GUIDE TO COMMUNITY INFRASTRUCTURE LEVY

CHRISTOPHER CANT
My original purpose in writing this guide was to provide information on CIL for those involved in property development. That purpose remains. The Guide does not cover in detail the process of establishing CIL in an area. It seems to me this is a separate topic with the focus on local planning authorities which have to bear a heavy and changing burden. However, in addition to seeking to assist developers in understanding CIL and avoiding unnecessary CIL bills I hope that it will also assist those who have the thankless task of administering the CIL regime.

My resolve to keep this Guide updated faltered with the increased uncertainty as to the future of CIL. It appears that at present there is an intention to muddle on with CIL introducing amendments at intervals. This update includes the amendments to the regulations since 2015 including particularly those in the 2019 (No. 2) Regulations; the many redacted statutory appeal decisions since then; the fewer but important court decisions; the government material published since the last update; and the experience of the operation of the CIL regime gained over the last four years.

That experience has served to emphasise three key general points for developers and those who advise them on planning applications. First, it is crucially important that it is appreciated that the CIL regime applies to a proposed development in an area in which a charging schedule has been introduced. Although a very basic point this has not always been the case. Second, the knowledge that CIL will apply to a proposed development needs to be taken to the level of understanding the implications and how to comply with the CIL requirements. Third, it has to be understood that informal discussions with planning officers whilst valuable in the context of planning have no role in the administration of the CIL regime. No power to waive or modify a requirement imposed by the CIL regime is conferred on a charging authority. Each charging authority is required to administer a rigid and unforgiving regime. The mindset for CIL is very different to planning and some developers and advisers struggle to take that on board resulting in unnecessary and painful CIL bills particularly with regard to self-build houses.

The amendments in the 2019 Regulations apply only to England and so this edition of the Guide will not apply to the three areas in Wales which have established charging schedules. The earlier sixth edition will apply but as that is four years old reference to this version may assist but having to disregard any amendments introduced in 2019. I have not discovered how this difference between the two countries is to be tackled going forward until the completion of an overall review of CIL in Wales.

Over the last four years I have been encouraged by e-mails and chance conversations to believe that there is a place for this guide on the web. It has grown to an extent I never originally anticipated. This edition has an expanded contents section at the front but still no index. The scars of preparing an index forty years ago still continue to deter me from embarking on such a task. In the course of updating I found the navigation facility in Word immensely useful and more helpful than the general find on page facility. I hope that this and the Google search facility on my personal website will go some way to make up for the absent index.
The Guide contains my personal views and it is intended to be informative but not to provide legal advice. Specialist professional advice should be sought in respect of any step or transaction with CIL implications. As the Hourhope decision and subsequent court and appeal decisions illustrate many of the points that will arise regarding CIL will depend heavily on the specific facts of the matter.

This guide can be found on my chamber’s webpage at https://www.9stonebuildings.com/

or on my personal webpage which has additional material relevant to developments at http://www.christophercant.co.uk/

The current Guide represents my understanding of CIL as at 1st September 2019.

Christopher Cant  
9, Stone Buildings  
Lincoln’s Inn  
5th August 2019

Illustration by David Thomas
Guide to Community Infrastructure Levy

Christopher Cant

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This Seventh edition of the guide sets out my understanding of the levy as at 1st September 2019.


Illustration by David Thomas
Table of Abbreviations

Any reference to a regulation is to a regulation in the 2010 Regulations unless the contrary appears
Any reference to a paragraph is to a paragraph in a Schedule to the 2010 Regulations unless the contrary appears

Wording in italics indicates a section which has ceased to current but has been retained in case it is needed for historic cases save in so far as it relates to starter homes in the context of the social housing relief when it represents what was proposed in consultation but has not been enacted.

2008 Act – the Planning Act 2008
2010 Regulations – the Community Infrastructure Levy Regulations 2010/948 as amended from time to time unless the contrary is stated
2011 Regulations – the Community Infrastructure Levy (Amendment) Regulations 2011/987
2012 Regulations - the Community Infrastructure Levy (Amendment) Regulations 2012/2975
2013 Regulations - the Community Infrastructure Levy (Amendment) Regulations 2013/982
2014 Regulations - the Community Infrastructure Levy (Amendment) Regulations 2014/385
2015 Regulations - the Community Infrastructure Levy (Amendments) Regulations 2015/836
2018 Regulations - the Community Infrastructure Levy (Amendment) Regulations 2018/172
2019 (no. 2) Regulations - the Community Infrastructure Levy (Amendments) (England) Regulations 2019

CIL – Community Infrastructure Levy;
GIA – gross internal area;
in-use building – a building which satisfies the conditions in para. 1(6) of Schedule 1 previously reg. 40(11);
MCIL 1 – the first charge to the Mayor of London’s CIL;
MCIL 2 – the second charge to the Mayor of London’s CIL;
MDC – Mayoral Development Corporation;
NPPF – National Planning Policy Framework
POCA – the Proceeds of Crime Act 2008
post-CIL permission - a planning permission granted after the introduction of a charging schedule in the area;
PPG – Planning Practice Guide
pre-CIL permission – a planning permission granted before the introduction of a charging schedule in the area;
psm – per square metre
RICS Code - RICS Code of Measuring Practice (currently 6th Edition);
sqm – square metre
Use Classes Order – Town and Country Planning Act (Use Classes) Order 1989
VOA – Valuation Office Agency
A. Introduction

1. Overview

1.1 Objective – Section 205 of the Planning Act 2008 provides that the overall purpose of CIL is to ensure that costs incurred in supporting the development of an area can be funded (wholly or partly) by owners or developers of land in a way that does not make development of the area economically unviable. Introduced in April 2010 it has been the government’s preferred means of collecting developer’s contributions to fund infrastructure\(^1\) with the intention of addressing the cumulative impact of development whilst section 106 planning obligations continue to address site-specific issues. During its lifetime there has been considerable criticism as there had previously been with section 106 funding. Recommendations have been made for change including its replacement by a national low level Local Infrastructure Tariff charged on gross developments using a fixed formula and with no exemptions.\(^2\) However, despite this CIL has remained subject to frequent amendments. The 2019 (No. 2) Regulations are the most recent attempt to address outstanding issues but in such a manner as to require yet further amendments in the future.

As at 1\(^{st}\) September 2019 there are 165 authorities and bodies charging CIL. The introduction of CIL over the two countries has been described as patchwork. It was stated in the Reading study that the “Authorities that have operational CILs are concentrated to a large extent in more affluent parts of the country where market and land values are higher. Over half of CIL adopters are from London and the south east of England.”\(^3\) A number have decided that it is not viable to introduce CIL.

1.2 Operation – CIL is not a national charge but each local planning authority can elect whether or not to introduce it. This is only possible in England or Wales. When introduced the charging authority will have set out in the CIL Charging Schedule the CIL rates applicable to specified uses which may be by reference to the Use Classes but does not have to be. The focus in many charging schedules has been on residential and retail development with many other commercial uses being given a low or zero CIL rate.\(^4\) To arrive at the chargeable amount each part of the internal floorspace of the development to be used for a particular use is multiplied by the CIL rate applicable to that use. The aggregate of such calculations constitutes the chargeable amount.

In carrying out the calculations there are deductions to be made from the gross internal area\(^5\) in relation to (i) existing buildings or parts which are to be demolished during the course of the development; (ii) existing buildings or parts which are to be retained and qualify as “in-use buildings”; and (iii) existing buildings or parts which will have the

\(^{1}\) Para. 1 DCLG’s Value Impact and delivery of CIL Report of study by University of Reading and three Dragons published February 2017
\(^{2}\) A new approach to developer’s contributions submitted by L. Peace CIL Review team in October 2016
\(^{3}\) Para. 6 of the Reading University study
\(^{4}\) Para. 9 of the Reading University study
\(^{5}\) See section 15.2.5 below
same planning use before the grant of planning permission and after the completion of the development.

There are a number of mandatory exemptions and reliefs available which it has been suggested has reduced the total of CIL receipts by around 50%. These include minor developments exemption (reg. 42); charitable relief (reg. 43); social housing relief (reg. 50); self-build housing exemption (reg. 54A); exemption for residential annexes and extensions (reg. 42A). A local authority may elect to extend the reliefs to include any one or more of discretionary social housing (reg. 49A), discretionary charitable relief (reg. 44) and exceptional circumstances relief (reg. 55).

1.3 England and Wales - Part 11 of the Planning Act 2008 which contains the statutory basis for the Community Infrastructure Levy (“CIL”) regime applies only to England and Wales. Until 2019 the CIL regime has been the same for both England and Wales. The 2010 Regulations and each of the amending Regulations up to and including the 2018 Regulations has applied to both England and Wales. However, in May 2018 all but one of the functions of the Secretary of State under Part 11 of the 2008 Act were transferred so far as they are exercisable in relation to Wales to the Welsh Ministers. In consequence both the 2019 Regulations and the 2019 (No. 2) Regulations are expressed to apply only to England. With the first 2019 Regulations this is not of significance as those regulations are concerned with the Mayoral CIL.

However, as regards the 2019 (No. 2) Regulations this is a matter of great significance. It contains substantial amendments which will only apply in England and not in Wales. Unless the Welsh Ministers decide to introduce the same provisions as those in the 2019 (No. 2) Regulations it will mean that the CIL regime for Wales will be different to that applicable in England. For example, in Wales failure to give a commencement notice will remain a reason for any available exemption in relation to the development being lost whilst in England such an exemption will no longer be lost for that reason and instead a mandatory surcharge will be imposed.

There are three local authorities in Wales which have introduced CIL - Caerphilly, Merthyr Tydfil and Rhondda Cynon Taff. In those areas both the authorities will need to be alert to ensure that the correct CIL provisions are being applied. There are at least seven other local authorities which are at various stages of introducing CIL but which are probably awaiting the outcome of a review of CIL in Wales.

This version of the Guide incorporates the amendments in the 2019 (No. 2) Regulations and so is the CIL regime applicable in England. The fifth revised Guide incorporates the CIL regime prior to those amendments and so is more appropriate for Wales but does not include the 2016 Regulations and 2018 Regulations and does not have the appeal decisions and other material now included in this revised version.

1.4. Structure of charging process – in order for CIL to be chargeable the following elements have to be considered:-

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6 Section 240(1)(g) 2008 Act
7 Reg. 44 of Welsh Ministers (Transfer of Functions) Order 2018/644 taking effect on 23rd May 2018 (reg. 1(1))
8 Reg. 1(2) of the 2019 Regulations and the 2019 (No. 2) Regulations
9 In the Final Report of the Law Commission on Planning Law in Wales No. 383 published in November 2018 it recommended that part 11 of the Planning Act be incorporated in the new planning act until such time as the review is completed.
1.5. Need to understand - the number of authorities putting in place charging schedules to enable the community infrastructure levy (“CIL”) to be charged is still increasing but at a much slower rate. There are just over 360 local planning authorities in total in England and Wales and just over 160 have introduced CIL. It had been anticipated that
about 70% will introduce it but the final number is likely now to be less. The pressure which was applied by the introduction of the pooling restrictions in April 2015 has reduced and will be released altogether by the removal of those restrictions by the 2019 (No. 2) Regulations.

In areas in which CIL has been introduced it has been noticeable that small developers and homeowners have been slow to appreciate that CIL applies to developments in the area and even when they do still fail to understand the rigidity and complexity of the regime. There has been a reluctance to understand that CIL requires a markedly different mindset to that which prevails in planning and to appreciate that the onus of compliance lies on the developer or landowner. There is no obligation on the charging authority to advise on the CIL consequences of a planning application or to chase up compliance with the statutory requirements. This means that those acting for planning applicants and planning applicants acting in person should have an understanding of the CIL regime which allows them to comply with its requirements.

Notwithstanding that there have been regular amendments there are still issues over the manner in which CIL operates and there has been a tendency for those amendments to increase complexity rather than simplify. Even after the coming into force of the 2019 (No. 2) Regulations in England it is anticipated that further amendments will be needed whilst in Wales there may be the outcome of a full scale review. The government still wishes to link the indexation provisions more closely to the market and the value of developments and to extend social housing relief to include Starter Homes. It is to be expected that there will be other amendments.

2. **Claimed advantages for CIL regime** – it had been anticipated that the new regime would have a number of advantages as against the previous predominant reliance on section 106 agreements.

2.1 **Simple to operate** – once the authority has put in place the CIL charging system it is claimed to be easier and speedier to operate than the system of section 106 agreements. There is a reduced scope for negotiation in contrast to the costly and lengthy negotiations sometimes involving section 106 agreements. This was expected to reduce the administrative and legal burden on both the authorities and the developer. Section 106 agreements still continued to have a role albeit in the main focused on specific infrastructure issues related to the particular site and affordable housing. An element of negotiation and legal administration has being brought back by additions such as the possibility of discharging the CIL charge in whole or part by land transfers or infrastructure payments. However, CIL issues arising from planning permissions for complex sites can be protracted as have been the difficulties associated with self-build housing developments.

2.2 **Simple to comprehend** – it is not the first time that such a claim has been made for a new tax regime. The complexity of the amendments and the unanswered queries being raised suggests that this aim will not be achieved notwithstanding it being one of the objectives of the 2019 (No. 2) Regulations. This objective is not aided by the failure to provide one set of consolidated regulations incorporating all the amendments. As the number of amendments increase both in number and complexity this is a very serious obstacle to understanding the regime. In Wales there will be a further problem that the
CIL regime is not the one in force in England but instead for the moment the regime prior to the two 2019 Regulations.

2.3 Certainty – developers will know where they are when formulating proposals for a development as it will not to the same extent as previously depend on the outcome of negotiations for a section 106 agreement. The calculation of the prospective CIL charge will be comparatively easy. However, the benefit of this certainty is reduced by two factors. First, with many developments it will be necessary to still negotiate section 106 agreements particularly after the 2019 (No. 2) Regulations. Second, the amount of the CIL charge may well be at a level which discourages development notwithstanding the requirement that when setting the local CIL rates account must be taken of the need not to deter developments.

2.4 Increased infrastructure contributions for authorities - in contrast for authorities it was considered likely that there will be a greater contribution to the provision of infrastructure than with section 106 agreements only. At the end of 2012 the government estimated that the annual receipts for CIL by 2016 would be £1 billion so substantial sums are involved. As yet the CIL receipts have not run at that level. In the University of Reading study it was estimated that CIL receipts were only running at 5-20% of the funds needed for infrastructure. Figures provided in a written answer by Lord Bourne of Aberystwyth on 14th May 2019 showed that the annual CIL receipts for 2017-2018 were just under half a billion pounds (including just under £110 million for MCIL 1) with ten charging authorities yet to start reporting in that year as they had only introduced CIL during that year. Concern has been expressed that the CIL regime merely changes the mechanism by which the same pot is produced as was achieved before the introduction of the CIL regime. It is just that with the introduction of CIL the pot is divided in a different way. However, it may be in some areas at least that the pot will increase in size.

It will be easier to charge a wider range of developments and the level of contribution will take into account the authority’s overall infrastructure priorities without having to relate them to the particular development site. One issue for authorities in this context is the potential for CIL liabilities to be revised due to development changes even after the development has started. If such revisions result in a reduced CIL liability and there is a need to make a repayment this would mean less certainty for the authorities. This is the case with section 73 planning permissions but not abatement as a result of a subsequent standalone planning permission. With the later there is no entitlement to a repayment if the CIL liability arising from the subsequent standalone planning permission is less than the earlier CIL liability.

2.4 Reduces scope for purchasing planning permission – one of the criticisms of unrestricted section 106 agreements was that large developers can seek to purchase planning permission by unilaterally offering to undertake infrastructure works. It is anticipated that the scope for this to occur with the CIL regime is very significantly reduced.\textsuperscript{10}

2.5 Section 106 system – the section 106 system prior to CIL was criticised for being ineffective, arbitrary, lacking transparency, not encouraging or assisting with funding

\textsuperscript{10} See section 25.5.4(ix) below
of major infrastructure projects, having a disproportionate effect on major
developments and open to purchase. Until the 2019 (No. 2) Regulations the section 106
system has been shackled by reg. 123 but this has been a block to the grant of planning
permissions for development which would otherwise have been acceptable for planning
with the appropriate planning obligations. Those shackles have now been removed and
the implications of the new relationship between CIL and section 106 planning
obligations will take some time to work out.

2.6 Objectives of 2019 (No. 2) Regulations – in the MHCLG’s Government response
to reforming developer’s contributions June 2019 the following objectives were set out:

(i) less complex regulations;
(ii) more transparent administration of the CIL regime for communities and developers
    with a view to showing how CIL receipts and planning contributions are applied;
(iii) making it easier for authorities to introduce CIL;
(iv) include more flexibility to change and thereby take account of changes in viability
    and local housing market;
(v) lift barriers to development principally due to limitations on planning obligations in
    reg. 123;
(vi) to ensure that if charging authority wants to stop charging CIL it must explain the
    impact of doing so and address how it will deal with shortfall in infrastructure funding.

2.7 Main amendments introduced by the 2019 (No. 2) Regulations -

(i) make introduction of CIL easier by reducing from two consultations to one and
giving authorities greater discretion as to manner of consultation;
(ii) require more information to be provided if charging authority wishes to cease
    charging CIL so as to discourage such a step;
(iii) amending charging provisions when dealing with a section 73 permission both
    when the parent permission is a pre-CIL permission and a post-CIL permission;
(iv) amending charging provisions for social housing relief;
(v) change to single bespoke index for indexation provisions;
(vi) failure to give commencement notice will no longer cause loss of exemption or
    relief but will instead be subject to mandatory surcharge;
(vii) carry over of all exemptions or reliefs to section 73 permission;
(viii) ability to pay by instalments carried over to section 73 permission;
(ix) require annual infrastructure funding statement (covering both CIL receipts and
    section 106 contributions) and CIL rate summary by charging authorities;
(x) amend cap on amount of CIL receipts passed to parish councils under reg. 59A;
(xi) by deleting reg. 123 remove pooling restriction and restriction on planning
    obligations linked to infrastructure list;
(xii) expressly authorise planning obligation to pay fee for monitoring of planning
    obligations;
(xiii) vary charging provisions for outline planning permission granted prior to revision
    of charging schedule when permission does not first permit development until after that
    revision.
3. Current drawbacks with CIL regime – the piece meal introduction of CIL has made it harder to assess the impact of the CIL regime. However, there have been aspects that have given rise to problems. The 2019 (No. 2) Regulations seek to address some but although there is an understanding that there is a need for amendments there remains outstanding issues.

3.1 Delivery of infrastructure – until the 2014 Regulations a very considerable drawback was the absence of any procedure in place by which the developer could ensure the provision of particular infrastructure for the benefit of the development site and certainly not within a timely manner. The developer will pay the CIL charge but not be certain that the infrastructure needed will be put in place. The only guarantee of delivery is if the developer provides it. As a result of reg. 9(6) of the 2014 Regulations it is now possible that a developer may at the election of the authority provide infrastructure in lieu of all or part of a CIL liability. This has not been as great an advantage as had been hoped. It is dependent on the particular authority agreeing to use the procedure. It will only apply to land which is owned by the developer or where the developer can ensure that the infrastructure will be provided but it is a valuable start. Further it does not apply to site-specific infrastructure. In consequence this has not been used to the extent hoped for.

3.2 Effect on construction of affordable housing – the withdrawal of affordable housing from the definition of infrastructure has meant that CIL receipts cannot be applied for that purpose. A number of the authorities have introduced CIL and followed the approach adopted by Dartford with varying CIL rates for residential development dependent not just on the number of dwellings comprised in the development but the extent to which affordable housing is included. This could be a real encouragement dependent on the extent to which the rates vary.

3.3 Discouraging developments – it has been said that the level of CIL being fixed particularly for residential development is discouraging developments. For example it has been reported that the house builders Galliford Try have stated that the respective CIL rates for residential development proposed by Exeter and Torbay of £80 psm and £100 psm respectively in their respective examination were overcharging when £35 psm would suffice. In the charging schedule Torbay did introduce its top CIL rate for residential development is £70. In the judicial review case R (on the application of Fox Strategic Land & Property) v Chorley11 the setting of a CIL rate for residential development at £65 in a CIL Charging Schedule was challenged but failed. This is going to be more of a problem with the removal of the limitations on section 106 planning obligations. Considerable care will have to be taken by local authorities that the combination of CIL and the unlimited section 106 planning obligations will prevent developments from proceeding.

3.4 Section 106 agreements – the limitations imposed on planning obligations by reg. 123 have been a real difficulty for local authorities and developers. Their removal by the 2019 (No. 2) Regulations will remove these difficulties for the future but create a different problem for developers.

11 see section 5.4.3.3 below
3.5 **Negotiations** – as more amendments are made the need for negotiations involving authorities in relation to a proposed development increases. In this respect the removal of the limitations imposed on reg. 123 on section 106 planning permissions is a significant change. By way of example, the planning outcome in *R (oao Oates) v Wealden DC*¹² would have been different because it will now be possible for a planning contribution to be made towards the traffic infrastructure required in addition to the CIL payment even though the project was intended to be funded from CIL alone. The practical issue then becomes whether it is financially worthwhile the developer continuing with the proposed project. There will also be a need for negotiations if CIL charges are to be discharged in part or whole by a transfer of land or the provision of infrastructure. Such negotiations are likely to take some time.

3.6 **Self-build** – there is an inherent contradiction between the rationale for the introduction of CIL and the self-build housing exemption. Such a development will impact the need for infrastructure in exactly the same manner as a house constructed by a house-builder. However, having added this exemption the manner in which local authorities are required to apply the CIL regime to self-build houses is unfair and results in disproportionate penalties.¹³ This has been recognised with regard to the requirement that a commencement notice be served before the development commences. Regulation 6 of the 2019 (No. 2) Regulations removes that requirement but does not undertake a more comprehensive review of the operation of CIL as regards self-build. The amendment does not tackle the constant problems arising from self-build dwellings being constructed in a manner which varies from the original planning permission and requiring a retrospective planning permission. Why should a completed dwelling which would satisfy all the requirements of a self-build dwelling if the original planning permission had approved it lose the self-build housing exemption because retrospective approval was required? The amendment allowing the rolling over of exemptions and relief to a section 73 permission will not cover this. Should ignorance of CIL cause the self-builder to lose the benefit of the exemption because no claim was made before the commencement of the development? Should the self-builder suffer the withdrawal of the exemption if the dwelling undoubtedly qualifies as a self-build dwelling but the self-builder is unable to satisfy all the documentary requirements at the second stage after completion.

3.7 **Waiver or modification of CIL requirements** – one of the real problems with the current application of the CIL regime is its rigidity. The regime has to be applied by local authorities without any ability to waive failures to comply. This can lead to disproportionate consequences such as up until 1st September 2019 the loss of the benefit of an exemption by the giving of a commencement notice.

3.8 **Interpretation of the CIL regime** - different local planning authorities have adopted different constructions of the CIL regulations. This has occurred with the application of the indexation provisions and also with whether there is a need for a commencement notice to be served in respect of a development comprising a residential extension which has been granted the exemption. With the later central government has emphasised its view yet some local authorities disregard this. It is unfair that the CIL

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¹² [2018] EWCA Civ 1304
¹³ This has been explored clearly and helpfully in the four part self-build series by Rachel Herbert on Dentons’ website. Also by the author in Retrospective planning permissions and CIL Lexology 11th July 2017 and Residential extensions and CIL Local Government Lawyer 7th September 2018
treatment of houseowners differs between areas. It is unfortunate that central government does not accept responsibility when the cause of the problem is the drafting of the relevant regulations.

3.9 Land bank – there may in some areas be substantial land banks which were acquired at prices which did not take into account the application of the CIL regime to possible developments of such land. This may deter developments in some areas where high CIL rates have been fixed for the particular type of development. It may also be a problem for landowners whose land is subject to an option entered into before CIL was contemplated. On an exercise of the option the price may be reduced by the CIL liability but the landowner has to discharge the CIL liability.14

4. Legal basis –

4.1 Sources - the CIL regime was set out in the Community Infrastructure Levy Regulations 2010/948 ("the 2010 Regulations") which took effect on 6th April 2010 and is based on the authority and in accordance with the provisions contained in Part 11 of the Planning Act 2008 ("the 2008 Act"). The principal charging provision is section 206 of the 2008 Act. Amendments have been made principally by the Community Infrastructure Levy (Amendment) Regulations 2011/987 (which took effect on 6th April 2011); the Community Infrastructure Levy (Amendment) Regulations 2012/2975 ("the 2012 Regulations") which took effect on 29th November 2012; the Community Infrastructure Levy (Amendment) Regulations 2013/982 ("the 2013 Regulations") which took effect on 25th April 2013; the Community Infrastructure Levy (Amendment) Regulations 2014/385 ("the 2014 Regulations") which took effect on 24th February 2014; the Community Infrastructure Levy (Amendments) Regulations 2015/836 ("the 2015 Regulations") which took effect on 1st April 2015; the Community Infrastructure Levy (Amendments) (England) Regulations 2019/966 ("the 2019 Regulations") which took effect on 23rd May 2019; and the Community Infrastructure Levy (Amendments) (England) Regulations 2019/ ("the 2019 (No. 2) Regulations") which took effect on 1st September 2019.

It is to be expected that the stream of amendments will continue to flow encouraged by the complexity of some of the amendments.

4.2 CIL Charge – The Secretary of State is authorised by section 205 of the Planning Act 2008 to make regulations imposing a charge and by reason of section 206 a “charging authority may charge CIL in respect of development of land in its area.” This makes it clear that whether or not the charging regime is imposed is a matter for the discretion of the charging authority. For these purposes a charging authority will be a local planning authority15 save that the Mayor of London is a charging authority for Greater London, the Broads Authority is the only authority for the Broads16 and the Council of the Isles of Scilly is the only charging authority for the Isles of Scilly.17 Such

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14 see section 23.3.4 below  
15 Section 206(2)  
16 As defined by section 2(3) of the Norfolk and Suffolk Broads Act 1988  
17 Section 206(3)
a CIL liability becomes payable when the relevant chargeable development commences in reliance on a planning permission.\(^\text{18}\)

It is required that the CIL regulations must require the authority that charges CIL to apply it, or cause it to be applied, to supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure.\(^\text{19}\)

4.3 **Simplicity** – one objective with the CIL regime was that it should be simple and readily comprehensible. The terms of the amendments to the 2010 Regulations particularly those in the 2019 (No. 2) Regulations show how hard it will be to achieve the objective of simplicity with this levy. These amendments also highlight what seems to be a continuing problem with the drafting of the CIL regime. There is a failure to spell out clearly how the provisions are intended to operate and an excessive reliance on assumptions. There is also an understandable tendency to rely on concepts taken from planning law which can result in uncertainty. For example, amongst the amendments in the 2014 Regulations the planning concept of abandonment of planning permission is introduced when determining whether a deduction may be made for the internal floor space of an existing building. This depends on intention and is uncertain in application. When relevant it could throw up difficult issues both legal and factual. This is not desirable with this type of tax.

In addition the new amendments are eating into the underlying rationale for CIL that developers should contribute to the cost of infrastructure because of the impact that the development has on infrastructure needs. Dwellings constructed by a self-builder will impact infrastructure in the same manner as one constructed by a developer. Yet the former is now exempt. Similarly there is a move away from the original rationale when providing for CIL monies to be passed to local councils or to be applied for local communities but in a manner which does not involve infrastructure.

It is a serious handicap that the original 2010 Regulations and the subsequent amendments have not been consolidated into one set of regulations. The introduction of Schedule 1 to the 2010 Regulations\(^\text{20}\) is a valuable step forward but it has been stated that it is only when there are further amendments that consideration will be given to a consolidated version of the regulations. It is a particular problem for those affected by or interested in the CIL regime who do not have access to one of the subscription service providing a consolidated version.

4.4 **Approach to statutory construction** –

4.4.1 **General** - the old presumption that a taxing statute has to be construed strictly in favour of the taxpayer is no longer the guiding principle but with local authority taxes it has been stated by Sales J. in Harrow v Ayiku\(^\text{21}\) in the context of council tax that “it remains the case that in a context in which a clearly tenable and natural reading of a provision in tax legislation favours the subject, such a reading is (subject to any clear indications to the contrary) to be preferred. The legislator is presumed to have intended to produce a result which is fair to the tax-payer and not liable to defeat his or her

\(^{18}\) Section 208(3)

\(^{19}\) Section 216 as amended by section 115(5)(9a)(ii) of the Localism Act 2011

\(^{20}\) Para. 5(12) of the 2019 (No. 2) Regulations

\(^{21}\) [2012] EWHC 1200 (Admin)
reasonable expectations derived from the terms of the legislation.” Later in his judgment he made the point that setting a general rule means that there is a risk of hard cases falling the wrong side of the line but being able to imagine such cases will not be allowed to dictate the correct interpretation.

It is recognised that because CIL is a financial burden imposed on an owner or developer this affects the manner in which it is construed. In the context of the CIL regime it has been stated by Mr. Martin Rodger QC (sitting as a Deputy Judge of the High Court)\(^2\) that “The imposition of a CIL surcharge is a formal matter. The Levy is a punitive imposition designed to penalise a developer which has failed to comply with the 2010 Regulations. It is agreed that such a developer has no opportunity to seek any extension of the 28 days allowed for bringing an appeal. It is therefore important that the procedure is complied with in a way which leaves no doubt either about whether an amount has been demanded, or about when the demand was made. The latter question is of particular important in this case, and in any case in which it is said a right of appeal has expired.”

In the appeal relating to reg. 128A and indexation the appointed person favoured the appellant’s arguments that a purposive construction be adopted.\(^2\)\(^3\) There has been a decisive change in that the literal meaning of statutory words is no longer conclusive nor does it carry the same great weight when seeking to ascertain the intention of Parliament (Laws LJ at page 805 in Oliver Ashworth (Holdings) Limited v Ballard (Kent) Limited\(^2\)\(^4\)). Lord Steyn has stated that the pendulum has swung towards purposive methods of construction (at para. 21 in R (Qunitavalle) v Secretary of State for Health\(^2\)\(^5\) ). This is the correct approach regardless of whether it is shown that there has been an error in the drafting. Lord Bingham stated (in R (Qunitavalle) v Secretary of State for Health supra in para. 8 at page 697) that

“The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.”

4.4.2 Conflict between central government and local authority – the decision to introduce CIL and the administration of CIL is dealt with by each local planning

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\(^2\) Hillingdon LBC v SSHCLG and McCarthy & Stone Lifestyles Limited [2018] EWHC 845 (Admin) at para 50

\(^3\) Development: Variation of condition….Decision date 6th March 2017 para 12

\(^4\) \([1999]\) 2 AER 791

\(^5\) \([2003]\) 2 AC 687 at page 700
authority. This can be the cause of difficulties if some charging authorities adopt a different construction of the CIL regime to that of central government. This has arisen with the application of the indexation provisions in the context of section 73 planning permissions and with the issue over whether a commencement notice need be served if residential extension exemption has been granted. Section 221 PA 2008 provides that the Secretary of State may give guidance to a charging authority “about any matter connected with CIL; and the authority must have regard to the guidance.” There have been very clear statements from the Ministry of Housing Communities and Local Government that a commencement notice is not needed in the case of a residential extension development subject to the exemption. That has not stopped some charging authorities continuing to treat the exemption as lost if no commencement notice is given. One outcome may be that the Ministry will seek to be joined as an interested party in any proceedings as happened with the judicial review proceedings concerning the application of the indexation provisions and reg. 128A. This is unsatisfactory and section 221 does not appear to be achieving its objective.

4.4.3 Ramsay approach - in R (oao Orbital Shopping Park Swindon Limited) v Swindon BC and Next plc\(^26\) an attempt was made to apply to the CIL regime the approach adopted with regard to taxing legislation beginning with \(W T\) Ramsay Ltd v Inland Revenue Commissioners; Eilbeck (Inspector of Taxes) v Rawling.\(^27\) Two planning applications had been made. One was to authorise the installation of a mezzanine floor in the shopping unit at the orbital Shopping Centre in Haydon Wick and the other for external works to the unit. Two planning permissions were granted. Applying the CIL regime to each no CIL liability would arise as the new mezzanine floor is not a development for the purposes of CIL\(^28\) and the second permission did not increase the floor space. Swindon Council sought to charge CIL on the basis that there was a single permission for a single development comprising both the developments authorised by the two permissions. It justified this by arguing that a purposive construction be applied with the court having “an eye on the real world” and that it would be wrong to adopt an arbitrary distinction between commercial and legal realities. Reliance was place on two tax cases to permit a composite transaction to be treated as a single transaction - Barclays Mercantile Business Finance Limited v Mawson (HM Inspector of Taxes)\(^29\) and MacNiven (HM Inspector of Taxes) v Westmoreland Investments Limited.\(^30\)

In the Barclays Mercantile case Lord Nicholls stated\(^31\):

“As Lord Steyn explained in Inland Revenue Commissioners v. McGuckian [1997] 1 WLR 991, p 999, the modern approach to statutory construction is to have regard to the purpose of a particular provision and interpret its language, so far as possible, in a way which best gives effect to that purpose. Until the Ramsay case, however, revenue statutes were “remarkably resistant to the new non-formalist methods of interpretation”. The particular vice of formalism in this area of the law was the insistence of the courts on treating every transaction which had an individual legal identity (such as a payment


\(^{27}\)[1982] AC 300

\(^{28}\)Reg. 6(1)(c) as to which see section [ ]

\(^{29}\)[2005] 1 AC 684 at [36]

\(^{30}\)[2003] 1 AC 311

\(^{31}\)Para. 28
of money, transfer of property, creation of a debt, etc.) as having its own separate tax consequences, whatever might be the terms of the statute. As Lord Steyn said, it was: 534 Tax Cases, Vo l. 76 “those two features—literal interpretation of tax statutes and the A formalistic insistence on examining steps in a composite scheme separately—[which] allowed tax avoidance schemes to flourish.”

He then went on to state32:

“The essence of the new approach was to give the statutory provision a purposive construction in order to determine the nature of the transaction to which it was intended to apply and then to decide whether the actual transaction (which might involve considering the overall effect of a number of elements intended to operate together) answered to the statutory description. Of course this does not mean that the courts have to put their reasoning into the straitjacket of first construing the statute in the abstract and then looking at the facts. It might be more convenient to analyse the facts and then ask whether they satisfy the requirements of the statute. But however one approaches the matter, the question is always whether the relevant provision of statute, upon its true construction, applies to the facts as found. As Lord Nicholls of Birkenhead said in MacNiven v. Westmoreland Investments Ltd. [2003] 1 AC 311, p 320, para 8: “The paramount question always is one of interpretation of the particular statutory provision and its application to the facts of the case.”

