



# Community Infrastructure Levy

Guidance Notes for Applicants

April 2016

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## Status

This informal guidance note has been prepared to assist applicants in understanding how CIL may impact their development and the process which is likely to be followed in charging and payment of the levy. The contents of this note do not override the provisions of – or any powers available to the Council – through the Community Infrastructure Levy Regulations 2010 (as amended).

# 1. Introduction

## What is the Community Infrastructure Levy?

- 1 The Community Infrastructure Levy (CIL) is a standardised local levy on new development. Its purpose is to help fund infrastructure to support new development. CIL takes the form of a charge per square metre of net additional floorspace. The level of charge depends on the size, type and location of new development as set out in the Council's Charging Schedule<sup>1</sup>.

## How do CIL and s106 agreements differ?

- 2 A section 106 agreement (or “planning obligation”) is a legal agreement which places obligations on an individual development in order to make it acceptable in planning terms. Section 106 agreements are therefore designed to secure site specific mitigation and infrastructure needed for a single site, as well as affordable housing.
- 3 CIL is a “pooled” fund which will be used to fund infrastructure required to support growth of the borough as a whole. This means that CIL will primarily be used to address the cumulative effects of development and/or projects with a wider community benefit.
- 4 Section 106 agreements are agreed by negotiation through the planning process between the developer and Council. In contrast, CIL is non-negotiable charge which is set up front and cannot be challenged through the planning appeal process. Contributions secured through section 106 agreements must be spent on the project specified in the agreement, whereas, once collected CIL can be used more flexibly by the Council on appropriate infrastructure projects.

## Why should development pay for infrastructure?

- 5 The provision and funding of infrastructure is a vitally important part of ensuring that the borough grows and develops in a sustainable way.
- 6 Most development, whether it brings new residents, visitors or employees, will either impact upon the need for – or benefit from the provision of – infrastructure, services and amenities. It is therefore reasonable that new development contributes to the cost of this infrastructure to ensure that provision can keep pace with demand.
- 7 The Examiner's Report<sup>2</sup> into our CIL Charging Schedule concludes that there is a need to levy a CIL in the borough in order to help bridge the estimated gap in future funding for local infrastructure.

