



# Developer Contributions

## Supplementary Planning Document

April 2016

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## Executive Summary

- I. This Supplementary Planning Document (SPD) forms part of the Reigate and Banstead policy framework. It provides more information on the Council's approach to securing developer contributions towards the provision of infrastructure needed to support development or make it acceptable in planning terms.
- II. This SPD focusses on the main mechanisms for securing contributions to, or a commitment to deliver, infrastructure. The SPD explains the relationship between the various mechanisms, including the Community Infrastructure Levy (CIL) and planning obligations, in the funding of infrastructure improvements. It provide guidance as to the circumstances under which planning conditions may be imposed, or planning obligations and highways agreements required in addition to CIL contributions in order to deliver improvements to infrastructure or fulfil policy requirements. In doing so, it is intended to make developers, landowners and others aware at the earliest stage of the likely developer contributions which could apply to their scheme so that they can take them into account when negotiating for land and in formulating development proposals.
- III. The SPD also explains the procedure which applicants and the Council will normally follow when negotiating and completing any agreements and obligations associated with a particular development. This process will ensure agreements planning applications can be dealt with expediently.
- IV. This SPD replaces the Planning Obligations and Infrastructure SPD previously adopted in April 2008 and the Horley Infrastructure Provision SPD adopted in July 2008. It should also be read in conjunction with the Affordable Housing SPD adopted in July 2015 which sets out the Council's expectations in respect of the delivery of, and contributions towards, affordable housing.

# 1. Introduction

## Purpose of the Supplementary Planning Document

### Background

- 1.1 Delivering development sustainably is a key theme of the Council's Core Strategy. In order to do this, it is important that the necessary infrastructure is put in place to meet the needs of existing and future communities and that any adverse impacts of development on the local environment and/or residents' quality of life are adequately mitigated.
- 1.2 To deliver this, the Council will expect new developments to fund or contribute directly to the necessary infrastructure improvements in accordance with Core Strategy Policy CS12: these measures are known as 'Developer Contributions'. The Council may also require developments to be designed or used in a certain way.

### Scope of the document

- 1.3 This Supplementary Planning Document (SPD) provides guidance to all interested parties about the different mechanisms the Council will use to secure contributions, in-kind works and other mitigation from new developments. Specifically, the SPD includes:
  - An explanation of the mechanisms available to the Council, including the Community Infrastructure Levy, and the relationship between them in the context of delivering infrastructure
  - Guidance to developers as to the circumstances in which contributions or works may be secured through planning conditions or obligations
  - An explanation of Council's procedures when negotiating and securing agreements, and the material which should be submitted by applicants to accompany planning applications
  - An overview of how the Council will monitor, review and spend contributions.

## Status and use of the SPD

- 1.4 In accordance with the relevant legislation<sup>1</sup>, this document has been subject to public consultation. The SPD was formally adopted by the Council on 21 April 2016.
- 1.5 It contains detailed advice and guidance to support the implementation of the Local Plan, particularly Core Strategy Policy CS12. It should be read alongside the Community Infrastructure Levy (CIL) Charging Schedule and related documents.

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<sup>1</sup> Town and Country Planning (Local Planning) (England) Regulations 2012

- 1.6 It should also be read in conjunction with the Affordable Housing SPD which sets out the Council's expectations in respect of the delivery of, or contributions towards, affordable housing as set out in Core Strategy Policy CS15.
- 1.7 The SPD is a material consideration in the determination of planning applications: it should therefore be taken into consideration when undertaking initial feasibility, when negotiating for site acquisition and during the preparation of proposals for new residential and non-residential developments.
- 1.8 This SPD replaces the Planning Obligations and Infrastructure SPD previously adopted in April 2008 and the Horley Infrastructure Provision SPD adopted in July 2008. These SPDs – and the tariff style approaches within them – have become out of date as a result of changes brought about by the CIL Regulations and introduction of the levy. Horley Masterplan policies within the Borough Local Plan 2005 relating to infrastructure provision will remain in force as part of the adopted Development Plan.

## Legislative and policy context

### Planning legislation

- 1.9 The statutory framework for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990 as amended by Section 12 (1) of the Planning and Compulsory Purchase Act 1991.
- 1.10 The Planning Act 2008 provides the enabling powers for local authorities to apply a Community Infrastructure Levy (CIL) to development in order to support the provision of infrastructure in an area.
- 1.11 These enabling powers came into force in April 2010 through the introduction of the CIL Regulations 2010 which provide the detail on the implementation of CIL.
- 1.12 The CIL Regulations also introduce new statutory restrictions upon the use of planning obligations (under s106 of the Town and Country Planning Act 1990) so that they work fairly and transparently with CIL. These restrictions include:
  - ***Placing into law the policy tests on the use of planning obligations set out in the NPPF para 204 (and historically in Circular 05/2005)***

CIL Regulation 122 sets out that, for a planning obligation to be used as a reason to grant planning application for development, or any part of a development, the obligation must be:

    - i. Necessary to make the development acceptable in planning terms
    - ii. Directly related to the development, and
    - iii. Fairly and reasonably related in scale and kind to the development.
  - ***Ensuring the local use of CIL and planning obligations does not overlap***

Through CIL Regulation 123, it is anticipated that local planning authorities will publish a list of infrastructure which they intend to fund through the CIL. Where an element of infrastructure is included on this list, contributions towards it through a planning obligation cannot constitute a reason for granting planning permission for a development proposal.

