



# **Community Infrastructure Levy (CIL)**

**Position statement on the use of CIL and  
Section 106 agreements**

**DRAFT**

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# Introduction

1. This draft statement has been prepared to accompany consultation on the Council's Community Infrastructure Levy Preliminary Draft Charging Schedule.
2. National guidance makes clear that planning obligations and CIL should act as complementary contribution mechanisms and, as a key part of this, there should not be any actual or perceived 'double dipping' (i.e. developers paying twice for the same infrastructure item).
3. This draft statement has therefore been produced to clarify how the Council intends to implement and use planning obligations (known as Section 106 agreements) in partnership with the Community Infrastructure Levy (CIL) once the levy is adopted in the borough to ensure fairness and transparency. It seeks to provide guidance – although not exhaustive – on the circumstances in which an item of infrastructure (or contributions for) may be required through a planning obligation in addition to CIL payments.
4. This statement should be read in conjunction with the Council's draft infrastructure list which sets out the specific infrastructure types and projects which the Council intends could be funded through CIL.
5. The contents and principles of this statement will ultimately be incorporated into a revised version of the Council's Planning Obligations and Infrastructure SPD which was adopted in 2008.

## Developer contributions – mechanisms

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

### Community Infrastructure Levy

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

### Planning Conditions

14. Planning conditions are imposed by the Council on a grant of planning permission requiring actions that are needed in order to make development acceptable in planning terms. Power to impose conditions is set out in Section 70 and 72 of the Town and Country Planning Act 1990.
15. Whilst conditions cannot be used to secure financial contributions or monies to be paid, they can be used to ensure that certain elements of a development are carried out in a particular way. Conditions may relate to phasing of development, timely (or up front) delivery of infrastructure, site-specific environmental or physical issues or the appearance of development, all of which can help to mitigate and manage the adverse impacts or additional pressures of development.

16. In some cases, it may be possible to overcome the same issue or achieve the same objective by using either a condition or planning obligation. In these circumstances, the Council will prefer to use a planning condition as per national policy.

### **Planning Obligations**

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

### **Highways Agreements**

20. Highways agreements (known as “section 278 agreements”) are legal agreements which provide a mechanism for ensuring developers deliver or fund improvements or alterations to the public highway which are necessary to mitigate the impacts of a specific development and make it acceptable in planning terms. This could include works such as roundabouts, right hand turn lanes, traffic signals or cycleways.
21. These agreements are not the responsibility of the Local Planning Authority but are made with the Department for Transport or Surrey County Council (as the Highway Authority).

# The relationship between CIL and planning obligations – general principles

22. In general, it is the Council’s intention to use CIL to fund and deliver the strategic or borough-wide infrastructure required to support the growth of the borough and the quality of life of its communities as a whole rather than to make individual development proposals acceptable in planning terms. As a result, there will still be a legitimate role, on a case-by-case basis, for additional site-specific infrastructure or impact mitigation to be required without which a development would be unacceptable or unsustainable.
23. The table below provides a summary of the general purpose and principles of each mechanism as well as where to find further detail.

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

## How will CIL be used and spent?

24. Under the Community Infrastructure Levy Regulations 2010, monies collected under CIL can be spent on a wide range of projects including the provision, improvement, replacement, operation or maintenance of infrastructure require to support growth in the borough.
25. In general terms, it is the Council’s intention to use CIL to fund and deliver the infrastructure required to support the growth of the borough and its communities as a whole rather than those required to make an individual development scheme acceptable. In essence, this means the expenditure of CIL will be focussed on more strategic, borough-wide projects, those which address the cumulative effects of development and/or those with a specific benefit to the wider community/neighbourhood.
26. The types of infrastructure and, where relevant, specific projects which the Council intends to fund wholly or partly through CIL will be published in the Council’s list of relevant infrastructure (Regulation 123 List). Infrastructure providers will be full engaged in the process of establishing priorities for spending through the Infrastructure Delivery Plan process.
27. To further ensure that both mechanisms are complementary and to avoid ‘double dipping’, the Council has published a draft list of relevant infrastructure in accordance with Regulation 123 of the Community Infrastructure Regulations 2010. This list (often referred to as a “Regulation 123 List”) sets out the infrastructure types, and where relevant specific projects,

that the Council intends will be, or may be, wholly or partly funded through CIL. Once CIL in place and the final Regulation 123 list is approved, contributions via a planning obligation towards any item of infrastructure on this list cannot be used as a reason to grant planning permission.