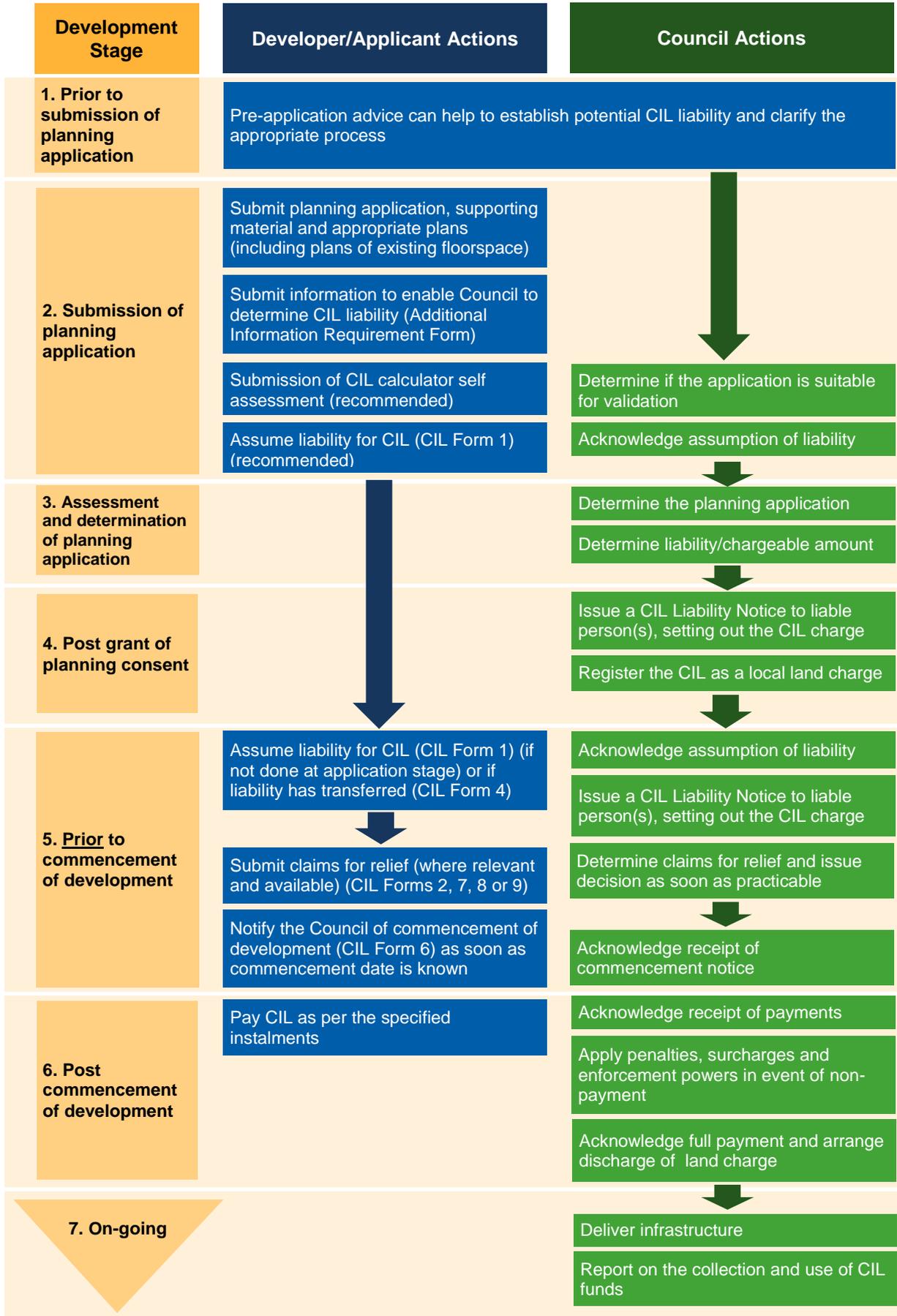
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<sup>1</sup> [http://www.reigate-banstead.gov.uk/downloads/file/2343/cil\\_charging\\_schedule](http://www.reigate-banstead.gov.uk/downloads/file/2343/cil_charging_schedule)

<sup>2</sup> [http://www.reigate-banstead.gov.uk/downloads/file/2234/examiners\\_report](http://www.reigate-banstead.gov.uk/downloads/file/2234/examiners_report)

## 2. The CIL Charging Process

8 The diagram below shows the CIL process. Further information about each stage follows.



## Prior to submission of a planning application

- 9 Although not compulsory, applicants are encouraged to engage in pre-application advice prior to submitting a planning application.
- 10 For CIL, pre-application advice may provide an initial opportunity for the applicant/developer to understand whether their development will be CIL liable and the potential payment which they may be required to make. It can also be the first opportunity to discuss matters such as potential reliefs and exemptions, in-kind payments and the processes involved in making such requests.
- 11 Applicants may also wish to carry out a self-assessment of their CIL liability early in the process. As CIL is non-negotiable, potential liability should be taken into account when making bids for, and purchasing land, and may inform the type and nature of scheme proposed. This self-assessment can be done using the Council's online CIL calculator<sup>3</sup>.
- 12 This can help to smooth and speed up any subsequent application and provide applicants with early knowledge of potential CIL liabilities which may inform land purchases or development proposals.