- ***Limiting the pooling of contributions from planning obligation towards a specific infrastructure project or type of infrastructure***

CIL Regulation 123 sets out that a planning obligation cannot be a reason to grant planning permission where five or more other planning obligations already exist which provide funding for, or the provision of, the same project or provide for the funding or provision of the same type of infrastructure.

## **National Planning Policy Framework**

- 1.13 The National Planning Policy Framework (NPPF) provides guidance to local planning authorities on the use of planning conditions and obligations in paragraphs 203 to 206. It encourages local planning authorities to use obligations only where a condition cannot adequately address any unacceptable impacts. The NPPF repeats the three tests on the use of planning obligations which are enshrined in the CIL Regulations (as set out in paragraph 1.12 above).
- 1.14 The NPPF also sets out that where obligations are being sought or revised, account should be taken of changes in market conditions and that local planning authorities should be flexible to avoid development being stalled or delayed. Paragraph 176 encourages planning authorities – through discussions with applicants – to explore options for keeping the costs of any necessary mitigation or compensation to a minimum.

## **Planning Practice Guidance**

- 1.15 The National Planning Practice Guidance (NPPG) sets out further detail about the use of planning obligations. It reiterates the expectation that the combined impact of conditions, obligations and CIL should not threaten viability. Where a CIL is in place, the NPPG encourages local planning authorities to be clear about what developers will be expected to pay and through which route to ensure that actual or perceived ‘double dipping’<sup>2</sup> is avoided.

## **Local Plan: Core Strategy**

- 1.16 Delivering development sustainably is the main theme of the Core Strategy<sup>3</sup>. It is therefore essential that new development where possible avoids, or otherwise mitigates its own adverse effects and in the process secures the necessary infrastructure and services required to support our existing and future communities.
- 1.17 This SPD specifically relates to the implementation of Policy CS12: Infrastructure Delivery which is the primary mechanism in the Core Strategy for securing the delivery of new or improved infrastructure. However, it is also relevant to the implementation of Policy CS10: Sustainable Development, Policy CS11: Sustainable Construction and Policy CS17: Travel Options and Accessibility.

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<sup>2</sup> ‘Double dipping’ is the situation where developers are effectively required to pay twice for the same piece of infrastructure due to overlap between the general CIL charge and site specific planning obligations.

<sup>3</sup> <http://www.reigate-banstead.gov.uk/corestrategy>

## **Affordable Housing SPD**

- 1.18 The Affordable Housing SPD<sup>4</sup> – which was adopted in 2014 – sets out the Council's approach to securing on-site provision and financial contributions for affordable housing. It provides detail on the implementation of Core Strategy Policy CS15.
- 1.19 It explains how to calculate financial contributions on sites of 14 net additional units or less and the Council's expectations in terms of unit type and tenure for on-site provision. It also provides an overview of the application process, including the Council's approach to assessing financial viability.
- 1.20 Planning obligations under Section 106 of the Town and Country Planning Act 1990 will continue to be used to secure on-site provision of, or financial contributions towards, affordable housing.

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<sup>4</sup> [http://www.reigate-banstead.gov.uk/info/20085/planning\\_applications/28/supplementary\\_planning\\_documents\\_and\\_guidance/3](http://www.reigate-banstead.gov.uk/info/20085/planning_applications/28/supplementary_planning_documents_and_guidance/3)

## 2. Securing Developer Contributions

### What are developer contributions?

- 2.1 Developer contributions are 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.
- 2.2 Historically, planning conditions and obligations have been the standard mechanisms for securing these requirements. However, the Community Infrastructure Levy (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 other mechanisms, particularly planning obligations, has changed.
- 2.3 This section 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.

### Mechanisms available

#### Community Infrastructure Levy

- 2.4 The Community Infrastructure Levy is a local charge which Councils can set on new development to raise funds for the delivery of infrastructure to support growth.
- 2.5 It provides a fairer, more certain and transparent mechanism for securing the majority of financial contributions, both for developers and other stakeholders.
- 2.6 It 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.
- 2.7 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 Councils) to enable the delivery of the infrastructure required to support, and address the demands arising from, the cumulative growth of the borough.
- 2.8 CIL takes the form of a charge per square metre of net additional floorspace and, will apply to new retail and residential development. 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**

- 2.9 Planning conditions are imposed by the Council on a grant of planning permission and are used to require 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.
- 2.10 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.
- 2.11 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 (reflecting national policy).

## **Planning obligations**

- 2.12 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.
- 2.13 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).
- 2.14 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

- 2.15 Highways agreements (known as “section 278 agreements”) are legal agreements which provide an alternative mechanism for ensuring developers deliver or fund improvements or alterations 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, turning lanes, traffic signals or cycleways.
- 2.16 These agreements are not the responsibility of the Local Planning Authority but are made with the Department for Transport/Highways England or Surrey County Council (as the Highway Authority). Pre-application engagement with these bodies on development proposals, particularly large scale, is recommended in order to identify any likely requirements for highways agreements.