In the MacNiven case Lord Hoffman emphasised that the Ramsay principle was not an overriding legal principle but a principle of statutory construction. Importantly he stressed the limitations applicable in the following terms33:

“The limitations of the Ramsay principle therefore arise out of the paramount necessity of giving effect to the statutory language. One cannot elide the first and fundamental step in the process of construction, namely to identify the concept to which the statute refers. I readily accept that many expressions used in tax legislation (and not only in tax legislation) can be construed as referring to commercial concepts and that the courts are today readier to give them such a construction than they were before the Ramsay case. But that is not always the case. Taxing statutes often refer to purely legal concepts. They use expressions of which a commercial man, asked what they meant, would say "You had better ask a lawyer". For example, stamp duty is payable upon a "conveyance or transfer on sale": see Schedule 13, paragraph 1(1) to the Finance Act 1999. Although slightly expanded by a definition in paragraph 1(2), the statutory language defines the document subject to duty essentially by reference to external legal concepts such as "conveyance" and "sale". If a transaction falls within the legal description, it makes no difference that it has no business purpose. Having a business purpose is not part of the relevant concept. If the "disregarded" steps in Furniss v Dawson [1984] AC 474 had involved the use of documents of a legal description which attracted stamp duty, duty would have been payable.”

Patterson J. DBE in the Orbital Shopping case supra emphasised that there is no provision in planning law under which two planning permissions can be treated as one and nor is that such a provision in the CIL regime.34 On the contrary no discretion is

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32 Para. 32
33 Para. 58
34 Para. 54
conferred as to how planning permission is to be interpreted\textsuperscript{35} as it is mandated by regulations 2 and 5. In consequence there is no statutory provision to which the new tax approach could be applied. The learned judge rejected the contention that making two separate planning applications rather than a single combined planning application was a manipulation of the system and considered that if it was not the intention of the legislature to permit this then it is for the legislature to change it.\textsuperscript{36}

This judgment leaves little scope for the application of the line of authorities running from the Ramsay decision to the CIL regime. Patterson J. DBE stated in the Orbital Shopping case supra “in my judgment, the statutory intent of the CIL Regulations is to give certainty to developers and the local planning authority as to when and how the liability for CIL will arise.”\textsuperscript{37} Certainty is best achieved by applying the provisions in the regime rather than trying to introduce new concepts by means of statutory construction.

The learned judge did also rely on the well-known dicta of Lord Wilberforce in Vestey v Inland Revenue Commissioners even though such dicta no longer has such force in tax cases:\textsuperscript{38}

"Taxes are imposed upon subjects by Parliament. A citizen cannot be taxed unless he is designated in clear terms by a taxing Act as a taxpayer and the amount of his liability is clearly defined. A proposition that whether a subject is to be taxed or not, or, if he is, the amount of his liability, is to be decided (even though within a limit) by an administrative body represents a radical departure from constitutional principle. It may be that the revenue could persuade Parliament to enact such a proposition in such terms that the courts would have to give effect to it: but, unless it has done so, the courts, acting on constitutional principles not only should not, but cannot, validate it."

\textsuperscript{35} Para. 59  
\textsuperscript{36} Para. 73  
\textsuperscript{37} Para. 62  
\textsuperscript{38} [1980] AC 1148 at page 1172
B. Putting CIL regime in place

5.1 Overview - CIL does not apply automatically in all areas. It has not been introduced as a normal tax applicable uniformly to the whole country. Each LPA has to elect to introduce it to the area for which it is responsible. It will decide the rates at which it is applied in that area. This requires the authority to set in place a charging schedule and up until 1st September 2019 also required it to issue a reg. 123 list of infrastructure projects. The former will set out the rate or rates applicable to all or certain specified types of development for which the authority gives or is deemed to give permission and this will be at a specified rate per square metre. The reg. 123 list set out the projects or type of infrastructure which are to be financed by the authority exclusively from the CIL receipts. It is not simply a matter of publishing such a schedule and list. There is first a demanding procedure to be gone through by the authority.

5.1.1 Balance to be struck - regulation 14 of the 2010 Regulations requires a Charging Authority to strike the appropriate balance between the “desirability of funding from CIL (in whole or part) the actual and expected estimated total cost of infrastructure required to support the development of its area” and “the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area”. The rate set should “not threaten the ability to develop viably the sites and scale of development identified in” the relevant Local Plan (in England), the Local Development Plan (in Wales) and the London Plan (in London).

5.1.2 Absolute obligation - until the 2014 Regulations the requirement was that the charging authority “must aim to strike what appears to the charging authority to be an appropriate balance between” the two stated objectives. This permitted a subjective element. With effect to authorities which have not published a draft charging schedule prior to 24th February 2014 those words have been deleted and such authorities are now required to strike such a balance rather than aim to and it is no longer enough that the charging authority considers that it has struck the required balance.

5.1.3 Evidence - the preliminary draft charging schedule has to be backed by evidence which is subjected to scrutiny by an examiner who has to be satisfied that the authority has complied with the requirements imposed on it. The charging authority must be able to justify how the proposed CIL rates will contribute to the implementation of the local plan and support development within the area. The authority will need to explain the appropriate balance it has struck; justify that balance; explain and substantiate how the levy will contribute to its local plan and also “support the development of their area”. The concern is that some rates may be set which will affect the financial viability of developments particularly residential developments. It is not intended that CIL should be a means by which the authority takes a share of profits from highly profitable developments.

5.1.4 Draft reg. 123 list of infrastructure - up until 1st September 2019 as well as providing a draft charging schedule when setting the CIL rates a charging authority has

39 No reg. 123 Infrastructure list is required after 31st August 2019 due to reg. 11 of the 2019 (No. 2) Regulations
40 See section 5.5 below
41 Reg. 14(2) of the 2014 Regulations
42 Reg. 11 of the 2019 9No. 2) Regulations
also been expected to put forward a draft reg. 123 list which it intends to publish as its infrastructure list (see section 5.5 below) as part of the relevant evidence for consideration and examination.\(^43\) This will not be required if the publishing of the draft charging schedule pursuant to reg. 16 does not occur until on or after 1\(^{st}\) September 2019.\(^44\)

5.1.5 **Transitional provisions** - the changes as regards the balance to be struck and the draft reg. 123 list introduced by the 2014 Regulations did not apply if the charging authority had already published a draft Charging Schedule before 24\(^{th}\) February 2014.\(^45\) The same applies as regards the changes in the 2019 (No 2) Regulations which do not apply to authorities which have published a draft charging schedule before 1\(^{st}\) September 2019.\(^46\)

5.2 **Charging authority** –

5.2.1 **single charging authority** - the charging authority will be the local planning authority\(^47\) with the exception of the Broads Authority and the Isles of Scilly Council who are the only charging authorities for their areas. As mentioned above there are around 360 such authorities. In London the Mayor of London is an additional charging authority in addition to the local borough councils. This is changing as a result of the Localism Act 2011 which confers the power on the Mayor of London to create Mayoral Development Corporations (“MDC”) to act as a local planning authority and thus become a charging authority for the purposes of CIL in place of the local borough council.\(^48\) This power has been exercised in relation to the Olympic Park and to an area around Old Oak Common. The Mayor will also be able to carry out the functions of a charging authority on behalf of a MDC having initiated the establishment of the MDC but prior to that establishment.\(^49\) Where a London borough council granted planning permission and then a MDC is established the CIL payable due to the development authorised by that planning permission will be received by the borough council.\(^50\) For such purposes the borough council will remain the charging authority and the collecting authority as regards that CIL.

Any functions of a charging authority save for the excluded functions can be exercised by a contractor authorised by the charging authority.\(^51\) This allows the contracting-out of functions which relate to the setting, charging, collection, enforcement and spending

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\(^{43}\) Reg.14(5) added by reg. 5(3)(b) 2014 Regulations
\(^{44}\) Para. 11 and 13 of the 2019 (No. 2) Regulations
\(^{45}\) Reg. 14(2) of the 2014 Regulations
\(^{46}\) Para. 13(1) of the 2019 (No. 2) regulations
\(^{47}\) See section 21.8 below
\(^{48}\) See new reg. 11A 2010 Regulations
\(^{49}\) Reg. 63A
\(^{50}\) See new reg. 11A 2010 Regulations
\(^{51}\) Reg. 2 of the Local Authorities (Contracting Out of Community Infrastructure Levy Functions) Order 2011/2918
of the Community Infrastructure Levy. The excluded functions are key functions concerning the approval of the declaration that the drafting requirements have been satisfied when submitting the draft charging schedule for examination, the approval of a charging schedule, determining that the charging schedule ceases to have effect and an application for the issue of a warrant of commitment against any debtor. Such matters concerning the charging schedule require a meeting of the authority under the Planning Act 2008 save in the case of the Mayor Of London and so cannot be delegated. Any such contractor will act as the agent for the authority and steps taken must be taken in the name of the authority.

The objective with this order is to allow “levy authorities to contract out functions will enable a competitive bidding process between suppliers, with the attendant potential to drive costs of services down and standards up. The objective is to support authorities and the Mayor to meet their duty to provide best value to the public. Levy authorities will be able to choose which, if any, of these functions they deem it appropriate to contract out.” Some authorities such as Wakefield have outsourced the administration of the CIL regime.

5.2.2 Joint authorities – some authorities have combined to produce a joint infrastructure strategy such as the South Worcestershire Councils. It is possible for each of such authorities to introduce CIL through a joint examination and then to apply some of their CIL receipts for infrastructure in the wider area utilising the power in reg. 59(2) to apply CIL outside the individual authority’s area. Each of such joint authorities has to still charge its own CIL and the joint authority cannot charge a levy itself.

An alternative which has been proposed in the last few years but has yet to be implemented is for a Strategic Infrastructure Levy to be imposed by any of the Combined Authorities which currently number ten or by Economic Prosperity Boards. This will apply only to England. It is envisaged that this will be along the lines of the successful Mayor of London CIL charge focused on a particular infrastructure project at a fixed rate lower than the normal CIL rates. In Wales Strategic Development Plans are being developed along with Strategic Planning Panels pursuant to section 4 of the Planning (Wales) Act 2015 with such plans far advanced in respect of South East Wales and Cardiff Capital Region.

5.3 Collecting authority - Normally the charging authority will be its own collecting authority but it is possible for this to be undertaken on behalf of the charging authority by another body such as the Homes and Communities Agency, an urban development

52 Reg. 3 of the Local Authorities (Contracting Out of Community Infrastructure Levy Functions) Order 2011/2918
53 Reg. 4 of the Local Authorities (Contracting Out of Community Infrastructure Levy Functions) Order 2011/2918
54 Regulations 5 to 8 as amended by reg. 12(1) of 2019 (No. 2) Regulations with effect from 1st September 2019 in relation to reg. 6 of the 2011 Order (enforcement).
55 Para. 7.1 of the Explanatory Memorandum in relation to the Order
58 See Designating a SDP Boundary and Establishing a Strategic Planning Panel March 2019
59 Reg. 10(1)
corporation or an enterprise zone authority. In London the local borough council will be the collecting authority for the Mayor of London’s CIL and that is the case even if the borough council has not set up its own CIL regime. Care has to be taken to check whether the charging authority is also the collecting authority because the regulations distinguish between the charging and collecting authority – for example, notices often have to be given to the collecting authority and if this body is not the charging authority then service on the charging authority will not be effective.

For a separate collecting authority to be able to function properly it will have to be provided with the necessary information. In particular planning details must be passed to the collecting authority within 14 days of the grant of planning permission. The charging authority must supply the collecting authority with information identifying the planning permission, the planning applicant, the owner, the address of the development site, the date that development is first permitted and any other information it has which is needed to calculate the chargeable amount. This does not apply in respect of developments under general consent. The collecting authority has power to request from the charging authority any information that it requires in order to carry out its CIL functions. The charging authority must comply with such a request within 21 days. Even without such a request the charging authority is authorised to volunteer such information to the collecting authority. The collecting authority is authorised to use information obtained under other enactments unless it was obtained by a committee in its capacity as a police authority or in its capacity as an employer. As with charging authorities the functions of a collecting authority may be contracted out save for an application for the issue of a warrant of commitment against any debtor.

5.4 Charging schedule –

5.4.1 Objective - the schedule of CIL rates for the particular area is intended to be based on the up to date development plan for the area. The charging authority has to put forward evidence to justify the CIL rate or rates that it wishes to charge. The authority has to balance raising the funding required for the infrastructure needs of the area which are to be paid for from the CIL revenue as against not putting at serious risk the overall development of the area. This is provided in reg. 14(1) by requiring the charging authority to strike “an appropriate balance between - (a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and

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60 Reg. 10(5)
61 Reg. 10(3)
62 Reg. 77(1)
63 Reg. 77(3)
64 Reg. 78(1)(4)
65 Reg. 78(2)
66 Reg. 78(3)
67 Reg. 79
68 Reg. 2 of the Local Authorities (Contracting Out of Community Infrastructure Levy Functions) Order 2011/2918 see discussion in section 5.2
69 Reg. 3(d)
70 Reg. 14
expected sources of funding; and (b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.”

Account has to be taken of other funding sources which will be principally core government funding for infrastructure and funding from anticipated section 106 agreements and highway improvement schemes. Up and until 1st September 2019 section 106 obligations will have been subject to the restrictions in regulations 122 and 123 of the 2010 Regulations but not from then on.\(^{71}\) As a result of the changes introduced by reg. 12 of the 2014 Regulations the restriction related to the reg. 123 list of infrastructure was applied to section 278 highway agreements.\(^{72}\) However, on and after 1st September 2019 this limitation no longer applies. Account may also be taken of the actual and expected administrative expenses in connection with CIL to the extent that such expenses are capable of being funded from CIL receipts in accordance with reg. 61.\(^{73}\) In addition the London boroughs must also take into account the Mayoral CIL to be charged as well when assessing the effect on economic viability.\(^{74}\)

5.4.2 Infrastructure – the non-exclusive meaning of infrastructure contained in section 216(2) Planning Act 2008 includes roads and other transport facilities, flood defences, schools and other educational facilities, medical facilities, sporting and recreational facilities (such as park improvements or leisure centres) and open spaces. CIL is to be raised for the purpose of “supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure”.\(^{75}\) This amendment ensures that the operation and maintenance of infrastructure can be funded from this revenue source and it is not a pre-condition that the provision of such infrastructure should have been funded by CIL receipts. It is, therefore, possible to apply CIL receipts in funding a very wide range of facilities. It will cover, for example, play areas, parks, academies, free schools and police stations. It does not include training and the acquisition of skills on which some authorities have wanted to apply CIL nor will it include funding community events.

Importantly what is currently deliberately excluded from this definition is affordable housing so that the monies raised by CIL cannot be applied directly for that purpose and reliance has to be placed on section 106 planning obligations.\(^{76}\) It has been suggested that CIL receipts should be capable of being applied to fund affordable housing but no proposals have been put forward to achieve this. Affordable housing may have an indirect effect on CIL. Greater emphasis has been placed on the impact of the proposed CIL rates on affordable housing targets during the examination stage of the introduction process. Differential rates are being fixed taking into account the amount of affordable housing in a residential development. The suggestion that a meaningful proportion of such receipts be passed to neighbourhood bodies has been put into effect in the 2013 Regulations and these funds are not subject to such limitation and may be applied with regard to affordable housing.\(^{77}\)

\(^{71}\) See section 25 below  
\(^{72}\) See section 25.8 below  
\(^{73}\) Reg. 14(2)  
\(^{74}\) Reg. 14(3)  
\(^{75}\) Section 216(1) as amended by section 115(5)(b) of the Localism Act 2011  
\(^{76}\) Reg. 63 deleted paragraph (g) from the definition of infrastructure in section 126(2) of the Planning Act 2008  
\(^{77}\) See section 5.6.2 below
As regards Mayoral CIL 1 education and health were specifically excluded so that it could not be used to fund such projects and it was focused on transport and in particular Crossrail. Mayoral CIL 2 will assist in completing the funding for Crossrail.

5.4.3 Procedure – it is not proposed in this guide to go through the process of setting the CIL rates in detail as it is a matter principally for the authority and for those developers and concerns that are able to fund involvement in the statutory process. For example, a major retailer intervened with the drafting of the charging schedule by Poole Council because it objected to the higher CIL rate proposed for large supermarkets. The intervention resulted in the removal of that differential rate so that all retailers were treated the same regardless of size. Poole did not seek to change that in the review of its Charging Schedule. For most developers this will not be a realistic option. In any event the outcome in R (on the application of Fox Strategic Land & Properties Limited) v Chorley BC78 will operate as a deterrent to challenging charging schedules in the Courts. It is not just challenges during the examination of a draft Charging Schedule which may hold up the introduction of CIL. Challenges to a draft Local Plan may have the same effect as has occurred.

5.4.3.1 summary –

(a) draft charging schedules published under reg. 16(1) before 1st September 2019 - The process for preparing a charging schedule was set out in para. 2.2.1.1 February 2014 Guidance and involves:-

(i) evidence arranged by authority on which to base draft charging schedule;
(ii) preliminary draft charging schedule prepared;
(iii) preliminary draft charging schedule published for consultation;
(iv) consultation takes place over a minimum period of four week (the proposal to increase this to six weeks in the 2013 consultation was not taken up)79;
(v) draft charging schedule prepared taking account of representations received under consultation80;
(vi) draft charging schedule published81;
(vii) period for further representations to authority82;
(viii) public examination of draft charging schedule and recommendations made by examiner83;
(ix) examiner’s recommendations published;
(x) examiner’s recommendations considered by authority84;
(xi) approval of charging schedule and publication85.

(b) draft charging schedule under reg. 16(1) published after 1st September 2019 – this will cover a preliminary draft charging schedule prepared under reg. 15 but which had

78 [2014] EWHC 1179 (Admin) as to which see section 5.4.3.3 below
79 Reg. 15
80 Reg. 17
81 Reg. 16
82 Reg. 16
83 Reg. 19 to 22
84 Reg. 23
85 Reg. 25
not been published under reg. 16(1) before 1st September 2019. In such circumstances any representations made to the authority must be taken into account by the authority before it published the draft charging schedule under reg. 16(1).

The original proposals for amendment in 2018 proposed the possibility of removing the need for two consultations in the process and replacing it by the charging authority deciding on the level of engagement that should take place. The provisions in 2019 (No. 2) Regulations compromise and seek to streamline the process by reducing the consultations from two to one. Reg. 15 is omitted. Now instead of consulting on the preliminary charging schedule under reg. 15 the charging authority must publicise the charging schedule and other documents as before in accordance with reg. 16(1) but without a preliminary consultation and at that stage invite representations from certain specified persons and bodies before submitting the draft charging schedule to examination.

5.4.3.2 Steps in process –

(a) draft charging schedules published before 1st September 2019 - the authority must first prepare a preliminary draft charging schedule and up until 1st September 2019 was encouraged to also prepare a draft reg. 123 list of infrastructure both with accompanying supporting evidence. Such a preliminary draft charging schedule must contain (a) the name of the charging authority; (b) the rates (set at pounds per square metre) at which CIL is to be chargeable in the authority's area; (c) where a charging authority sets differential rates in accordance with regulation 13(1)(a), a map which - (i) identifies the location and boundaries of the zones, (ii) is reproduced from, or based on, an Ordnance Survey map, (iii) shows National Grid lines and reference numbers, and (iv) includes an explanation of any symbol or notation which it uses; and (d) an explanation of how the chargeable amount will be calculated. Subject to this it was and still is for a charging authority to determine the format and content of a charging schedule.

The charging authority has to then consult on the draft charging schedule with the specified consultation bodies, local residents and businesses. Any representations received had to be considered and then a fresh draft charging schedule prepared. Before submitting this for examination the charging authority had to first make it available for inspection with the relevant evidence and a statement of the representations procedure; publish it on its website; send copies to each of the consultation bodies; and take out a local advertisement setting out the statement of the representations procedure and where the draft charging schedule and other documents would be available for inspection.

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86 Reg. 13(1) of 2019 (No. 2) Regulations
87 Reg. 13(2) of 2019 (No.2) Regulations
88 Reg. 3(3) of 2019 (No. 2) Regulations
89 Reg. 16(1A) inserted by reg. 3(4)(b) of 2019 (No. 2) Regulations
90 Reg. 12(2)
91 Reg. 12(1)
92 Previously reg. 15 but by reg. 16(2) (inserted by reg. 3(4)(c) of 2019 (No. 2) Regulations) as from 1st September 2019 save as regards draft charging schedule published before that date (reg. 13(1) of 2019 (No. 2) Regulations.
93 Reg. 16(1)
This would enable representations to be made during a period of at least four weeks\(^{94}\) which it was proposed should be extended to six weeks but which suggestion was not taken up. The authority had the power to select a longer period. Then unless withdrawn\(^{95}\) the draft schedule, the draft reg. 123 list of infrastructure, the relevant evidence, and the representations made with a summary of the main issues raised by the representations went to an independent examiner to be considered at a public hearing conducted in a manner directed by the examiner.\(^{96}\)

The examiner may recommend one of three courses - approval, approval with specific modifications or rejection on the basis that the legislative requirements have not been complied with. In a number of cases the examiner’s report has required a rethink by the authority. If there were to be changes or a new schedule then the process has to be gone through again. The council must then approve the draft charging schedule. Having done so the authority must then publish it on the authority’s website; make it available for inspection at its principal office and such other places as it considers appropriate; give notice by local advertisement; notify approval to persons who requested notification; and send copy to each of relevant consenting authorities.\(^{97}\) The charging schedule as well as containing the information set out above in respect of the draft charging schedule must state the date on which it was approved and the date it takes effect plus a statement that it has been issued, approved and published in accordance with the CIL Regulations and Part 11 of the PA 2008.\(^{98}\)

As mentioned above with authorities which have not published a draft charging schedule before 24\(^{th}\) April 2014 a draft reg. 123 infrastructure list should also be included in the process.\(^{99}\) Authorities which have published a draft charging schedule before that date do not need to as it would add an unexpected burden to the process. The reason for the change was so the effect of the list could be taken into account. This change restricted the flexibility of the authority with regard to what appears on the list. However, it was reaffirmed that there is no requirement that CIL receipts can only be applied for infrastructure appearing on that list so that authorities remain free to apply CIL receipts in other ways provided that it is on infrastructure whether or not it appeared on the reg. 123 list.

(b) draft charging schedule published after 1\(^{st}\) September 2019 – the intention behind the provisions in the 2019 (No. 2) Regulations with regard to the introduction of CIL in an area is to encourage such introduction by authorities that have not yet done so by speeding up the process and streamlining it.\(^{100}\) The previous requirement that there should be two rounds of consultation has been removed. A more flexible process is provided which confers on the local authority a considerable degree of discretion. For

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\(^{94}\) Reg. 16  
\(^{95}\) Reg. 18  
\(^{96}\) Reg. 21  
\(^{97}\) Reg. 25. For these purposes the relevant consenting authorities are (a) the Secretary of State, (b) the Infrastructure Planning Commission), (c) the Mayor, if the charging schedule has been approved by a London borough council, (d) each London borough council, if the charging schedule has been approved by the Mayor, (e) each county council whose area includes any part of the area to which the charging schedule applies, and (f) any other body exercising the functions of a local planning authority (within the meaning of TCPA 1990) in the area to which the charging schedule applies (reg. 11(1)).  
\(^{98}\) Reg. 12(3)  
\(^{99}\) See section 5.1 above  
\(^{100}\) Para. 13 of the MHCLG’s Government response to reforming developer’s contributions June 2019
example, a proposed minimum period of consultation has not been included in these regulations.

As discussed above the consultation in relation to the preliminary charging schedule provided for in reg. 15 has been removed by omitting reg. 15 altogether\(^{101}\) so that instead of the process starting with a preliminary charging schedule there will be a draft charging schedule\(^{102}\) which together with the relevant evidence and a statement of the representations will be published and made available in accordance with reg. 16(1) as discussed in (a) immediately above save that the requirement to give a local advertisement notice is deleted.\(^{103}\) A reg. 123 infrastructure list is no longer needed. The definition of consulting bodies to which the draft charging schedule and the other documents is to be sent has been removed from reg. 15 to reg. 16.\(^{104}\) It will leave the definition for Wales unchanged in reg. 15. As regards the new definition in reg. 16 for England a neighbourhood forum has been added to the list of consulting bodies.\(^{105}\) This brings the CIL consultation into line with Local Plan consultation requirements.

At this stage the charging authority must invite representations on the draft charging schedule from such of the following as the authority considers appropriate:- (a) persons who are resident or carrying on business in its area; (b) voluntary bodies some or all of whose activities benefit the charging authority’s area; and (c) bodies which represent the interests of persons carrying on business in the charging authority’s area.\(^{106}\) The previous minimum period of four weeks in which representations can be made is deleted.\(^{107}\) It is now expressly required that the charging authority must take into account any representations received before submitting the draft charging schedule.\(^{108}\) A summary of how the representations received were taken into account has to be provided to the examiner as well as informing the examiner of the number of representations with a summary of the main issues raised by them.\(^{109}\)

It is proposed that further guidance on consultation will be given in planning guidance to cover such matters as the importance of a minimum four week consultation period for substantive changes.\(^{110}\) Further statutory guidance will also be provided for Examiners, requiring them to consider whether appropriate levels of consultation have been undertaking by the local authority.

5.4.3.3 Challenge to charging schedule - the setting of a charging schedule may be challenged by judicial review. Such a challenge was made in R (on the application of Fox Strategic Land & Properties Limited ) v Chorley BC\(^{111}\) to the CIL rate of £65 fixed in relation to residential developments in charging schedules approved and published by Chorley BC, South Ribble BC and Preston BC. The applicant was a large landowner in the area. The challenge was made on the ground that the examiner’s approach was irrational, based on a misunderstanding of development costs and had failed to take

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\(^{101}\) Reg. 3(3) of 2019 (No. 2) Regulations
\(^{102}\) Reg. 14(4) as amended by reg. 3(2) of 2019 (No. 2) regulations
\(^{103}\) Reg. 3(4)(a)
\(^{104}\) Reg. 16(2) inserted by reg. 3(4)(c) of 2019 (No. 2) Regulations
\(^{105}\) Reg. 16(2)(b) and neighbourhood forum “means an organisation or body designated as such under section 61F(3) of TCPA 1990”.
\(^{106}\) Reg. 16(1A) added by reg. 3(4)(b) of 2019 (No. 2) Regulations
\(^{107}\) Reg. 17(3) omitted by reg. 3(5)(a) of 2019 (No. 2) Regulations
\(^{108}\) Reg. 17(5) inserted by reg. 3(5)(b) of 2019 (No. 2) Regulations
\(^{109}\) Reg. 19(1)(b)(i) amended by reg. 3(7)(a) of 2019 (No. 2) Regulations
\(^{110}\) Para. 14 of the MHCLG’s Government response to reforming developer’s contributions June 2019
\(^{111}\) [2014] EWHC 1179 (Admin)
account of the impact of a new development policy to be introduced regarding dwellings in 2016. It failed on all grounds. The task was an uphill struggle. It was not a rehearing of the examiner’s decision but rather the applicant had to show that the decision was outside the bounds of a reasonable decision-maker. In this case it was held that the decision of the examiner in recommending approval of the draft charging schedule was not outside those bounds. Mr. Justice Lindblom described the allegation of irrationality as particularly ambitious. Much as developers and landowners will dislike the CIL rates being set for residential development it will be difficult to successfully challenge any charging schedules approved by an authority following a properly conducted examination.

This was confirmed by the challenge to the Charging Schedule set by Tandridge DC in Oxted Residential Limited v Tandridge DC. The grounds for the challenge in the judicial review proceedings was that the Tandridge District Core Strategy had been adopted in October 2008 under a national planning policy for housing land supply which had been superseded in March 2012 by the NPPF. It was contended that if there is no up to date local plan then it is impossible to make a rational assessment of the need for infrastructure in the authority’s area. The argument failed as the charging authority is free to decide what constitutes appropriate available evidence for the purposes of setting the CIL rates as had been illustrated by the Fox Strategic case supra. If there was no up to date local plan then a pragmatic course of action was to proceed and to revise when an up to date local plan has been approved bearing in mind that there is no statutory obstacle to such a course. This decision as with the decision in the Fox Strategic case serves to emphasise how hard it will be to successfully challenge an approved Charging Schedule.

As regards the argument that account was not but should have been taken of increased development costs that would result from a proposed change in 2016 to the development plan this was not accepted. The need for a charging authority to keep its charging schedule under review is emphasised in the official guidance. The charging authority needs to ensure that “levy charges remain appropriate over time”. There are no rules as to when such reviews should be undertaken but if there is to be a substantive review of the Local Plan then it is suggested in the CIL Guidance that it would be sensible to link a review of the charging schedule with that review. The need on the part of the charging authority to monitor and when appropriate review the CIL rates meant that in the Chorley BC case it was open to the authorities and the examiner to disregard in 2013 the proposed future increase in development costs in 2016. Such reviews have in fact started to happen. For example, Poole BC was one of the first authorities to introduce CIL and has now carried out a formal review and introduced revised CIL rates.

5.4.3.4 Taking effect – the charging schedule will take effect on the day specified in the schedule. This cannot be earlier than the day after the day on which it is

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112 Para. 101
113 [2016] EWCA Civ 414
114 Para. 58
115 Para. 59
116 para. 2.2.6.3 February 2014 CIL Guidance
117 Reg. 28(1)
It will continue in effect until the beginning of the day on which the authority determines that it should cease to have effect or the end of the day before the day a revised charging schedule issued by the authority takes effect. Prior to 1\textsuperscript{st} September 2019 in the event that it determines that the charging schedule should cease to take effect it must publish a statement of that fact on the authority’s website; give notice by local advertisement; and notify the relevant consenting authorities. More demanding requirements have been imposed by reg. 28A as discussed in section 5.4.9 below. In the case of planning permission granted before the charging schedule ceases to have effect no CIL liability will be payable if the development authorised by the planning permission is not commenced on or before the day on which the charging authority determines the charging schedule is to cease to be effective.

5.4.3.5 Correction of error in charging schedule - a correctable error in an approved charging schedule can be corrected. A correctable error is one which will have no effect on the amount of CIL chargeable in respect of any given chargeable development in the area or would have that effect but is required in order to give effect to the modifications of the draft charging schedule recommended by the examiner. The correction must be made either at the volition of the authority or at the written request of any person. Any such correction must be within six months of the approval of the charging schedule. As soon as practicable after making the correction the authority must issue a correction notice specifying the correction; send a copy of the correction notice to the person, if any, who requested the correction; publish the corrected charging schedule and the correction notice; make both available for inspection at its principal office and any other appropriate places; and if the error could affect the amount of CIL chargeable give notice by local advertisement, send a copy of the correction notice to persons who had requested to be notified of the approval of the charging schedule and to the relevant consenting authority.

The correction takes effect from the date the correction notice is issued. If as a result of a correction the CIL liability in respect of a chargeable development is decreased then the collecting authority must notify the affected person (the person liable to pay the CIL liability if the development has commenced or if the development has not then the persons on whom the liability notice is served) and recalculate the CIL liability and if available any relief. Any recalculation of relief although subject to the corrected charging schedule will be on the same basis as when originally calculated using the information available at that time.

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\(^{118}\) Reg. 28(2)
\(^{119}\) Reg. 28(3)
\(^{120}\) Reg. 28(4) and relevant consenting authority is defined by reg. 11(1) (see section 5.4.3.2)
\(^{121}\) Reg. 129(2)
\(^{122}\) Reg. 26
\(^{123}\) Reg. 26(2)
\(^{124}\) Reg. 26(3)
\(^{125}\) Reg. 26(4)
\(^{126}\) Reg. 26(5) and relevant consenting authority is defined by reg. 11(1) (see section 5.4.3.2)
\(^{127}\) Reg. 27(1)
\(^{128}\) Reg. 27(4)
\(^{129}\) Reg. 27(2) and (3)
\(^{130}\) Reg. 27(4)
5.4.4 Differential rates –

5.4.4.1 General - there are no uniform CIL rates applicable across the country and each charging authority must set its own rates and thus they will differ greatly from area to area. Each area will have its own funding requirements for future infrastructure expenditure, own anticipated infrastructure projects and expected types of development. In addition each authority can set differential rates. There is no common approach with differential rates. A few authorities may go for a single rate regardless of location or type of development. Many more will have differential rates depending on the type of development being carried out and, or alternatively, dependent on the part of the area in which the development is to be carried out. Again there will be no uniformity as to the differing types of development that are to be charged at different CIL rates although there is a general focus on residential and retail developments. It has been emphasised in the official guidance that differential rates “should not be used as a means to deliver policy objectives” but must be justified by reference to robust evidence on the economic viability of development. The different CIL rates currently being charged are set out in the First Appendix and a glance through that will show the variety that there is.

(a) Original basis for differing rates - until the 2014 Regulations it had been possible to have different rates set by reference to “different zones” and “different intended uses of development”. Charging authorities have made great use of the ability to have different CIL rates for different types of user or different areas but without there being a common approach. For example, some, such as Bristol, have imposed a higher CIL rate for student residential accommodation than for ordinary residential development whilst others, such as Exeter, have a lower rate for student residential accommodation. Although Exeter is now embarking on a review of its charging schedule with a view to addressing the 50% lower CIL rate for student accommodation as compared to residences. Separate and higher CIL rates for student accommodation has been a strong trend.

With the original provisions it made it possible to resist different rates by reference to different sizes of development. Such a differentiation was attempted in particular with regard to retail developments. In some cases it was accepted by the examiner but in some areas the authority had to withdraw the proposed differential rate. Both Wycombe and Plymouth have different CIL rates for retail development dependent on the size of the development. For example, in Wycombe there is a CIL rate of £200 psm for convenience based supermarkets and retail warehouses whilst other retail developments are chargeable at the CIL rate of £125 psm.

It had been emphasised in official guidance that such differences must be justified “by reference to the economic viability of development” of the different areas or the different types of development. In the guidance the point was made that a major strategic site may be a zone for these purposes if justified by the evidence. It was said in the 2014 Consultation paper that “differential rates cannot currently be set in relation to the size of a development.” Even then this last statement needed qualifying. As stated above differential rates have been set by reference to the size of a development.

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131 reg. 13(1)(a) and (b)
132 Para. 21
For example as set out above different rates have been fixed dependent on the size of a retail unit. This has been possible because the relevant examiner has accepted the evidence supporting the conclusion that the different types of retail development constitute different markets. With the changes effected by the 2014 Regulations such evidence is no longer needed albeit that evidence will still be required to justify the difference on the basis of economic viability and to show that it does not give rise to notifiable State Aid.

(b) extended basis for differing rates - the 2014 Regulations\(^{133}\) extended the ways in which differential rates might be set to include different rates set by a charging authority by reference to the intended gross internal area of the development\(^{134}\) and by reference to the intended number of dwellings or units to be constructed or provided.\(^{135}\)

(i) Retail - the most obvious type of development that was affected by this change was retail development. Attempts to introduce higher CIL rates for new supermarkets had prior to that change been vigorously opposed. The ability to differentiate by reference to gross internal floor area removed any doubt as the justification of such approaches by authorities. As a result it is now common for authorities to have a number of CIL rates relating to retail use dependent on location, internal floorspace and type of goods sold. It is left to each authority to select the size of unit which will qualify as a supermarket. Inevitably there is no uniformity. Presently the minimum area varies between 280 square metres (such as Bexley, Sandwell and Bath and North East Somerset) and 2000 square metres (such as Reading, Norwich and Broadlands) with a number in between such as Peterborough (500 sqm) and Plymouth (1000 sqm). Many authorities have their own definitions for superstores, supermarkets and retail warehouses. Hambleton’s Charging Schedule contains not just a definition but also then goes on to set out the general characteristics of a supermarket. Tandridge distinguishes between convenience retail (rated at £100) and comparison retail (nil rated). This is a distinction also employed in Richmond’s Charging Schedule.