28. The Council and its partners may, and indeed are likely to, pool funding from CIL or use it to leverage in other sources of funding, both internal and external (such as Growing Places Fund) in order to deliver strategic infrastructure.

#### **When might planning obligations be used?**

29. Whilst CIL will address the general contributions towards wider infrastructure needed to support growth, developers will be expected to provide any site-specific infrastructure or impact mitigation required to make the development acceptable in planning terms.
30. Requirements of this nature will inevitably vary in scale and type depending upon the specifics of the individual development (e.g. it could range from the need for land for a school on a strategic housing site to small scale junction improvements/crossovers to access a development). They may also arise from specific policy commitments within the Local Plan. These requirements – which are directly related to development – are more appropriately secured and delivered through a planning obligation or section 278 agreement in addition to the CIL charge.
31. These requirements will be negotiated with developers on a case-by-case basis with input from relevant infrastructure providers (such as the County Council) and will normally be secured through a Section 106 agreement (or unilateral undertaking).
32. In addition, affordable housing, which falls outside of the definition of “infrastructure”, will continue to be secured through planning obligations in accordance with Policy CS15 and the Affordable Housing SPD.
33. Planning conditions will be used to address site-specific requirements where possible; however, there will continue to be cases – particularly where financial contributions are required – where it is necessary and appropriate to use planning obligations.

# Infrastructure, policy requirements and contribution mechanisms

34. The following table and subsections outline examples of the most appropriate mechanism for securing each type of infrastructure or policy requirements which are not infrastructure. In doing so, it provides guidance as to when CIL is likely to be used and where planning obligations may be required. Whilst this list is not exhaustive and exceptional circumstances may arise, it is intended to provide up-front guidance to developers and other interested parties as to the most common situations where additional financial contributions or in-kind works may be sought through planning obligations.
35. It is recognised that large scale developments – particularly strategic residential proposals – are likely to attract more significant site-specific measures, works or contributions to be provided by developers in order to make them acceptable in planning terms. The potential for such schemes to attract more significant non-CIL contributions has been factored into the viability evidence underpinning CIL charge levels to ensure that such expectations would not prevent schemes from coming forward.

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

Policing and fire and rescue			
General community safety measures			
Development specific community safety measures	Planning obligation/and or planning condition	<ul style="list-style-type: none"> <li>– Strategic scale housing developments such as Urban Extensions</li> <li>– Housing and commercial developments in town/local centre locations</li> </ul>	CS10
<b>Leisure, Open Space and Green Infrastructure</b>			
Leisure centres	CIL		CS12
Cemeteries	CIL		CS12
Allotments	CIL (exceptionally planning obligations may be used to secure land for allotments)	<ul style="list-style-type: none"> <li>– Strategic scale housing developments such as Urban Extensions</li> </ul>	CS12
Local amenity space and areas for children and young people's play	Planning obligation/and or planning condition	<ul style="list-style-type: none"> <li>– Housing developments exceeding 25 units</li> </ul>	CS10 CS12 Emerging DMP policy
Outdoor sport and recreation grounds	CIL (exceptionally planning obligations may be used to secure land for outdoor sport)	<ul style="list-style-type: none"> <li>– Strategic scale housing developments such as Urban Extensions</li> </ul>	CS12
<b>Sustainability, Flood Risk Management and Flood Defence</b>			
Strategic flood attenuation and defence	CIL (exceptionally planning obligations may be used to secure specific corridor enhancements)	<ul style="list-style-type: none"> <li>– Housing and commercial developments with watercourses within or adjoining the site</li> </ul>	CS10 Emerging DMP policy
River corridor enhancements	Planning obligation and/or planning condition	<ul style="list-style-type: none"> <li>– Housing and commercial developments at risk of flooding where measures are necessary to deliver a safe scheme</li> </ul>	CS10 Emerging DMP policy
Development specific flood attenuation, mitigation and resilience	Planning obligation and/or planning condition	<ul style="list-style-type: none"> <li>– Housing developments exceeding 10 units and commercial schemes exceeding 1,000sqm</li> </ul>	CS10 Emerging DMP policy
Sustainable Urban Drainage Systems (and arrangements for long term maintenance)	Planning obligation and/or planning condition	<ul style="list-style-type: none"> <li>– All housing developments and commercial schemes</li> </ul>	CS10 CS11 Emerging DMP policy
Resource efficiency measures	Planning obligation and/or planning condition		