## Relationship between the mechanisms – general principles

- 2.17 To some extent, CIL replaces planning obligations. Since April 2015, the CIL regulations have restricted local planning authorities from pooling contributions towards a particular project or type of infrastructure from five or more separate planning obligations.
- 2.18 In general, it is therefore the Council’s intention to use CIL to fund and deliver the infrastructure required to support the cumulative growth of the borough and the quality of life of its communities as a whole.
- 2.19 However, there will still be a legitimate role, on a case-by-case basis, for additional site-specific infrastructure or impact mitigation without which a development would be unacceptable or unsustainable. This will continue to be secured through the other mechanisms available (in addition to CIL payments).
- 2.20 Table 1 provides a summary of the general purpose and principles of each mechanism as well as where to find further detail.

**Table 1: Mechanisms available**

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, including to 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

## Approach to use of CIL

- 2.21 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.
- 2.22 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 that required to make an individual development scheme acceptable. This means the expenditure of CIL will be focussed on the projects needed to support, or address the demands of, the cumulative development and growth of the borough, and/or those with a specific benefit across a wider community/neighbourhood.
- 2.23 The types of infrastructure and, where relevant, specific projects which the Council intends to fund wholly or partly through CIL are published in the Council's list of relevant infrastructure (Regulation 123 List). Infrastructure providers will be engaged in the process of establishing priorities for spending, although the Council will ultimately be responsible for allocating funding. In determining CIL spending priorities, consideration will be given to ensuring that the funding and provision of borough-wide, strategic infrastructure through the levy is aligned with the likely phasing of planned development and enables growth to be delivered in a timely manner (in line with Core Strategy Policy CS12 and CS13).
- 2.24 To further ensure that the use of CIL and planning obligations is complementary and to avoid 'double dipping', the Council has published a list of relevant infrastructure in accordance with Regulation 123 of the Community Infrastructure Regulations 2010. This list (the "Regulation 123 List")<sup>5</sup> 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. Contributions via a planning obligation towards any item of infrastructure on this list cannot be used as a reason to grant planning permission.
- 2.25 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 from central government or Local Enterprise Partnerships) in order to deliver strategic infrastructure.
- 2.26 The Council may also accept 'in-kind' payment of CIL in line with its adopted Payment in Kind policy. This may include accepting land (to be used for provision of infrastructure) and/or completed infrastructure from developers where this would expedite, or otherwise be a more efficient means of, delivery of infrastructure.

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<sup>5</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)

## **Approach to the application of planning obligations and other mechanisms**

- 2.27 Whilst CIL will be used to collect general contributions towards the wider infrastructure needed to support growth, developers will also be expected to provide any site-specific infrastructure or impact mitigation in order to make the development acceptable in planning terms and to ensure any specific policy requirements are met.
- 2.28 Planning obligations of this nature will inevitably vary in scale and type depending upon the individual development and the specific pressures which it creates on surrounding infrastructure (e.g. it could range from the need for provision of a new school (including land) on a strategic housing site to small scale junction improvements/crossovers to access a development). They may also arise from specific policies within the Local Plan. These requirements – which are directly related to development – are more appropriately secured and delivered through a planning condition, planning obligation or section 278 agreement in addition to the CIL charge.
- 2.29 The precise scope of planning obligations will be negotiated with developers on a case-by-case basis with input from relevant infrastructure providers (such as the County Council) and taking account of the specific circumstances of the development, including financial viability where appropriate. Where possible and appropriate, an indication of likely site specific infrastructure and mitigation requirements will be provided through the plan-making/site allocation process. However it should be noted that requirements will need to be finalised until detailed development proposals are available (i.e. at the planning application stage).
- 2.30 In all instances, planning obligations will only be sought where they satisfy the relevant statutory tests set out in the Community Infrastructure Levy Regulations 2010 (as amended) and any other relevant guidance.
- 2.31 Affordable housing, which falls outside of the definition of “infrastructure”, will continue to be secured through planning obligations in accordance with Core Strategy Policy CS15<sup>6</sup> and the Affordable Housing SPD<sup>7</sup>.
- 2.32 Planning conditions will be used to address site-specific requirements where possible to minimise the need for complex legal agreements. There will however, continue to be cases – particularly where complex works or financial contributions are required – where it is necessary and appropriate to use a planning obligation.