(ii) Residential - differentiating by reference to the number of dwellings and units has been adopted as a method by some authorities. For example, there can be different rates dependent on the number of dwellings constructed pursuant to a planning permission and this can be further elaborated by reference to the amount of affordable housing included in the development. Peterborough and Spelthorne BC both distinguish between residential developments of less than fifteen units and those with fifteen or more. Peterborough also had a separate rate for apartments. A similar distinction is made by Dartford BC but in addition with a lower rate for affordable housing.

(iii) Special types of accommodation – some authorities have introduced further refinements. With some student housing has a special CIL rate separate from the general residential CIL rate. The CIL rate can be high. For example in one of the zones in Camden it is £400. Those authorities which have introduced CIL later have gone further and fixed differential rates distinguishing between student housing let at market rent and those at less than market rent. This includes Bath and North East Somerset, Tower Hamlets and Southwark. Each has its own definition of what constitutes a letting

\(^{133}\) Reg. 5(2) of the 2014 Regulations
\(^{134}\) Reg. 13(1)(c)
\(^{135}\) Reg. 13(1)(d)
at less than market value but all will require there to be a requirement relating to it in a section 106 agreement.\textsuperscript{136}

Some authorities have introduced special CIL rates for sheltered housing, retirement homes, residential care accommodation and extra care housing. Examples are the Charging Schedules established by Bracknell Forest and Wokingham. Some will refer to use classes for this purpose whilst others will have their own special definitions such as Dacorum which carefully formulates what will constitute a retirement home for these purposes.\textsuperscript{137} It will be necessary to consider each charging schedule as the definitions for such types of accommodation are not identical.

(iv) Other types of development – in many Charging Schedules there is clearing up group at the end described as “all other types” of development or use. This will usually be nil rated. In Lewisham there is catch all rate for all other use classes set at £80 psm which may cause unexpected problems for some developments which are not within the separately rated classes of residential or class B (commercial office and industrial).

(c) “Keep it simple” - there has been a strong trend for each authority to set rates which are particular to its area and different from all other areas. Many of the charging schedules have contained complex sets of rates. The official guidance is that charging authorities should seek to avoid “undue complexity” and limit the permutations of different charges set within the authority’s area. One reason is to reduce the risk that the differential rates will not be State aid compliant.\textsuperscript{138} It has also been emphasised that differential rates “should not be used as a means to deliver policy objectives”.\textsuperscript{139} For developers operating in a number of areas or nationwide the differences in rates will be an inconvenience and will require considerable thought to be given to the impact of potential CIL liabilities dependent on the location of a particular development site.

(d) Emergency services - it is to be expected that authorities will want to ensure that developments for emergency services will not be subject to anything other than a zero rating for the purposes of CIL. However, this is not always the case. Brent has a CIL rate of £40 psm for fire and police stations. This rate also applies to water and waste infrastructure.

5.4.4.2 Use –

5.4.4.2.1 Meaning - one basis for differential CIL rates is by reference to “different intended uses of development”.\textsuperscript{140} There is no definition of “use” for these purposes. It has been argued that it means the use classes in the Town and Country Planning Act (Use Classes) Order 1987 (“Use Classes Order”). This is not correct. This is a point which has been made in the official guidance (the most recent being para. 2.2.2.6 of the February 2014 Guidance) in which the point is explicitly made that “use” is not tied to the meaning in the Planning Act (Use Classes) Order. It was proposed to clarify this point to put it beyond doubt in the 2014 Regulations but that opportunity was not taken. Subject to the case of retail developments it is to be expected that many CIL rates will

\textsuperscript{136} See Appendix 1
\textsuperscript{137} See Appendix 1
\textsuperscript{138} See para. 5.4.4.6 below
\textsuperscript{139} Para. 2.2.2.6 February 2014 CIL Guidance
\textsuperscript{140} Reg. 13(1)(b)
be set by reference to the use classes in the 1987 Order but this is not a requirement. The extent of the classes in the Use Classes Order can be wide and the boundaries uncertain. This can mean that charging CIL by reference to a use class may pose problems because the class is not precise enough.

5.4.4.2.2 Retail - The main proponent of the argument that the meaning of “use” is linked to the Use Classes Order had been the large retailers and in particular the supermarkets. The reason for this was their desire to prevent authorities establishing different CIL rates by reference to size of retail units. If the meaning of “use” is limited in the manner argued then there would only be scope to have a differential rate relating to retail use and it would not be possible to distinguish between different types or sizes of retail unit or a combination of the two. The larger retailers would then benefit from the single CIL rate applicable to all retail units which must inevitably be much lower as it has to take into account smaller units. However, when considering some draft charging schedules prior to the 2014 changes there had been an acceptance by independent examiners that it was possible at that time to impose different CIL rates for retail use dependent on the size of unit and the type of retail user but to be justified this required evidence showing that the differences in size reflected different characteristics of retailing and related to different markets. In a number of cases, such as Huntingdonshire and Wycombe, the examiner had accepted that the evidence did justify splitting retail use. With Poole the examiner did not. With the change in reg. 13(1)(c) that took effect due to the 2014 Regulations allowing the scale of development to be a differentiating factor this ceased to be an issue going forward.

5.4.4.2.3 Formulation of retail - the class may be formulated in a different manner altogether than just retail. For instance, the Broadlands charging schedule has a different rate for “large convenience goods based stores of 2000 square metres gross or more”. It then specifies that this is a store where more than 50% of the net intended floor area is intended for the sale of convenience goods. These are defined as covering food, alcoholic and non-alcoholic beverages, tobacco, periodicals and newspapers and non-durable household goods. This is an approach which has been adopted by some authorities whilst others have adopted differing definitions of the type of store covered. Wycombe set the limit on floor space at 280 sqm whilst Plymouth set the limit at 1000 sqm.

There may be problems ascertaining ahead of the commencement of the operation of the particular retail unit whether it is within the particular definition of store adopted by the authority. Reliance will have to be placed on the retailers’ proposals and projections. As mentioned above the amendment to reg. 13(1)(c) allows differential rates to be set by reference to the size of development which presumably means now that there is no need to prove an identifiable market.

5.4.4.3 Within use class - when differential charging rates are fixed by reference to particular use classes that will lead to issues as to whether particular developments fall within such use classes.

5.4.4.3.1 Class C3 - One example of this is CIL rates charged on residential developments by reference to class C3. This Use Class covers “use as a dwelling house

\[\text{Reg. 5(2) of the 2014 Regulations}\]
Will this include houses built for holiday lets? There are a series of planning cases on this point leading up to the Court of Appeal decision in Moore v SSCLG.¹⁴² These say that a holiday home may or may not be within Use Class C3 depending on the circumstances. Major factors will be the type of building, number of bedrooms, number of people staying and the type of groups occupying. Ordinary dwellings with lettings to families should be within the class. In contrast a large building with large groups of 20 occupying it is unlikely to be within the class. Those cases were concerned with whether there had been a material change of use. The big difference between such cases and those relating to CIL is that there was a history of use to be considered in the former cases whereas that will not be available when planning permission has just been granted.

This issue has been considered in a reg. 114 appeal.¹⁴³ The decision in the Sheila Moore case was applied. It was not enough that the building was going to be used exclusively for commercial holiday lets. Account was taken of the planning permission, the applicant’s planned use of the building and a number of enquiries for lettings. The appointed person highlighted the difficulty of dealing with this issue when the building had not been constructed. The conclusion was reached that it was likely that a significant number of future occupiers would not be occupiers living together as a family and thus it fell outside Class C3 into a sui generis use. As a result no CIL was payable. There is no reason why the authority should not amend the charging schedules to put beyond doubt the matter. The uses specified in the charging schedule do not have to be by reference to use classes.

In contrast in a later appeal the conversion of a stable building into two holiday-let units was held by an appointed person to be chargeable to CIL at the rate applicable to C3 dwellinghouses.¹⁴⁴ The appellant had relied on the Sheila Moore case whilst the charging authority had relied on Gravesham BC v Secretary of State for Environment.¹⁴⁵ In that case McCullough J. stated that “Consider a building that anyone would acknowledge was a dwelling-house. If it is not being lived in because, for example, the occupants are on holiday or because they have two houses and spend half the year in each, it remains a dwelling-house. Take a common situation where a family has a second house in the country that is only visited at weekends, in the summer months and for a summer holiday. That is clearly a dwelling-house. So the intention to use one’s house, or the practice of using it throughout the year, is not essential.” He, therefore, held that a property which could only be used lawfully for weekends and holiday lets could be a dwellinghouse.

In the appeal the appointed person considered “it highly likely that a significant proportion of the potential occupiers will comprise family groups/single households

¹⁴² [2012] EWCA 1202
¹⁴³ Development: Substitution of approved block of 5 No. holiday units into a single 9 No. bedroom holiday unit. Decision date: 14th December 2013
¹⁴⁴ Development: change of use of existing stable building to 2 No. Holiday-let units with associated landscaping and parking. Decision date: 26th February 2019
¹⁴⁵ [1984] PCR 142
due to the size and layout of accommodation.”

There was no evidence as to the history of use so account was taken of the physical layout of the units. The two self-contained units each offered two bedroomeed accommodation with a shower room and open plan kitchen/living/dining area. In consequence the two units constituted dwellinghouses within the C3 Use Class.

Rather than rely on the Use Classes some authorities have introduced a special definition of residential development for the purposes of CIL. For example, Woking has a lengthy definition focused on the houses being occupied as a single household.

5.4.4.3.2 Residential or other type of development – rather than charge by reference to Use Class C3 a charging authority may charge by reference to “residential development”. The issue has arisen whether this is wider in scope than Use Class C3. In an appeal the charging authority drew a distinction between part of the building used for holiday accommodation and part as living accommodation and only charged the latter at the CIL rate applicable to residential development. This was not accepted by the appointed person who applied the dictionary definition of “designed for people to live in”. This the appointed person considered should not be limited to use Class C3 but applied to the holiday accommodation because that part is designed for people to live in and provides the facilities required for day to day private domestic use. The term did not require occupation by way of a permanent home.

This appeal decision followed an earlier decision in which a development comprising five flats to be occupied as holiday accommodation was claimed by the appellant not to be a residential development but to be a “sui generis” use because it is commercial leisure accommodation. Reliance was placed on a statement in the planning officer’s delegated report which advised that should the proposed business fall flat then a new application for residential C3 use would be needed. The appointed person considered that “dwelling” means a building that provides the facilities required for day to day private domestic existence and that it did not need to be a permanent home. Consequently it was held that the development comprises dwellings and is not excluded in the charging schedule because they are to be used for holiday lets.

An appeal has raised the issue whether an extension to an existing garage situated within the grounds of a large dwelling house should be charged to CIL on the basis of a rating applicable to residential use or nil rated as within the category of all other types of development. It was to be used for garaging vehicles and landscape equipment belonging to the owner of the house. The appellant argued that the garage was not a dwelling house and a building ancillary to a dwelling was not residential in character. In contrast the authority argued that the extended garage located within the curtilage was ancillary and incidental to the dwelling. The appointed person held in favour of the authority that the garage was within the category of residential and chargeable to CIL at the residential rate. He then raised the issue whether the residential exemption would apply. It was not open to him to decide such a point but commented that the garage

146 Para. 16
147 Development: Conversion of redundant barn to holiday accommodation (C1). Decision date 24th October 2017 - para. 9. See also Development: No. two bedroom single storey. Decision date: 14th November 2017
148 Para. 5 of Development: erection of 5 No. 2 bed…Decision date: 6th December 2016
149 Para. 10
might be an extension to a dwelling. This depends on whether an extension must be physically part of the house.\textsuperscript{150}

5.4.4.3.3 Retail – rather than charge CIL by reference to a Use Class such as A1 the rate may be by reference to retail development. A charging authority has sought to include a café or restaurant as retail on the ground that items of food and drink are sold for consumption. The dictionary definition referred to in the appeal is “the sale of goods to the public in relatively small quantities for use or consumption rather than resale” which the appointed person considered to be material but which if looked at in isolation could cover a restaurant or café. In planning law a distinction is drawn between restaurants/cafés and retail both in the Use Classes and the Permitted Development Rights regime. The appointed person also raises the use of the distinction in the NPPF\textsuperscript{151} which although these passages relate to planning policy concerning town centres do have a bearing as the charging schedule referenced the Local Plan. The appointed person took account of the dictionary definition in the context provided by these sources such as the Local Plan and the NPPF.\textsuperscript{152}

An appointed person has had to consider whether the characterisation of the type of use authorised by a planning permission is to be determined in accordance with the planning Use Classes or by the actual proposed use. In the appeal concerning a development described as the erection of two storey with ancillary residential accommodation the choice lay between residential or retail. It arose from a planning permission authorising retail use (A3/A4) with ancillary residential accommodation.\textsuperscript{153} Amongst the conditions attached to the permission was a requirement that the residential accommodation be occupied only by persons solely involved in the managing or operation of the retail business. A further condition provided that the premises be used only for A3 and A4 purposes and no other purposes. The charging authority in its charging schedule chose to rate developments by reference to the TCP (Use Classes) Order 1987. The type of development subject to the residential CIL rate was defined by reference to C3 and C4 and the charging authority made the point that the Use Class C3 is defined as “use as a dwelling house (whether or not as the sole or main residence)”. It was held that the living accommodation should be charged at the rate applicable to retail use and not residential use notwithstanding the residential element because that element is ancillary to the main use.\textsuperscript{154}

5.4.4.4 Location of developments – for developers with a choice as to where developments are carried out CIL will be a significant factor to be taken into account. The absence of a uniform approach means that the CIL rate set by some authorities for particular types of development will be more attractive that those set by other authorities. In particular this could be an important influence in the locating of retail and residential developments. Some authorities are introducing a different CIL rate applicable to student residential developments. Bristol has set a higher rate of £100 psm

\textsuperscript{150} See section 11.6.3 below
\textsuperscript{151} Development: Construction of new [ ] centre including various facilities [ ] plus car parking and open space. Decision date: 26\textsuperscript{th} February 2019 – para. 17 and see Development: partial demolition, conversion and extension of [ ] from [ ] (use Class A1). Decision date – 30\textsuperscript{th} April 2019
\textsuperscript{152} Development: Erection of two storey ...(class 3/A4) with ancillary residential accommodation Decision date: 15\textsuperscript{th} December 2013
\textsuperscript{153} Para. 7

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than with ordinary residential developments (£70 psm for Outer zone and £50 psm for Inner zone). In contrast Exeter has set a lower rate of £40 psm for student purpose built residential developments than the CIL rate of £80 psm for ordinary residential developments. Although not a proper justification one possible reason for the higher CIL rate with proposed developments to provide student accommodation is that such developments produce a greater profit margin. Ordinary residential developers will also be affected. For example, Wandsworth LBC has set a CIL rate for residential development at £575 psm in one zone. This is in contrast to, say, Shropshire which operates two rates of £40 psm and £80 psm dependent on the zone. Other authorities are drawing a distinction between high and low rise residential developments. Retailers will be similarly affected. Exeter has set a CIL rate of zero for supermarkets in the City centre and £125 psm outside the City centre. All such variations emphasise that the CIL rate applicable to a development will need to be considered and thought given as to whether a more favourable location can be found at a lower CIL cost.

5.4.4.5 **Mixed user** – as stated above the differential rates as regards types of development do not have to be formulated by reference to classes of planning use. However, if they are not then there could be a problem when permission is granted for a planning class which includes more than one type of development and they are chargeable at different rates. How is the CIL to be calculated? The same point arises if the planning permission granted authorises more than one class of use and different CIL rates are applicable. Reliance cannot be placed just on the terms of the planning permission. It will be necessary for the charging authority to investigate further as to the precise nature of the development to be carried out. A pragmatic solution will be for a liability notice to be issued on the basis of the information available at the time that the planning permission is granted and then once there is certainty as to the actual intended use a revised liability notice will need to be issued which will replace the earlier liability notice. This emphasises the importance of the charging authority being provided with full information at an early stage as it is in the interests of both sides that the amount of the CIL liability is established accurately as soon as possible. It suggests a degree of continuous engagement which may be hard to meet on the part of the authority. However, attempts to increase the CIL liability will receive a hostile reception.

5.4.4.6 **ancillary use** – if a use is ancillary to a main use in the development then it is to be expected that the ancillary use will be charged to CIL at the rate applicable to the main use rather than the ancillary use as a standalone use.\(^\text{155}\) This applies when the planning permission concerns only the part to be used for the ancillary use. The extension of a garage was held to be chargeable at the rate applicable to residential (C3) because the garage use is ancillary to the use of the dwelling.\(^\text{156}\) The same approach has been applied to an annexe.\(^\text{157}\) Similarly with planning permission for an extension to be used as solely for the loading of vehicles which had internal access to retail area. This was held to be chargeable at the retail rate.\(^\text{158}\) The appellant had relied on the planning

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\(^{155}\) Development: Erection of two storey ...(class 3/A4) with ancillary residential accommodation  
Decision date: 15\(^{th}\) December 2013 - ancillary residential use charged as retail on appeal.

\(^{156}\) Development: Single storey garage extension to existing block to provide [ ] No. additional bays  
decision date 15\(^{th}\) December 2013 – para. 10

\(^{157}\) Development: Erection of ancillary building Decision date 17\(^{th}\) November 2015 – para. 8

\(^{158}\) Development: Erection of a single storey side extension to relocate existing...Decision date 13\(^{th}\) January 2016
application being for Use Class B8 although the planning permission was silent. It was further argued that it was the chargeable development which had to be charged and not the larger planning unit. These arguments were rejected. The crucial point was that the extension could only function as part of the existing retail building. In that appeal the appointed person made the point that if the building had been constructed with the extension then the whole including the loading area would have been charged at the retail rate and that the loading area would not have been treated differently to the retail area.\(^\text{159}\)

A similar approach was adopted in another appeal in which permission was given for an extension to a warehouse. It was a condition that the extension shall only be used for purposes ancillary to the main use of the site as a builder’s merchant falling under a B8 Use Class and no other purpose. No reference was made to it being a retail development. The charging authority sought to charge CIL at the retail rate. The appointed person rejected this because the charging schedule did not state that ancillary retail use was to be charged at the retail CIL rate and the planning permission did not grant permission for a retail development within Use Classes A1-A5.\(^\text{160}\)

Whether a use is ancillary does not depend on the extent of the area given over to the particular use but rather the function of the use.\(^\text{161}\) The charging authority sought to charge the workshop in the development as an independent use due to the proportion of the development area taken up by this use but failed. Will the sale of convenience food and groceries in a petrol station always be ancillary to a petrol station which is a sui generis use or will it be such that it may constitute a separate retail use?

5.4.4.7 State Aid – when setting different rates within its area the charging authority is responsible for ensuring that such differences are State Aid compliant. They must not provide a selective advantage. In consequence the charging authority must justify any differences by consistent evidence relating to economic viability

5.4.5 Local developers – for developers carrying on their business in a particular area consideration should be given to taking part in the consultation process and making representations. The CIL rate will be a permanent, continuing and important factor in the development costs of the business.

5.4.6 Subsequent change of use – there may be a trend to carrying out an initial development for a use which attracts a low CIL rate and then subsequently seeking to change to a different use which would have attracted a higher CIL had it been the initial use. If there is no increase in internal floor area and no dwelling comprised in the development there should be no CIL liability as a result of that change due to the deduction of the GIA of the existing building. Even if there is a dwelling provided that the building has been in continuous lawful use for six months this should remove or at least keep down any CIL liability. Whether such a course of action will be feasible will depend on the CIL charging structure of the relevant charging authority and the local CIL rates applicable to the differing types of development. It will also depend on other

\(^{159}\) Para. 9

\(^{160}\) Development: Proposed extension of existing warehouse and change of use [ ]. Decision date: 4th July 2017 – para. 13

\(^{161}\) Development: Construction of a [ ] with [ ] storage, valet, and display areas: a [ ] showroom building, offices and workshop….Decision date: 20th March 2018
practical factors such as whether the buildings constructed in the development are suitable for the alternative use or if it is economic to replace those buildings by new appropriate buildings. If such a trend were to begin it will be interesting to see how authorities react to future change of use applications. It has been raised in an online CIL forum and the response seemed fairly pragmatic. The view was that at present nothing could be done to stop but it may not be a problem as in practice it may rarely be possible to achieve.

5.4.7 Review – it is emphasised in the official guidance that charging authorities should keep their rates under review so that they remain appropriate. In particular account should be taken of changes in market conditions. Some authorities have stated an intention as to the frequency with which reviews will be carried out. For example, South Gloucestershire has stated in its Charging Schedule that it will carry out reviews no later than every three years. Cornwall when introducing CIL with effect from 1st January 2019 has stated that it will review its CIL rates every three years or sooner if house prices increase by 10% or there is a significant change to national planning policy or guidance. These are expensive exercises and the likelihood is that by undertaking them it will result in increasing CIL rates. Christchurch and East Dorset will review if (i) housing delivery falls by 20% of expected figures at the end of any 3 year rolling programme or rises more than the 20% above; (ii) infrastructure funding gap falls below the projected level of funding that would be generated by new development from CIL; (iii) average property price changes (including upturn in the market), that lead to a significant impact on development viability; (iv) Changes in delivery times of major schemes to be funded in part by CIL.

In particular the worry is that this will result in the increase in CIL rates relating to residential developments. This is borne out by the increase by Kensington and Chelsea BC from £650 to £750 with regard to the residential rate during the process of introducing CIL. This has been followed by a formal review by Poole BC of its CIL Charging Schedule. It was reviewing the Poole Core Strategy and at the same time taking the opportunity to review its CIL rates. Since 2nd January 2013 the CIL rates for residential developments had been £150, £100 and £75 for the three designated zones. In the review it was proposed to have eight zones for residential developments with the highest rate being £1,300 for Sandbanks. As is pointed out in the consultation document CIL monies received in respect of the Sandbanks area have amounted to £69,541 but if the new rate had been in force £602,666 would have been received. The revised CIL rates for residential development actually introduced were far more modest at £230, £60 and zero dependent on the applicable zone.

With a rising housing market the incentive to carry out a review will be there for many authorities even bearing in mind the cost involved in such an exercise. A review will be particularly appropriate if the authority is proposing to review its local plan. The requirement that an authority keep under review the CIL rates in a charging schedule was a factor in the Fox Strategic judicial review case. Expected increases in development costs three years ahead due to changes with regard to the building requirements could be coped with by a future review. The judgment emphasised that the charging authority did not have the power to set CIL rates for a fixed period. Once set the rates would continue unless and until revised or withdrawn.

162 Para. 2.2.6.3 February 2014 Guidance
Details of the authorities which have commenced reviews of their charging schedule are set out in Part 2 of the First Appendix. In some case the review is only a partial review. For example, in 2017 Haringey instigated a review in relation to only the eastern charging zone within its borough.

5.4.8 Monitoring of authority’s CIL rates - As a charging authority’s CIL rates are not set in stone it is important to monitor the relevant authority’s website to ensure up to date rates are being used for costing purposes. There are no proposals to introduce controls or restrictions with regard to the process of review to be adopted. In the February 2014 Guidance it is stated that any revision of an authority’s charging schedule (in whole or in part) should follow the same process as the original process for establishing the charging schedule. That is the approach that Poole BC has adopted. This will involve considerable expenditure and may deter some authorities. It certainly excludes the possibility of fine tuning. Changes in the CIL regime such as the change as regards differential rates may themselves cause an authority to reconsider its charging schedule. It may, for example, encourage authorities to introduce different CIL rates for supermarkets.

5.4.9 Ceasing to exist – section 214 of the Planning Act 2008 empowers a charging authority to determine that a charging schedule has effect and regulations may be passed which specify the circumstances in which that power can be exercised. This power must be exercised at a meeting of the charging authority by a majority of members present at the meeting save that the Mayor of London may exercise the power personally.

Unless the charging schedule ceasing to have effect is being replaced by a new charging schedule on the day that it ceases to have effect then with effect from 1st September 2019 reg. 28A requires that before a charging authority makes a determination under section 214(3) it must

(a) prepare a statement providing:-

(i) details of the CIL receipts for the period of five years immediately preceding the date on which the statement is first published in accordance with para. 28A(1)(d), or, where the charging schedule was not in effect for the whole of the five years, the period during which the charging schedule was in effect;

(ii) an assessment, for the period of five years beginning with the date on which it is proposed the charging schedule will cease to have effect in the area, of the potential effects of the proposal on the funding of infrastructure needs for the area; and

(iii) a summary of the measures (in relation to planning obligations or otherwise) the charging authority has or intends to put in place in relation to funding of infrastructure needs for the area, together with an assessment of how effective the

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163 Sub-section (3)
164 Section 214(4)
165 Section 214(5)
166 Section 214(6)
167 Reg. 28A(2)
168 Inserted by reg. 4(2) of 2019 (No. 2) Regulations
169 Reg. 28A(1)(a)
authority considers those measures are likely to be in replacing the funding lost on the charging schedule ceasing to have effect.

(b) make available for inspection any documents within (a) above at its principal office;

(c) send a copy of the documents within (a) above to the consultation bodies\textsuperscript{170};

(d) publish on its website—

(i) a statement specifying that the authority proposes to determine under section 214(3) of PA 2008 that a charging schedule is to cease to have effect;

(ii) a copy of the statement referred to in reg. 28A(1)(a); and

(iii) a statement specifying—

(aa) the period (being not less than four weeks) within which representations about the proposal may be made;

(bb) the address to which, and the name of the person (if any) to whom, representations about the proposal must be made;

(cc) that representations may be made in writing or by way of electronic communications;

(dd) that representations may be accompanied by a request to be notified at a specified address of the decision of the charging authority in relation to the proposal; and

(e) consider any representations made to the charging authority under reg. 28A.

Once the determination under section 214(3) is made a statement of the making of that determination must be published on the charging authority’s website\textsuperscript{171} and notify the relevant consenting authorities of the determination.\textsuperscript{172} In the event that one charging schedule is being replaced on the same day by another charging schedule then in addition to publishing the new charging schedule in accordance with reg. 25 the charging authority must continue to publish the replaced charging schedule on its website\textsuperscript{173} and make available for inspection a copy of the replaced charging schedule at its principal office and such other offices as it considers appropriate.\textsuperscript{174}

5.5 Reg. 123 list of infrastructure projects – a reg. 123 Infrastructure list is no longer required with effect from 1\textsuperscript{st} September 2019.\textsuperscript{175} This was an important element of the CIL regime and needed to be borne in mind by both authorities and developers. This section remains for reference with regard to the period prior to that date but in italics so as to indicate that it no longer applies from 1\textsuperscript{st} September 2019.

5.5.1 Requirement for list – CIL receipts have to be applied in the provision, improvement, replacement, operation or maintenance of infrastructure but there is no prescribed means of challenging the application of such funds by an authority or

\textsuperscript{170} Consultation bodies were defined in reg. 15 but are now by reg. 16(2) (inserted by reg 3(4)(c) of 2019 (No. 2) Regulations) save as regards draft charging schedules published before 1\textsuperscript{st} September 2019 (reg. 13(1) of 2019 (No. 2) Regulations) and see section 5.4.3.2 above

\textsuperscript{171} Reg. 28A(4)(a)

\textsuperscript{172} Reg. 28A(4)(b) and relevant consenting authority is defined by reg. 11(1) (see section 5.4.3.2)

\textsuperscript{173} Reg. 28A(3)(b)

\textsuperscript{174} Reg. 28A(3)(a)

\textsuperscript{175} Reg. 11 of the 2019 (No. 2) Regulations
requiring particular infrastructure projects to be carried out. The only real control is that the authority cannot seek to impose a planning obligation with a view to funding a type of infrastructure or an infrastructure project which the authority is funding exclusively through the CIL regime.\textsuperscript{176} In order to police this restriction the authority has to publish a list of infrastructure projects and types of infrastructure that the authority intends to be funded wholly or partly by CIL. This means that if the authority is to have a charging schedule setting rates but wishes to make use of section 106 agreements as an additional means of funding then it must also have a reg. 123 list. If it does not have such a list then all infrastructure must be funded by CIL and there will be no scope for section 106 funding.\textsuperscript{177} No local authority will allow this situation to arise. Any project or type of infrastructure appearing on such a list will have to be funded by CIL and not by section 106 planning obligations. However, this will not prevent section 106 funds accruing before the introduction of the CIL regime from being applied in such a manner. The stated principal purpose for the list is to provide transparency on what the charging authority intends to fund in whole or part through the CIL regime and to avoid “double dipping” by the authority. To assist in achieving these objectives the draft list should in the future be provided as part of the consultation and examination process with authorities which had not published a draft charging schedule by 23\textsuperscript{rd} April 2014 (see section 5.1 above). It means that care has to be taken by the charging authority over the content of the list and the manner in which the projects and types of infrastructure included are described. As part of the examination process when setting up the CIL charging schedule for the area the charging authority should have set out how its section 106 policy will be affected by the introduction of CIL for the area.

5.5.2 Examples –

5.5.2.1 Redbridge – this authority has opted in its reg. 123 list for specifying the generic type of facilities that CIL will be used to fund. It covers its education facilities without any exception as well as leisure, health care, community care and community facilities, provision of open space and transport improvements. However, originally this was not as simple as it appeared at first sight. For example, if consideration was being given to a large residential development within that area it cannot be said with certainty that no section 106 planning obligations will be required for matters such as schooling or community facilities. The reason for this was that at the bottom of the Redbridge list was an exclusion which stated that “Unless the need for the infrastructure arises directly from five or fewer developments, where section 106 arrangements may continue to apply if the infrastructure is required to make the development acceptable in planning terms.”\textsuperscript{178} This sought to comply with the restrictions imposed on section 106 planning obligations by regulations 122 and 123 of the 2010 Regulations (see para. 25.4 below) whilst at the same time seeking to reserve the ability to impose planning obligations which relate to any of the facilities listed in the reg. 123 list. It was seeking to continue the section 106 system for funding to the maximum extent permissible whilst also applying the CIL regime.

5.5.2.2 Validity of exclusion - clearly at the time Redbridge LBC considered such an exclusion valid but in my view it is questionable. It appears to be a classic attempt by

\textsuperscript{176} Reg. 123(2)
\textsuperscript{177} Reg. 123(4)
the authority to have its cake and at the same time eat it. In my view the facilities listed by Redbridge constitute relevant infrastructure for the purposes of reg. 123 because they are a description of a type of infrastructure\textsuperscript{178} rather than an infrastructure project. It is a type of infrastructure which it is intended is to be funded in whole or part by CIL. I anticipate that Redbridge would argue that the words at the bottom of the list had to be taken into account as part of the description of the type of infrastructure. However, it seems to me that there is nothing in reg. 123 which allows an authority to insert an exclusion from the description of the type of infrastructure in this manner. The exclusion is not seeking to exclude a more specific type of infrastructure within the wider type but to exclude that wider type of infrastructure when the need for it has arisen in a certain way. Reg. 123(2) provides that a planning obligation providing for the funding of relevant infrastructure cannot constitute a reason for granting planning permission. I do not consider that the wording at the bottom of the list will prevent this restriction operating. It will be interesting to see if the point is taken. Such a point could be taken after the grant of planning permission subject to planning obligations which include obligations related to a type of infrastructure included on the original Redbridge reg. 123 list. The original reg. 123 list has been replaced by a list which does not have this qualification at the bottom so may be it has been accepted that it was not valid. As regards transport projects it excludes site specific elements which will still be covered by highway agreements and section 106 planning agreements.

5.5.2.3 Portsmouth - in contrast Portsmouth City Council has focused on projects by including a number of specific highway projects, a couple of flood management projects and the improvement of Southsea Common and the Seafront. There is included in the list one item which is treated as a project but seems to be really a generic type of infrastructure expenditure – school places (primary and secondary schools). There is no wording included seeking to undermine the reg. 123 list as considered above with the Redbridge list. This means that a developer considering a large residential development in the Portsmouth could be sure that there will be no attempt to impose a section 106 planning obligation relating to school capacity projects. In so far as the items on the list relate to highway infrastructure it will now not be possible to make them the subject of a highway agreement.\textsuperscript{179} Huntingdonshire DC has adopted a similar approach to the formulation of its reg. 123 list in including a number of specific projects.

5.5.3 Consideration of reg. 123 list – it is sensible to consider the ref. 123 Infrastructure list for the area in which a development is to be located in order to ascertain whether any infrastructure issues relating to the site will be funded by CIL or will have to be negotiated as a planning obligation. For example, a residential development may result in a need for additional schooling facilities. If the authority’s published reg. 123 list includes education then that will be funded by the authority’s CIL receipts and there will be no section 106 issue unless there is included wording similar to that used in the Redbridge list discussed above. However, if it states education save for the local school then increased funded for that school will need to come from a section 106 planning obligation if the development will impact on that school. That in turn will raise the issue whether it is still possible for the authority to require a pooled contribution for the

\textsuperscript{178} Reg. 123(4)

\textsuperscript{179} Reg. 123(2A) introduced by the 2014 Regulations - see section 25.8 below
purpose of increasing capacity at the school under a planning obligation or whether this is no longer possible due to the number that have already been entered into.

5.5.4 Changes to the list – such lists are not set in stone. They can be simply changed without going through an elaborate procedure although the official guidance advocates that the changes should be clearly explained and be subject to appropriate local consultation. It was suggested in the April 2013 consultation that an appropriate consultation process be gone through but without specifying what that process should be. However, this suggestion was not taken up. This ability to vary the list means that an eye should be kept on the relevant authority’s website to ensure that there is no material change which could affect a proposed development. There has been concern that specific projects may be removed from the list so that section 106 obligations can be imposed with a view to providing funding for such project. In the official guidance it is stated that “Charging authorities should not remove an item from the regulation 123 list just so that they can fund this item through a new section 106 agreement.”

Despite a proposal that charging authorities undertake consultation before making changes there is no such obligation nor any prescribed method of control and so reliance would have to be placed by any aggrieved person on judicial review. If the change to the list would have a significant impact on the evidence as to viability which was presented during the examination process then it is suggested that there should be a review of the authority’s charging schedule. The inclusion of the draft reg. 123 list of infrastructure now in that process encourages such an approach. A review of the Charging Schedule will require the authority to go through the same formal process as was gone through for the introduction of CIL.

5.6 Application of CIL – the CIL receipts must be applied in funding infrastructure or making a payment to a local council.

5.6.1 Application - the principal obligation of the charging authority is to apply the CIL received in funding infrastructure. It covers not just the provision of infrastructure but also the improvement, replacement, operation or maintenance of infrastructure. It can be applied to reimburse expenditure already incurred on infrastructure. CIL can be applied by a charging authority by paying to another person to apply as well as being actually applied by the charging authority itself.