### What types of development are exempt from CIL

- 13 The following types of development are exempt from CIL:
  - Any development involving buildings or structures into which people do not normally go or go only intermittently for the purpose of inspecting or maintaining fixed plant and machinery
  - Any development where, upon completion, the gross internal area of any new buildings or enlargements to existing buildings is less than 100sqm, except if the development involves the creation of one or more dwellings
  - Any development where the total chargeable amount is less than £50 (this is deemed to be zero)
  - Reserved matters for developments where outline planning consent was granted prior to the date of implementation of the Council's Charging Schedule
  - The creation of a mezzanine(s) within existing buildings where less than 200sqm
  - The conversion or change of use of a building that is in-use (i.e. where that building, or a part thereof, has been in continuous use for a period of six months in the previous three years) and no new floorspace is created
  - The conversion or change of use of a building that is not in-use (as per the definition above) provided that it does not result in new dwellings.

### Permitted Development

- 14 In some instances, proposals commenced via a 'general consent' (i.e. under permitted development rights) may be liable for CIL. Such instances are likely to be rare but could arise from development permitted by Local Development Orders, Neighbourhood

<sup>3</sup> [http://www.reigate-banstead.gov.uk/downloads/file/2353/cil\\_calculator](http://www.reigate-banstead.gov.uk/downloads/file/2353/cil_calculator)

Development Orders or permitted development under the General Permitted Development Order (GPDO).

- 15 Where such a development exceeds 100sqm of net additional floorspace or involves the creation of one or more dwellings, the developer will be required to completed and submit **CIL Form 5: Notice of Chargeable Development** before commencement of any works. Liability must also be assumed by the relevant person.

## Submission of a planning application

- 16 All CIL forms are available on the [Planning Portal](#) website.
- 17 For all planning applications which are – or may be – liable for CIL, applicants must ensure that the necessary information is submitted to enable the Council to determine CIL liability.
- 18 All applicants must submit **CIL Additional Information Requirement Form** alongside their application. In most cases, this form will provide sufficient information for the Council to determine whether the development is liable for CIL and calculate the amount due; however, for large complex schemes, additional information may be required.
- 19 Full scaled plans must be provided for both the proposed development and existing buildings on site, whether they are to be retained or demolished.
- 20 Applicants may also wish to submit a “self-assessment” of their CIL liability using the Council’s online CIL calculator<sup>4</sup>. This will help the Council identify consistency or discrepancies between both parties’ calculations and may speed up the assessment process.
- 21 The Council will determine whether validation requirements are met, requesting additional information promptly to ensure that the application can be validated as quickly as possible.
- 22 **Failure to provide sufficient information at this stage may result in your application being invalidated, delaying the determination process. Knowingly or recklessly providing false or misleading information to the Council in relation to CIL is an offence and conviction may result in unlimited fines, two year imprisonment or both.**
- 23 It is the responsibility for the developer, or person who will ultimately pay CIL to assume liability. Failure to do so prior to commencement will mean liability defaults to the landowner(s) and could result in surcharges/penalties being imposed. Applicants are therefore strongly encourage to inform the Council who will be liable for paying CIL when submitting their application using **CIL Form 1: Assumption of Liability**, knowing that liability can be withdrawn or transferred to another party at any time prior to commencement should the situation change (see below paragraphs 41-44).

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<sup>4</sup> [http://www.reigate-banstead.gov.uk/downloads/file/2353/cil\\_calculator](http://www.reigate-banstead.gov.uk/downloads/file/2353/cil_calculator)

## Assessment and determination of a planning application

- 24 Applications will be assessed and determined in the normal way, in line with planning legislation. Provided the correct information is submitted, assessment of an application for CIL need not delay determination of the application.
- 25 During the application process, the Council will continue to communicate with the applicant regarding CIL, particularly where there are substantive differences between the Council's calculations and the applicant's "self-assessment".