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<sup>6</sup> <http://www.reigate-banstead.gov.uk/corestrategy>

<sup>7</sup> [http://www.reigate-banstead.gov.uk/info/20085/planning\\_applications/28/supplementary\\_planning\\_documents\\_and\\_guidance/3](http://www.reigate-banstead.gov.uk/info/20085/planning_applications/28/supplementary_planning_documents_and_guidance/3)

## Using the most appropriate mechanism

### Introduction

- 2.33 The table and subsections below outline examples of what the Council considers likely to be the most appropriate mechanism for securing different types of infrastructure or policy requirements which are not infrastructure.
- 2.34 This is intended to provide guidance as to when CIL is likely to be used and where planning obligations or other mechanisms may be applied. Whilst this list cannot be exhaustive and circumstances may arise which warrant a different approach, it seeks – as far as is practical – to provide transparent, 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 other mechanisms.
- 2.35 Large scale developments – particularly strategic residential proposals – are likely to require 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. Where possible, these requirements will be highlighted at the site allocation stage, through the plan-making process.
- 2.36 It should be noted that the ordering of infrastructure types within Table 2 does not represent any prioritisation. Any thresholds and calculations mentioned in the discussion that follows are indicative.

**Table 2: Infrastructure types and likely mechanisms**

Requirement	Most Likely Mechanism(s)	When might planning obligations/conditions be applied	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</li> </ul>	CS16
Specialist/Adapted Housing	Planning condition	<ul style="list-style-type: none"> <li>– Larger housing developments (for example)</li> </ul>	CS14
<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	–	Housing developments exceeding 10 units and commercial schemes exceeding 1,000sqm	
<b>Education and Training</b>				
Early years provision				
Primary schools	CIL	–	Exceptionally on strategic scale housing developments to secure land (and buildings)	CS12
Secondary schools				
Other education facilities				
Employment and training initiatives (including apprenticeships)	Planning obligation and/or planning condition	–	Larger housing developments and commercial schemes (for example)	CS5
<b>Community Facilities and Community Safety</b>				
Healthcare				
Community, youth and adult centres				
Libraries				
Neighbourhood halls	CIL	–	Exceptionally on strategic scale housing developments	CS10 CS12
Policing and fire and rescue				
General community safety measures				
Development specific community safety measures	Planning obligation/and or planning condition	–	Strategic scale housing developments – Housing and commercial developments in town/local centre locations	CS10
<b>Leisure, Open Space and Green Infrastructure</b>				
Leisure centres	CIL			CS12
Cemeteries	CIL			CS12
Allotments	CIL	–	Exceptionally on strategic scale housing developments to secure land/laid out allotments	CS12
Local amenity space and areas for children and young people's play	Planning obligation/and or planning condition	–	Larger housing developments (for example)	CS10 CS12
Outdoor sport and recreation grounds	CIL	–	Exceptionally on strategic scale housing developments to secure land/laid out sports provision	CS12
<b>Sustainability, Flood Risk Management and Flood Defence</b>				
Strategic flood attenuation and defence				
River corridor enhancements	CIL	–	Housing and commercial developments with watercourses within or adjoining the site to secure specific corridor enhancements/attenuation	CS10
Development specific flood attenuation, mitigation and resilience	Planning obligation and/or planning condition	–	Housing and commercial developments at risk of flooding or likely to increase flood risk where measures are necessary to deliver a safe scheme	CS10
Sustainable Urban Drainage Systems (and arrangements for long term maintenance)	Planning obligation and/or planning condition	–	Housing developments exceeding 10 units and commercial schemes exceeding 1,000sqm	CS10
Resource efficiency measures	Planning obligation and/or planning condition	–	All housing developments and commercial schemes	CS10 CS11
Water supply and waste water	Planning condition	–	All housing developments and commercial schemes	CS10 CS12

## Housing

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

- 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

2.38 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.

2.39 General improvements to the strategic and local highway network, public transport services and sustainable travel options (e.g. cycle routes) designed to provide sufficient and safe capacity to address the cumulative demands arising from growth will be funded through CIL. However there may be instances where, in consultation with the County Council, planning obligations or section 278 agreements are required to address a specific issue arising from an individual development. Requirements (in general terms) may be highlighted through the site allocation process or in response to transport studies carried out as part of individual applications and could include, but not limited to, the following development specific measures:

- Improvements or remodelling of junctions on-site and/or in the immediate locality of the site required as a direct consequence of traffic generated by a particular development
- Creation of safe access routes/servicing for a development proposal including link/spine roads, local traffic calming, vehicular crossovers, deceleration/turning lanes, lay-bys and the introduction of, or amendments to, traffic signalling and signage
- Diversion/extension of existing public transport/bus routes through or in proximity to a site including any associated road alterations and the provision or enhancement of any user infrastructure (such as stops etc.)
- Giving over of land to provide widened footway, cycleway, bus-stop, lay-by or for other purposes
- Maintenance costs to cover subsidy for new/extended bus routes until the point at which a privately run service could reasonable be considered to become self-sustaining

- Implementation of, or amendment to parking restrictions, waiting restrictions, controlled parking zones, resident parking zones required as a consequence of the development including payments to cover costs of progressing necessary Traffic Regulation Orders
- Introduction of, or improvements to, on and off-site bus stop and bus service facilities (e.g. shelters, seating, lighting, hardstanding and real time passenger information)
- 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**