As stated above infrastructure does not include affordable housing which still has to be funded from other sources including section 106 agreements although changes may be introduced in the future which will allow such an application of CIL receipts. The only current qualification to this is that the portion of CIL receipts paid to neighbourhood funding can be applied for purposes not related to infrastructure and in particular can be expended on affordable housing.

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180 Para. 2.6.2.3 February 2014 CIL Guidance
181 Para. 90 DCLG Guidance – December 2012 and para. 2.6.2.3 February 2014 CIL Guidance
182 See section 5.7 below
183 For meaning see section 5.4.2 above
184 The extension from just funding infrastructure was introduced by reg. 7(a) of the 2012 regulations.
185 Reg. 60(1)
186 Reg. 59(4)
187 See section 5.6.2.6 below
It cannot be used to pay interest on monies borrowed for the provision of infrastructure and charging authorities are not authorised to borrow against future CIL receipts. The only exception is the Mayoral CIL (2) which can be applied in repaying borrowings from the GLA and TfL for the purposes of, or in connection with, the provision of the schedule works within Schedule 1 to the Crossrail Act 2008. Reg. 60 contains provisions which could allow repayment of borrowings and interest if the Secretary of State directs a particular percentage of the CIL receipts which can be applied in such a manner but as yet no such direction has been given.

Further the CIL monies cannot be used to fund private companies. This precludes funding of water infrastructure owned by, say, a private water undertaker.

5.6.2 Outside the area – CIL receipts may be applied outside the authority’s area if it would support the development of the area. Examples of such permitted applications of CIL receipts given in the February 2014 CIL Guidance are payments to the Environment Agency to go towards flood defences and to County Councils for schools.

5.6.3 Pooling of CIL receipts – an alternative approach is for a charging authority to pool some of the CIL receipts with another charging authority with regard to a large infrastructure project such as transport which will support development in their respective areas.

5.7 Local councils –

5.7.1 Amounts payable –

5.7.1.1 General - a relevant proportion of CIL receipts from a chargeable development should be paid to any local council in whose area the chargeable development is situated. This applies to all charging authorities other than the Mayor of London’s CIL. Any surcharge paid by the developer of such development will not be treated as CIL for these purposes. A local council can refuse in writing such payments in which case the charging authority must retain them.

In England the proportion is 25% of the relevant CIL receipts if there is either a neighbourhood development plan in place or no such plan is in place but the permission was granted under a neighbourhood development order made under section 61E or 61Q (community right to build orders) of the TCPA 1990. The payment is to the parish council for the area. Where neither set of circumstances apply the proportion

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188 Reg. 60(7A) inserted by reg. 3 of the Community Infrastructure (Amendment) (England) Levy Regulations 2019 with effect from 23rd May 2019.
189 Reg. 59(3)
190 Reg. 59A(1) and(2)
191 59A(2)
192 Reg. 88(3)(a)
193 Reg. 59A(12)
194 Reg. 59A(3) and a neighbourhood development plan is in place if (a) a neighbourhood development plan was made by a local planning authority in accordance with section 38A(4) of the Planning and Compulsory Purchase Act 2004 prior to the time at which planning permission first permits that development; and (b) that neighbourhood development plan is extant in relation to the relevant area on the day when planning permission first permits that development (reg. 59A(11)).
195 Reg. 59A(4)
is 15% subject to a cap.\textsuperscript{196} In Wales the proportion is 15% (subject to the cap) if all or part of the chargeable development is within the area of a community council.\textsuperscript{197}

5.7.1.2 Cap - in England for such payments to a local council when there is no neighbourhood development plan and in Wales in all cases there is a cap in each financial year on the total of such payments. Prior to 1\textsuperscript{st} September 2019 the cap was an amount equal to £100 for each dwelling in the local council’s area multiplied by the index figure for that year.\textsuperscript{198} On or after 1\textsuperscript{st} September it is calculated using the formula inserted in reg. 59A(7) which has been added so that the cap is subject to indexation and will not remain fixed as time passes.\textsuperscript{199} The formula is:-

$$£100 \times \frac{I_Y}{I_0}$$

Where—

$I_Y$ is the index figure for the calendar year in which the amount is passed to the parish council (as determined in accordance with paragraph 1(5) of Schedule 1);

$I_0$ is the index figure for 2013 (as determined in accordance with paragraph 1(5) of Schedule 1); and

$N$ is the number of dwellings in the area of the parish council.

If the development crosses local council boundaries then the CIL is divided between the local councils proportion to the area of the development in each local council’s relevant area.\textsuperscript{200} For the purposes of the division the local council’s relevant area and the relevant development are:

(i) in respect of the 25% of the CIL receipts under reg. 59A(3) the part of the local council’s area that has a neighbourhood development plan and the whole of the development;\textsuperscript{201}

(ii) in respect of the 25% of the CIL receipts payable under reg. 59A(4)(a) the part of the local council’s area which does not have a neighbourhood development plan and that part of the development for which permission was granted under section 61E or 61Q (community right to build orders) of the TCPA 1990;\textsuperscript{202} and

(iii) the 15% under reg. 59A(5)(a) the part of the local council’s area which does not have a neighbourhood development plan and that part of the development for which permission is not granted under section 61E or 61Q (community right to build orders) of the TCPA 1990.\textsuperscript{203}

\textsuperscript{196} Reg. 59(5) and see section 5.7.1.2 immediately below as regards the cap
\textsuperscript{197} Reg. 59A(6) and (9)(c)
\textsuperscript{198} The original reg. 59A(7) inserted by reg. 8(3) of the 2013 Regulations
\textsuperscript{199} Inserted by reg. 9(3) of the 2019 (No. 2) Regulations
\textsuperscript{200} Reg. 59A(8)
\textsuperscript{201} Reg. 59A(9)(a) and (10)(a)
\textsuperscript{202} Reg. 59A(9)(b) and (10)(b)
\textsuperscript{203} Reg. 59(9)(b) and 59A(10)(c)
5.7.2 **Area with no local council** – reg. 59F applies when a chargeable development is not within a local council area and a proportion of the charging authority’s CIL receipts would have been paid under reg. 59A and 59B if the area been a local council area as permitted by reg. 59C. The charging authority may use such monies for the same purposes as if there were a local council. In England an area with no parish council but a neighbourhood plan will receive the higher proportion of 25%. It will be necessary for the charging authority to consult with the local community. There is no prescribed procedure for such consultation.

5.7.3 **Relevant proportion** – If the development is within an area with a neighbourhood plan in England or a community council in Wales the proportion will relate to the full CIL for the chargeable development. If the permission for the chargeable development is in part only under a neighbourhood development order or a community right to build order then the 25% proportion will apply to the CIL relating to that part and the 15% proportion will apply to the rest. It has been queried whether when calculating the amount payable to a local council any deduction can be made in respect of the administration costs of the CIL regime. There is no basis for such a deduction. The calculation is by reference to the full relevant CIL receipts.

5.7.4 **Land payments and infrastructure payment** – the value of any land payment or infrastructure payment in discharge of a CIL liability will be used to calculate any payments under these regulations but the proportion paid to a local council or community council must be in the form of cash and cannot be land or infrastructure.

5.7.5 **Payment periods** – the charging authority and the local council may agree a timetable for payment in which case payment must be made in accordance with that timetable. In the absence of such an agreement in any financial year the due proportion of any CIL received between 1st April and 30th September shall be paid by 28th October and that received between 1st October and 31st March by 28th April of the following financial year.

5.7.6 **Application of payments** – the local council receiving such payments must apply the payments for the provision, improvement, replacement, operation or maintenance of infrastructure or “anything else that is concerned with addressing the demands that development places on an area”. This covers a wider range of expenditure than is authorised with charging authorities and is not limited exclusively to infrastructure. For example, such funds can be expended on affordable housing if it addresses the development needs of the area which is in sharp contrast to the position of a charging authority. Any amount received from the charging authority in excess of the relevant proportion must be applied in relation to infrastructure.

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204 Reg. 59F(1)
205 Reg. 59F(2)
206 Reg. 59F(3) and as to such purposes see para. 5.7.6 below
207 Reg. 59B(2)
208 Reg. 59B(3)
209 Reg. 59D(2)
210 Reg. 59D(3), (4) and (5)
211 Reg. 59C
5.7.7 **Recovery of payment to local council** – if any payment to a local council is not applied to support development within its area within five years of receipt or is applied but not in accordance with reg. 59C\(^\text{212}\) then the charging authority may seek to recover the payments.\(^\text{213}\) The charging authority may by written notice require repayment of all or some of such sum.\(^\text{214}\) Such a notice must state the amount to be repaid; the reasons for requiring repayment; and the repayment date which must not be earlier than 28 days from the day that the notice is served.\(^\text{215}\) The local council must comply with the notice to the extent that it holds CIL receipts not yet spent.\(^\text{216}\) The terms of such a notice may be varied by agreement between the charging authority and the local council.\(^\text{217}\) It may also be withdrawn at any time and any unspent CIL receipts recovered (whether by payment by the local council or withholding of payments by the charging authority) must be returned to the local council.\(^\text{218}\)

To the extent that the local council does not have unapplied CIL payments with which to recoup the charging authority then the charging authority can withhold payments otherwise due to the local council.\(^\text{219}\) It may not use the enforcement powers in Part 9 of the 2010 Regulations.\(^\text{220}\) The charging authority must give a notice if it effects recovery by withholding payments. Such notice must state the amount recovered by this method and the amount still to be recovered by the charging authority.\(^\text{221}\) Monies recovered by this process must be applied for the benefit of the area of the local council from which they are recovered and the monies must be used to fund the same purposes as the local council may apply receipts under reg. 59A or 59B.\(^\text{222}\)

5.7.8 **Transitional provision** – no payment is due from a charging authority to a local council under these regulations nor will a charging authority be liable to apply CIL in accordance with section 5.7.2 (area with no local council) above if a liability notice was issued in relation to the development before the 2013 Regulations came into effect on 25\(^\text{th}\) April 2013.\(^\text{223}\)

5.8 **Administrative costs** –

5.8.1 **Costs covered** – the costs of establishing and running the CIL regime are recoverable from CIL receipts\(^\text{224}\) subject to a cap.\(^\text{225}\) CIL receipts includes the value of land acquired by a land payment.\(^\text{226}\) It also includes the value of infrastructure provided

\(^{212}\) See para. 5.7.6 above

\(^{213}\) Reg. 59E(1)

\(^{214}\) Reg. 59E(2)

\(^{215}\) Reg. 59E(3)

\(^{216}\) Reg. 59E(4)

\(^{217}\) Reg. 59E(8)

\(^{218}\) Reg. 59E(7)

\(^{219}\) Reg. 59E(5)

\(^{220}\) Reg. 59E(9)

\(^{221}\) Reg. 59E(6)

\(^{222}\) Reg. 59E(10) and see section 5.7.6 above as to the purposes for which payments may be used by a local council

\(^{223}\) Reg. 12 of the 2012 Regulations

\(^{224}\) Reg. 61(1)

\(^{225}\) See section 5.8.2 immediately below

\(^{226}\) Reg. 61(7)
or to be provided by virtue of an infrastructure payment agreement accepted in that year.\textsuperscript{227}

This means that a charging authority or a collecting authority collecting on behalf of a charging authority can recoup the set-up costs from the future CIL receipts when received.\textsuperscript{228} Administration will include monitoring (which could be a burdensome task), negotiating agreements with regard to land or infrastructure payments in kind and enforcement. Challenges to the CIL decisions of a charging authority may be expensive particularly if by way of judicial review. A collecting authority acting for a charging authority may retain up to 4\% from the CIL receipts to fund its administrative costs.

5.8.2 \textbf{Cap} – there is a cap on the amount of CIL that a charging authority can apply on the administrative costs of operating the CIL regime. It is:

(i) in the case of a charging authority which collects CIL

(a) in years one to three it is 5\% of the CIL collected over the period of years one to three which can be applied in paying administrative expenses incurred during those three years and any expenses incurred before the charging schedule was published;\textsuperscript{229} and

(b) in year four and subsequent years 5\% of the CIL collected in the relevant year.\textsuperscript{230}

(ii) in the case of a charging authority which does not collect CIL then the cap shall be determined as in (i) above save that the cap shall be 5\% less any CIL which is applied by the collecting authority in meeting its administrative expenses pursuant to reg. 61(4).\textsuperscript{231}

(iii) in the case of a collecting authority which collects CIL on behalf of a charging authority

(a) in years one to three it is 4\% of the CIL collected for that charging authority over the period of years one to three which can be applied in paying administrative expenses incurred in relation to that collection during those three years and any expenses incurred before the charging schedule was published;\textsuperscript{232} and

(b) in year four and subsequent years 4\% of the CIL collected on behalf of the charging authority in the relevant year.\textsuperscript{233}

For these purposes year one begins with the date on which the charging authority’s first charging schedule takes effect and ends at the end of the first subsequent full financial year.\textsuperscript{234} Thereafter years two to four are the consecutive financial years which follow

\begin{flushleft}
\textsuperscript{227} Reg. 61(7A) \\
\textsuperscript{228} Reg. 61(1) and 61(2) \\
\textsuperscript{229} Reg. 61(3)(a) \\
\textsuperscript{230} Reg. 61(3)(b) \\
\textsuperscript{231} Reg. 61(5) and as regards the cap reg. 61(6) \\
\textsuperscript{232} Reg. 61(4)(a) \\
\textsuperscript{233} Reg. 61(4)(b) \\
\textsuperscript{234} Reg. 61(8)(a)
\end{flushleft}
In the case of a collecting authority acting for a charging authority this is determined by reference to the charging authority for whom it acts.

To the extent that the cap is not reached the balance must be applied on capital infrastructure projects. The Mayoral CIL is collected by the relevant London borough council which will be entitled to retain up to 4% of the Mayoral CIL.

The cap is calculated by reference to the amount of CIL collected and whether or not a proportion is then paid to a local council is immaterial to the amount that can be applied on administrative costs.

5.9 Annual reporting –

5.9.1 Prior to 1st September 2019 –

(a) charging authority – it must pursuant to reg. 62 provide an annual report for any financial year (“the reported year”) in which it collects, or there is collected on its behalf, CIL or has unspent CIL monies. For these purposes CIL monies includes land payments and infrastructure payments. The value of land will be the value in the land payment agreement and if a part is to be valued then it will be in with the formula in reg. 73(10). A land payment is treated as not spent if a development has not commenced on the acquired land for a relevant purpose or if the acquired land has been used or sold for a purpose other than a relevant purpose the amount deemed to be CIL money under reg. 73(9) has not been spent. An infrastructure payment is treated as not spent if it has not been provided.

The report must include:

(a) total CIL receipts for year;

(b) total CIL expenditure;

(c) summary details of CIL expenditure including items of infrastructure to which CIL monies have been applied; amount of CIL expenditure on each item; the amount of CIL money applied to repay borrowed money including interest with details of infrastructure items that borrowed money used to provide; and the amount of CIL monies applied to administrative expenses and what percentage that is of the annual CIL receipts;

(d) the amount of CIL passed to a local council and to a person under reg. 59(4) (person other than a charging authority who is to provide infrastructure using CIL monies);

(e) summary details of receipt and expenditure of CIL to which reg. 59E (recovery of CIL from local council) and reg. 59F (CIL monies applied in area with no local council)

235 Reg. 61(8)(b)
236 Reg. 61(8)(c)
237 Reg. 62(1)
238 Reg. 62(3) and (3A)
239 Reg. 62(6)
240 Reg. 62(3)
241 Reg. 62(3A)
242 Reg. 62(4) and as to the formula see section 18.3.1(iii)
including total CIL receipts covered by those two provisions; items to which CIL receipts have been applied under those two provisions; and the amount of expenditure on each item;

(f) summary details of any notices served in accordance with reg. 59E (recovery of CIL from local council) including total value of CIL receipts requested from each local council and any funds not yet recovered from each local council;

(g) total amount of (i) CIL receipts retained at the end of the reported year other than those within reg. 59(E) and reg. 59(F); (ii) CIL receipts from previous years retained at the end of the reported year other than those within reg. 59(E) and reg. 59(F); (iii) CIL receipts relating to reg. 59(E) and reg. 59(F) retained at the end of the reported year; (iv) CIL receipts relating to reg. 59(E) and reg. 59(F) from previous years retained at the end of the reported year.

These reports should be published on the authority’s website by 31st December of each year following the end of the financial year.245

(b) local councils – these must prepare a report for any financial year (“the reported year”) in which CIL receipts are received.244 Such report must include:245

(i) total CI receipts for the reported year;

(ii) total CIL expenditure for the reported year;

(iii) summary of CIL expenditure during the reported year including items on which CIL monies applied and amounts on each item;

(iv) details of any notices received in accordance with reg. 59E (recovery of CIL by charging authority) including total value of CIL receipts subject to such notices during reported year and the total value of CIL receipts subject to such notices in any year which remain unpaid at end of the reported year.

(v) the total amounts of CIL receipts for reported year retained at end of reported year and CIL receipts from previous years retained at end of reported year.

The report must be published on the local council’s website and the charging authority’s website if the local council does not have one but if neither has a website or the charging authority refuses to put it on its website then the local council must publish it within its area as it considers appropriate.246 A copy must be sent to the charging authority from which it receives CIL receipts no later than 31st December following the reported year unless the report is or is to be published on the charging authority’s website.247

5.9.2 On or after 1st September 2019 - regulations 62 and 62A have been omitted and replaced by Part 10A comprising regulations 121A to 121C and Schedule 2.248 The
intention is to benefit developers and communities by increasing transparency and accountability.\textsuperscript{250} It is put forward by the MHCLG as a more appropriate and better mechanism for preventing double dipping following the removal of the restrictions in reg. 123.\textsuperscript{251}

(A) Charging authorities\textsuperscript{252} –

(I) annual infrastructure funding statement – this must be published by a contribution receiving authority which is (a) any charging authority which issues a liability notice during the reported year and (b) any local planning authority\textsuperscript{253} which enters a planning obligation under section 106 of the TCPA 1990 during the reported year under which a sum is required to be paid or which receives a non-monetary contribution under that obligation.\textsuperscript{254} The first such statement must be published by 31\textsuperscript{st} December 2020.\textsuperscript{255} As yet there is no penalty for failing to provide such a statement although this will be kept under review.\textsuperscript{256} Each annual infrastructure funding statement must be published on its website.\textsuperscript{257} In order to reduce the burden on local authorities some of the proposed information that was to be included has been removed. The local authority does not have to provide information regarding a forecast of anticipated future income nor regarding the delivery and provision of infrastructure although it may do so.\textsuperscript{258}

The annual infrastructure funding statement must comprise:\textsuperscript{259}

(a) the infrastructure list - which is a statement of the infrastructure projects or type of infrastructure which the charging authority intends will be, or may be, wholly or partly funded by CIL (other than CIL to which regulation 59E or 59F applies);\textsuperscript{260}

(b) CIL report - a report about CIL, in relation to the previous financial year (“the reported year”), which includes the matters specified in para. 1 of Schedule 2;\textsuperscript{261}

(c) section 106 report - a report about planning obligations under section 106 of TCPA 1990, in relation to the reported year, which includes the matters specified in para. 3 of Schedule 2 and may include the matters specified in para. 4 of Schedule 2.\textsuperscript{262}

No information is required to be included in the annual infrastructure funding statement in relation to CIL which is collected by the authority on behalf of another charging authority.\textsuperscript{263}

\textsuperscript{250} Para. 21 and 68 of the Government response to reforming developers’ contributions June 2019
\textsuperscript{251} See section 25.7.7
\textsuperscript{252} Reg. 121A
\textsuperscript{253} Within the meaning in section 1 of the TCPA 1990 as that section has effect subject to sections 2 to 9 of the 1990 Act – reg. 121A(5)(b)
\textsuperscript{254} Reg. 121A(5)
\textsuperscript{255} Reg. 121A(2)
\textsuperscript{256} Para. 66 of the MHCLG’s Government response to reforming developer’s contributions June 2019.
\textsuperscript{257} Reg. 121A(3)
\textsuperscript{258} Para.67 of the MHCLG’s Government response to reforming developer’s contributions June 2019
\textsuperscript{259} Reg. 121A(1)
\textsuperscript{260} Reg. 121A(1)(a)
\textsuperscript{261} Reg. 121A(1)(b)
\textsuperscript{262} Reg. 121A(1)(c)
\textsuperscript{263} Reg. 121A(4)
The original proposals also required to be included in the annual infrastructure funding statement a three forecast statement about CIL and a three year forecast statement about planning obligations under section 106 of TCPA 1990. These have been omitted from the reg. 121A inserted by the 2019 (No. 2) Regulations.

(II) CIL report – this must include the following matters:

(a) the total value of CIL receipts set out in all demand notices issued in the reported year;

(b) the total amount CIL receipts for the reported year but it is not required that this include any amount of CIL collected by the authority, or by another person on its behalf, on behalf of another charging authority;

(c) the total amount of CIL receipts, collected by the authority, or by another person on its behalf, before the reported year but which have not been allocated;

(d) the total amount of CIL receipts, collected by the authority, or by another person on its behalf, before the reported year and which have been allocated in the reported year;

(e) the total amount of CIL expenditure for the reported year;

Para. 1 of Schedule 2 and for the purposes of paragraph 1—

(a) CIL collected by an authority includes land payments made in respect of CIL charged by that authority; (b) CIL collected by way of a land payment has not been spent if at the end of the reported year - (i) development (within the meaning in TCPA 1990) consistent with a relevant purpose has not commenced on the acquired land; or (ii) the acquired land (in whole or in part) has been used or disposed of for a purpose other than a relevant purpose; and the amount deemed to be CIL by virtue of regulation 73(9) has not been spent; (c) CIL collected by an authority includes infrastructure payments made in respect of CIL charged by that authority; (d) CIL collected by way of an infrastructure payment has not been spent if at the end of the reported year the infrastructure to be provided has not been provided; (e) the value of acquired land is the value stated in the agreement made with the charging authority in respect of that land in accordance with regulation 73A(7)(e); (f) the value of a part of acquired land must be determined by applying the formula in regulation 73(10) as if references to N in that provision were references to the area of the part of the acquired land whose value is being determined; (g) the value of an infrastructure payment is the CIL cash amount stated in the agreement made with the charging authority in respect of the infrastructure in accordance with regulation 73A(7)(e). (para. 2 of Schedule 2)

From 1st September 2019 CIL receipts means for a charging authority - (i) CIL collected by that authority (including the value of any acquired land and the value of infrastructure under an infrastructure payment), but does not include CIL collected on behalf of the charging authority by another public authority but which that authority has not yet paid to the charging authority; and (ii) CIL recovered by that authority in accordance with regulation 59E, but does not include CIL not yet paid to the charging authority by the parish council (reg. 2(1) added by reg. 9(1)(a) of 2019 (No. 2) Regulations.

In the original proposals it was the CIL receipts set out in liability notices.

In England this information must be included in the authority’s monitoring report – reg. 34(5) of the Town and Country Planning (Local Planning) (England) Regulations 2012 as amended by reg. 12(2) of 2019 (No. 2) Regulations

In the original proposals this was to include CIL collected in previous reported years but not expended but that has been taken out and is now covered by (c) and (d) in para. 1 of Schedule 2

Reg. 121A(4)

From 1st September 2019 CIL expenditure is defined as “(a) the value of any acquired land on which development (within the meaning in TCPA 1990) consistent with a relevant purpose has been commenced or completed, and (b) CIL receipts transferred by a charging authority to another person to spend on infrastructure (including money transferred to such a person which it has not yet spent), but excludes CIL receipts which are allocated but not spent” – reg. 2(1) inserted by reg. 9(1)(a) of 2019 (No. 2) Regulations.
(f) the total amount of CIL receipts, whenever collected, which were allocated but not spent during the reported year;

(g) in relation to CIL expenditure for the reported year, summary details of

   (i) the items of infrastructure to which CIL (including land payments) has been applied;

   (ii) the amount of CIL spent on repaying money borrowed, including any interest, with details of the infrastructure items which that money was used to provide (wholly or in part);

   (iii) the amount of CIL applied to administrative expenses pursuant to regulation 61, and that amount expressed as a percentage of CIL collected in that year in accordance with that regulation;

(h) in relation to CIL receipts, whenever collected, which were allocated but not spent during the reported year, summary details of the items of infrastructure on which CIL (including land payments) has been allocated, and the amount of CIL allocated to each item;

(i) the amount of CIL passed to - (i) any parish council under regulation 59A or 59B; and (ii) any person under regulation 59(4);

(j) summary details of the receipt and expenditure of CIL to which regulation 59E or 59F applied during the reported year including -

   (i) the total CIL receipts that regulations 59E and 59F applied to;

   (ii) the items of infrastructure to which the CIL receipts to which regulations 59E and 59F applied have been allocated or spent, and the amount of expenditure allocated or spent on each item;

(k) summary details of any notices served in accordance with regulation 59E, including -

   (i) the total value of CIL receipts requested from each parish council;

   (ii) any funds not yet recovered from each parish council at the end of the reported year;

(l) the total amount of -

   (i) CIL receipts for the reported year retained at the end of the reported year other than those to which regulation 59E or 59F applied;

   (ii) CIL receipts from previous years retained at the end of the reported year other than those to which regulation 59E or 59F applied;

   (iii) CIL receipts for the reported year to which regulation 59E or 59F applied retained at the end of the reported year;

   (iv) CIL receipts from previous years to which regulation 59E or 59F applied retained at the end of the reported year;
5.9.3 **section 106 report** – the following matters must be included in this report:

(a) the total amount of money to be provided under any planning obligations which were entered into during the reported year;

(b) the total amount of money under any planning obligations which was received during the reported year;

(c) the total amount of money under any planning obligations which was received before the reported year which has not been allocated by the authority;

(d) summary details of any non-monetary contribution to be provided under planning obligation which were entered into during the reported year, including details of—

   (i) in relation to affordable housing, the total number of units which will be provided;

   (ii) in relation to educational facilities, the number of school places for pupils which will be provided, and the category of school at which they will be provided;

(e) the total amount of money (received under any planning obligations) which was allocated but not spent during the reported year for funding infrastructure;

(f) the total amount of money (received under any planning obligations) which was spent by the authority (including transferring it to another person to spend);

(g) in relation to money (received under planning obligations) which was allocated by the authority but not spent during the reported year, summary details of the items of infrastructure on which the money has been allocated, and the amount of money allocated to each item;

(h) in relation to money (received under planning obligations) which was spent by the authority during the reported year (including transferring it to another person to spend), summary details of—

   (i) the items of infrastructure on which that money (received under planning obligations) was spent, and the amount spent on each item;

   (ii) the amount of money (received under planning obligations) spent on repaying money borrowed, including any interest, with details of the items of infrastructure which that money was used to provide (wholly or in part);

   (iii) the amount of money (received under planning obligations) spent in respect of monitoring (including reporting under regulation 121A) in relation to the delivery of planning obligations;

(i) the total amount of money (received under any planning obligations) during any year which was retained at the end of the reported year, and where any of the retained money has been allocated for the purposes of longer term maintenance (“commuted sums”), also identify separately the total amount of commuted sums held.

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271 Para. 3 of Schedule 2. For the purposes of this provision (a) where the amount of money to be provided under any planning obligations is not known, an authority must provide an estimate; (b) a non-monetary contribution includes any land or item of infrastructure provided pursuant to a planning obligation under section 106 of TCPA 1990; and (c) where the amount of money spent in respect of monitoring in relation to delivery of planning obligations is not known, an authority must provide an estimate. (para. 5 of Schedule 2).
In addition the following matters may be included in the section 106 report for each reported year:—

(a) summary details of any funding or provision of infrastructure which is to be provided through a highway agreement under section 278 of the Highways Act 1980 which was entered into during the reported year,

(b) summary details of any funding or provision of infrastructure under a highway agreement which was provided during the reported year.

5.9.4 Annual CIL rate summary - each charging authority must publish an annual CIL rate summary no earlier than 2nd December and no later than 31st December of each year. It must be published on its website. This summary must relate to the following year and must include the following:

(a) state the name of the charging authority (A) to which it relates;

(b) state the year, YN, to which it relates;

(c) state the date when each charging schedule and revised charging schedule, issued by the charging authority, took effect;

(d) specify each of the rates, taken from the charging schedule, at which CIL is chargeable in A’s area, together with a description of the development to which the rate applies;

(e) specify, for each rate (R)—

(i) the index figure for the calendar year in which the charging schedule containing rate R took effect (as determined in accordance with paragraph 1(5) of Schedule 1);

(ii) the index figure for the calendar year YN (as determined in accordance with paragraph 1(5) of Schedule 1);

(iii) the indexed rate calculated by applying the following formula—

\[
\frac{R \times I_Y}{I_C}
\]

Where—

I_Y is the figure referred to in sub-paragraph (e)(ii);

I_C is the figure referred to in sub-paragraph (e)(i); and

(f) where charging authority A’s area is in Greater London and the Mayor has a charging schedule in effect which applies in all or part of A’s area, include a statement explaining that the Mayor also charges CIL in relation to all or part of the area.

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272 Para. 4 of Schedule 2
273 Reg. 121C
274 Reg. 121C(1)
275 Reg. 121C(3)
(B) **parish councils**\(^{276}\) - a parish council receiving CIL receipts in a financial year (“the reported year”) must prepare a report.\(^{277}\) This report must include the following matters:\(^{278}\)

(a) the total CIL receipts\(^{279}\) for the reported year;

(b) the total CIL expenditure\(^{280}\) for the reported year;

(c) summary details of CIL expenditure during the reported year including –
   
   (i) the items to which CIL has been applied; and
   
   (ii) the amount of CIL expenditure on each item;

(d) details of any notices received in accordance with regulation 59E, including –
   
   (i) the total value of CIL receipts subject to notices served in accordance with regulation 59E during the reported year;
   
   (ii) the total value of CIL receipts subject to a notice served in accordance with regulation 59E in any year that has not been paid to the relevant charging authority by the end of the reported year;

(e) the total amount of –
   
   (i) CIL receipts for the reported year retained at the end of the reported year;
   
   (ii) CIL receipts from previous years retained at the end of the reported year.

The parish council report must be published on its website and the charging authority’s website if the parish council does not have one but if neither has a website or the charging authority refuses to put it on its website then the parish council must publish it within its area as it considers appropriate.\(^{281}\) A copy must be sent to the charging authority from which it receives CIL receipts no later than 31\(^{st}\) December following the reported year unless the report is or is to be published on the charging authority’s website.\(^{282}\)

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\(^{276}\) Reg. 121B inserted by reg. 9(6) of the 2019 (No. 2) Regulations

\(^{277}\) Reg. 121B(1)

\(^{278}\) Reg. 121B(2)

\(^{279}\) CIL receipts for a parish council means “CIL passed to it under regulations 59(4), 59A(2) or 59B, but does not include funds not yet paid to the parish council by the charging authority in accordance with regulation 59D;” (reg. 2(1) added by reg. 9(1)(a) of 2019 (No. 2) Regulations)

\(^{280}\) From 1\(^{st}\) September 2019 defined by reg. 2(1) inserted by 9(1)(a) of 2019 (No. 2) Regulations – see (A)(I)(a)(b) above

\(^{281}\) Reg. 121B(3)(a)

\(^{282}\) Reg. 121B(3)(b)
C. Triggers for CIL charge

6. General – for such an important point there is a remarkable lack of clarity in the 2010 Regulations as to when a CIL charge arises. The objective is that the grant of planning permission will trigger the operation of the CIL regime and that the CIL liability thereby arising will only become payable as and when the development is commenced. There is no discretion conferred on the charging authority to waive the CIL liability no matter what course events have taken between the charging authority and the landowner or developer. In particular complaints that a planning permission should have been granted sooner and before the introduction of CIL will not prevent the CIL liability having to be discharged.

For a CIL charge to arise the charging authority must have put in place a Charging Schedule and must have authorised or be deemed to authorise a chargeable development by a planning permission or general consent. The commencement of the development will then trigger the liability to pay.

6.1 Charging schedule in place – the original trigger to the application of the CIL regime has been that at the date of the planning permission the development is situated in an area in which a charging schedule is in effect. Until this step is taken no planning permission will cause the CIL regime to operate. However, if the planning permission granted prior to the establishment of the charging schedule is carried out in a manner which does not comply with the planning conditions attached to that permission that will require a fresh retrospective permission and if granted subsequent to the introduction of CIL that will be charged to CIL regardless of the earlier pre-CIL permission.

The wording of reg. 128(1) has been changed by the 2019 (No. 2) Regulations so that the CIL regime is not operated if on the date of the planning permission a charging “authority has no charging schedule in effect”. This ensures that in areas where there are two charging authorities but only one has in place a charging schedule that authority can charge CIL. For example, the Mayor of London will be able to charge CIL even if the London borough council for the area has not put in place a charging schedule.

Prior to 1st September 2019 it was not also essential that the charging authority had published a reg. 123 list setting out the infrastructure which was to be funded exclusively by the authority from CIL receipts. That was optional because if no such list was published then the authority was to be treated as funding all infrastructure from CIL funding and not section 106 planning obligations. From 1st September 2019 there is no longer a need for a reg. 123 Infrastructure list.

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283 Original reg. 128(1)
284 Development: Retention of existing building (with alterations) [ ] comprising 6 flats…Decision date 16th May 2016 para. 17 and see Proposal: Retention of two dwellings[ ] and [ ] houses) with associated hard and soft landscaping and parking. Decision date: 2nd October 2018
285 Reg. 5(10) of the 2019 (No. 2) Regulations
286 Reg 123(4)
6.2 Grant of planning permission –

6.2.1 General rule – the development must be authorised by a planning permission and the grant of the planning permission must have taken place after the putting in place of the charging schedule for the area in which the site is located.\textsuperscript{287} A grant of planning permission is in consequence an important element of the CIL regime. It is provided in reg. 2 that it has the meaning in reg. 5 and “that “grant” of planning permission must be construed accordingly”. Patterson J DBE stated that\textsuperscript{288} “The statute, therefore, confers no discretion as to how a planning permission is to be interpreted: it mandates an interpretation in accordance with the definition in regulation 5. There is nothing within regulation 5 which, in my judgment, permits the interpretation that the defendant urges. Rather, the words used refer to planning permission granted by a local planning authority under sections 70, 73 or 73A TCPA.” The learned judge held in that case that it is not possible for a charging authority to combine two separate planning permissions and treat them as a single planning permission for the purposes of charging CIL.

Regulation 5 provides that for the purposes of Part 11 of the Planning Act 2008 planning permission means:

“(a) planning permission granted by a local planning authority under section 70, 73 or 73A of TCPA 1990;
(b) planning permission granted by the Secretary of State under the provisions mentioned in sub-paragraph (a) as applied by sections 76A(10), 77(4) and 79(4) of TCPA 1990 (including permission so granted by a person appointed by the Secretary of State in accordance with regulations made under Schedule 6 to TCPA 1990);
(c) planning permission granted or modified under section 177(1) of TCPA 1990 (grant or modification of planning permission on appeals against enforcement notices);
(d) modification of a planning permission under section 97 or 100 of TCPA 1990;
(e) planning permission granted by an order made under section 102 or 104 of TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works);
(f) development consent granted by an order made under section 114(1)(a) of PA 2008; or
(g) a general consent.”