### How is the chargeable amount calculated?

- 26 The chargeable amount due on any particular development depends upon three factors:
- The type of development
  - The location of the development; and
  - The amount of chargeable floorspace
- 27 The chargeable amount is calculated by multiplying the chargeable floorspace created by the proposal by the relevant charge rate. This figure is then subject to an index to allow for inflation over time.
- 28 The Council's Charging Schedule sets out the per square metre levy rates which apply to different types of development in different locations of the borough.
- 29 The starting point for the chargeable floorspace is the gross internal area (GIA) of the development which has been granted permission. This includes all buildings, including ancillary buildings. In all cases GIA is measured in accordance with the RICS Code of Measuring Practice (6<sup>th</sup> edition, 2007 or any subsequent edition).
- 30 However, in some cases, the gross internal area of existing buildings to be demolished or converted as part of development may be eligible to be deducted from the chargeable floorspace. This only applies where the building:
- is permanent and substantial; and either
  - the building to be demolished – or a part thereof – has been in lawful use for a continuous period of at least six months in the previous three years; or
  - the building is to be retained and the proposed use is one which could lawfully and permanently be carried on in the building without further planning permission (i.e. without change of use).
- 31 It is the responsibility of the applicant to provide sufficient evidence for the Council to determine whether an existing building or floorspace is eligible to be deducted from the chargeable floorspace. Full scaled plans must be provided for both the proposed development and existing buildings on site, whether they are to be retained or demolished.
- 32 **Where an applicant intends to rely on floorspace to be demolished to off-set the CIL liability, they must ensure that the relevant buildings are still standing on the**

**day that planning permission is granted. Any buildings or floorspace demolished prior to the grant of planning permission will not be deductible from CIL liability except where it falls within the scope of abatement.**

### **In-kind payments**

- 33 In some circumstances, the Council and developer may agree that it is desirable for land or items of infrastructure to be provided by the developer in lieu of all or part of the CIL liability for a particular development. This is likely to occur in only a small number of cases, predominantly larger developments. The value of the land or infrastructure to be provided is determined by an independent person.
- 34 Infrastructure which is otherwise necessary to make the proposal acceptable in planning terms cannot be accepted as in-kind payment (i.e. the scheme must be able to be granted planning permission without the infrastructure proposed).
- 35 Applicants are strongly encouraged to discuss any potential offers to make payment in-kind with the Council as early as possible in the process, and ideally at pre-application stage.
- 36 Agreements to make in-kind payments must be entered into prior to commencement of development. Payments in kind must be provided to the same timescale as cash payments.

### **Post grant of planning consent**

- 37 Once planning consent has been granted, the Council will confirm the chargeable amount of the development. This will ensure that any amendments which may have occurred during the assessment and determination process are reflected in the chargeable amount.
- 38 This amount will also include indexation to account for the passage of time – and cost inflation – between the point at which the Council's Charging Schedule is adopted, and the point at which planning permission is granted for a particular development. This is based on the BCIS All-in Tender Price Index.
- 39 The Council will issue a **CIL Liability Notice** to the landowner(s) or the party that has assumed liability, setting out this amount as soon as practicable after the grant of planning consent. Copies of the notice will also be submitted to any interested parties (which could include the applicant/agent).
- 40 Where the applicant disagrees with the chargeable amount calculated by the Council, they can request a review – which is carried out by a Senior Officer within the Council. The Council has 14 days to come to a decision on the review and, if the applicants are not satisfied with the outcome of the review, a right of appeal exists to a third party (the Planning Inspectorate or Valuation Office). Reviews and appeals must be requested within the relevant statutory timescales.

- 41 Once a **Liability Notice** has been issued, the CIL liability will be registered as a local land charge on the relevant property.

## Prior to the commencement of development

### Liability

- 42 Before development starts, a party(ies) must have assumed liability for CIL. This should be done using **CIL Form 1: Assumption of Liability**.
- 43 Liability can be transferred between parties at any point prior to commencement using **CIL Form 4: Transfer of Liability**. Revised Liability Notices will be issued by the Council to the relevant parties each time liability changes.
- 44 Where no one has assumed liability to pay CIL prior to commencement, the liability will automatically default to the landowners of the relevant land.
- 45 **Failure by any parties to assume liability prior to commencement will mean that any instalments policy is nullified and payment of the full CIL amount becomes due immediately upon commencement of the development. Surcharges will also be applied. Applicants are therefore strongly encouraged to assume liability as early as possible, ideally alongside their planning application.**