- 2.40 Improvements to, the expansion of, or the development of new schools and state-funded education facilities (including early years provision) needed to address the cumulative effect of growth will normally be funded through CIL, including potentially through in-kind provisions should appropriate opportunities arise.
- 2.41 However, provision for education facilities may exceptionally 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. This could include provision of a serviced site for a school, offered at nil cost, secured through a planning obligation or condition, to help ensure that future education provision is not constrained by a lack of available land.
- 2.42 In very exceptional instances where a single development proposal generates demand for a whole school on its own, planning obligations or conditions may also include meeting the construction and commissioning costs of an appropriately sized new school (calculated by reference to the pupil yield of the development)<sup>8</sup>. This approach will provide more confidence to residents that education needs can be provided for, and certainty to developers that facilities which are likely to be critical to the attractiveness of their developments (particularly schools) will be delivered.
- 2.43 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**

- 2.44 The Core Strategy requires that new development provides a high quality, safe and inclusive environment. General improvements to the borough's open spaces, sport

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<sup>8</sup> As an indicative guide, it is envisaged that such a requirement may only become necessary on individual housing developments of 800 units or more for a single form of entry (1FE) primary school and approximately 4,000 units or more for a secondary school.



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 strategic projects to enhance biodiversity.

2.45 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 requirement is incorporated within Policies CS10 and CS12 of the Core Strategy. Planning obligations/conditions 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 the on-going maintenance and management of on-site open space, play and recreation that the developer would like another body to adopt (including any necessary commuted sums)
- Securing the replacement of any non-surplus open space lost as a result of the development
- Improvements, remodelling and/or replacement of public realm on-site or within the immediate locality
- 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**

2.46 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 generally be funded through CIL.

2.47 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 and would be protected for the purposes of community provision. In addition, where a single development generates demand for the facility on its own, contributions to cover the cost of construction may also be required.

2.48 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 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

- Securing provision of local shops or neighbourhood centres as part of larger housing developments

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

- 2.49 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.
- 2.50 To support delivery of these objectives, the use of planning conditions and planning obligations could include:
- Securing use of low emission/cleaner fuel technology and/or the creation of, or connection to, district heating networks
  - Securing provision of appropriate waste and recycling facilities (such as neighbourhood bring sites) to serve a new development
  - 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
- 2.51 Developers may also be required, through planning conditions, to demonstrate that utilities infrastructure – such as water supply and waste water – is adequate to serve new development without affecting service to new or existing users. Conditions may also be used to require improvements to be identified and delivered where capacity constraints are identified. Developers should engage with relevant utilities providers early in the development process.

## 3. Implementation

### Introduction

- 3.1 This section provides guidance to applicants on the process which the Council will follow in securing developer contributions through CIL and in negotiating and agreeing planning obligations. Also outlined is the Council's approach to financial viability considerations.
- 3.2 The procedures set out below are intended to provide clarity and certainty to parties involved in the development process, enabling issues and potential requirements to be identified at the earliest stage possible. The process is also designed to ensure that matters relating to developer contributions can be progressed smoothly thus avoiding unnecessary delays in the application process.

### Procedure for securing contributions through CIL

- 3.3 A large proportion of new developments will be liable to pay CIL. The level of charge depends on the size, type and location of new development as set out in the Council's Charging Schedule<sup>9</sup>.
- 3.4 This section provides a brief explanation of the CIL charging and collection process. More detailed guidance notes setting out the responsibilities of the Council and the applicant at different are available separately.

### Introduction

- 3.5 CIL is charged per square metre on the net additional increase in floorspace of a particular development. It will be collected as a financial contribution; however, as set out below, there may be some exceptional instances where land or infrastructure could be provided by a developer in lieu of part, or all, of the CIL amount.
- 3.6 The process for calculating and securing the amount of contribution to be paid through CIL is laid out in the Community Infrastructure Levy Regulations 2010 (as amended) and the Council will implement the levy in accordance with these regulations.
- 3.7 The amount of CIL payable on a development scheme is non-negotiable. There are however some specific exemptions and mandatory reliefs for affordable housing and for developments by charities for the purposes of charitable activity. Self-build housing, residential extensions and annexes are not liable to pay the levy. There are also a small number of discretionary reliefs: should the Council decide to offer these at any point, a policy will be published on the Council's website.

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<sup>9</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)

## Charging and collecting CIL

- 3.8 In accordance with the Council's local list requirements, applicants must provide the necessary information to enable the Council to determine whether the development is liable for CIL and calculate CIL liability correctly.
- 3.9 As discussed above, relief from CIL can be claimed in certain circumstances. Any claims for relief must be approved prior to commencement of development.
- 3.10 It is the responsibility of the developer, or person who will ultimately pay CIL to assume liability. Liability can be transferred to another party at any time prior to commencement of the development. Where liability is not assumed, it defaults to the owners of material interests in the land and where liability is not assumed by any party prior to commencement, penalties and surcharges may be imposed. As such, applicants are strongly encouraged to submit the assumption of liability form alongside their application.
- 3.11 A Liability Notice will be issued to the landowner(s) or parties who have assumed liability as soon as practicable once planning permission has been granted. Interested parties will also be sent a copy of the notice.
- 3.12 Before development starts, liable parties must notify the Council and all owners of the land of the intended commencement date on the appropriate form. Once the Council has been notified of commencement, a Demand Notice will be sent to liable parties. Where the Council has not been notified of commencement prior to works starting on site, the total CIL liability must be paid in full immediately (irrespective of whether a payment policy is in force) and a penalty of up to £2,500 may be imposed.
- 3.13 Payment is due following the commencement of development. Provided the Council has been notified of commencement prior to works starting on site, payments can be made in accordance with the Council's adopted instalments policy<sup>10</sup>. Financial penalties/surcharges may be imposed and/or legal action carried out in the event of non-payment.