This includes a planning permission resulting from a successful appeal decided after CIL has been introduced regardless of when the appeal was made. There are special rules which extend the scope of CIL to catch the carrying out of developments under other means of authorisation such as general consents.\textsuperscript{289} In such circumstances the development must commence after the CIL charging schedule has been put in place. Certain developments are excluded from the operation of the regime\textsuperscript{290} and there is an increasing list of limited exemptions.\textsuperscript{291}

\textsuperscript{287} Reg. 128(1)
\textsuperscript{288} R (oao Orbital Shopping Park Swindon Limited) v Swindon BC [2016] EWHC 448 (Admin) at paragraph 59
\textsuperscript{289} R (oao) Reg. 5(3) and see section 8.3 below with regard to general consents.
\textsuperscript{290} See section 10 below
\textsuperscript{291} See section 11 below
6.2.2 Distinction between grant and “first permits” - it is important to bear in mind that there is a difference in the CIL regime between the grant of planning permission and when a planning permission “first permits” a development. They are not the same although they may be the same date. The former will be used to determine whether or not the development is chargeable to CIL whilst the later determines the set of CIL rates applicable for the purposes of the calculation in reg. 40 and the GIA deductions which may be available but is not relevant to whether or not CIL is chargeable. With the introduction of CIL by numbers of authorities this is a point which is cropping up frequently and is often overlooked. Importantly the date when the development is first permitted will be material in determining the relevant period for the application of the vacancy test.292

This means in particular that the provisions of reg. 8 deferring when a permission first permits a development do not apply for the purpose of determining whether CIL is chargeable. For example, if an outline planning permission which is not phased is granted subject to a number of reserved matters then the date of the grant of the outline permission will be the relevant date for determining whether or not this development is subject to the CIL regime. If the relevant charging authority does not establish its CIL rates until after the grant then commencing the development will not trigger a CIL liability even if the final approval of the last reserved matter associated with the permission was not obtained until after the establishing of the CIL rates for the area. If the grant of such planning permission was after the establishment of the CIL rates in the area then CIL will be chargeable. In those circumstances the date when the required final approval is obtained293 will determine which set of CIL rates applies so that if different from those applicable at the date of the grant of the permission the newer set of CIL rates will be used to calculate the chargeable amount.294 Similarly the date of the final approval (and not the date of the grant of the planning permission) will be the material date when determining whether any GIA deductions are available.

6.2.3 “first permits” – in determining when a development is first permitted the starting point is that it will be the date of the grant of planning permission295 but in practice this will not normally be the outcome because planning permissions are rarely granted with no conditions or reserved matters. That starting point has been heavily qualified. As a result of the 2014 Regulations there are now two sets of qualifications. One set applies in respect of chargeable developments authorised by a planning permission granted prior to 24th February 2014 and the other to such developments authorised by planning permissions granted on or after 24th February 2014.296

6.2.3.1 Pre-24th February 2014 planning permissions – the original provisions in reg. 8(3)-(6) 2010 Regulations provided that as regards:

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292 See section 152.5.4 below
293 Reg. 8(4)
294 Subject now to para. 2 Schedule 1 (introduced by the 2019 (No. 2) Regulations) which applies the rates from the earlier charging schedule if the outline planning permission is granted before the revision in rates but does not first permit development until after the revision takes effect.
295 Reg. 8(2)
296 Reg. 14(1) 2014 Regulations

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6.2.3.1.1 outline planning permission – subject to outline permissions for phased developments\textsuperscript{297} the date of the final approval of the last reserved matter\textsuperscript{298} associated with the permission would be when an outline planning permission first permits development\textsuperscript{299}.

6.2.3.1.2 phased outline permission – each phase would be treated as a separate chargeable development and so it was the date of the final approval of the last reserved matter associated with the particular phase which would be the date that development was first permitted for the particular phase\textsuperscript{300}.

6.2.3.1.3 conditional planning permission other than outline – if the planning permission was subject to a condition which required further approval to be obtained before the development could commence then the date when final approval was given would be when the permission first permits development\textsuperscript{301}. Prior to the 2014 Regulations the special treatment for phased developments did not apply to planning permissions other than outline planning permissions.

6.2.3.1.4 development under general consent – it was originally provided that such a development would first be permitted on the day that the collecting authority sent an acknowledgment of receipt of a notice of chargeable development submitted to it in respect of that development\textsuperscript{302}. This was amended so that it was either (a) the day on which the collecting authority received a notice of chargeable development submitted to it in accordance with regulation 64 in respect of that development; or (b) if no notice of chargeable development was submitted in accordance with regulation 64, the day on which the last person was served with a notice of chargeable development in accordance with regulation 64A(3)\textsuperscript{303}.

6.2.3.2 Planning permissions granted on or after 24\textsuperscript{th} February 2014 – the treatment of outline and full planning permissions authorising phased developments is now in principle the same and such treatment is no longer applicable only to outline planning permissions. Each phase of a development will be treated as a separate chargeable development for these purposes and not just those authorised by an outline planning permission\textsuperscript{304}.

6.2.3.2.1 unphased full planning permission – such a permission first permits development when it is granted\textsuperscript{305}.

\textsuperscript{297}See para. 6.2.3.1.2 below
\textsuperscript{298}Reserved matters have the same meaning as in section 92(1) of the 1990 Act (reg. 2(1)) which defines them as matters not particularised in the application which are reserved for subsequent approval. This is a wide definition which is not limited to those that have to be satisfied before the development can commence.
\textsuperscript{299}Reg. 8(4)
\textsuperscript{300}Reg. 8(7)
\textsuperscript{301}Reg. 8(6)
\textsuperscript{302}Original reg. 8(7)
\textsuperscript{303}Reg. 8(7) as substituted by reg. 4(2) of the 2011 Regulations
\textsuperscript{304}Reg. 9(4)
\textsuperscript{305}Reg. 8(2)
6.2.3.2.2 Phased planning permission – each phase of a development is a separate
chargeable development306 so that the CIL regime is applied separately to each phase.307
There is now a definition of phased planning permission for the purposes of CIL which
is a planning permission “which expressly provides for the development to be carried
out in phases”308. This means that the planning permission must expressly authorise the
development to be carried out in phases. It is not enough that it is implicit. In some
cases it will be important to ensure that the wording includes an express authorisation
for a phased development. It may have a significant effect on the cash flow or avoid
disqualifying events affecting parts of a development unrelated to the event. It will be
important not just to have express phasing but also to ensure that the phases coincide
with the works to be carried out. Phasing will not have the desired CIL effect if some
of the works will cause the CIL liability to be triggered not just for the first phase of the
development but for some other or all phases. This can occur, for example, if
infrastructure works extend beyond the particular phase.309

6.2.3.2.1.1 outline planning permission – for each phase of an outline phased planning
permission the phase will first be permitted to be developed on the day of the final
approval of the last reserved matter associated with that phase310 unless it has been
agreed in writing with the collecting authority that it will be the day final approval is
given under any pre-commencement condition associated with that phase311. Such a
written agreement must be reached before the commencement of any development
under that planning permission which would seem to refer to all the development
authorised by the planning permission and not just the particular phase of development.
If correct then that could be a trap for the unwary to fall in. Further the agreement will
only operate if it is an earlier date than the day of the final approval of the last reserved
matter.

6.2.3.2.1.2 phased permissions other than outline – a permission relating to a phase of
development authorised by a phased planning permission other than an outline
permission will first permit development on the day that final approval is given under
a pre-commencement condition312 associated with that phase313 or if there is no such
condition then on the day of the grant of the permission314.

6.2.3.2.2 outline planning permissions which not phased – such a permission first
permits development on the day that final approval is given for the last reserved
matter.315

6.2.3.2.3 planning permission which is neither phased nor outline – reg. 8(6) has been
omitted and so the date it first permits development is the day of the grant of the
planning permission rather than the later date at which any required approval is given316.

306 Reg. 9(4)
307 See section 8.9 below
308 Reg. 2(1) 2010 Regulations inserted by reg. 3(1)(g) 2014 Regulations
309 See section 6.3.5 below
310 Reg. 8(3A)(a)(i)
311 Reg. 8(3A)(a)(ii)
312 Defined in reg. 8(3B) – see section 6.2.3.3 below
313 Reg. 8(3A)(b)(i)
314 Reg. 8(3A)(b)(ii)
315 Reg. 8(4)
316 Reg. 8(2)
6.2.3.2.4 development under general consent – this continues as before in accordance with reg. 8(7) as is set out in section 6.2.3.1.4 above.

6.2.3.3 pre-commencement condition - a definition of a pre-commencement condition has been introduced in reg. 8(3B) as being a condition “which requires further approval to be obtained before a phase can commence”. It would seem that whether or not a condition has this effect will be a matter of construction as it does not state that this has to be expressly provided in contrast with the definition of a phased planning permission. This issue has been considered by the courts in the context of disputes over the unlawful commencement of development.317

6.2.3.4 site clearance – it was also proposed prior to the 2014 Regulations that if there is a phase relating to site preparation this phase should be ignored for the purposes of CIL. This would have delayed a liability to pay CIL until the first phase in which construction work commenced but this proposal has not been taken up.

6.2.3.5 infrastructure works – an issue which has given rise to considerable thought is the effect of carrying out infrastructure works on a site which is subject to a phased planning permission. Such works can span a number of phases or even the whole site and could thereby trigger the CIL charge in respect of each phase spanned or the whole site. With developments in strategic areas which are treated preferentially for CIL purposes with a low or zero CIL rate phasing will not give rise to CIL complications although it could have implications for the section 106 planning obligations particularly as regards the application of the “pooling restriction” when it was applicable.318 With sites subject to normal CIL rates some imaginative solutions have been proposed. One is to treat the enabling infrastructure works as a separate phase and another and similar is to treat the planning application as a hybrid application with the enabling infrastructure being authorised by a full planning permission and the residential development as a separate permission.

6.2.3.6 self-build housing – when a development involves more than one self-build house it is recommended that the planning permission provides for a phased development with each self-build house being a separate phase.319 Each self-builder will need to assume liability for the CIL in respect of that builder’s house.320

6.2.4 Planning permissions obtained by third parties - there is no requirement that the planning permission should have been obtained by or on behalf of the owner of the site or with the owner’s consent. The operation of the CIL regime can be triggered by a planning permission applied for by a third party without the consent or involvement of the landowner. Normally this would not be a problem because the grant of planning permission alone does not cause CIL to be payable. It is the commencement of the development which makes the CIL payable and this will usually not occur without the consent of the landowner. However, there are two respects in which it could have adverse CIL consequences. The first is that it could result in the authority registering a local land charge against the owner’s title which could lead to complications if the

317 See section 6.3.4 below
318 See section 25.6 below
319 See section 11.5.8.2 below
320 See section 11.5.6.2(iii) below
owner wishes to deal with the land. Second if the planning application relates to other land as well and development commences on that other land his could give rise to an obligation to pay a CIL liability by the landowner being triggered. For example, if there has been a successful planning application by a third party relating to a larger area which includes land not owned by that third party but by X when the development is commenced on a different part of the land covered by the planning permission then unless the third party has assumed liability for all the CIL X will be liable to pay the portion of CIL relating to X’s part of the land. This is so even though X was not involved in the obtaining of such permission. In such circumstances X must seek a suspension of the CIL liability. Even this may not be available if the third party has the right to enter X’s land and carry out works which comprise part of the chargeable development such as construction of an access road or the laying of services.

6.2.5 Retrospective planning permission – it is possible for a local planning authority or on appeal a planning inspector to grant a planning permission which authorises in whole or in part works which have already been carried out. It is an automatic consequence that the permission is granted at least in part under section 73A if the authorisation covers past work. If the development to be authorised is wholly completed then the planning permission authorised is wholly retrospective and thus granted under 73A. Pitchford LJ stated in the Lawson Builders case supra that “I accept that, theoretically, section 73 enables an application to be made whether the development has not yet commenced, or is in progress, or has been completed. If the development has not yet commenced, a new grant of permission will take effect prospectively. If the development is partially completed the permission may take effect prospectively or, upon exercise of the section 73A power, both retrospectively and prospectively. However, if the development has been completed in breach of a pre-condition, (i) there remains no proposed development in respect of which any permission can be given and (ii) since there is no proposed development, any conditions, as varied, could only be imposed as a current obligation. The power to make a grant of permission in these circumstances is derived from section 73A and section 70 TCPA (see below, paragraph 27). Since the development had been completed it was, as Mr Rogers found at paragraph 9 of his decision letter, an automatic consequence of the successful application for permission that the permission had been implemented.”

In the case of a retrospective planning permission the development will be deemed to commence on the date of the grant. This means that it will be too late to give a commencement notice or assume liability but this is something brought on by the owner.

A retrospective permission may be needed because the works carried out implementing an earlier planning permission have not complied with the conditions attached to that earlier permission. The partial carrying out of a development authorised by a planning

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321 See section 17.6 below
322 Section 73A TCPA 1990
323 Section 117(1)(c) TCPA 1990
324 Lawson Builders Limited v Secretary of State for Communities and Local Government [2015] EWCA Civ 122 applied in APP/L5240/L/16/1200069 decision date 21st April 2017; APP/P0119/L/16/1200073 decision date 18th May 2017; and APP/L/17/1200115 decision date: 9th February 2018
325 At para. 25
326 Reg. 7(5)
327 APP/L3815/L/16/1200046 decision date: 21st October 2016 and see APP/Z2830/L/16/1200075
permission will not be a lawful development.328 It has been argued that to the extent that part of the works had been carried out in compliance with the planning conditions that part can be used lawfully. On appeal that argument was rejected on the basis that any use of such a building will be unlawful.329 A retrospective permission may also be needed even if the works have been in accordance with the approved plans if the authorised use cannot be complied with. For example, in one appeal the basement had been constructed in accordance with the plans approved by an earlier planning permission relating to the basement but the authorised use of the basement was as “a basement to ancillary recreational accommodation” and that ancillary recreational accommodation had not been constructed in accordance with the approved plans under an earlier permission in relation to that accommodation. This meant that not only the ancillary recreational accommodation was not in lawful use but also the basement. In consequence the retrospective planning permission covered the basement as well as the upper floors.330

However, if the time limit for starting enforcement proceedings has expired then unless there has been deliberate concealment it will then be possible for a completed building to qualify as an “in-use building”.331

It has also been argued that the parts of the works carried out in accordance with an earlier permission should be left out of account when determining the scope of the chargeable development. This was rejected in an appeal in which the scope of the retrospective planning permission covered the past works as well as a future extension. The scope of the planning permission whether or not retrospective determines the scope of the chargeable development.332 An attempt to argue that demolition which had taken place prior to the grant of planning permission was due to health and safety issues and was, therefore, pursuant to the provisions of the Permitted Development Rights regime failed.333 Further an attempt to argue in an appeal that the demolition had taken place 18 months before the grant of planning permission and had only been included in the planning application by mistake was rejected.334

This will often arise as an issue in case in which a self-build exemption has been granted but the exempt development is not carried out in accordance with the conditions attached to the planning permission authorising the development. Often the solution put forward by the charging authority’s planning department is for a fresh planning permission to be granted which covers some or all of the work already carried out. This

328 Lord Hobhouse in Sage v SSETR [2003] 1 WLR 983 at para. 23
329 Development: Retention of existing building (with alterations) [ ] comprising 6 flats…Decision date 16th May 2016 para. 16 and see Development: Retrospective application for variation of condition 14 [ ]. Decision date: 30th April 2019
330 Development: Retention of Detached Outbuilding to be used as ancillary guest accommodation. Decision date: 2nd October 2018 – para. 15
331 Development: retention of two existing self-contained one bedroom [ ] flats Decision date: 16th May 2016
332 Development: The construction of a roof and side extension to create an additional dwelling. Decision dated 9th February 2017 para. 10. Also in Development: Retrospective application for the erection of 1 No. dwelling. Decision date 24th October 2017. See also Development: Erection of a detached house. Decision date 9th September 2016 – para. 11
333 APP/W0340/L/16/1200052 decision date 12th January 2017 at para. 2
334 APP/T5720/L/16/1200061 decision date:10th February 2017 at para 2
will inevitably be a retrospective permission. This is illustrated by a statutory appeal which concerned the replacement of the original house by a new house but the works were not carried out in compliance with the planning permission so a new full planning permission was granted which was in part retrospective as regards the retained parts. As a result the self-build exemption was lost; there was no demolition deduction because the original house was demolished before the grant of the second planning permission; and CIL was chargeable on the full GIA of the new house with no netting off in respect of the original replacement house. The need for a second planning permission may be the result of very bad luck. For example, in one case when carrying out work under a planning permission which did not give rise to a CIL charge it was discovered that there was substantial timber decay and associated structural weakness/instability which resulted in the building being wholly demolished. A retrospective planning permission was needed and could not benefit from the self-build exemption.

It has been held that it is possible to appeal the CIL consequences of a retrospective permission on the basis that the works authorised will have commenced before the grant of the planning permission. However, this may be undermined by reg. 7(5) which was not discussed in the decision and deems a development authorised by a planning permission granted under section 73A to have commenced on the date of the grant. This argument seems to have been raised in a later appeal but without express mention of reg. 7(5) and the appointed person accepted the agents statement that the development had commenced earlier.

It was argued in one appeal that the house had been constructed in accordance with an earlier permission subject to minor differences which could be resolved by an application for a section 73 permission so that a section 73A planning permission which had actually been granted should be disregarded. The appointed person stated that there was no need to consider whether the differences were minor and could have been remedied by such an approach because the section 73A permission had been granted and the development was deemed to have commenced at the date of the grant. It has happened that a section 73 planning application is made but the local planning authority converts it to a section 73A planning application. In such circumstances consideration should be given to the speedy withdrawal of the planning application so that the CIL consequences can be thought through.

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335 Development: Erection of replacement dwelling (amendment to scheme...retention of part works already undertaken). Decision date: 13th November 2015. See also Development: Erection of ancillary building Decision date November 2015
336 As in this appeal although not a self-build – Development: Erection of single storey dwelling, detached garage and vehicular access. Decision date: 19th June 2018
337 See also Proposed development: Demolition of dwelling and erection of replacement dwelling. Decision date 16th March 2016 in which first planning permission had been for alteration of bungalow but whilst works were being carried out structural defects were discovered and it was demolished. The second permission gave retrospective permission for the demolition of the bungalow and its replacement.
338 Development: application for the rebuilding of [ ] and conversion [ ] to a single dwelling house and demolition. Decision date 25th April 2017
339 Development: Retrospective planning application. Decision date 4th July 2017 – para. 18.
6.2.6 Permission under section 177(1) of the 1990 Act – in an appeal under section 174 of the 1990 Act against an enforcement notice the planning inspector has the power to grant a planning permission. If such a permission is granted then for the purposes of CIL the development authorised by that permission is treated as commencing on the day that the permission is granted. It is not possible to give a valid commencement notice and so the authority should select the date of the grant of the permission as the deemed commencement date.

6.2.7 Outline planning permission – an outline planning permission gives rise to a CIL liability just as full one does. This means that if works start before the reserved matters have been dealt with it will trigger the payment of CIL. This is illustrated by an appeal in which an outline planning permission was granted and then a section 73 application made for a change to a condition which did not change the CIL liability and then this was followed by a reserved matter application. Whilst these applications were being made demolition works were carried out. The appellant argued that no commencement notice or assumption of liability notice was required because CIL was not payable until the reserved matters had been dealt with. This was rejected.

Approval of a reserved matter under an outline planning will not be a planning permission for the purposes of CIL.

6.2.8 Planning permission granted before charging schedule in place –

6.2.8.1 General - no CIL liability will arise if a development is commenced after the charging schedule is put in place pursuant to a planning permission granted before the putting in place of the schedule. A planning permission pre-dating the charging schedule cannot by itself give rise to a CIL liability. This is the case regardless of whether the planning permission is outline, full, hybrid or phased. A successful appeal after such a charging schedule is in place will be subject to CIL regardless of when the appeal was made. Further if there is an application to vary such a planning permission then there can be CIL complications as the varied planning permission will be a new planning permission (see section 8.4 as regards section 73 applications; section 8.5 as regards replacement planning permissions; and section 17.7 as regards subsequent free standing planning permissions triggering the abatement procedure).

6.2.8.2 Lapsed permissions - to avoid a CIL liability the planning permission prior to the putting in place of the charging schedule must be still be a valid permission. This point was raised in an appeal to an appointed person in relation to a planning permission for the erection of single storey self-storage units. A planning permission for such erections had been granted but on condition that the development be begun within three years which it was not. A fresh application was made but was not granted until after a charging schedule had been put in place. The owner disputed the CIL liability assessed by the authority. The appeal against the CIL assessment failed as the earlier planning permission was no longer valid. The grant of the new planning permission had been

342 Reg. 7(5)(b)
343 APP/X0360/L/17/1200107 decision date: 23rd October 2017
344 APP/R0335/L/17/1200103 decision date: 18th October 2017
346 Para. 8(a) Development: Erection of [ ] single storey self storage units decision date 16th December 2013
delayed by the need for a flood assessment and it was argued that reg. 65 had not been
complied with which requires a liability notice to be issued as soon as practicable after
the day on which a planning permission first permits development. On this issue the
appointed person made the point that an appeal under reg. 114 can only be made on the
ground that the chargeable amount has been calculated incorrectly. It was not part of
the remit of the appointed person to determine whether the planning permission could
have been granted earlier or whether reg. 65 had been complied with.

6.2.8.3 Delay in grant of planning permission – when it is known that a charging
schedule is to be put in place it will encourage applications for planning permission to
be made with a view to obtaining a grant which does not trigger a CIL liability. In the
appeal mentioned in section 6.2.8.2\textsuperscript{347} above the suggestion was that the grant had been
delayed which had resulted in a CIL liability that could have been avoided with a
speedier grant. Although reg. 65 was relied on that is not really material in my view
because the operation of that regulation is only triggered by the grant and does not apply
to the position prior to the grant. It is really a matter for planning law. Most planning
applications should be decided by the planning authority within 8 weeks and if the
appropriate time limit for the application is not complied with then the applicant can
appeal to the Secretary of State as if the application had been refused.\textsuperscript{348} In a CIL
enforcement appeal against Preston City Council\textsuperscript{349} reliance was placed by the appellant
on delay by the Council in dealing with a planning application but this was held not to
have any bearing on the appeal. The point was made in another appeal that costs had
been awarded against the planning authority in the planning appeal for unreasonable
behaviour which indicated that the planning permission should have been granted
earlier before CIL had been introduced. The appointed person pointed out that he had
no power under reg. 117 or reg. 118 to quash the CIL liability.\textsuperscript{350}

6.2.8.4 Timing planning applications before CIL established – in areas in which the
authority has started the process of establishing CIL developers may bring forward their
development plans to avoid being subject to a CIL charge. In such situations nice
judgments as to timing may be required. However, it is not automatically the case that
there will be a financial advantage to be gained in obtaining planning permission ahead
of the establishment of the CIL regime. The financial burden can be less under the CIL
regime. If the developer waits the particular CIL rate applicable to the development
may be low or zero. The cost of complying with section 106 planning obligations may
be significantly reduced. Deciding whether to press ahead or wait for the CIL regime
to be established will require difficult judgments to be made assessing the final financial
outcome.

6.2.9 Planning permission before new or revised charging schedule – obviously a
revision of the CIL by a change of chargeable schedules will not affect the charging of
CIL on a planning permission granted before the revision. It could affect the relevant
CIL rate applicable as that is not determined at the date of the grant but at the date that
the permission first permits development.\textsuperscript{351} With effect from 1\textsuperscript{st} September 2019 there

\textsuperscript{347} Para. 8(b) in Development: Erection of [ ] single storey self storage units decision date 16\textsuperscript{th} December 2013
\textsuperscript{348} Section 78(2) TCPA 1990
\textsuperscript{349} APP/N2345/L/14/1200007 Decision date: 5\textsuperscript{th} June 2014
\textsuperscript{350} APP/U5360/L/18/1200230 Decision date: 18\textsuperscript{th} April 2019 at para. 1
\textsuperscript{351} Previously reg. 40(11) but now para. 1(10) in Schedule 1
is a special rule which is triggered if between the grant of an outline planning permission and the date that the outline permission first permits development a new or revised charging schedule comes into effect. In such circumstances the chargeable amount is determined using the rates in the charging schedule in effect when the permission was granted.\textsuperscript{352} In applying the indexation provisions the index figure which will be IC will be taken from the calendar year in which the charging schedule which was in effect when the outline permission was granted itself took effect.\textsuperscript{353}

6.2.10 Interpretation of planning permission – how a planning permission is construed may be important in the context of CIL. For example, it may determine in which phase of a development particular works fall which will have important consequences for CIL such as whether the phase has commenced. It has been emphasised that the interpretation of a planning permission does not differ materially from that appropriate to other legal documents.\textsuperscript{354}

In Trump International Golf Club Scotland Limited v Scottish Ministers\textsuperscript{355} which concerned a consent under section 36 Electricity CT 1989 Lord Hodge stated

“33. Whether words are to be implied into a document depends on the interpretation of the words which the author or authors have used. The first question therefore is how to interpret the express words, in this case the section 36 consent. There is a modern tendency in the law to break down divisions in the rules on the interpretation of different kinds of document, both private and public, and to look for more general rules on how to ascertain the meaning of words. In particular, there has been a harmonisation of the interpretation of contracts, unilateral notices, patents and also testamentary documents. This can be seen, for example, in \textit{Rainy Sky SA v Kookmin Bank} [2011] 1 WLR 2900 per Lord Clarke at paras 14 to 23 (contracts), \textit{Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd} [1997] AC 749 per Lord Steyn at pp 770C-771D and Lord Hoffmann at pp 779H-780F (unilateral notices), \textit{Kirin-Amgen Inc v Hoechst Marion Roussel Ltd} [2005] 1 All ER 667, per Lord Hoffmann at paras 27 to 35 (patents), and \textit{Marley v Rawlings} [2015] AC 129, per Lord Neuberger at paras 18-23 (testamentary documents). Differences in the nature of documents will influence the extent to which the court may look at the factual background to assist interpretation. Thus third parties may have an interest in a public document, such as a planning permission or a consent under section 36 of the 1989 Act, in contrast with many contracts. As a result, the shared knowledge of the applicant for permission and the drafter of the condition does not have the relevance to the process of interpretation that the shared knowledge of parties to a contract, in which there may be no third party interest, has. There is only limited scope for the use of extrinsic material in the interpretation of a public document, such as a planning permission or a section 36 consent: \textit{R v Ashford Borough Council, Ex p Shepway District Council} [1999] PLCR 12, per Keene J at pp 19C-20B; \textit{Carter Commercial Developments Ltd v Secretary of State for Transport, Local Government and the Regions} [2002] EWCA Civ 1994, [2003] JPL 1048, per Buxton LJ at para 13, at para 27 per Arden LJ. It is also relevant to the process of interpretation that a failure to comply with a condition in a public law consent may give rise to criminal liability. In section 36(6) of the 1989 Act the construction of a generating station otherwise than

\textsuperscript{352} Para. 2(3)(a) Schedule 1
\textsuperscript{353} Para. 2(3)(b) Schedule 1
\textsuperscript{354} Andrews J. in Swindon BC v SSHCLG [2019] EWHC 1677 (Admin) at para. 32
\textsuperscript{355} [2015] UKSC 74
in accordance with the consent is a criminal offence. This calls for clarity and precision in the drafting of conditions.

34. When the court is concerned with the interpretation of words in a condition in a public document such as a section 36 consent, it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense. Whether the court may also look at other documents that are connected with the application for the consent or are referred to in the consent will depend on the circumstances of the case, in particular the wording of the document that it is interpreting. Other documents may be relevant if they are incorporated into the consent by reference (as in condition 7 set out in para 38 below) or there is an ambiguity in the consent, which can be resolved, for example, by considering the application for consent.”

Lord Carnwath in that case agreed with the approach of Lord Hodge and stated:

“Any such document of course must be interpreted in its particular legal and factual context. One aspect of that context is that a planning permission is a public document which may be relied on by parties unrelated to those originally involved. (Similar considerations may apply to other forms of legal document, for example leases which may need to be interpreted many years, or decades, after the original parties have disappeared or ceased to have any interest.) It must also be borne in mind that planning conditions may be used to support criminal proceedings. Those are good reasons for a relatively cautious approach, for example in the well-established rules limiting the categories of documents which may be used in interpreting a planning permission (helpfully summarised in the judgment of Keene J in the Shepway case at pp 19-20). But such considerations arise from the legal framework within which planning permissions are granted. They do not require the adoption of a completely different approach to their interpretation.”

When the wording of the planning permission is clear then regard is to be had only to the terms of the permission taking into account that terms in a permission which have a definition in planning legislation will bear that meaning unless there is a clear indication to the contrary. The reasonable reader of the permission will be assumed to have some knowledge of planning law and practice but to start by taking the

356 At para. 66
357 Swindon BC v SSHCLG supra at paragraphs 31 and 32 affirming Wyre Forest DC v SS for Environment [1990] 2 AC 357 at 365
358 Lambeth LBC v SSCLG [2018] EWCA Civ 844 at paragraphs 52 and 71
permission at face value and not embarking on an elaborate analysis.\textsuperscript{359} Only in the event of an ambiguity may extrinsic evidence be admitted.

6.3 Commencement of development –

6.3.1\textbf{ General} - no CIL will be payable even though planning permission has been granted after the establishment of the CIL rates for the area unless and until the development authorised is commenced. An unimplemented planning permission will not result in any payment of CIL. Redbridge Council has estimated that a fifth of planning permissions granted by the authority are not implemented. The danger with such a planning permission is that as the commencement of a development does not require a great deal of work the development may be unwittingly commenced by the carrying out of a small amount of work, possibly involving demolition, thereby causing the CIL to be payable and a surcharge to be claimed due to the failure to serve a commencement notice. The grant of a planning permission will also probably result in the registering of a local land charge. It is sensible to ensure that there is evidence establishing when a development commenced in case there is an issue raised over this. Such evidence will include photographs and communications.

6.3.2 \textbf{What constitutes commencement} – what constitutes the commencement of a development is governed by concepts taken from planning law. Under planning law section 56 of the 1990 Act provides that a development begins on the earliest date on which any material operation comprised in the development begins to be carried out. This threshold is low. For the purposes of CIL reg. 7 governs when a development commences.\textsuperscript{360} It is provided that a development is treated as commencing "on the earliest date on which any material operation begins to be carried out on the land."\textsuperscript{361} This is subject to three qualifications.\textsuperscript{362}

6.3.2.1 \textbf{Material operations} – this phrase has the same meaning as in section 56(4) TCPA 1990.\textsuperscript{363} That sub-section expressly provides that this includes:-

(i) any construction work in the course of the erection of a building\textsuperscript{364};

(ii) any demolition work of a building\textsuperscript{365};

(iii) any digging of trenches to provide a foundation or part of a foundation. This is true even if the trenches once dug are then filled in (High Peak BC v Secretary of State\textsuperscript{366}).

\textsuperscript{359} Lord Carnwath in Lambeth LBC v SSCLG [2019] UKSC 33 at para. 28
\textsuperscript{360} Reg. 7(1)
\textsuperscript{361} Reg. 7(2)
\textsuperscript{362} See section 6.3.2.2 below
\textsuperscript{363} See section 6.3.2.2 below
\textsuperscript{364} This covered the removal of the original windows and door and installation of three windows and boarding up door and window openings – APP/G1250/L/17/1200140 decision date: 21\textsuperscript{st} February 2018
\textsuperscript{365} There is a common misunderstanding that demolition does not constitute the commencement of development. Attempts to avoid this by claiming that the demolition is permitted on health and safety grounds under the Permitted Development Rights regime are likely to fail – APP/M1710/L/18/1200212 decision date: 18\textsuperscript{th} January 2019. Similarly, demolition claimed to be necessary to enable a contamination survey to be carried out as required by a pre-commencement condition does not cause that not to commence the development which involves demolition – APP/F0114/L/18/1200229 decision date
\textsuperscript{366} (1981) JPL 366
However, these must be trenches which are required for the development and not merely dug so as to be able to argue that a start has been made on the planning permission being implemented.

(iv) the laying of any underground main or pipe to the foundations or part of the foundations of a building or to any trench within (iii) above;

(v) any operation in the course of laying out or constructing a road or part of a road.
For example, the pegging out of the width of the road will be sufficient.

(vi) any change in the use of any land which constitutes material development but if there has already been a material operation then the first in time will constitute the commencement.

It is possible that a development can commence by works even though these are not material operations in the list in section 56(4). This is illustrated by Malvern Hills DC v Secretary of State for the Environment which concerned the pegging out of a line of a road with pegs which were not a permanent feature but the work was held to be within section 56(4)(d) of the 1990 Act.

In a surcharge appeal it was stated that the clearing of the site and the undertaking of groundworks would constitute the commencement of development but not the segregation of the development site from other land. Similarly it was found in another appeal the removal of the top soil with plots marked and a hard surfaced access to the public highway had been constructed with the driveway marked out had resulted in a significant change in the physical appearance and layout of the land. These works were held to be operations which commenced the development even though no trenches or foundations had been dug. Creation of a vehicular access was held to be sufficient notwithstanding that the appellant claimed it was a parking space to avoid parking tickets due to the parking restrictions applying to the highway. However, in contrast the installation of central heating and carrying out internal electric works will not constitute material operations and so not cause the development to commence.

When the planning permission authorises a change of use internal alterations which are not development by themselves will not cause the development to have commenced. Unless significant works are required the operation of the new activity will be the commencement.

6.3.2.2 Qualification to reg. 7(2) – the general rule in reg. 7(2) linking the commencement of development to the start of a material operation is subject to three qualifications. The date on which a planning permission is granted (or in the case of a modification under section 177(1) TCPA 1990 the date of modification) will be the date that the development commences for the purposes of CIL when

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367 Field v First Secretary of State [2004] JPL 1286
368 [1983] 46 P & CR 58
369 APP/L5240/L/1200030 decision date: 17th March 2016 - para. 10
370 APP/L3245/L/16/1200070 decision date: 4th August 2017 at para. 10-12
371 APP/G1250/L/18/1200194 decision date: 7th November 2018
372 APP/L5240/L/18/1200243 decision date: 6th June 2019 at para. 3
373 APP/W0340/L/17/1200113 decision date: 21st December 2017
(i) retrospective planning permission is granted under section 73A of the TCPA 1990;\(^\text{374}\)

(ii) the permission is granted or modified on appeal against enforcement proceedings under section 177(1) of the TCPA 1990;\(^\text{375}\)

(iii) if a previous planning permission had been granted for the development but for a limited period.\(^\text{376}\)

6.3.3 Earnest of intent – in the 1990’s it was considered that the operation relied on to constitute the commencement of a development required it to be an earnest of an intention to develop. Following Stafford CC v Riley\(^\text{377}\) it is now accepted that there is no issue of intent and all that is required is that (i) the particular operation is carried out pursuant to a planning permission or similar authorisation; and (ii) it is material and not de minimis. It has been held in a statutory appeal decision that there is no need for any intentional element.\(^\text{378}\) In that case it was claimed that demolition had been carried out under the health and safety provisions in the Permitted Development Rights regime rather than pursuant to a planning permission. It was argued that the appellant had no intention to commence the development but the appointed person, Mr. K McEntee, held that it was enough that the demolition constituted a material operation which is one even though there is no planning permission.