## Housing

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

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

## Transport, Highways and Travel

37. The Core Strategy sets an overarching approach to travel options and accessibility focussed on three key strands: managing demand; improving the efficiency of the network; improving transport choice.
38. General improvements to the strategic and local highway network, public transport services and sustainable travel options (e.g. cycle routes) designed to provide sufficient capacity and to safely accommodate the demands arising from growth will be funded through CIL. However there may be exceptional instances where, in consultation with the County Council, planning obligations or section 278 agreements are required to ensure individual applications can be approved. This could include the following development specific measures:
- Improvements or remodelling of junctions on-site and/or in the immediate locality or the site required as a direct consequence of traffic generated by a particular development
  - Creation of safe access routes/points to serve a development proposal including spine roads, vehicular crossovers, deceleration/turning lanes and the introduction of, or amendments to, traffic signalling and signage
  - Diversion/extension of existing public transport/bus routes through a site including any associated road alterations and the provision or enhancement of any user infrastructure (such as stops etc.)
  - Implementation of, or amendment to parking restrictions, waiting restrictions, controlled parking zones, resident parking zones required as a consequence of development including payments to cover costs of progressing necessary Traffic Regulation Orders
  - Introduction of, or improvement to, on and off-site pedestrian facilities (e.g. footways, footpaths, refuge points) and cycle facilities (e.g. cycleways, cycle storage)
  - Preparation and implementation of travel plans and on-going monitoring
  - Offers of sustainable travel incentives (such as bus/train vouchers, cycle shop vouchers, car clubs)

### **Education and Training**

39. Improvements to, the expansion of, or the development of new schools and state-funded education facilities will be funded through CIL.
40. However, exceptionally land for education facilities may be required from strategic housing sites where there are no realistic expansion opportunities within the existing network of schools to meet the specific uplift in school place demand arising from such developments. It is envisaged that this land would be secured through a planning obligation with CIL contributions from such sites potentially supporting the construction/commissioning costs of any new school. This mechanism will provide more certainty to developers in respect of the delivery of facilities which are likely to be critical to the attractiveness of their developments (particularly schools).
41. Planning conditions or obligations may also be used to secure local employment and training opportunities from new developments during both construction and end-use. This could include initiatives to support local construction apprenticeships or training to ensure the local labour force has the right skills to compete for job opportunities created by the development.

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

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

## **Community Facilities and Community Safety**

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

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

46. The Core Strategy incorporates a strong commitment to ensuring that development is achieved in a sustainable way, protecting and mitigating its impact on the natural environment and ensuring it is resilient to future climate change. In line with national policy, the Core Strategy also seeks to ensure that flooding risks associated with, and arising from, new developments, are appropriately managed.

47. To support delivery of these objectives, the use of planning conditions and exceptionally planning obligations could include:

- Securing use of low emission/cleaner fuel technology and/or the creation of, or connection to, district heating networks
- Implementation of measures to mitigate the effect of increased emissions as a consequence of development on local air quality (particularly in AQMAs) including any necessary air quality monitoring
- Implementation of on-site flood risk management, resistance and resilience measures and the provision of sustainable drainage systems including mechanisms (and any necessary commuted sums) for the on-going maintenance and management of such assets