## Payment in kind

- 3.14 In accordance with the Regulations, the Council can choose to accept payment of CIL 'in kind' rather than in cash. This can include agreements to transfer land (to be used for a relevant purpose) or provide completed infrastructure where this would expedite, or otherwise be a more efficient means of, delivery. The monetary value of this will be independently assessed and used to off-set the overall CIL liability.
- 3.15 The Council's adopted policy for 'in kind' payment of CIL, including the conditions and circumstances in which the Council may accept in kind payments, is available on the Council's CIL webpages<sup>11</sup>. The adopted policy does not oblige the Council to accept any such offer or application and the decision will remain at the Council's discretion on a case-by-case basis.

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<sup>10</sup> [http://www.reigate-banstead.gov.uk/downloads/file/2344/instalments\\_policy](http://www.reigate-banstead.gov.uk/downloads/file/2344/instalments_policy)

<sup>11</sup> [http://www.reigate-banstead.gov.uk/downloads/file/2345/payment\\_in\\_kind\\_policy](http://www.reigate-banstead.gov.uk/downloads/file/2345/payment_in_kind_policy)

## Procedure for negotiating and completing planning obligations

### Introduction

- 3.16 This subsection explains the procedure which the Council and applicants will normally follow for completing planning obligations.
- 3.17 The completion of necessary legal agreements is a critical part of ensuring that a development scheme is acceptable in planning terms. In line with guidance in the NPPG and to provide certainty to all parties, the Council will not normally grant planning permission until any necessary agreements are in place.

### Pre-application

- 3.18 It is important that applicants have as much clarity as possible regarding potential planning obligations prior to submitting planning application. Where possible, the Council will aim to work with partners to provide an indication of likely infrastructure requirements through the site allocation process. However, developers are advised to enter into discussions about specific development proposals with the local planning authority (and where appropriate other infrastructure providers such as the County Council) as early as possible regarding potential planning obligations.
- 3.19 Applicants are therefore strongly recommended to use the Council's formal pre-application process<sup>12</sup>, in particular for larger or more complex schemes. The County Council also operates a formal pre-application process in respect of transport/highways advice<sup>13</sup> and it may be advisable to arrange joint pre-application discussions and / or advice. Having regard to this SPD, applicants should provide any available information or evidence to support such discussions.
- 3.20 Entering pre-application discussions prior to the acquisition of land will also enable developers to more accurately anticipate the financial implications of planning obligations and CIL on their development proposal. This understanding may be of critical importance to determining an appropriate value for the site and, ultimately, the achievement of a viable proposal.
- 3.21 This approach provides an opportunity for potential issues which may lead to the need for a planning obligation (such as infrastructure requirements) to be established and any requirements for supporting documentation to be identified as fully as possible up-front to minimise delays in determining planning applications. It should however be appreciated that it will not always be possible to identify with clarity all issues or potential costs at pre-application stage by the applicant.

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<sup>12</sup> [http://www.reigate-banstead.gov.uk/planning/planning\\_advice\\_and\\_guidance/before\\_you\\_apply/charging\\_for\\_pre\\_application\\_planning\\_advice/index.asp](http://www.reigate-banstead.gov.uk/planning/planning_advice_and_guidance/before_you_apply/charging_for_pre_application_planning_advice/index.asp)

<sup>13</sup> <http://new.surreycc.gov.uk/environment-housing-and-planning/planning/transport-development-planning/charging-for-transport-development-pre-application-advice>

- 3.22 Where sites have already been purchased, any potential issues with viability should also be flagged at pre-application stage.

### **Application submission**

- 3.23 In accordance with the Council's local list requirements, planning applications must be supported by appropriate documentation. Applications made without the required information/documents may not be registered.
- 3.24 Where it is known from the outset that a section 106 agreement or unilateral undertaking will be required for the proposal, the Council will expect applicants to submit either a draft signed unilateral undertaking or draft heads of terms for a section 106 agreement to accompany their planning application. Applicants should also provide proof of title, details of the solicitor acting on their behalf and an agreement to pay the Council's reasonable legal costs in checking, negotiating and preparing the agreement/undertaking whether or not the matter proceeds to completion.
- 3.25 For affordable housing contributions/provision, applicants will be expected to follow the procedures set out in the Council's Affordable Housing SPD.