This seems questionable. If there are two live planning permissions both of which comprise demolition the carrying out of the demolition will not commence both developments. Which development is commenced will depend on intention. If it is possible to carry out demolition work under the PDR regime and the owner genuinely wishes to keep open the option not to implement the planning permission then why can that not be achieved by merely carrying out the demolition? However, even if this is correct there will still be the issue whether it is possible for demolition to be carried out under Class B of Part 11 of Schedule 2 to the 2015 Order if the land is subject to planning permission and is thereby excluded development.

6.3.4 Operation contravening planning condition – the position use to be that any operation contravening any condition attached to a planning permission could not constitute the commencement of planning permission (FG Whitley & Sons Limited v Secretary of State for Wales\(^\text{379}\)). Woolf LJ stated at page 302 that the “permission is controlled by and subject to the conditions. If the operations contravene the conditions they cannot properly be described as commencing the development authorised by the permission. If they do not comply with the permission they constitute a breach of planning control and for planning purposes will be unauthorised and thus unlawful. This is the principle which has now been clearly established by the authorities.” It he did not consider it necessary to determine whether the condition is or is not a pre-condition.

\(^{374}\) Reg. 7(5)(a)
\(^{375}\) Reg. 7(5)(b)
\(^{376}\) Reg. 7(4)
\(^{377}\) [2002] PLCR 75
\(^{378}\) APP/W0340/L/18/1200241 Decision date: 22\textsuperscript{nd} May 2019 para. 1-3
\(^{379}\) (1992) 64 P & CR 296
The issue has often arisen in the context of disputes as to whether a planning permission has lapsed due to the expiry of time. It is possible that in the context of CIL this point could now be an issue in disputes as to whether or not CIL has become payable. However, it has not been accepted in statutory appeals that the issue is whether the development has commenced and not whether it is lawful. 380

Whilst recognising the principle as clear and of general application Keene J. considered that it was subject to exceptions 381 so that a development can in some circumstances commence even though there has not been full compliance with all the conditions. Although Keene J. accepted that the class of exceptions had not closed he was clear that there was no broad discretion based on fairness which would permit application of the Whitley principle to be overridden.

One exception to the principle was accepted in the Whitley case. It involved a planning condition requiring approval by a time limit when an application for approval had been made before the expiry of the time limit but approval was given subsequently. Work prior to the approval can constitute the commencement of the development. If the developer has done all that can be done to comply or there has been substantial compliance then the development may commence. 382 Similarly if the local planning authority has agreed that it can start or if enforcement action could not succeed. 383 Further where enforcement action would be irrational or an abuse of power in relation to the works carried out then such works can constitute the commencement of the development (R (Hammerton) v London Underground Ltd 384 Admin and R (Prokopp v London Underground Ltd). 385

To reflect this a distinction has been drawn in R (Hart Aggregates Limited) v Hartlepool BC 386 between such planning conditions which prohibit a development from taking place before certain action has been taken and act as a true condition precedent and those which require certain matters to be agreed before the commencement of development. Mr. Stuart Isaacs Q.C., sitting as deputy judge of the High Court, in Glenmere plc v F Stokes & Sons Limited stated that “the effect of Hart Aggregates is to suggest a more flexible approach which requires consideration on a case-by-case basis whether a condition is in truth a condition precedent and if so whether a failure to comply with it does indeed have the effect of engaging the Whitley principle”.

The Court of Appeal in Greyfort Properties Limited v Secretary of State for Communities and Local Government 388 confirmed the application of the Whitley principle whilst acknowledging the exceptions but accepted that a condition which

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380 APP/Z2830/L/17/1200110 decision date: 1st November 2017 at para. 3 and after the revised demand notice was served a second appeal was made raising the same arguments as regards unlawful commencement of the development – APP/Z23830/L/17/1200157 decision date: 7th February 2018

381 Leisure Great Britain plc v Isle of Wight County Council (2000) 80 P&CR 370 at 378

382 R v Flintshire CC ex parte Somerfield Stores plc [1998] PLCR 336

383 Agecrest Limited v Gwynedd CC [1998] JPL 325

384 [2002] EWHC 2307 Admin

385 [2003] EWCA Civ 961

386 [2005] EWHC 480

387 [2008] All ER (D) 92 at paragraph 23

388 [2011] 3 EGLR 93
expressly provides that it must be satisfied before the development can commence has effect as a pre-condition and prohibits the work until the condition has been fulfilled.\textsuperscript{389} These authorities may have contributed to the introduction in the 2014 Regulations of the new definition for a “pre-commencement condition”\textsuperscript{390} in the context of phased planning permissions.\textsuperscript{391} However, the wording used does not make clear whether it has to be a pre-condition as it refers to a condition which requires further approval to be obtained before a phase can commence. From the authorities such a condition need not be a pre-condition.

In practice whether a condition is or is not a pre-condition is not an easy distinction to be drawn and there is still scope for argument as to whether a development has truly commenced if not all the conditions attached to the planning permission have been satisfied. The oddity is that it could be the developer rather than the charging authority relying on this point to avoid the crystallisation of a CIL liability. It has been held in an appeal that placing trenches and footings in the wrong place will not prevent the development from being treated as commenced as this is an enforcement issue only.\textsuperscript{392} Similarly if works are started under an outline planning permission before the reserved matters have been dealt with.\textsuperscript{393}

6.3.5 Phased developments – as each phase is a separate chargeable development so that works in relation only to one phase will trigger the CIL liability for that phase but not for the other phases. However, if the works relate to more than phase that will trigger the CIL liability in relation to all the phases affected. This can be an issue if infrastructure works need to be carried out across the whole site before construction works can start. How can the trigger of the whole CIL liability be avoided? A number of options have been suggested. One is to add a further phase to the development which relates only to the infrastructure work so that when that work starts it acts as a trigger only in relation to the infrastructure phase. For instance, a first phase constructing a road for a residential development will defer CIL becoming payable until the second phase. An alternative suggestion is to have a hybrid application which results in a separate planning permission in relation to the infrastructure work.

6.3.6 Retrospective permissions – if a planning permission is granted in part or whole under section 73A of the 1990 Act the development is treated as commencing on the date that the permission is granted regardless of the works having actually been started earlier.\textsuperscript{394} The same is the case with a planning permission granted under section 177(1) of the 1990 Act by a planning inspector in an appeal against an enforcement notice.\textsuperscript{395} In both cases the deemed commencement date will be the date of the grant of the planning permission.\textsuperscript{396} 

\textsuperscript{389} Richards LJ at para. 31  
\textsuperscript{390} Reg. 8(3)  
\textsuperscript{391} See section 6.2.3.3 above  
\textsuperscript{392} APP/L3245/L/17/1200095 decision date 8\textsuperscript{th} August 2017 at para. 4  
\textsuperscript{393} APP/R0335/L/17/1200103 decision date: 18\textsuperscript{th} October 2017  
\textsuperscript{394} Reg. 7(5)(a)  
\textsuperscript{395} Reg. 7(5)(b)  
\textsuperscript{396} As regards section 177(1) 1990 Act permission – APP/X0360/L/17/1200107 decision date: 23\textsuperscript{rd} October 2017. As regards section 73A permission – see section 6.3.2.2 above
7. Who charges CIL – a charging authority is one which grants planning permission and may put in place the charging schedule.  The CIL does not have to be collected by the charging authority but can be collected by a separate collecting authority although normally the charging authority and the collecting authority will be the same authority. The Mayor of London’s charge will be collected by the relevant local London Borough Council or MDC if set up by the Mayor. Care has to be taken if there is a separate collecting authority so that notices required to be given to the collecting authority are not by mistake given to the charging authority.

8. Planning Permission – as set out in section 6 above the operation of the CIL regime is triggered by a development being authorised. Normally this will be by the grant of a planning permission. However, it extends beyond such grants to general consents. This includes permitted developments previously under the Town & Country Planning (General Permitted Development) Order 1995 (SI 1995/418) and the subsequent 22 amending orders but now consolidated and widened in the Town and Country Planning (General Permitted Development) (England) Order 2015. As a means of authorising developments this has taken on increasing importance with more changes in use being permitted without the need for the grant of a fresh planning permission. A prior application to the local planning authority may still be required relating to matters such as impact on highways, demolition, contamination risk and noise impact but such applications will not trigger the operation of the CIL regime. Developments authorised by a neighbourhood development order (section 61E of TCPA 1990) will now be covered by the CIL regime.

The CIL regime will operate differently dependent on whether there is an actual grant of planning permission or a deemed grant under a general consent. With an actual grant it will trigger the issue and service of a CIL liability notice by the charging authority (see section 12.1 below for a summary of a possible sequence of events) but with a general authorisation the first main step should be the service of a notice of chargeable development by the developer or landowner (see para. 8.3.3 below) which in turn will result in a liability notice. Developments commenced before 6th April 2013 and authorised by a general consent (being a development order under section 59 1990 Act or a local development order or an enterprise zone scheme) will not be within the CIL regime.

8.1 Pre-CIL permission – the implementation of a planning permission which was granted before the setting of the CIL rates in the relevant area (“pre-CIL permission”) will not give rise to a CIL charge even if the commencement of the development is after the setting of the CIL rate. This is true even if the development is phased or conditional upon an approval which is obtained after the setting of the CIL rates. A pre-CIL permission may have CIL consequences if it is the parent permission for one

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397 Section 206(1) PA 2008
398 See section 5.2 above
399 See section 21.8 below
400 Reg. 5 and see sections 8.2.3 and 8.3 below
401 2015/596 subsequently amended by the removal of permitted development rights in relation to public houses listed or nominated for listing as an asset of community value by the Town and Country Planning (General Permitted Development)(Amendment) (England) Order 2015/659
402 Reg. 128(2)
403 Reg. 128
404 See section 6.2.2 above
or more section 73 permissions granted after the introduction of CIL. The pre-CIL permission will most probably be subject to section 106 planning obligations which will not have been subject to the restrictions introduced with the CIL rate setting.

For these purposes the original reg. 128(1) focused on whether the development was located in an area in which a charging schedule is in effect. This has been changed so that with effect from 1st September 2019 the focus is on whether the charging authority has a charging schedule in effect. This allows for the possibility that there can be more than one charging authority in an area but the authority which is the local planning authority does not have a charging schedule in place.

8.2 What constitutes planning permission for CIL – there is an expanded definition of planning permission in reg. 5 which excludes planning permission granted for a limited time but includes

8.2.1 ordinary grants of planning permission made by the local planning authority or the Secretary of State;

8.2.2 modifications to or replacements of existing planning permissions pursuant to sections 73, 97, 100, or 177 of the 1990 Act. This does not extend to section 96A of the 1990 Act which allows a local planning authority to make a non-material change to a planning permission;

8.2.3 general consents which term covers permissions under development orders, local development orders, neighbourhood development orders (which include Community Right to Build orders), developments under government authorisation and arising under a simplified planning zone scheme and an enterprise zone scheme. In the case of development authorised by a development order, local development order or by an enterprise zone scheme CIL will apply to developments commenced on or after 6th April 2013.

It is pointed out in the February 2014 Guidance that a grant of a Lawful Development Certificate issued pursuant to section 191 or 192 TCPA 1990 is not relevant to the operation of the CIL regime. Such a certificate will confirm the application of permitted development and that no further planning permission is required to carry out the development but it will not trigger a CIL liability or payment. It is not a planning permission for the purposes of CIL. The development to which the certificate relates will require the giving of a notice of chargeable development in the normal manner.

Similarly the approval of a reserved matter is not a planning permission.

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405 See section 8.4 below  
406 See section 25 below  
407 Reg. 5(10) of the 2019 (No. 2) Regulations  
408 Reg. 5(2)  
409 See section 8.8 below  
410 Para. 2.1.5  
411 See section 8.3.3 below  
8.3 General consents –

8.3.1 Meaning – a general consent is a planning permission for the purposes of the CIL regime.\footnote{Reg. 5(1)(g)} It means any of the following:\footnote{Reg. 5(3)}

(a) planning permission granted—

(i) by a development order made under section 59 of TCPA 1990. In exercise of the power conferred by this section the Secretary of State has passed The Town and Country Planning (General Permitted Development) (England) Order 2015/596 which is the current statutory instrument containing the Permitted Development Rights regime which automatically authorises the carrying out of various developments without the need for an application for the grant of planning permission.

(ii) by a local development order adopted under section 61A of TCPA 1990;

(iii) by a neighbourhood development order made under section 61E [or 61Q (community right to build orders) of TCPA 1990.];

(iv) by a simplified planning zone scheme within the meaning of sections 82 and 83 of TCPA 1990,

(v) in accordance with section 90 of TCPA 1990 (development with government authorisation), or

(vi) by an enterprise zone scheme adopted under Schedule 32 to the Local Government, Planning and Land Act 1980; or

(b) development authorised by an Act of Parliament or an order approved by both Houses of Parliament which designates specifically the nature of the development authorised and the land on which it may be carried out.

8.3.2 Care needed - many developments under the general consents will be minor developments which do not equal or exceed the 100 square metre limit thereby benefiting from the minor works exemption.\footnote{See section 10.3 below} When they do exceed that limit or they are below that limit but relate to a new dwelling then particular care will need to be taken to ensure compliance with the requirements of the CIL regime because there will be no formal planning permission which will have alerted both the charging authority to the need to serve a CIL liability notice and the householder to the CIL charge. It will be up to the developer and landowner between them to alert the charging authority by the giving of a notice of chargeable development and to ensure compliance with the CIL regime. There is no express time limit on the making of a claim to CIL in such circumstances so an unsuspecting owner may carry out a chargeable development under a general consent blissfully unaware that by doing so the CIL regime has been operated and then some time after the development’s completion receive out of the blue a CIL liability notice and demand notice from the charging authority.
8.3.3 Notice of chargeable development - Care must be taken to ensure that prior to commencement of such a development a notice of chargeable development is given to the collecting authority unless it is a minor development or one in relation to which the CIL chargeable amount is zero or one in respect of which an exemption for residential extension has been granted.

This notice must be in the prescribed form or a form “to substantially the same effect”. Accompanying the notice must be a plan which identifies (a) the land to which the notice relates; (b) the development; (c) any buildings relevant for the purpose of calculating K or E when calculating the CIL liability in accordance with the formulae in regulation 40 and in relation to planning permissions granted on or after 1st September 2019 Schedule 1. There is a continuing obligation to inform the collecting authority of any changes which are made prior to commencement of the development. The collecting authority has power to request further information, documents or materials from the person giving such a notice. Although it is not provided for I assume that the intended response to the service of a notice of chargeable development is that the collecting authority should issue a liability notice but so far as I am aware there is no provision to this effect. This is in contrast to the case where due to default by the developer it is the collecting authority that serves the notice of chargeable development as then the collecting authority is required to serve a liability notice as well.

8.3.4 Default in serving notice of chargeable development – in the event of a failure to serve such a notice of chargeable development the collecting authority must prepare such a notice and plan if it believes that development has been commenced and neither the minor development exemption nor the residential exemption applies. The requirement to identify the buildings is relevant for the purposes of Kr and E of the reg. 40, and in relation to planning permissions granted after 1st September 2019, Schedule. Such CIL calculation is qualified to applying “where the collecting authority has sufficient information to do so.” This notice should be served on every person known to have a material interest in the land together with the CIL liability notice.

The authority may be short of information. If it does not have the necessary information relating to the existing buildings which are to be retained or demolished then it can treat those as zero for the purposes of calculating the CIL liability. At the same time as serving the notice and plan it should also serve a liability notice as the development has commenced and such a notice must be served as soon as practicable after the date on which development is first permitted (see section 13 below). It would also seem...

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416 Reg. 64(2)
417 Reg. 64(1A)(i)
418 Reg. 64(1A)(iii)
419 Reg. 64(1A)(ii)
420 Reg. 63(3)(a)
421 Reg. 64(4) as amended by reg. 5(5) of 2019 (No. 2) Regulations and see sections 15.2.2, 15.2.3 and 15.2.5 below as regards such deductions
422 Reg. 64(8)
423 Reg. 64A(3)
424 Reg 64A
425 Reg. 64A(2)(c)(iii) as amended by reg. 5(6) of 2019 (No. 2) Regulations
426 Reg. 64A(3)
427 Reg. 40(9)
sensible to serve the demand notice as well at the same time although there is no obligation requiring the authority to do so (see section 17.1 below as regards demand notices). There is a right to appeal against such a deemed commencement date if a demand notice is served (see section 20.6 below).

8.3.5 Information – it may be difficult for the collecting authority to know whether there has been a development under a general consent. If it suspects that such a development has commenced it may require the owner of a material interest in the land to provide it with further information, documents or materials as it considers relevant to assist it to ascertain whether a notice of chargeable development must be submitted under reg. 64(2). In addition the collecting authority has the power to authorise a person in writing to enter land for the purpose of ascertaining whether a notice of chargeable development must be submitted under reg. 64(2) or if such a notice has been given so as to gather information in order to calculate the chargeable amount payable. In either case a request for the information must first be made before the power of entry is exercised and in the case of a private dwelling a warrant must first be obtained from a justice of the peace. A collecting authority has authority to use any information it has obtained under any other statutory provision save for that received by a committee of the authority in its capacity as a police authority or in its capacity as an employer. It can, therefore, for example, use information received by the building control department under the statutory building control system to assist with the discharge of its functions under the CIL regime.

8.4 Section 73 permissions – section 73 TCPA 1990 confers a power to remove or change a condition attached to an earlier planning permission. It was introduced to avoid the consequences of having to appeal a planning permission which was granted subject to a condition which was objected to. An appellant making such an appeal ran the risk that the planning could be lost. Section 31A TCPA 1971 was introduced to address this problem. It enabled an application to be made to “amend” the condition but leaving the original planning permission in existence and available to be implemented. An exercise of the statutory power now in section 73 will create an additional planning permission subject to the new or amended condition.

Sullivan J. in R v Coventry City Council ex parte Arrowsmith Group plc when discussing the extent of the power conferred by section 73 stated “Thus the council is able to impose different conditions upon a new planning permission, but only if they are conditions which the council could lawfully have imposed upon the original planning permission in the sense that they do not amount to a fundamental alteration of the proposal put forward in the original application.”

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428 Reg. 108A
429 Reg. 109(1)(f)
430 Reg. 109(1)(e)
431 See section 19.5.8 below
432 Reg. 79
434 CO/1063/2000
In the Vue Entertainment case Collins J. went further and considered that it was not open to a local planning authority to vary conditions pursuant to an application under section 73 “if the variation means that the grant (and one has therefore to look at the precise terms of the grant) are themselves varied.”\textsuperscript{436} In a careful judgment Sir Wyn Williams whilst accepting the ratio of Sullivan J. in the Arrowcroft case rejected this proposition formulated by Collins J.\textsuperscript{437} which he considered would “lead to an over-technical and inflexible approach to the application of section 73 of the 1990 Act”.\textsuperscript{438}

An application under section 73 is not limited to developments which have not started. Lord Carnwath stated in Lambeth LBC v Secretary of State for Housing, Communities and Local Government\textsuperscript{439} that “Although the section refers to “development” in the future, it is not in issue that a section 73 application can be made and permission granted retrospectively, that is in relation to development already carried out. This question arose indirectly in the courts below, in the context of a dispute about the validity of the time-limit condition (condition 1), which required the “development to which this permission relates” to be begun within three years. The Court of Appeal upheld the inspector’s decision that this condition was invalid, in circumstances where the relevant “development” had been carried out many years before.”

This means that if the earlier permission has been implemented or at least started there and what is required is a change in the conditions attached to the earlier planning permission then there may be two routes open to the owner. One is to apply for a retrospective planning permission under section 73A and the other is to apply for a section 73 permission with varied conditions to those attached to the earlier permission. The CIL consequences will be different dependent on which route is pursued. In particular the carrying over of relief under reg. 58ZA requires that the second permission is granted under section 73 and will not cover one granted under section 73A. Which is opted for will make a great difference. Care will also need to be taken that if the application is stated to be under section 73 that is not changed by the planning authority during the course of the application so that the actual permission granted is a section 73A permission.

If an application under this section is successful it results in a new planning permission which leaves intact and unamended the original planning permission so that there is a choice which is implemented.\textsuperscript{440} Such an application may involve a substantial change with, for example, additional floors or alternatively be a relatively minor change such as an alteration to the external appearance of the building. One will increase the floor space whilst the second has no impact at all on area. However, as the section 73 permission is a new planning permission it will cause the CIL regime to operate again. In consequence there is a need to consider the CIL consequences which flow from this second permission particularly as prior to the 2012 Regulations those consequences could be extremely unwelcome. This can arise in two different CIL contexts. The earlier planning permission which is being varied may have occurred either before the setting of CIL rates in the area or after the setting. Each set of circumstances will need to be considered separately. In neither case under the CIL regime in force before the 2012 Regulations would the CIL charge arising from the section 73 permission be limited.

\textsuperscript{436} Para. 14
\textsuperscript{437} Finney v Welsh Ministers [2018] EWHC 3073 (Admin) at para. 38
\textsuperscript{438} Para. 40
\textsuperscript{439} [2019] UKSC 33 at para. 12
\textsuperscript{440} Pye v Secretary of State for the Environment (1998) 3 PLR 72
only to any increase in the gross internal floor area brought about by the second 73 permission.

This meant that the financial consequences with a large development could be huge. With a proposed redevelopment in Victoria Street by Land Securities the prospective CIL bill due to the section 73 application was said to be millions of pounds and was stopping the proposed development. This was avoided by the amendments in the 2012 Regulations in the process saving 2,500 new jobs. It can mean the difference between a proposed development going ahead and being shelved. Such a prospect encouraged the Government to act and remove by the 2012 Regulations both of the CIL problems arising in relation to successful section 73 applications.

One appeal decision appears to have side-stepped such consequences of a section 73 permission. In that case a house had been constructed pursuant to pre-CIL permissions but was wider than shown on the approved plans. Subsequent to the introduction of CIL a section 73 planning application was made to vary a variation of a condition attached to a pre-CIL permission. This was retrospective as the work had been carried out. The appointed person held that as the application was to allow extension to the side elevations this meant that the chargeable development was those areas at the side and not the internal area of the whole house. This is questionable as it would leave the remainder of the house without proper authorisation under planning law. It would seem inconsistent with other appeal decisions concerning retrospective permission required due to the construction works not being carried out in accordance with the approved plans authorised by the earlier permission. Such an appeal decision was made on the same day as that limited section 73 decision.

8.4.1 Earlier pre-CIL permission -

8.4.1.1 Position before 2012 Regulations in force - If between the grant of the pre-CIL permission and the grant of the section 73 permission a CIL charging schedule had been put in place for the area then the section 73 permission but not the earlier permission would trigger the operation of the CIL regime. This would be the case whether the section 73 permission increased or decreased the GIA of the authorised development or left it unchanged. The CIL liability was charged on the development authorised by the section 73 permission as an independent standalone permission taking account of the circumstances prevailing at the time of the grant and without any reference to the parent permission.

In many cases if the proposed development involved a vacant site this would mean that the charge to CIL was levied on the full GIA of the development. In a very few cases there might be a deduction from the gross internal space of the development if it had already commenced before the section 73 application and one or more buildings or parts

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441 Development: Retrospective application for variation of condition 14 [ ]. Decision date: 30th April 2019
442 Para. 16
443 Development: Application [ ] of outbuildings/barns with guest accommodation, stable [ ], [ ] flat, and [ ] area. Decision date: 30th April 2019
444 When the second permission is granted under section 73A TCPA 1990 this will not trigger the operation of reg. 128A – Development: Application for the rebuilding of [ ] and conversion [ ] to a single dwelling house and demolition. Decision date 25th April 2017 para. 10
had been constructed and already been in continuous lawful use for the required six months or more by the date of the grant of the section 73 permission.

A possible further adverse CIL consequence might have arisen if at the time that the parent pre-CIL permission was granted there was an existing building on the site but as part of the development it had been demolished by the time the section 73 permission was granted. In those circumstances no deduction in respect of the GIA of the demolished building would be available in respect of the CIL computation in relation to the section 73 permission whereas if the parent permission had been subject to CIL there would have been a deduction.

In all cases it is likely that the site would already be subject to a section 106 agreement as a result of the earlier permission. No relief is given as against the CIL charge for the burden arising from that section 106 agreement. The burden of the section 106 agreement will have been anticipated by the developer but not the additional CIL charge. This was a very harsh outcome bearing in mind that it occurs whether or not the section 73 permission has resulted in an increase in gross internal floor area. It may be necessary to re-visit the section 106 agreement in order to ascertain whether the burden can be mitigated by varying the terms of that agreement.

8.4.1.2 Position after 2012 Regulations in force but before 2019 (No. 2) Regulations – to avoid this deterrent to development a new relief was introduced with effect from 29th November 2012. The intention was that on the grant of the section 73 permission the amount of CIL payable will be the amount by which the CIL chargeable by reason of the section 73 permission exceeds what would have been the CIL charge if CIL had been chargeable on the occasion of the earlier grant of planning permission.

The general objective with the amendments was set out in the Second Delegated Legislation Committee debates on 12th November 2012 by the Parliamentary Under-Secretary of State for Community and Local Government (Mr. N. Boles) when he stated: “In transitional cases when the original planning permission was granted prior to a CIL charge being brought in, but when the section 73 application is granted following the introduction of CIL, the section 73 consent will trigger CIL only for any additional liability it introduces to the development. These changes ensure CIL works fairly and does not hold back development when conditions have changed.”

In the Community Infrastructure Levy Guidance dated December 2012 issued by the Secretary of State under section 221 guidance was given with regard to the amendment of the relationship between CIL and section 73 application by the 2012 Regulations (paragraphs 94 to 98). It stated in para. 97 that in “transitional cases, where the original planning permission was granted prior to a levy charge being brought in, but when the section 73 application is granted following the introduction of CIL, the section 73 consent will only trigger CIL for any additional liability it introduces to the development.” Not only is this statutory guidance but section 221 requires that a charging authority must have regard to it. This Guidance was replaced by Guidance dated April 2013 also issued by the Secretary of State under section 221 and paragraphs 94 to 98 are identical to those in the earlier 2012 Guidance.

445 new regulation 128A inserted in 2010 CIL regulations by reg. 9 of the 2012 Regulations
This CIL guidance was echoed in the CIL Guidance provided in the Planning Practice Guidance on the DCLG website with regard to the impact of a section 73 application to be found at Paragraph 007 reference ID 25-007-20140612 which includes http://www.legislation.gov.uk/uksi/2012/2975/regulation/9/made the statement that regulation 128A “provides for section 73 consent to only trigger levy liability for any additional liability it introduces to the development”. The government’s intention is that the provisions set out in regulation 128A should apply to all subsequent section 73 permissions granted in respect of such a development where these transitional circumstances have arisen.

The relief was given using the formula in reg. 128A(3):

“X-Y

Where

X = the chargeable amount for the development for which B was granted, calculated in accordance with regulation 40; and

Y = the amount, calculated in accordance with regulation 40, that would have been the chargeable amount for the development for which A was granted, if A first permitted development on the same day as B.”

The earlier deemed charge (Y) is calculated at the same CIL rate as applies at the date of the grant of the section 73 permission. No further modification was included which has left scope for argument as to the manner in which Y is to be computed. In the event that Y is greater than X then the chargeable amount is zero and there is no repayment by the charging authority.

The intention was that no CIL is payable as a result of the section 73 permission if the CIL otherwise chargeable is the same or less than it would have been if there had been a CIL charge on the occasion of the earlier permission. Thus a change, for example, comprising the addition of a planning condition relating to the opening hours of a retail unit will not have CIL consequences. On the other hand if the change adds a floor thereby increasing the GIA of the development CIL would be charged by reference to that increase only and not the gross internal area of the whole development. Conversely, if the GIA decreased so should the CIL liability.

However, the limited nature of the modifications to the application of reg. 40 when calculating the notional CIL liability (Y) led to problems with the indexation element of the reg. 40 calculation. The issue centred on Ip in reg. 40(5) which is the index figure for the year in which planning permission is granted. When calculating Y should Ip be the index figure for the year in which the pre-CIL parent permission was granted or for the year in which the section 73 permission was granted? Charging authorities differed as to which index figure should be adopted. Some used the index figure for the year the parent permission was granted on the basis that there was no modification to prevent

446 Original reg. 128A(4) inserted by 2012 amendments
447 Original reg. 128A(5) inserted by 2012 amendments
this notwithstanding that it meant using an index period for a period prior to the introduction of CIL in the relevant area. To do so meant that even if the effect of the section 73 permission was not to increase the GIA of the development the CIL liability could be increased purely due to indexation which applied to the whole of the development’s GIA and not just to any change in GIA resulting from the section 73 permission. Other authorities used the index figure for the year the section 73 permission was granted as this accorded with the rationale behind reg. 128A.

The issue was raised in a statutory appeal and decided in favour of Ip being the index figure for the year in which the section 73 permission was granted.\footnote{\textit{Variation of condition [ ]} (development in accordance with the approved drawings) of planning permission ref. [ ] … Decision date: 6\textsuperscript{th} March 2017} This decision was challenged by way of judicial review proceedings but did not proceed to a hearing because the government introduced an amendment to reg. 128A by the Community Infrastructure Levy (Amendment) Regulations.\footnote{Reg. 128A(4)(a) as provided by 2018 amendment} This amendment took effect with regard to any CIL liability notice or revised notice on or after 5\textsuperscript{th} February 2018. It amended reg. 128A(4) by adding two modifications for the computation of the notional CIL with regard to the parent permission. The first modification\footnote{Reg. 128A(4)(b) as provided by 2018 amendment} confirms that the index figure (Ip) to be used when calculating the notional CIL for the parent permission will be the index figure for the year in which the section 73 permission was granted. This removed the issue regarding indexation. As regards the period up until the coming into force of this amendment the appointed person’s decision still stands and is supported by a subsequent statutory appeal decision with regard to the operation of the 2012 amendments to the application of the CIL regime to sections 73 permissions with a post-CIL parent permission.\footnote{20\textsuperscript{th} March 2018 variation of condition 4.} The second modification in the 2018 Regulations\footnote{Reg. 128A(4)(b) as provided by 2018 amendment} determines the CIL rates used for the calculation of the notional CIL by reference to the date that the section 73 permission first permits development rather than the year in which the section 73 permission is granted. This may have been to avoid uncertainty if there is change in CIL rates in that year but oddly the 2019 amendments revert to the earlier wording used.\footnote{See section 8.4.1.3 below}

In fact indexation was not the only real issue arising from the operation of the reg. 128A relief and this has required the enactment of the 2019 amendments.\footnote{See section 8.4.1.3.1(ii) below} These modifications apply only for the purposes of reg. 40 and not reg. 50 which concerns the calculation of the social housing relief.

In the revised June 2014 Planning Practice it was stated in para. 7 that the provisions in reg. 128A should apply to all subsequent section 73 permissions in relation to a development regarding which the original planning permission was prior to the introduction of CIL. I take this to mean there can be more than one section 73 planning permission subsequent to the introduction of CIL in the relevant area and the CIL position arising from the second or later section 73 permission will be determined by reference to the original planning permission and reg. 128A. This guidance draws no
distinction between a section 73 permission which changes the original parent permission and one which changes a subsequent section 73 permission.

This point was considered by the appointed person in a statutory appeal. It concerned a pre-CIL parent permission for the construction of five houses and three subsequent post-CIL section 73 permissions. The charging authority argued that reg. 128A applied to all the section 73 permissions. In contrast the owner contended that as the third section 73 permission changed a planning condition introduced by the second section 73 permission reg. 128A did not apply on the ground that the second planning permission was planning permission A for the purposes of reg. 128A and as it was subsequent to the introduction of CIL meant that the relief was not available because the A permission was not pre-CIL. The appointed person considered that there was nothing in reg. 128A to prevent permission A being a permission under section 73 and held that in that case the second section 73 permission was permission A as the third planning permission changed a condition introduced by the second section 73 permission. This may result in a higher CIL liability. This was a trap for the unwary particularly in the light of the non-statutory guidance and has been addressed by the 2019 amendments.

8.4.1.3 Position after introduction of 2019 (No. 2) Regulations – the 2018 amendment did not finally put to bed the issues arising in respect of the operation of the reg. 128A relief. In consequence this required further extensive amendment in the 2019 amendments which takes effect in relation to planning permissions granted on or after 1st September 2019. The outstanding issues to be addressed included the availability of reliefs in respect of the section 73 permission B; phased permissions; abatement; subsequent section 73 permissions; and appeals concerning the relief. This has been achieved by the substitution of paragraphs 7, 8 and 9 in Schedule 1 for reg. 128A. The original proposals in draft reg. 128A to reg. 128AE were considerably longer and more complex but following the consultation were reduced to two paragraphs in the new Schedule 1. These do not include, as the original proposals did, special provisions for abatement or overpayment applicable only to pre-CIL permissions and section 73 permissions.

8.4.1.3.1 Para. 7 Schedule 1 relief for non-phased permissions - phased permissions are dealt with separately by paragraph 8 which applies the new paragraph 7 to the phased permission but subject to modifications. The substitution of a new provision for the old reg. 128A for non-phased permissions is focused particularly on preventing one or more reliefs being claimed in respect of the post-CIL section 73 permission but not in respect of the parent permission thus increasing substantially the relief. In the first set of draft amendments the single formula was retained but account was required to be taken of applicable reliefs. The actual provisions introduced by the 2019 (No. 2) Regulations have separated the process of calculation into two parts using two formulae which is easier to understand.

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455 Proposed development: Variation of condition number 10 of planning permission. Decision date: 2nd October 2018 para. 16-18.
456 Part 3 of the Schedule 1 introduced by reg. 5(12) and Schedule 1 of the 2019 (No. 2) Regulations.
457 Reg 1(3) of the 2019 (No. 2) Regulations
458 Draft reg. 128AC in the original set of draft amendments
459 Draft reg. 128AD in the original set of draft amendments
(i) Operation of para. 7 – the following criteria have to be satisfied for this relief to apply. There has to be:-

(a) a planning permission (A) must be granted in relation to the development which is a pre-CIL permission;\(^{460}\)

(b) a section 73 permission (B) is granted in relation to the development which is an “in-CIL permission”;\(^{461}\) and

(c) B changes a condition subject to which a previous planning permission (P) in relation to the development was granted.\(^{462}\)

The new criterion in (c) makes clear that this paragraph can apply to a section 73 permission which changes a condition subject to which a section 73 permission has been granted rather than the parent permission. Its scope is not limited to section 73 permissions which only change conditions subject to which the parent permission has been granted. This is in contrast to the old reg. 128A relief.

