to in the event that CIL charges are not paid in accordance with the Council's CIL Instalments Policy, the application of CIL Stop Notices in the event of non-payment of CIL, recovery of CIL through court proceedings, the sale of CIL debtors' assets, commitment to prison, and pursuit of outstanding CIL payment upon death through the deceased's executor or administrator.

Q: How do I appeal against the calculation of the CIL liability, or the apportionment of the liability, against a CIL surcharge, or CIL Stop Notice, etc?

A: The CIL Regulations provide scope for appeals to be made on a number of grounds, ranging from appeal against the calculation of the amount of CIL due, to appeal against enforcement actions the Council may take. The above mentioned CLG 'CIL Collection and Enforcement Information Document' references these in chapter 3. There are strict time limits about when appeals can be made. The Valuations Office Agency (VOA) plays a role in some appeal situations. Information is available on the VOA's website.

The Planning Inspectorate also plays a role in some appeal situations, for example, in relation to appeals against the imposition of CIL surcharges, in relation to CIL collecting authorities deeming development to have commenced, and in relation to those authorities' serving of CIL stop notices. Information is available on the Planning Portal website.

Before initiating appeals, developers are encouraged to contact the Council in the first instance as it may be quicker, easier and less expensive to resolve issues before taking more formal action. Developers are reminded that, except in the case of applications for outline consent, it is a 'Local Validation List' requirement that a 'Planning Application Additional Information Requirements Form' is submitted along with planning applications to provide for the Council to accurately determine the CIL liability.

Q: Will I get my CIL contribution back if the Council does not spend it within a given period?

A: The CIL Regulations do not provide for CIL contributions to be returned to those making the contribution within any given period, although the Regulations (specifically Regulation 62 as amended) do require the Council to report on its CIL expenditure in each financial year, detailing, for example, the items of infrastructure on which CIL has been spent, the amount spent on each item, and the total CIL received and spent.