### **Application assessment**

- 3.26 Once a valid application is submitted, the investigation and negotiation on any necessary conditions or obligations will proceed as part of the consideration of the application. This process is without prejudice to the determination of the application.
- 3.27 In conjunction with the Council's Legal Team, the Planning Case Officer will manage the negotiation process. They will consult internally and with all relevant external stakeholders, in particular County Council, to confirm the full extent and scope of obligations necessary to make the development acceptable. Any draft heads of terms submitted to accompany the application will also be reviewed in conjunction with infrastructure providers and will be publicly available alongside other planning documentation for residents and other parties to comment on.
- 3.28 Once all relevant consultation responses have been received, the detailed requirements and justification for them will be relayed to the applicant with a view to negotiating and agreeing the precise nature, scale and trigger for matters to be included as obligations. These negotiations are undertaken without prejudice to the final determination but should be approached positively by the applicant with a view to progressing matters as far as possible in order to ensure timely decision-making. The Council's Legal Team will be instructed to liaise with the applicant (or their legal representatives) to progress drafting and/or checking of the formal agreement.
- 3.29 Where an application is to be refused on other grounds, a decision will be made as to whether it is prudent to pursue completion of an agreement prior determination of the application or whether to add this as an additional reason for refusal.
- 3.30 The applicant will be expected to pay the Council's reasonable legal costs associated with drafting, checking and sealing the agreement. The applicant will be advised of

the likely costs and, depending upon the scale of the application, this may be required up front or in stages, and will be payable irrespective of whether permission is subsequently granted.

## Viability and Negotiation

- 3.31 The Council recognises the combined impact which all policy requirements, including CIL, affordable housing and other planning obligations can have on development viability. The impact on viability of these requirements considered through the plan-making process, including in relation to likely infrastructure and mitigation required as part of site allocations, to ensure that policy requirements are achievable. However, the Council recognises that, in exceptional circumstances, individual proposals may generate insufficient value to support the full range of developer contributions.
- 3.32 In such instances, applicants will need to demonstrate that the site is clearly unviable by submitting a Financial Viability Assessment (FVA) which should adopt an “open book” approach. As set out above, any viability issues should be flagged at the pre-application stage and an FVA must be submitted as part of the planning application.
- 3.33 If a FVA is submitted, it must meet the requirements outlined below and in Appendix 1, which are consistent with those set out in the Council’s Affordable Housing SPD:
- A FVA should be in two parts:
    - i. A **Summary** clearly stating the exceptional reasons that make the site unviable, a request to vary the usual affordable housing and/or other planning obligations requirements, and a summary of the main costs, revenues and assumptions etc
    - ii. A **Detailed Appraisal** containing the information in Appendix 1 as a minimum together with supporting evidence.
- 3.34 The minimum requirements to be provided by the applicant are outlined in Appendix 1, but the following should also be noted:
- Each cost, value, revenue, assumption, etc. must be evidence from an independent expert or source, and any assumptions will need to be explained and justified in detail.
  - The Council will assume that:
    - i. The land value to be used in the calculation should be the current market value, not the amount paid for the land
    - ii. The cost of meeting the affordable housing requirements in policy CS15 should be reflected in the price paid, or price to be paid, for the land, and should be based on:
      - No public subsidy or grant
      - Payment by the providers of the affordable housing should meet current HCA guidance, i.e. less than market value
    - iii. The cost of meeting other policy requirements, including developer contributions, should be reflected in the price paid, or to be paid, for the land.

iv. Site abnormalities should be reflected in the price paid, or to be paid, for the land.

- 3.35 The Council will carry out an assessment of the Financial Viability Appraisal to determine whether the information and data submitted supports the Applicant's request to vary the affordable housing requirements on the basis of financial viability.
- 3.36 The Council may use its own in-house experts, or may (particularly on larger sites) instruct external consultants. If external consultants are to be instructed the Applicant will be required to pay the fees. The applicant will be advised of the fees payable and the amount will need to be paid to the Council prior to the FVA being assessed.
- 3.37 The application process, including any FVA, must be open and transparent; however, the Council recognises that some of the information or data in a FVA may be commercially sensitive.
- 3.38 The applicant must make clear which, if any, information is commercially sensitive. The Council will then make a judgement as to which information is placed in the public domain. Generally, the Council may place the summary in the public domain with the detailed appraisal treated as confidential. Provisions relating to Freedom of Information and Environmental Information Regulations may also mean that confidentiality cannot be guaranteed.
- 3.39 A FVA is only current at the time it is prepared. Financial viability will change over time and with the changing economic and property markets. As such, on large sites that are expected to build or sell over a number of years, and particularly where the application is in Outline, a FVA may be required for each phase which will need to be updated when the Reserved Matters application is made or prior to the commencement of each phase.
- 3.40 Where the Council is satisfied that the combined developer contributions cannot be met in full due to financial viability the Council will choose to either:
- Negotiate or revise the affordable housing requirement in accordance with Core Strategy Policy CS15 and the Affordable Housing SPD. This could include:
    - Revised affordable housing requirements (in terms of adjustments to tenure mix)
    - Reduced affordable housing provision (in terms of number of units)
    - A mechanism for the clawback of an affordable housing financial contribution in the event that the completed development proves to be more financially viable than anticipated in the FVA (potentially in addition to the measures above)
  - Negotiate or revise other planning obligations. This could include:
    - As a priority, the requirement to provide site specific infrastructure in phases or with deferred timing/trigger points to ease cashflow
    - Revising the scope of contributions or in-kind requirements provided the scheme would still remain acceptable in planning terms. This



could be through altering the nature/specification of a particular piece of infrastructure or negotiating reduced commuted sums.