(ii) Amount of para. 7 relief if P is pre-CIL permission – when this paragraph applies and permission P is a pre-CIL permission then the amount of CIL payable in respect of the development authorised by permission B shall be the chargeable amount for the development less the relief amount determined using the formulae in para. 7(3). As with the social housing relief provisions in the 2019 (No. 2) Regulations this is now achieved with the use of two formulae with the second determining the relief amount to be deducted from the chargeable amount for the development. If the outcome is a negative figure then the amount of CIL is deemed to be zero.\(^{463}\) In the event that the pre-CIL permission is a phased permission within para. 8(2) of Schedule 1 then a negative figure in respect of a phase of the development may be a phase credit.\(^{464}\)

(a) **chargeable amount for the development** - the formula for this is;\(^{465}\)

\[
X - Y
\]

Where

X is the chargeable amount for the development for which B was granted, calculated in accordance with paragraph 1 Schedule 1\(^{466}\);

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\(^{460}\) Para. 7(2)(a) of Schedule 1. A pre-CIL permission “means a planning permission granted in relation to a development where on the date the permission is granted the development is situated in an area for which the charging authority has no charging schedule in effect” – reg. 7(13).

\(^{461}\) Para. 7(2)(b) Schedule 1. An in-CIL permission “means a planning permission granted in relation to a development where on the date the permission is granted the development is situated in an area for which the charging authority has a charging schedule in effect.” - reg. 7(13).

\(^{462}\) Para. 7(2)(c) Schedule 1

\(^{463}\) Para. 7(8) Schedule 1

\(^{464}\) Para. 7(8A) inserted by para. 8(3)(c) Schedule 1 – see section 8.4.1.3.2(ii)(b)

\(^{465}\) Para. 7(3)(a) Schedule 1

\(^{466}\) See section 15 below
Y is the amount that would have been the chargeable amount for the development for which P was granted, calculated in accordance with paragraph 1 Schedule 1 subject to the three modifications contained in para. 7(4) which modifications are:-

(I) permission P is treated as if it first permitted development on the same day as permission B.467 This will be important for deductions such as in respect of demolished buildings;

(II) I is index figure for permission P treated as if were the index figure for the calendar year in which permission B was granted.468 This reverts to the original form of words using the year of grant as the reference point. It accords with the appeal decision relating to the previous reg. 128A.469

(III) a reference to a relevant charging schedule were a reference to the charging schedule of the charging authority which was in effect - (i) at the time B first permits development; and (ii) in the area in which the development will be situated.470

Permission B may be the original parent permission or a section 73 permission which changes a condition which the original parent permission is subject to or a section 73 permission which changes a condition that a section 73 permission is subject to. What is crucial is that permission P is a pre-CIL permission.

(b) the relief amount – this applies to all types of relief. For the purposes of CIL relief “means an exemption for residential annexes or extensions, an exemption for self-build housing, charitable relief, social housing relief or relief for exceptional circumstances”.471 The amount of relief is determined using the formula472:-

\[ Rx - NRy \]

Where

\[ Rx = \] the amount of any applicable relief473 in relation to the development for which permission B was granted under Part 6 of these Regulations;

\[ NRy = \] the amount of any notional relief in relation to the development for which permission P was granted, determined in accordance with paragraph 5(5).

The definition of applicable relief in para. 7(13) covers all reliefs including any carry over under reg. 58ZA. In determining the notional relief the charging authority is required to determine whether any one or more of the reliefs is applicable to the

467 Para. 7(4)(a) Schedule 1
468 Para. 7(4)(b) Schedule 1
469 See section 8.4.1.2 above
470 Para. 7(4)(c) Schedule 1
471 Reg. 2 of the 2010 Regulations
472 Para. 7(3)(b) Schedule 1
473 “applicable relief” means any relief (including any relief carried over under regulation 58ZA) which, at the time any calculation under this paragraph is carried out, has been granted in relation to the development by the collecting authority in accordance with Part 6 of these Regulations (as modified by this paragraph) and not withdrawn. (para. 7(13) Schedule 1)
development authorised by permission P having regard to “all the circumstances of the development for which permission P was granted”\(^{474}\) and the requirements of relief provided in Part 6 of the 2010 regulations subject to the modifications in paragraph 7(6)\(^{475}\). In the first set of draft amendments this provision then went on to state “as if the charging schedule which applies to B [the section 73 permission] took effect immediately before the date when A [the parent permission] first permits development.”\(^{476}\) This last part has been removed from the 2019 (No. 2) Regulations albeit that in order to determine the reliefs applicable to the development authorised by the pre-CIL permission it has to be assume that CIL had been introduced in the area in which the development will be situated.

Additionally for the purpose of determining the notional relief:

(a) in relation to social housing relief reg. 50 and para. 6 Schedule 1 will be applied but with the three modifications contained in para. 7(4) and set out in (I) to (III) in Rx above.\(^{477}\)

(b) the regulations providing for the withdrawal of relief are to be disregarded in relation to any notional relief.\(^{478}\) This contrast with the definition of “applicable reliefs” in para. 7(13) which excludes a relief which has been withdrawn.

Save for social housing relief it is not open to a charging authority to apply a relief in respect of the pre-CIL parent permission which is not applied in relation to the post-CIL section 73 permission.\(^{479}\) As regards social housing relief this allows for the possibility that there may be changes in the number of market units and social housing units between the date of the grant of the parent permission and the grant of the section 73 permission. It is a means of protecting the CIL payable.

(iii) **Amount of para. 7 relief if P is pre-CIL outline planning permission** – there have been particular problems in determining the CIL liability when the pre-CIL permission is an outline planning permission. There may be insufficient information from which to determine the figure Y in the formula for the chargeable amount of the development authorised by the pre-CIL outline planning permission. A new provision is introduced that applies if permission P is a pre-CIL permission and an outline planning permission.\(^{480}\) It operates if the calculation under para. 7 Schedule 1 is to be made before permission P first permits development. An outline planning permission which is not a phased permission will first permit development on the day of the final approval of the last reserved matter associated with the permission.\(^{481}\) In such circumstances if the charging authority is satisfied that it has sufficient information to calculate Y in the chargeable amount formula that figure will be the amount calculated by the authority.\(^{482}\)

\(^{474}\) Para. 7(5)(a) Schedule 1
\(^{475}\) Para. 7(5)(b) Schedule 1
\(^{476}\) Draft reg. 128A(4)(a)(ii) in the first draft set of amendments
\(^{477}\) Para. 7(6)(a)(i) Schedule 1
\(^{478}\) Para. 7(6)(a)(ii) Schedule 1. The withdrawal provisions cover reg. 42C (residential annexes exemption), 48 (charitable relief), 53 (social housing relief), 54D (self-build housing), and 67(5) (acknowledgement to specify date clawback period ends) (para. 7(13) Schedule 1).
\(^{479}\) Para. 7(6)(b) Schedule 1
\(^{480}\) Para. 7(10) Schedule 1
\(^{481}\) Reg. 8(4)
\(^{482}\) Para. 7(10)(a) Schedule 1
However, if it is satisfied that it does not have sufficient information to calculate $Y$ then the amount of CIL payable in respect of permission B is deemed to be zero.\(^{483}\) Such an outcome of zero CIL is only allowed once.\(^{484}\)

In the event that there is a second section 73 permission after there has been a section 73 permission to which para. 7(10) applies (that is outline planning permission P and amount of CIL payable in respect of section 73 permission B to be calculated before P first permits development) then it is necessary to determine whether that second section 73 permission changes a condition subject to which permission P was granted. If it does not then para. 7(9) will apply to the second section 73 permission. If it does then para. 7(3) to (6)\(^{485}\) is applied to calculate the chargeable amount in relation to that second section 73 permission but with the substitution of permission B for any references to permission P.\(^{486}\)

This will apply whether or not the CIL payable in respect of permission B has been deemed to be zero. It does not appear to matter whether the development authorised by permission B is implemented. There is the risk that the deemed zero CIL liability is achieved by a planning permission which is not implemented. When calculating the chargeable amount in relation to the second section 73 permission C in these circumstances $Y$ will not be zero even if para. 7(10)(b) has applied to permission B but the chargeable amount and the relief amount will be calculated in accordance with para. 1 Schedule 1 as modified by para. 7(4) to (6).

It is unclear whether this provision only applies to the second section 73 permission after the introduction of CIL in the area or includes further section 73 permissions. It would seem that it only operates once because it does not substitute the second section 73 permission C for permission B in the subsequent operation of para. 7 as is done in para. 7(9). If it applies only to that second section 73 permission C then it would appear that there is nothing to prevent para. 7(9) applying to a subsequent section 73 permission which would otherwise be within para. 7(12).

(iv) **Amount of para. 7 relief if P is an in-CIL permission** – if P is an in-CIL permission then the chargeable amount is to be determined by applying paragraphs 7(3) to (6) Schedule which are discussed in (i) immediately above but not by reference to permission P but by substituting in place of P the most recently granted pre-CIL permission ignoring any planning permissions where none of the conditions of that permission are of a type changed by B.\(^{487}\) This does not mean that a section 73 permission must change a condition subject to which the pre-CIL permission is granted provided that the section 73 permission changes a condition subject to which another permission has been granted which is the same type as one which the pre-CIL permission was granted subject to. This may give rise to disputes as to what constitutes a type of condition.

\(^{483}\) Para. 7(10)(b) Schedule 1
\(^{484}\) Para. 7(11) Schedule 1
\(^{485}\) See (i) immediately above
\(^{486}\) Para. 7(12) Schedule 1 which replaces the operation of para. 7(9)
\(^{487}\) Para. 7(7) Schedule 1
(v) Further section 73 permissions - with regard to the uncertainty as to how the relief previously provided by the old reg. 128A applies to further section 73 permissions it is provided that if a fresh section 73 permission is granted after an earlier section 73 permission which is a permission B for the purposes of para. 7 Schedule 1 that fresh permission will be treated as a permission B for the purposes of paragraph 7. There is no requirement that the section 73 permission must change a condition subject to which the pre-CIL P permission was granted. It will cover section 73 permissions which change a condition subject to which an earlier section 73 permission had been granted. But this could still be an issue if P is an “in-CIL permission” and the operation of para. 7(7) is triggered with the consequence that it is necessary to ascertain whether the condition changed by the section 73 permission is the same type of condition as a condition subject to which a pre-CIL permission was granted. There is nothing in para. 7(9) which limits its operation to the first section 73 permission after B. Its operation is triggered if there is a new planning permission under section 73 which can occur more than once. Each successive section 73 permission will be substituted for permission B including in para. 7(9) so that the most recent section 73 permission will be B for the whole of para. 7.

8.4.1.3.2 Phased permission – if the pre-CIL parent permission authorises a phased development and there is a subsequent section 73 permission which is an in-CIL permission then para. 7 will apply with modifications.

(i) Trigger – for para. 8 to operate three criteria must be satisfied. These are:-

(a) a pre-CIL phased permission is granted in relation to the development. This would seem to be a phased permission which is granted before the introduction of CIL to the area in which the development will be situated.

(b) a section 73 permission (B) is granted in relation to the development which is an in-CIL permission.

(c) permission B changes a condition subject to which a previous phased planning permission (PP) in relation to the development was granted. This does not require the section 73 permission B to change a condition subject to which the original parent permission was granted nor does it have to change a condition subject to which a pre-CIL permission has been granted. It can change a condition subject to which a section 73 permission was granted which is an in-use CIL permission.

(ii) modifications to para. 7 – para. 8 of Schedule 1 introduces the following modifications. These are:-

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488 discussed in section 8.4.1.2 above
489 Para. 7(9) Schedule 1
490 See section 6.2.3.2.1 as to meaning of phased development and reg. 2(1) as regards phased planning permission
491 Para. 8 Schedule 1
492 Para. 8(1) Schedule 1
493 Para. 8(2)(a) Schedule 1. A pre-CIL permission is defined by para. 7(13) but there is no statutory definition of pre-CIL phased permission.
494 Para. 8(2)(b) and “in-CIL permission” is defined by para. 7(13)
495 Para. 8(2)(c) Schedule 1
(a) phase of development – para. 7 will be applied not singly to the whole development but individually to the phase of the development. This is achieved by substituting the phase of the development for the development in para. 7 and also substituting PP for P in that paragraph.\(^{497}\)

(b) phase credit – in the event that the application of para. 7 to a phase of the development results in a negative figure then this creates a phase credit which is equal to the difference (which in substance is Y-X).\(^{498}\) The phase of the development in which the phase credit is created is known as the donating phase. Once the donating phase of the development has been commenced under section 73 permission B\(^{499}\) and an application has been made to the collecting authority then all or part of the phase credit may be applied to reduce the amount of CIL due in respect of another phase known as the receiving phase.\(^{500}\) The phase credit can only be set off against CIL which is due but not already paid.\(^{501}\) The application to utilise the phase credit must be made by a form published by the Secretary of State or a form substantially to the same effect.\(^{502}\) The application is made by the developer. This form replaces the requirements set out in the original set of amendments as how a request to apply a phase credit had to be made.\(^{503}\)

To qualify for this ability to elect for the application of the phase credit the developer must be “a person who - (a) has assumed liability to pay CIL in respect of both the donating phase and the receiving phase; or (b) has assumed liability to pay CIL in respect of only the receiving phase and has the written agreement, for the phase credit to be applied to the receiving phase, from the person who has assumed liability to pay CIL in respect of the donating phase.”\(^{504}\) It will be important to ensure that the correct documentation is provided with the application seeking to exercise this election whether this is assumption of liability notices by the same person in respect of both the donating and the receiving phase or alternatively the required written agreement to the application with an appropriate assumption of liability notice by the developer in respect of the receiving phase and an assumption of liability notice in respect of the donating phase by the person agreeing to the application of the phase credit by the developer.

The phase credit or part can only be applied in respect of a single receiving phase subject to para. 7(8D).\(^{505}\) To have the ability to apply a phase credit to more than one receiving phase there must have been after the application of a phase credit in the first receiving phase the granting of an amended phased section 73 planning permission. This permission must have the effect that before taking account of the application of the phase credit to the amended receiving phase no amount of CIL is payable. For these purposes “amended phased planning permission” means a phased planning permission

\(^{496}\) Para. 8(3)(a) Schedule 1
\(^{497}\) Para. 8(3)(b) Schedule 1
\(^{498}\) Para. 7(8A) inserted by para. 8(3)(c) Schedule 1
\(^{499}\) Para. 7(8B)(a) inserted by para. 8(3)(c) Schedule 1
\(^{500}\) Para. 7(8B)
\(^{501}\) Para. 7(8B)(a)
\(^{502}\) Para. 7(8B)(b)
\(^{503}\) Draft reg. 128AB in the original set of draft proposals
\(^{504}\) Para. 7(8E)
\(^{505}\) Para. 7(8C)
granted under section 73 of TCPA 1990 in relation to the development which is or forms part of a receiving phase.\footnote{Para. 7(8E)} In such circumstances the effect of the subsequent section 73 permission would be to waste the initial application of the phase credit as there is no CIL against which to have set it so a further chance to use it is given. If such section 73 permission has the effect of increasing or decreasing the CIL liability then this provision will not apply regardless of the amount of CIL involved.

When it does apply then at the discretion of the developer the phase credit may be applied in relation to another receiving phase.\footnote{Para. 7D} In order for this to happen the developer must make a fresh application in the prescribed form or a substantially similar form. To qualify for this discretion the developer must as discussed above in relation to the original application of the phase credit qualify as a developer for these purposes in accordance with the definition in para. 7(8E). This will require the appropriate documentation to be provided as discussed above.

The original proposals provided for the collecting authority to specify the amount of the phase credit on any CIL liability notice or revised notice in relation to the donating phase.\footnote{Draft Reg. 128AA(8)(b) in the first set of draft amendments} This proposed provision has not been included in the 2019 (No. 2) Regulations but when such a valid request for the application of a phase credit has been made there will be a need for a revised CIL liability notice.

8.4.1.3.3 Appeals in relation to paragraphs 7 and 8 –

(i) General – the original proposals provided that regulations 112, 116, 116A, 116B, 120 and 121 would apply in respect of relief granted in relation to permission B, the section 73 permission, as if the development for which permission B was granted were a chargeable development.\footnote{Draft reg. 128A(8) and draft reg. 128AA(11) of the first set of draft amendments} These were not included in the 2019 (No. 2) Regulations which suggest that issues over whether a relief is an applicable relief for the purposes of the calculations in paragraphs 7 and 8 cannot be the subject of an appeal. The only specific right of appeal is that contained in para. 9 of Schedule regarding the quantum of the notional relief (discussed immediately following).

(ii) amount of notional relief - para. 9 of Schedule 1\footnote{Para. 9(1) Schedule 1} provides an ability to appeal against the decision of a collecting authority to grant a notional relief under para. 7(5).\footnote{Para. 9(5)} An interested person who is aggrieved by the decision is given the right to appeal. The person who was granted the notional relief will be the interested person.\footnote{Para. 9(12) and Schedule 1 of the 2019 (No. 2) Regulations} This will apply to a chargeable development with a pre-CIL parent planning permission or to a phase of a development when such a permission is a phased planning permission. The appeal is to an appointed person. The ground of appeal must be that the value of the notional relief has been incorrectly determined. This will exclude other issues which do not relate to the amount of the notional relief such as the claimant’s eligibility for the claimed relief.
Such an appeal must be made within 60 days beginning with the date on which is issued the CIL liability notice stating the chargeable amount under para. 7 and the amount of the notional relief.\textsuperscript{513} If successful the appointed person may amend the amount of the notional relief.\textsuperscript{514}

Regulations 120 (appeal procedure) and 121 (costs) will apply to an appeal under para. 9. For these purposes references to an interested party are to a charging authority and if different a collecting authority\textsuperscript{515} and any reference to the representations period were a reference to 14 days beginning with the date the acknowledgement of receipt is sent under regulation 120(3), or such longer period as the appointed person may in any particular case determine.\textsuperscript{516}

8.4.2 Earlier CIL permission – if the earlier planning permission was after the setting of the CIL rates for the relevant area so that it was chargeable to CIL then

8.4.2.1 Position before 2012 Regulations in force - prior to the coming into force of the 2012 Regulations there was a similar unwelcome CIL outcome if the earlier planning permission was granted after the introduction for the area of such a CIL charging schedule. The earlier planning permission will have been subject to the CIL regime. For instance assume a planning permission was granted for a development on a vacant site and the development was commenced giving rise to a liability to pay the CIL charge. A section 73 application was then made to change a condition attached to the earlier permission and a new section 73 permission was granted. The development was still substantially the same but with a modification. Until the 2012 Regulations came into force there was nothing to mitigate in such circumstances the second charge arising on the occurrence of the successful section 73 application. Subject to a minor qualification for the purposes of CIL there will have been two chargeable developments\textsuperscript{517} commenced – the first authorised by the parent permission and the second by the section 73 permission.\textsuperscript{518} The second CIL charge was not restricted in scope to the modification. Instead CIL was chargeable on the full amount of the gross internal area of the development save that if any building had been constructed in accordance with the earlier permission then its internal floor area would be taken into account as a deduction but only if it had been in lawful use for a continuous period of six months or more during the relevant period prior to the successful section 73 application.

8.4.2.2 Position between 2012 Regulations and 2019 (No. 2) Regulations coming into force - in cases where the CIL regime applied to the earlier parent permission then two significant changes were introduced by the 2012 Regulations. One was the ability to abate the CIL already paid against the new CIL liability as a result of the section 73 permission. The other was the ability to switch the chargeable development between

\begin{flushleft}
\textsuperscript{513} Para. 9(2) Schedule 1
\textsuperscript{514} Para. 9(3) Schedule 1
\textsuperscript{515} Para. 9(4)(a) Schedule 1
\textsuperscript{516} Para. 9(4)(b)
\textsuperscript{517} The original reg. 9(1) which defines a chargeable development as a development authorised by a planning permission.
\textsuperscript{518} There is one qualification of this. The original reg. 9(5) of the 2010 Regulations provided that if “the effect of which is to change a condition subject to which a previous planning permission was granted by extending the time within which development must be commenced, the chargeable development is the development for which permission was granted by the previous permission.”
\end{flushleft}
the developments authorised by the parent permission and the section 73 permission so that there are not two developments charged to CIL as before.

8.4.2.2.1 abatement519: this applies if there is a new or revised CIL liability notice which changes the amount of the CIL liability. In such circumstances there is an abatement so that on the occasion of the second section 73 permission only any increase in CIL is payable. The amount of CIL paid in relation to the earlier permission is deducted from the CIL payable as a result of the section 73 permission. In order to obtain the benefit of this relief the person liable to pay the CIL arising from the section 73 permission must request it520 and provide proof of the payment of CIL on the first permission.521 A valid request under reg. 74A must be complied with by the charging authority.522

8.4.2.2.2 chargeable development - CIL is charged on a chargeable development which is a development authorised by a planning permission granted after the introduction of CIL in the area523. When there is a parent permission and a section 73 permission there are two chargeable developments because there are two independent planning permissions notwithstanding that the second 73 permission changes the condition attached to the parent permission. The 2012 Regulations made an important and substantial alteration to this basic CIL concept. If there are two planning permissions then the owner has the ability to decide which to implement.524

Reg. 9(6) to (9)525 provided a means by which it is established which development authorised by the parent permission and the section 73 permission is the one which constitutes the chargeable development. Instead of there being two chargeable developments there will only be one. The operation of these provisions is not straightforward. One reason is that there is a serious omission in the drafting which has had to be addressed in the 2019 (No. 2) Regulations.526

The manner in which these provisions are intended to operate can be stated simply but giving effect to that intention is not so simple. If the effect of a section 73 permission is to change a condition to which the parent permission is subject “so that the amount of CIL payable calculated under regulation 40 (as modified by paragraph (8)) would not change”527 then in such circumstances the chargeable development is the development authorised by the parent permission even if it is the development authorised by the section 73 permission that is commenced and not that authorised by the parent permission.

On the other hand if the effect of the section 73 permission is to change the amount of CIL payable under reg. 40 (as modified by paragraph 8)) then “the chargeable development is the most recently commenced or re-commenced chargeable

519 Reg. 74A inserted in 2010 Regulations by reg. 8(3) of the 2012 Regulations with effect to planning permissions granted on or before 29th November 2019 (reg. 1 of 20102 regulations).
520 Reg.74A(2)
521 Reg. 74A(3)
522 Reg. 74A(4)
523 Reg. 128
525 Inserted by reg. 3(2) of the 2012 Regulations with effect to development authorized by planning permission granted on or after 29th November 2012.
526 See section 8.4.2.2.3 below
527 Reg. 9(6) inserted by the 2012 Regulations

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development”.\textsuperscript{528} This means it is either the development authorised by the parent permission or the section 73 permission dependent on which is actually being carried out. The reference to a chargeable development being re-commenced allows for the possibility of switching back to a development which had been commenced and then halted.\textsuperscript{529} For example the development by the parent planning permission commences and then is halted and a development authorised by a later section 73 permission is commenced but itself subsequently halted and the original development under the parent permission is continued. In such a case the only chargeable development for the purposes of CIL will be the development authorised by the parent permission thus avoiding a CIL charge on the development authorised by the section 73 permission notwithstanding that it had commenced. If in that example the development authorised by the section 73 permission continued and was not halted then that development would be the only chargeable development. The CIL guidance given by the DCLG (April 2013) states that “the most recently commenced scheme is the liable scheme”.\textsuperscript{530}

This is clearly a major change. On 12\textsuperscript{th} November 2012 the Parliamentary Under-Secretary of State for Community and Local Government (Mr. N. Boles) stated the general objective\textsuperscript{531}:

“Section 73 consents are regularly used for very minor changes, such as a small change to a building appearance or a change to the opening hours of a retail unit. These amending regulations are quite clear that when the change does not alter the liability to CIL, only the original consent will be liable. They will ensure that when planning permission is granted under section 73 that introduces a more substantial change, such as by adding floor space to the building, the developer will pay CIL only on the permission that is actually implemented. The regulations also allow payments made in relation to a previous planning permission to be offset against the liability on the section 73 permission.”

This refers to regulations 9(6) to (9) whilst the latter reference is to the abatement provision.\textsuperscript{532}

The key to the operation of these provisions is the calculation of the CIL in respect of both the parent permission and the section 73 permission. The amount of the CIL liability in relation to the parent permission is calculated in the normal manner under reg. 40.\textsuperscript{533} The CIL liability in relation to the section 73 permission is modified by treating the date that the section 73 permission first permits development as the same date as the date that the parent permission first permits development.\textsuperscript{534} This means that any available deductions and the CIL rate are determined by reference to the circumstances at the date of the grant of the parent permission.

The extent of this modification of the operation of reg. 40 is limited and as with the original reg. 128A (applying if parent permission is pre-CIL) has resulted in disputes as to how the indexation element in the reg. 40(5) formula is applied. As compared to the issue regarding the determination of the index figure \(I_p\) for the pre-CIL parent

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{528} Reg. 9(7) inserted by the 2012 Regulations
\item \textsuperscript{529} Reg. 9(9) inserted by the 2012 Regulations
\item \textsuperscript{530} Para. 95
\item \textsuperscript{531} in the Second Delegated Legislation Committee debates
\item \textsuperscript{532} See section 8.4.2.2.1 above
\item \textsuperscript{533} See section I below
\item \textsuperscript{534} Reg. 9(8) inserted by the 2012 Regulations
\end{itemize}
\end{footnotesize}
permission in the context of the original reg. 128A this issue is more complexity because it involves two separate points. The first is what is the Ip for the section 73 permission when calculating the CIL liability under reg. 9(6) and reg. 9(7) (as inserted by the 2012 Regulations). This is more difficult than in the context of the original reg. 128A because both the parent permission and the section 73 permission will have been granted after the introduction of CIL in the area. In contrast with the original reg. 128A the Ip at the date of the grant of the parent permission would have been prior to the introduction of CIL. The second point is that there is nothing in reg. 9 (as inserted by the 2012 Regulations) to substitute the calculation of the amount of the CIL liability in accordance with reg. 9(8) for the ordinary calculation of that amount under reg. 40. This leads to two separate difficulties. First, when applying the indexation element of the CIL calculation are two different index figures used for the two permissions or the same index figure? Second is the CIL liability arrived at under regulations 9(6) to (9) the actual CIL liability or having fixed on what is the chargeable development is reg. 40 then applied to that chargeable development in the normal manner without regard to the modification in reg. 9(8)?

These issues were addressed in an appeal decided on 20th March 2018.535 The appellant argued Ip should be the index figure in the year that the parent permission was granted and not the year that the section 73 permission is granted so as to avoid there being an increase in the amount of the CIL liability purely because of the application of the indexation element in the CIL calculation. As against this it was noted by the charging authority that the modification in reg. 9(8) was expressed to be for “the purposes of paragraphs (6) and (7)” and so there is no such modification when reg. 40 is applied. In that case the appointed person noted that although the section 73 permission brought about a significant reduction in floorspace there would be an increase in the amount of the CIL liability solely due to the application of the indexation provisions in reg. 40. The appointed person decided not only that the Ip should be the index figure for the year in which the parent permission was granted but also that the CIL liability calculated under reg. 9(6) and reg. 9(7) should be carried forward into the calculation of the CIL liability under reg. 40.536

Whilst the indexation issue in the context of the original reg. 128A was settled by the 2018 regulations537 it has taken until the 2019 (No. 2) Regulations to clarify the statutory position regarding these two aspects.538

There is no express provision covering the possibility of a second or subsequent section 73 permission. Even if covered by reg. 9(6)539 there will be an issue whether it covers only section 73 permissions which change the condition to which the parent permission is subject. Alternatively, can it also include section 73 permissions which change the conditions attached to a section 73 permission or will that section 73 permission be treated as a previous planning permission for the purposes of reg. 9(6) and 9(7). This point is expressly dealt with in the 2019 amendments.

8.4.2.3 2019 (No. 2) Regulations – the amendments introduced by the 2019 (No. 2) Regulations are more involved than the appeal decision and the amendment of reg.

535 Development: Variation of Condition 4 (Approved Plans) of planning permission…Decision date: 20th March 2018
536 Para. 19
537 See section 8.4.1.2 above
538 See section 8.4.2.2.3 immediately below
539 As inserted by the 2012 Regulations
128A in the 2018 Regulations. They are contained in Part 2 of Schedule 1 which does not apply to cases in which the parent permission was granted before the introduction of CIL. When the parent permission is granted before CIL has taken effect the CIL consequences of a section 73 permission granted after the introduction of CIL will be governed by paragraphs 7 and 8 in Part 4 of Schedule 1.

These amendments in Part 2 operate in two independent ways. Regulations 9(6) to (9) (inserted by the 2012 Regulations) are wholly replaced by a new regulation 9(6) which determines what constitutes the chargeable development and then separate new regulations are introduced to deal with the calculation of CIL. There are separate provisions for determining the chargeable amount contained in Part 2 of Schedule 1. Paragraph 3 of Schedule 1 applies if there is no change in the notional CIL liability as a result of the section 73 permission; paragraph 4 if there is an increase in the notional CIL; and paragraph 5 if there is a decrease in the notional CIL. Additional formulae have been added by which to calculate the amount of relief to be deducted from the chargeable amount for the development. It has been stated that further guidance will be provided as to the operation of these paragraphs.

Further, all these new provisions will apply to a second or possibly subsequent section 73 permission in relation to the development within para. 3(8) or 3(9) of Schedule 1.

(A) trigger operating Part 2 – para. 3 applies when a section 73 permission changes a condition subject to which an earlier planning permission was granted. My reading of para. 3(9) is that this is overridden if there is a second or subsequent section 73 permission which changes a condition subject to which an earlier section 73 permission has been granted. If that provision applies then the section 73 permission is treated as being B for the purposes of para. 3 Schedule 1 and there is no need for it to comply with the requirement contained in para. 3(1).

(B) chargeable developments – the new reg. 9(6) provides that where a section 73 permission is granted the chargeable development is the most recently commenced or re-commenced chargeable development. This is a factual question as to which development is being carried out. It is not determined by whether there is a change in the CIL liability as a result of the section 73 permission. It means that if the development authorised by the section 73 permission is actually carried out then that development is the chargeable development and will not in some circumstances be treated as being the development authorised by an earlier permission as was the case under the previous reg. 9(6).

In the first set of draft 2019 Amendments there was a tighter redrawing of when a chargeable development is re-commenced when there is a section 73 permission. It would have limited a re-commencement to cases in which the development authorised

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540 Para. 3(11) Schedule 1
541 Reg. 5 of the 2019 (No. 2) Regulations which applies to planning permissions granted on or after 1st September 2019
542 Inserted by reg. 5(2) and Schedule 1 of the 2019 (No. 2) Regulations
543 Para. 47 of the MHCLG’s Government response to reforming developer’s contributions June 2019
544 See section (C)(c)(III) below as regards para. 3(8) and section (C)(d) as regards para. 3(9)
545 Para. 3(1) Schedule 1
546 Inserted by para. 5(1)(a) of the 2019 (No. 2) Regulations
547 A new reg. 9(12) proposed to be added by reg. 6 of the first draft 2019 amendments
by the original planning permission was commenced then work halted and a
development authorised by a section 73 permission was started before being in turn
halted and the original development commencing again. This proposed limitation has
not been carried over into the 2019 (No. 2) Regulations. It retains the old reg. 9(9)
which now applies to reg. 9(6) rather than 9(6) to (8).\textsuperscript{548} This is not limited to cases in
which the development originally commenced is the development authorised by the
parent permission but includes cases in which the development commenced is one
authorised by a section 73 permission, is halted so that another development authorised
by section 73 can start but is halted and the development originally commenced starts
again. The wording of this provision as opposed to the unadopted proposed more
restricted provision allows more than one such switch back.

The new reg. 9(6) will determine by reference to which development the CIL charge
will be calculated. The CIL liability arising from the development authorised by the
section 73 permission will be determined by reference to the formula contained in para.
1 of Schedule 1 but subject to the variations contained in paragraphs 3 to 5 in Part 2 of
Schedule 1. Paragraph 3 determines the notional amount of CIL for the parent
permission and for a subsequent section 73 permission. If they are the same amount
then paragraph 3 governs the CIL consequences for the section permission. Paragraph
4 applies if the notional amount for the section 73 permission is greater than for the
parent permission and paragraph 5 if it is smaller.\textsuperscript{549}

(C) notional amounts - when considering the CIL consequences of a section 73
permission with a post-CIL parent permission the starting point is the notional mounts
of the two permissions. In part 2 of Schedule 1 A is the parent permission and B is the
section 73 permission.

(a) notional amount of A (parent permission) – this is the amount of CIL payable in
relation to the development authorised by A determined in accordance with paragraph
1 of Schedule 1 less any applicable relief.\textsuperscript{550} For these purposes “applicable relief”
means any relief granted under Part 6 at the earliest of the commencement date of the
development for which A was granted or the date at which the calculation of the
notional amount is carried out and which relief has not been withdrawn at that time.\textsuperscript{551}

(b) notional amount of B (section 73 permission) – subject to A being an outline
planning permission\textsuperscript{552} this is the chargeable amount in relation to the development
authorised by B which is calculated in the same way as for A using Schedule 1 less any
applicable relief but the calculation under Schedule 1 is subject to three modifications\textsuperscript{553}
which are

(I) the section 73 permission first permits development on the same date as the parent
permission;\textsuperscript{554}

\textsuperscript{548} Reg. 5(1)(b) of the 2019 (No. 2) Regulations
\textsuperscript{549} Para. 3(1) of Schedule 1
\textsuperscript{550} Para. 3(2) Schedule 1
\textsuperscript{551} Para. 3(1) Schedule 1
\textsuperscript{552} See (c) immediately below
\textsuperscript{553} Para. 3(3) Schedule 1
\textsuperscript{554} Para. 3(4)(a) Schedule 1
(II) Ip for the section 73 permission is the index figure for the calendar year in which A is granted and so is the same as for the parent permission\(^ {555}\) which confirms the appeal decision on this point but taking into account the amendments relating to indexation introduced by the 2019 (No. 2) Regulations.\(^ {556}\)

(III) the CIL rate applied is that taken from the charging schedule in force when the parent permission first permits development and in the area that the development will be situated.\(^ {557}\)

These modifications are wider than the old reg. 9(8) which they replace and as mentioned above reflect the appeal decision regarding the operation of the indexation provisions but does not use the calculation of the notional CIL liability as also being the actual CIL liability.

The “applicable relief” for the development for which B was granted is determined in accordance with reg. 50 and para. 6 Schedule 1 but subject to the three modifications set out above.\(^ {558}\) Any withdrawn amount under reg. 53(4) is calculated in accordance with reg. 50 and paragraph 6 of Schedule 1 as modified by paragraph 3(5)(a).\(^ {559}\)

(c) A is outline planning permission – if A is an outline planning permission then this may cause the manner in which the notional amount of B is determined to be modified.

(I) after A first permits development - if the notional amount of B is calculated after the outline planning permission A first permits development then such calculation is in accordance with para. 3(3) Schedule 1 as discussed in (b) immediately above.