### Claiming relief or exemption from CIL

- 46 In certain circumstances, parties who have assumed liability for a particular development, may be able to claim relief from part or all of the CIL liability.
- 47 Any applications for relief or exemption from CIL must also be approved prior to commencement. Whilst the Council will seek to determine and issue decisions on requests for relief as quickly as practicable, applicants/developers are strongly encouraged to submit requests for relief as soon as practicable after assuming liability for the development.
- 48 This will avoid any risk of claims not being processed before commencement and potentially delaying development, particularly in the event that the applicant wishes to appeal the Council's decision. Claims must be submitted on the appropriate forms.
- 49 **Relief is not automatically available. It is the responsibility of the developer to apply for relief and any such application must be approved prior to commencement of development. Relief cannot be granted once a development has commenced, even if it would have legitimately applied.**

### What types of relief are available?

- 50 Relief can be sought from CIL in the following circumstances:
- Charitable development to be used by a charity for charitable purposes (**CIL Form 2: Claiming Exemption or Relief**)

- Social/affordable housing (**CIL Form 2: Claiming Exemption or Relief**)
- Self-build housing (**CIL Form 7: Self Build Exemption Parts 1 and 2**)
- Self-build residential annexes or extensions (**CIL Form 8 or 9: Self Build Exemption**)

- 51 Applicants must complete and submit the relevant form for relief to be considered. In addition, for self-build relief, further information must be submitted post completion for the relief to remain applicable.
- 52 In deciding whether to grant relief of any form, the Council has to take into account State Aid provisions, which may reduce or restrict the amount of relief which can be offered.
- 53 The Regulations also include provisions for the Council to make certain additional discretionary reliefs available in their area for charitable development, social housing (for discounted market sale) and exceptional circumstances relief. In the event that the Council decides to make such reliefs available in the borough, this will be published in the form of a policy on the Council's website.
- 54 In some cases, the grant of relief is subject to a clawback period and the CIL amount will remain a local land charge during this period. In the event that a "disqualifying event" occurs within the relevant clawback period, the liable party will be required to repay the amount of relief granted. It is the responsibility of the person benefitting from the relief to notify the Council if a disqualifying event has occurred.
- 55 Failure to notify the Council of a disqualifying event may result in a surcharge being imposed equal to 20% of the liable amount, up to a maximum of £2,500.**

### **Notification of commencement**

- 56 Before development starts, it is the responsibility of the liable parties to notify the Council and all owners of the relevant land of the intended commencement date of the development using **CIL Form 6: Commencement Notice**. Notification of commencement can only be accepted on the correct form and must be submitted no later than the day before works commence.
- 57 Failure to notify the Council of commencement or late submission following commencement of works will mean any instalments policy is nullified and payment of the full CIL amount becomes due immediately. In these cases, the Council will deem the commencement date. Any reliefs granted in respect of the development will also be invalidated and the full charge will be payable. Surcharges of 20% of the liable amount, up to a maximum of £2,500, will also be applied.**
- 58 Should the intended date of commencement change, liable parties must submit a revised Commencement Notice to the Council before works commence or, if no alternative date for commencement is known, give notice in writing to the Council that they wish to withdraw the commencement notice.

59 When the Council receives a valid commencement notice, it will acknowledge receipt. You are advised not to commence works until you have received acknowledgement that your commencement notice has been received.

### Demand Notice

60 The Council will then issue a CIL Demand Notice to the person(s) who have assumed liability (or the landowner if no party has assumed liability). The Demand Notice will contain details of the CIL payments required including:

- The total amount of CIL payable
- The amount of CIL payable in each instalment and the percentage of the liability which that instalment represents (in accordance with the Council's adopted Instalments Policy)
- The date for which each CIL instalment

61 Where an application has been permitted to be delivered in phases, the applicant can seek agreement from the Council to treat the proposal as a phased development for the purposes of CIL. This has the effect of treating each phase as a separate chargeable development, liable for payment individually. In such cases – which are expected to be limited only to large scale developments – a separate commencement notice must be submitted by the developer for each individual phase.