### **Determination and post determination**

- 3.41 Where a planning application to be determined under delegated authority is subject to a planning obligation, a completed and executed planning obligation will need to be submitted to, and approved by, the Council's Legal Team before a decision is issued. For developments of this scale, it is likely that this will in most cases be through a unilateral undertaking rather than by agreement.
- 3.42 For applications which are to be decided by Planning Committee, at the very least, all matters which are to be included in any obligations must be known and agreed with the applicant in detail, by the time the proposal is brought before committee. These requirements will be set out as part of the committee report and recommendation, which is a public document. Any resolution to grant planning permission will be made subject to the completion of a satisfactory legal agreement or undertaking within a specified time period and will authorise the relevant Head of Service to accept such an undertaking. The Committee will decide whether the proposed obligations are appropriate.
- 3.43 Ideally, the legal agreement should be drafted prior to Committee resolution. If this has not proved possible, this should be progressed immediately following the Committee resolution in order to meet the timescale specified in the resolution. Whilst it is recognised that negotiations on, and the preparation of, legal agreements can take time, where it appears that an agreement will not be successfully concluded in the specified timescale and/or progress from the applicant in doing so is unnecessarily slow, the Council may refuse the application.
- 3.44 At the earliest possible opportunity, and certainly prior to completion of the legal agreement, the Council's Legal Team will ensure that all financial and title matters are in order. If the land to which the proposal relates is mortgaged or charged to other third parties, it will be necessary for these interests to be party to the section 106 agreement or unilateral undertaking. Applicants are encouraged to liaise as early as possible with lenders/charges about their proposals to ascertain whether approval is likely and to avoid lengthy delays in the signing/execution process.
- 3.45 Planning permission and any other consent will be issued at the point that the legal agreement is completed.

### **Post completion and monitoring**

- 3.46 The agreement or undertaking, along with relevant consents, will be registered as local land charges and the applicant will be required to register the agreement as a charge against the title of the property at HM Land Registry. A copy of the completed agreement will be held by the Council and will be made publicly available to ensure the process is open and transparent.

- 3.47 Obligations which require financial contributions will normally be subject to indexation from the date of the agreement to ensure that the contribution received keeps pace with the actual cost of the project to be delivered.
- 3.48 Compliance with the agreement will be tracked and enforced as the development proceeds. No action will take place in respect of a legal agreement until the specific triggers have passed.
- 3.49 In the event the developer fails to comply with any terms in the agreement regarding financial payments, a penalty rate of interest – above and beyond normal indexation – may be incurred until the point the payment is received. This will be written into the agreement as a standard condition.
- 3.50 If it is evident through on-going monitoring that an agreement is not being complied with, the Council has powers to instigate legal and planning enforcement action. This could include injunctions to prevent development proceeding further. The Council also has the power to enter land to carry out required works and to recover costs for this action from the developer, subject to prior notice.

# Appendix 1: Financial Viability Appraisals

Background information on financial viability and Financial Viability Appraisals is given in Section 3: Implementation. The following requirements should to be read in conjunction with that section.

The Detailed Financial Viability Assessment should contain as a minimum the following information and data:

- The methodology used for the appraisal and details of any appraisal software or toolkits used
- Land values, both current and at the time of purchase (if different)
- Residual Land Values (RLV) and Gross Development Value (GDV)
- Price paid for the land; and costs taken into account when arriving at the price paid for the land (if the land is not owned by the applicant – details of any option agreements or agreements to purchase)
- Gross and net area of development
- Number size and type of units
- Build costs (per square metre), based on a site specific cost plan (and comparison with appropriate published RICS/BCIS data)
- Abnormal or exceptional costs not reflected in the land value/price (and reasons why)
- Other costs (design, legal, consultants, planning etc.)
- Cost of any other planning obligations including infrastructure requirements and financial contributions
- Build programme and phasing
- Interest rates, cap rates, loan costs, cash flows
- Developers profit and an explanation of its make up, and any company or financiers requirements
- Anticipated phasing
- Marketing and legal costs (and as a % of GDV)
- Anticipated sales price for each unit type, and current assumed value of each unit type
- Anticipated phasing of sales
- Ground rents payable; and the capitalised investment value of these
- Service charges payable;
- Proposals for on-site affordable housing meeting the requirements of the SPD
- Anticipated price to be paid by the affordable housing provider, and the assumption on which this is based.
- Substitution values and revenues for less or no affordable housing on site

Depending on individual site circumstances further information may be required, this may include:

- Developers Market Analysis Report
- Details of company overheads
- Copy of financing offer/letter
- Copy of cost plan
- Board Report on scheme

- Letter from Auditors re: land values and write offs
- Sensitivity analysis showing different assumption options (e.g. low, medium & high)

For mixed use schemes similar information and data will be required on the non residential uses.

All information and data should be evidenced from an independent expert or source, and be benchmarked.