## Post commencement of development

62 Upon commencement, the liable party(ies) are responsible for ensuring that CIL payments, including any in-kind payments, are made in accordance with the Council's adopted instalments policy (or immediately if any of the disqualifying events above have occurred).

63 The Council will acknowledge and issue receipts for all payments at the point at which the funds clear. Once full payment has been received, the chargeable amount will cease to be a local land charge and will be removed from the register by the Council.

**64 Failure to make payments or late payment of a particular instalment will incur late payment interest. Where payments remain overdue, a surcharge of 5% of the outstanding amount (subject to minimum of £200), will be applied at 30 days, 6 months and 12 months.**

**65 As CIL liability is held as a land charge, failure to pay CIL may result in difficulty selling the land, property or properties resulting from development.**

66 Where there is persistent late or non-payment or the Council believes that interest and surcharges will be ineffective in securing payment of overdue CIL, the Council may take legal action against the liable parties. A variety of powers are provided in the Regulations.

## Abatement

- 67 CIL payments made for a development which has commenced but has not been completed can be ‘credited’ against the levy liability for a revised scheme under a new planning permission on the same site. This is to ensure that the levy is not inappropriately levied twice.
- 68 **No refund is payable if the later development scheme has a lower liability than the original amount(s) paid on the site.**

## Appeals

- 69 There a number of specific circumstances where applicants and liable parties can appeal the decision of the Council in relation to CIL. These include:
- **Chargeable amount appeal** can be made where the applicant disagrees with the chargeable amount calculated by the Council following a review (VOA).
  - **Apportionment of liability appeal** can be made where the applicant disagrees with how the Council has apportioned CIL liability between different landowners (VOA).
  - **Charitable relief appeal** can be made where an applicant considers the value of the charity’s interest in the land has been incorrectly determined when granting charitable relief (VOA).
  - **Residential annex exemption appeal** can be made against the Council’s decision not to grant exemption for a residential annex (VOA).
  - **Self-build housing exemption appeal** can be made where an applicant believes that the amount of exemption for self-build housing has been incorrectly determined (VOA).
  - **Surcharge appeal** can be made where an applicant disagrees with a surcharge that has been imposed (PINS).
  - **Deemed commencement appeal** can be made where an applicant believes that the date of commencement has been incorrectly identified by the Council (PINS).
  - **Stop Notice appeal** can be made where an applicant disagrees with the Council’s decision to impose a stop notice on development (PINS).
- 70 **All appeals must be made by the applicant or liable party within the relevant timescales set out in the CIL Regulations.**
- 71 Appeals are made to either the Valuation Office Agency (VOA)<sup>5</sup> or Planning Inspectorate (PINS)<sup>6</sup> as specified in the list above.

## On-going

- 72 In accordance with the Regulations, money collected through CIL will be used to fund the provision, replacement, operation of maintenance of infrastructure required to support the growth of the borough. Projects may be delivered by the Council itself, a public sector partner (such as the County Council) or other third party provider. The Council will

<sup>5</sup> <http://www.voa.gov.uk/cil>

<sup>6</sup> <http://www.planningportal.gov.uk/planning/appeals/otherappealscasework/cilappeals>

maintain a list of relevant infrastructure (“Regulation 123 list”<sup>7</sup>) setting out the projects or types of infrastructure which it may fund through CIL.

- 73 The Council will also report regularly on the amount of CIL money collected and spent, including details of the projects which it has supported.
- 74 On an on-going basis, the Council will also monitor developments where relief has been granted during their relevant clawback period. In the event that a disqualifying event occurs within the clawback period, the liable party will be required to repay any relief granted.

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<sup>7</sup> [http://www.reigate-banstead.gov.uk/downloads/file/2346/regulation\\_123\\_infrastructure\\_list](http://www.reigate-banstead.gov.uk/downloads/file/2346/regulation_123_infrastructure_list)