(II) before A first permits development – in the event that the notional amount of B is to be calculated earlier than the date on which outline planning permission A first permits development then the chargeable amount for the chargeable development for which B was granted is determined in accordance with paragraph 1 of Schedule 1 but subject to the three modifications in para. 3(7) of Schedule 1 rather than para. 3(4).\(^ {560}\)

These modifications are:-

(i) B first permits development on the date that the outline planning permission A is granted;\(^ {561}\)

(ii) Ip for the section 73 permission B is the index figure for the calendar year in which A is granted and so is the same as for the parent permission\(^ {562}\) which as with para. 3(4)(b) Schedule 1 confirms the appeal decision on this point but taking into account the amendments relating to indexation introduced by the 2019 (No. 2) Regulations.\(^ {563}\)

\(^{555}\) Para. 3(4)(b) Schedule 1  
\(^{556}\) See section 15.1.2 as regards indexation  
\(^{557}\) Para. 3(4)(c) Schedule 1  
\(^{558}\) Para. 3(5)(a) Schedule 1  
\(^{559}\) Para. 3(5)(b) Schedule 1  
\(^{560}\) Para. 3(6) Schedule 1  
\(^{561}\) Para. 3(7)(a) Schedule 1  
\(^{562}\) Para. 3(7)(b) Schedule 1  
\(^{563}\) See section 15.1.2 as regards indexation
(iii) the CIL rate applied is that taken from the charging schedule in force when the parent permission was granted and in the area that the development will be situated.564

(III) another section 73 permission – in the event that A is an outline planning permission and para. 3(6) Schedule 1 has applied to a section 73 permission then if another section 73 permission is granted which changes a condition subject to which A was granted then para. 3 Schedule 1 will be applied but as if the references to A were to B and the references to B were to C save in para. 3(6) and (8).565 This will enable Part 2 to be applied to the second section 73 planning permission.

This provision only applies if the notional amount for B is to be calculated under para. 3 Schedule 1 before the date the outline planning permission A first permits development. In the event that the calculation is to be after that date para. 3(6) Schedule 1 will not apply and so, therefore, neither will para. 3(8). In those circumstances para. 3(9) Schedule 1 will apply.566

Further to fall within para. 3(8) a section 73 permission must change a condition subject to which outline planning permission A was granted. From this very deliberate wording it would seem that a section 73 permission which changes a condition subject to which an earlier section 73 permission had been granted and not the parent permission will not fall within para. 3(8) Schedule 1.

The wording is such that it should also apply to subsequent section 73 planning permissions and not just to the second section 73 permission.

(d) second or subsequent section 73 permission - para. 3 Schedule 1 will apply to any section 73 permission granted in relation to the development which does not fall within para. 3(6) Schedule 1 as if the references to B were to the new planning permission save in para. 3(6) and (8) Schedule 1.567 This will apply to all cases in which A is not an outline planning permission and when A is an outline planning permission to those cases in which the calculation of the notional amount of B is after the date on which A first permits development. When the calculation is before the date on which outline permission A first permits development para. 3(8) will apply to a subsequent section 73 permission rather than para. 3(9). This appears to leave a gap. If para. 3(6) applies but the second 73 permission changes a condition subject to which the first section 73 permission was granted and not a condition subject to which the parent permission was granted that second section 73 permission will be outside para. 3(8) but also will not fall into para. 3(9) because that provision does not apply if para. 3(6) does. It would seem to follow from this that para. 1 Schedule 1 will apply to such a section 73 permission and not para. 3.

In my view it is clear that the wording of para. 3(9) will apply not just to the second section 73 permission but to subsequent section 73 permissions. Also it does not appear to matter whether the section 73 permission changes a condition subject to which the parent permission was granted or a condition subject to which a section 73 permission

564 Para. 3(7)(c) Schedule 1
565 Para. 3(8) Schedule 1
566 See (d) below
567 Reg. 3(9) Schedule 1
was granted. Either will relate to the development and so will be within para. 3(9). This wording is distinctly different to that in para. 3(8) which requires the section 73 permission to change a condition subject to which A was granted with no mention of B as an alternative.

(D) notional amounts for A and B same – if the notional amounts for A and B determined in accordance with para. 3 are the same then the chargeable amount is the chargeable amount shown in the most recent liability notice or revised liability notice issued in relation to the development for which A was granted.568

(E) notional amount for B larger than for A – if after applying the provisions of para. 3 Schedule 1 the notional amount for B is larger than the notional amount for A paragraph 4 will apply.569 This paragraph determines the chargeable amount in relation to the chargeable development.570 The CIL liability is not the difference between the two notional amounts but has to be calculated afresh using the formula in para. 4. This paragraph will not apply if the parent permission was granted before the introduction of CIL in the area.571

The amount of the CIL liability shall be the chargeable amount for the development less the relief amount and these will be calculated using two separate formulae.572

(a) The formula for the chargeable amount is573 :-

\[ X - Y + Z \]

Where

X is the CIL liability in relation to the development for which section 73 permission B was granted calculated in accordance with para. 1 of Schedule 1;

Y is the CIL liability in relation to the development authorised by the parent permission A calculated in accordance with para. 1 of Schedule 1 subject to three modifications contained in para. 4(3). These modifications require:

(i) the parent permission A to be treated as first permitting development on the same date as the section 73 permission first permits development;574

(ii) Ip for the parent permission A is the index figure for the year in which the section 73 permission B was granted;575 and

568 Reg. 3(1)(a) Schedule 1
569 Para. 3(1)(b) Schedule 1
570 Para. 4(1) Schedule 1
571 Para. 4(6) Schedule 1
572 Para. 4(2)
573 Para. 4(2)(a) Schedule 1
574 Para. 4(3)(a) Schedule 1
575 Para. 4(3)(b) Schedule 1
(iii) applies the CIL rates in the charging schedule which is in effect when the section 73 permission B first permits development and the area in which the development will be situated.\textsuperscript{576}

\( Z \) is the CIL liability in relation to the development authorised by the parent permission calculated in accordance with para. 1 Schedule 1 as shown in the most recent CIL notice\textsuperscript{577} issued in relation to this development.

By using the index figure for the calendar year in which permission was granted as Ip the intention is to apply the indexation provisions to the increase in GIA so that the CIL liability reflects the indexation of that increase in GIA. As regards the amount of the GIA of the development authorised by permission A the operation of the indexation provisions will be neutral with Ip being the same even though it is determined by reference to the calendar year in which permission B was granted. This reverses the approach under reg. 9(8) as approved in a statutory appeal\textsuperscript{578} which used the Ip for the year in which permission A was granted for the purposes of applying the indexation provisions to both permissions.

Treating permission A as first permitting development at the same time as permission B means deductions which were available in relation to permission A may not be taken into account such as the area of a building demolished between the granting of permission A and permission B. This should be neutral as the important point is that the same treatment applies to both permissions.

(b) The formula for the relief amount is\textsuperscript{579}:-

\[
(Rx - Ry) + Rz
\]

Where

\( Rx \) is the amount of any applicable relief in relation to the development for which B was granted under Part 6 of these Regulations;

\( Ry \) is the amount of any applicable relief in relation to the development for which A was granted under Part 6 of these Regulations subject to two modifications in para. 4(4) which are:--

(i) reg. 50 and para. 6 schedule 1 apply subject to the modifications in para. 4(3) which are those set out above with regard to Y immediately above in (a);\textsuperscript{580} and

(ii) any withdrawn amount under reg. 53(4) is calculated in accordance with reg. 50 and paragraph 6 of Schedule 1 as modified by paragraph 4(4)(a).\textsuperscript{581}

\textsuperscript{576} Para. 4(3)(c) Schedule 1  
\textsuperscript{577} A liability notice or revised liability notice – para. 4(5) Schedule 1  
\textsuperscript{578} As to section 8.4.2.2.2  
\textsuperscript{579} Para. 4(2)(b) Schedule 1  
\textsuperscript{580} Para. 4(4)(a) Schedule 1  
\textsuperscript{581} Para. 4(4)(b) Schedule 1
Rz is the amount of any applicable relief in relation to the development for which permission A was granted under Part 6 of these Regulations.

For these purposes “applicable relief” means

(a) in relation to permission A any relief granted under Part 6 as modified by para. 4(4) at the earliest of the commencement date of the development for which A was granted or the date at which any calculation under para. 4 is carried out and which relief has not been withdrawn at that time;\textsuperscript{582} and

(b) in relation to permission B any relief granted under Part 6 as modified by para. 4(4) (including any relief under reg. 58ZA (carry over of relief to a section 73 permission)) at the time the calculation under para. 4 is carried out and had not been withdrawn.\textsuperscript{583}

\textbf{583} Para. 4(5)(b) Schedule 1

(F) notional amount for B is smaller than for A – if the notional amount for permission B is less than the notional amount for permission A determined in accordance with paragraph 3 then the amount of CIL payable in respect of the chargeable development is determined by paragraph 5.\textsuperscript{584} This amount of CIL will be the chargeable amount for the development less the relief and these will be calculated using two formulae.\textsuperscript{585} It does not apply to cases in which the parent permission was granted before the introduction of CIL in the area which are governed by paragraphs 7 and 8 of Schedule 1.\textsuperscript{586}

\textsuperscript{586} Para. 5(8) Schedule 1

(a) the formula for the chargeable amount for the development\textsuperscript{587}:-

\[ (X - Y) + Z \]

Where

X is the CIL liability in relation to the section 73 development calculated in accordance with para. 1 Schedule 1 but subject to the three modifications in para. 5(3). These modifications:-

(i) treat the section 73 permission B as first permitting development on the same date as the first planning permission (O) first permits development;\textsuperscript{588}

(ii) Ip for B is the index figure for the calendar year in which permission O was granted;\textsuperscript{589} and

(iii) applies the CIL rates from the charging schedule in force when permission O first permits development and in the area in which the development will be situated.\textsuperscript{590}

\textsuperscript{589} Para. 5(3)(b) Schedule 1

\textsuperscript{590} Para. 5(3)(c) Schedule 1
Permission O is the first planning permission granted in relation to the development ignoring any section 73 permissions.\(^{591}\)

Y is the CIL liability in relation to the development authorised by the parent permission A calculated in accordance with para. 1 Schedule 1 but subject to the three modifications in para. 5(5). These modifications:-

(i) treat the parent permission A as first permitting development on the same date as permission O first permits development;\(^{592}\)

(ii) Ip for A is the index figure for the year in which permission O was granted;\(^{593}\)

(iii) applies the CIL rates from the charging schedule in force when permission O first permits development and in the area in which the development will be situated.\(^{594}\)

Z is the chargeable amount for the development authorised by the parent permission A calculated in accordance with para. 1 Schedule as shown on the first CIL notice\(^{595}\) in relation to this development.

In contrast to the calculation under 4 the indexation provisions are applied by treating the Ip figure for both permissions to be the index figure in the year in which the first full permission which is not a section 73 permission was granted. This will mean that the effect of indexation will be reduced which will reduce the difference between X and Y.

(b) the formula for the relief amount is\(^{596}\):-

\[(Rx - Ry) + Rz\]

Where

Rx is the amount of any applicable relief in relation to the development for which B was granted under Part 6 of these Regulations subject to two modifications by paragraph 5(4) which are:-

(i) reg. 50 and para. 6 schedule 1 apply subject to the modifications in para. 5(3) which are those set out above with regard to X;\(^{597}\) and

(ii) any withdrawn amount under reg. 53(4) is calculated in accordance with reg. 50 and paragraph 6 of Schedule 1 as modified by paragraph 5(4)(a).\(^{598}\)

Ry is the amount of any applicable relief in relation to the development for which A was granted under Part 6 of these Regulations subject to two modifications by paragraph 5(6) which are:-

\(^{591}\) Para. 5(7) Schedule 1
\(^{592}\) Para. 5(5)(a) Schedule 1
\(^{593}\) Para. 5(5)(b) Schedule 1
\(^{594}\) Para. 5(5)(c) Schedule 1
\(^{595}\) A liability notice or revised liability notice
\(^{596}\) Para. 5(2)(b) Schedule 1
\(^{597}\) Para. 5(4)(a) Schedule 1
\(^{598}\) Para. 5(4)(b) Schedule 1
(i) reg. 50 and para. 6 schedule 1 apply subject to the modifications in para. 5(5) which are those set out above with regard to Y;

(ii) any withdrawn amount under reg. 53(4) is calculated in accordance with reg. 50 and paragraph 6 of Schedule 1 as modified by paragraph 5(6)(a).

Rz is the amount of any applicable relief in relation to the development for which A was granted under Part 6 of these Regulations.

For these purposes “applicable relief” means –

(a) in relation to A, any relief which, at the time the development for which A is granted is commenced or the time any calculation under paragraph 5 Schedule 1 is carried out (whichever is earlier), and

(b) in relation to B, any relief (including any relief carried over under regulation 58ZA) which, at the time any calculation under this paragraph is carried out,

has been granted in relation to the development by the collecting authority in accordance with Part 6 of these Regulations (as modified by paragraph 5 Schedule 1) and not withdrawn.

8.4.2.4 Reliefs

8.4.2.4.1 Social housing relief – in the event that social housing relief has been granted in relation to a development and then a section 73 permission is granted in respect of that development but the amount of the social housing relief has not changed as a result then all the acts done with regard to the relief under reg. 51 in relation to the first permission will be treated as if they were done in relation to the development authorised by the section 73 permission.

8.4.2.4.2 Other reliefs – the special treatment of social housing relief in this context as discussed immediately above did not apply to other types of relief until 1st September 2019. This was important because the abatement authorised in respect of section 73 planning permissions by reg. 74A will not itself assist when the earlier planning permission has had the benefit of a CIL relief. In those circumstances there will have been no CIL paid in respect of the earlier planning permission so there is no CIL to credit against the CIL liability arising from the later section 73 planning permission. In consequence the abatement provisions will not assist and the relief applicable to the earlier planning permission may not be applicable to the subsequent planning permission particularly if the development has already commenced before the grant of the subsequent section 73 permission. One relief that was caught by this problem is the self–build housing exemption. In many cases the self-build housing exemption has been lost when there are changes after commencement to the original development authorised by the first planning permission. To avoid such complications it might have been necessary for the special treatment of social housing relief to be extended to other...

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599 Para. 5(6)(a) Schedule 1
600 Para. 5(6)(b) Schedule 1
601 Para. 5(7) Schedule 1
602 See section 11.3 below
603 Reg. 50(7) inserted by reg. 7(6) of the 2014 Regulations in relation to developments regarding which a liability notice is issued on or after 24th February 2014 (reg. 14(3) of the 2014 Regulations). From 1st September 2019 this has been replaced by reg. 58ZA inserted by reg. 7 of the 2019 (No. 2) Regulations.
reliefs. Without such an extension the best approach was not to make any changes until later after the completion of the development.

With effect from 1st September 2019 a similar provision to reg. 50(7) is applied to the exemption for residential annexes or extensions, the exemption for self-build housing and charitable relief as well as social housing relief. There will be an automatic carry over of the relevant relief if the section 73 permission does not change the amount of relief and if it does then a fresh claim can be made. To benefit from this carry over it is crucial that the second planning permission is a section 73 permission and not a section 73A permission.

8.4.2.5 Overpayments –

8.4.2.5.1 Whether overpayment? - if the CIL charge relating to the earlier permission exceeds the CIL charge following the grant of the section 73 permission then it seems that it is expected that there will be a repayment of the difference as an overpayment. It is provided that in those circumstances no interest is payable by the collecting authority pursuant to reg. 75(3) if the CIL had been calculated correctly. This is consistent with there being one chargeable development. It is also material that with the abatement procedure introduced by the 2014 Regulations in relation to free-standing planning permissions it is expressly provided that no repayment will be made if the CIL liability relating to the subsequent planning permission is less than that arising from the earlier permission. This effectively confirms that such repayment will occur in such circumstances with subsequent section 73 permissions but not subsequent free-standing permissions. The possibility of such repayments will increase the administrative burden for authorities and make more uncertain the authority’s budgets regarding CIL receipts. It could particularly be a problem if the subsequent section 73 permission causes the development to be exempt as a minor development when previously it was not and CIL was paid.

8.4.2.5.2 Changes in ownership – it seems that this overpayment is to be achieved by a revised liability notice in relation to the earlier permission resulting from the change in the chargeable development. In cases in which there has been a change in the person liable for the CIL the repayment should go to the person who paid the CIL arising from the first permission. The revision of the liability notice for the earlier permission may secure that outcome. However, prudence may dictate that as a backup this outcome should be expressly covered by the terms by which any change in ownership or liability occurs.

8.4.2.6 Instalments – with effect from 1st September 2019 when CIL is payable under an instalments policy and a section 73 permission is then granted the CIL arising in respect of the section 73 permission will be payable by that instalment policy.

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604 Reg. 58ZA inserted by reg. 7(1) of the 2019 (No. 2) Regulations
605 A similar provision to reg. 51(4A) as regards social housing relief has been introduced by reg. 6 of the 2019 (No. 2) Regulations to the exemption for residential annexes or extensions (reg. 42B(3A); charitable relief (reg. 47(3A); and the exemption for self-build housing (reg. 54B(3B).
606 Reg. 75(4) inserted by reg. 8(4) of the 2012 Regulations
607 Reg. 74B(14)
608 Reg. 70(9) inserted by reg. 7(2) of the 2019 (No. 2) Regulations
8.5 Replacement permission – similar unwelcome CIL consequences arose with permissions granted pursuant to reg. 18(1)(b) or (c) Town and Country Planning (Development Management Procedure) (England) Order 2010. This procedure allows the replacement of permissions which are extant but have not been implemented provided that they were granted before 1st October 2010. It is not possible to use the power in section 73 to change a time limit when a planning permission is due to lapse so this procedure is available for such purposes but only for older planning permissions (pre-1st October 2010). If the replacement permission is granted after a charging schedule has been put in place in the area it will result in a CIL charge even though no such CIL liability would have arisen in relation to the permission replaced. Reg. 128B removes from the CIL regime the development carried out in accordance with such a replacement permission when there was no charging schedule in place at the date of the first permission. This amendment operates in England but was not needed in Wales as this had always been the position in Wales.

8.6 Stand-alone permissions – the special CIL treatment relating to subsequent section 73 permissions has been applied by the 2014 Regulations to subsequent free-standing planning permissions which are granted after the commencement of a development but before its completion. It does not operate in precisely the same manner. It allows the earlier CIL liability to be set off against the later CIL liability but only to the extent that there are uncompleted buildings. It is not possible to obtain a repayment by this route if the earlier CIL liability is greater. There are a number of restrictions and limitations and details are contained in section 18.6 below.

8.7 Building for limited period – the construction of a building for which permission has only been granted for a limited period will not be a development for the purposes of the CIL regime as the definition of planning permission does not include planning permission granted for a limited period. This means that the grant of permanent planning permission for such a building replacing a temporary permission is a chargeable development and subject to CIL even if the building is a temporary one. This was accepted in an appeal in which the CIL liability was upheld because there is no deduction under Kr(i) based on there having been over six months of lawful use as a building. This is because building for those purposes does not include a building for which planning permission was granted for a limited period. The self-build housing exemption is not available as the building has been constructed albeit a temporary building.

8.8 Section 96A permission – the statutory power conferred by section 96A TCPA 1990 allows changes to be made to planning permission if the authority is satisfied that they are not material. The power allows conditions attached to a planning permission to be removed or varied or new conditions to be added. This applies not only to conditions applied to the planning permission when granted but also to the subsequent conditional

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609 Section 73(5)
610 Inserted by reg. 9(2)
611 Reg. 5(2)
612 Development: Retention of a dwelling for occupation with equine enterprise. Decision date 18th June 2019 para. 12(i)
613 Para. 12(ii)
614 Para. (iii) of the definition of building in reg. 40(11) now para. 1(10) Schedule 1
approval of reserved matters. Lewison LJ confirmed in the Fulford Parish Council case supra that section 96A applies to the approval of technical details following the grant of permission in principle and that the statutory power in section 96A can be exercised retrospectively.

The applicant must have an interest in the land subject to the permission. The outcome of such an application is unlikely to result in any appreciable change to the internal floor space and this is not treated as a new planning permission for either CIL or the Crossrail contribution so there is no CIL charge. An application must be in writing and in a form published by the Secretary of State or in substantially the same form. The authority has 28 days in which to make a decision.

There is no definition of what constitutes a non-material change. This is stated to be deliberate as the answer must depend on the context of the overall scheme. It is for the individual planning authority to be satisfied the change is non-material. In guidance given by Bath and North Somerset Council on its website it states that as "a general rule for a change to be material it has to be of significance, of substance and of consequence".

It then sets out the following examples of what will not be regarded as non-material - there would be an alteration to the site boundary as defined by the red line; there would be a change to the description of the proposal; the amendment would conflict with any conditions of the planning permission; the amendment would conflict with the Councils’ Local Plan policies or Government Guidance; the amendment would significantly alter the appearance or size of the approved development; the amendment would have an unreasonable adverse effect on a neighbour, such as the introduction of a new widow that would increase overlooking; the amendment would have a greater impact on adjoining occupiers than the original planning application; amendments that by themselves require planning permission, for example the installation of more than two microwave antennae on a dwelling; amendments that raise issues not covered by an associated Environmental Statement.

Trafford BC also provide examples of what will constitute non-material changes. These are - the proposal is for a very small change to the development already granted planning permission; the proposed amendment does not alter the development significantly from what was described on the planning permission and does not conflict with any conditions of the permission; no adopted planning policy is breached; the proposed amendment would not move any external wall outwards more than the thickness of a wall; the proposal would not increase the height of any roof; no windows are introduced that could potentially permit overlooking of other properties.

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615 Lewison LJ in R (oao Fulford Parish Council) v City of York Council [2019] EWCA Civ 1359 at para. 35
616 Para. 39
617 Para. 44
619 Para. 002 MHCLG Guidance Flexible options for planning permissions March 2014
620 In Burroughs Day v Bristol City Council [1996] 1 EGLR 167 Mr. Richard Southwell QC stated at page 171 that whether alterations materially affected the external appearance of a building depended on the nature of the building and the nature of the alteration.
It is for each authority to make its own decision and these examples are merely guidance provided by an individual authority.

A non-material change contrasts with a change which is a minor material change. In the context of section 73 TCPA 1990 it is stated that there “is no statutory definition of a ‘minor material amendment’ but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.”

There may be scope for a non-material variation to be accepted by a planning authority without the need for a formal application to be made. This could be useful as an argument in statutory appeals as the appointed person may be prepared to take a view on whether there had been a variation which does not require authorisation. Lord Denning has stated:

“In my opinion a planning permission covers work which is specified in the detailed plans and any immaterial variation therein. I do not use the words 'de minimis' because that would be misleading. It is obvious that, as the developer proceeds with the work, there will necessarily be variations from time to time. Things may arise which were not foreseen. It should not be necessary for the developers to go back to the planning authority for every immaterial variation. The permission covers any variation which is not material.”

This would suggest that a change can be more than de minimis yet still be non-material. In planning matters de minimis has been said to be a change so insignificant as to have no discernible impact on a development. The phrase “de minimis” is explained in planning appeal decisions as “This term derives from the Latin de minimus non curat lex meaning the law does not concern itself about very small matters. Applying the term in the planning field requires judgment on the circumstances of the individual case.”

Similarly it was stated that a “change may be ‘de minimis’; that is, on too small a scale for the law to take account of it.” An appeal decision in enforcement proceedings has quashed an enforcement notice on the grounds of de minimis.

It concerned an extension in Sussex which had not complied exactly with the approved plans because it was between 235mm and 310mm longer than shown on the plans which reduced the gap between the building and the boundary of the adjacent property by between 235mm and 250mm at the front corner. An enforcement notice was served requiring the demolition of part of the extension. On appeal the inspector found that the works substantially complied with the approved plans and that the error in part was due to the scaling of the site plan. The inspector stated that “When considering whether something has been constructed in accordance with a planning permission, the extent

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621 Para. 017 MHCLG Guidance Flexible options for planning permissions March 2014 adopting definition proposed in para. 4.4 of DCLG’s Minor material changes to planning permissions options Study July 2009

622 Para. 1.7 DCLG’s Minor material changes to planning permissions options Study July 2009

623 Para. 11 APP/N1215/X/12/2185102 Decision date: 7th May 2013

624 Para. 13 APP/Z5630/X/14/2225676 Decision date: 17th July 2015

625 APP/C3810/C/18/3201500 Decision date: 17th April 2019
that the development complies with the plans submitted has to be considered as well as the extent that it does not accord with the plans.” The error was considered to be small and de minimis. It was material that the development could not be carried out in a manner which complied with all the plans. The works complied substantially with the approved plans and accordingly the enforcement notice was quashed.

This aspect of planning law may be crucially important in the context of CIL. A variation in works from the approved plans which is de minimis will not require a fresh permission. If the change is not de minimis but non-material then a section 96A permission will not give rise to a further CIL charge but if it is neither of these then a fresh planning permission will be needed with the risk of CIL complications. It emphasises the importance of pausing to consider the position if such enforcement issues arise. Instead of pursuing a standalone retrospective planning permission which may be the advice given by the local planning department it is important that alternative options are considered and their respective CIL implications taken into account. Even if a planning application for retrospective planning permission has been made it is possible to withdraw that application at any time prior to the issue of the formal decision. This would be a sensible step if the application has been instigated without the CIL consequences having been thought through.

8.9 Phased developments - What now constitutes a phased planning permission is set out in section 6.2.3.2.2 above. Phasing is important in the context of CIL because each phase is a separate chargeable development. This means that the CIL arising from a particular phase will only be payable when the works relating to that phase of the development commence. It allows for the CIL liability to be assumed on a phase by phase basis and does not require the same person to assume liability for all the phases. It also means that the CIL rates applicable to different phases within the development may differ because the date when each first permits development need not be the same. With reviews of existing CIL rates beginning now to take place this is no longer an academic point. It means that budgets for a development may have to be changed if new CIL rates are brought in before some phases have commenced.

Phasing may also affect the CIL bill arising from a development due to the application of differential CIL rates. This may because the development is a mixed use development with different CIL rates applicable to the different uses. The manner in which the different use areas are phased will affect the cash flow dependent on whether the higher CIL rates are applicable to the earlier or later phases. More importantly phasing could affect the particular CIL rate applicable as regards a specific use particularly residential use. Some authorities are bringing in CIL rates for residential use which differentiate by reference to the number of units constructed. For example Peterborough introduced CIL with effect from 24th April 2015 and as regards residential use the CIL rates are markedly lower if the development involves 15 or more market houses than if it involves less than 15. A development of 60 houses divided into four phases of 15 each will result in CIL charged in respect of each phase at the lower CIL rates for residential use. However, if any of the phases are for the construction of less

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627 Para. 12
628 R v West Oxfordshire DC ex parte Pearce Homes Limited [1986] JPL 523
629 Reg. 9(4)
630 See section 16.2
631 See section 6.2.3 above
than 15 houses then the higher CIL rate for residential use will be applicable to such phase resulting in a higher total CIL bill for the whole development.
D. Chargeable development

9.1 General – For a planning permission to trigger the operation of the CIL regime it must authorise a chargeable development. The definition of development in section 209 PA 2008 is a wide one as it is provided that it means (a) anything done by way of or for the purpose of the creation of a new building, or (b) anything done to or in respect of an existing building. The width of this meaning has been commented on a number of times by appointed persons in statutory appeals.

The CIL regime is not limited to permissions authorising a commercial development or the development of commercial property. Further an important basic feature of the CIL regime is that the development must relate to a building and not just structures such as pylons or wind turbines. The fact that a building has been completed before the grant of a planning permission will not exclude it from the scope of CIL.

The definition of building ensures that it covers any building in, under or over the land. The currently popular basement developments (subject to the exemption for residential extension) will be caught just as developments over railways will be. Excluded developments will not be caught. In particular it will not include the addition of mezzanine floors in existing buildings unless there has been a change of use which triggers the operation of the CIL regime. Subject to one qualification the focus is on whether there is an increase in the gross internal area of a building or buildings as a result of the development. The qualification is important and is a possible trap. It concerns permissions which change the use of an existing building and arises from the regulation governing the determination of the gross internal area of buildings.

9.2 Building –

9.2.1 General - what constitutes a building is crucial to CIL as the authorised development must relate to a building for a CIL charge to arise and the CIL charge is then calculated by reference to the gross internal floor area of the building. Oddly there is no special definition of building for the purposes of CIL. It cannot just follow the definition applicable for planning law because that definition includes any structures and erections and in consequence is far too wide for CIL purposes. For the purposes of the Planning Act 2008 building has the meaning in section 336(1) of the 1990 Act which includes structures and erections and includes, for example, hardstanding without a roof. The definitions in section 336(1) apply to all parts of the Planning Act save as regards Part 11 thereof which relates to CIL and so that statutory definition does not apply for the purposes of CIL. The absence of such a definition or guidance on

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632 Subsection (1)
633 Proposal: Retention of two dwellings and houses) with associated hard and soft landscaping and parking. Decision date: 2nd October 2018
634 Reg. 1(4)(c). This confirms the natural meaning of building which includes a basement and not just the part above ground – para. 34 Albion Residential Limited v Albion Riverside Residents RTM Company Limited [2014] UKUT 6 (LC)
635 See section 10 below
636 See section 10.4 below
637 See section 9.4 below
638 Section 336(1) Town and Country Planning Act 1990
639 Section 235(1) Planning Act 2008 and the appeal Development: Phase 1 Enabling Works….Decision date: 14th November 2017 - para. 17
the topic is unhelpful. In the majority of cases there will be no doubt and it will be clear whether the particular construction falls one side or the other of the line. However, there will be cases in which there is real doubt. The definition in the Oxford English dictionary of a “structure with walls and a roof” has been applied by an appointed person.\footnote{Development: Conversion of barns to provide…six..cottages Decision dated 2\textsuperscript{nd} April 2015 – para. 9 and 10} This has also been applied in another appeal in which it was held that hardstanding for parking without a roof was not a building for the purposes of CIL even though it constitutes a development for planning.\footnote{Development: Phase 1 Enabling Works…Decision date: 14\textsuperscript{th} November 2017 - para. 17 and 18} A garage will be a building.\footnote{Development: Full application for proposed erection of 5 dwellings. Decision date 26\textsuperscript{th} February 2019} 641

9.2.2 Question of degree - in Moir v Williams\footnote{[1892] 1 QB 264} it was stated that it is a question of degree and circumstances whether a construction is a building and that the usual meaning is a block of brick or stonework covered by a roof. This chimes with what has been suggested by Bristol Council’s planning department as the test which is to ask whether the structure is weather tight so that if it rains any one in it will remain dry. This is workable and practical but is it correct? It would exclude lean tos, verandahs and covered walkways. If applied to stadia Bristol considers that it would include changing rooms, executive suites, office, bars and conference facilities but exclude terraces and seats which are open to the elements.

Sevenoaks BC in its CIL guidance states that the “structure must have a solid roof but can have open sides. The roof will not be solid if the roof has gaps in it. Lightweight roof coverings, such as plastic sheeting will be considered to be a solid roof and the internal floorspace will therefore be taken into account.” By way of clarification it states that the following will not be counted as internal floorspace for the purposes of CIL - a pergola with no roofing material, free standing solar panels, below ground swimming pools where any cover is flush with the top of the pool, and raised decking that does not include any built in storage or accommodation or similar use underneath it.

A lean-to, pole barn and areas covered by corrugated iron roof with partial walls were buildings for the purposes of CIL and not just access areas or simply canopies.\footnote{Para. 8 and 9 Development: Conversion of barns to provide…six..cottages Decision dated 2\textsuperscript{nd} April 2015} They were in a poor state of repair but that was not material. Similarly outbuildings have been held to be buildings for the purposes of determining the area of buildings to be demolished.\footnote{Development: The erection of a pair of semi-detached dwellings and the demolition of the existing dwelling. Decision date: 19\textsuperscript{th} June 2018 – para. 18}

9.2.3 Rating purposes - in Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen and Baldwin’s Iron and Steel Co\footnote{[1949] 1 KB 385} the test for the purpose of rating legislation as to whether a construction is a building was set out as relying on three factors – size, permanence and degree of physical attachment. This test has been applied with regard to planning legislation in Barvis Limited v Secretary of State for the

\footnotetext[640]{Development: Conversion of barns to provide…six..cottages Decision dated 2\textsuperscript{nd} April 2015 – para. 9 and 10}
\footnotetext[641]{Development: Phase 1 Enabling Works…Decision date: 14\textsuperscript{th} November 2017 - para. 17 and 18}
\footnotetext[642]{Development: Full application for proposed erection of 5 dwellings. Decision date 26\textsuperscript{th} February 2019}
\footnotetext[643]{[1892] 1 QB 264}
\footnotetext[644]{Para. 8 and 9 Development: Conversion of barns to provide…six..cottages Decision dated 2\textsuperscript{nd} April 2015}
\footnotetext[645]{Development: The erection of a pair of semi-detached dwellings and the demolition of the existing dwelling. Decision date: 19\textsuperscript{th} June 2018 – para. 18}
\footnotetext[646]{[1949] 1 KB 385}
Environment\textsuperscript{647} and in Skerritts of Nottingham Limited v Secretary of State for the Environment, Transport and the Regions.\textsuperscript{648} Pill LJ stated at page 113:

“Jenkins J stated a three-fold test that involved considering size, permanence and degree of physical attachment in considering whether an item was a building or structure. In relation to permanence, he said: 'It further suggests some degree of permanence in relation to the hereditament, ie things which once installed on the hereditament would normally remain in situ and only be removed by a process amounting to pulling down or taking to pieces.' In my judgment, that test introduces a degree of flexibility into the approach to permanence. It does so, first, by qualifying the word 'permanence' by the expression 'some degree'. Second, it does so by using the word 'normally'. Third, it does so by introducing the concept of removing the building 'by taking to pieces'."

It is to be anticipated that this test will be utilised for the purposes of the CIL regime.

9.2.4 Planning purposes - However, for planning purposes a steel and concrete frame clad with corrugated sheeting is a building even though it had no roof (R v Ealing LBC ex parte Zaimuddain\textsuperscript{649} which concerned an uncompleted mosque which was used for the purposes of a religious gathering). A tunnel under a public highway linking two adjoining plots of land was a building for the purposes of the statutory right of a gas undertaker to open up land in order to carry out work (Schweder v Worthing Gaslight Co.\textsuperscript{650} [1912] 1 CH. 83). This last authority had applied Thomson v Sunderland Gas Co.\textsuperscript{651} which held that underground arches supporting a road which were used as storage cellars constituted a building. The specific decisions are not significant but they are an indication of the type of construction that can be treated as a building for planning purposes but which one would not expect to be a building for the purposes of CIL. It suggests that arguably covered walkways or a complete stadium could be regarded as buildings. More recently a portable shelter used for a golf tee practice area has been found to be a building.\textsuperscript{652} It is modestly sized and “visually a light weight structure with open front, partial open rear with a mesh material which also forms part of the sides, the top and part of the side is covered by a green polyethylene material.\textsuperscript{653} Although on wheels and so mobile when stationary it is tethered to the ground giving it in the view of the Planning Inspector “a degree of permanency”.\textsuperscript{654} Similarly a cricket practice cage comprising six 3.6 metre high posts permanently concreted into the ground and removeable netting erected in a rear garden was found to be a building for the purposes of planning and needed planning permission.\textsuperscript{655}

9.2.5 Polytunnels - An illustration of both the test in operation for planning purposes and a possible area where this could be a real issue with the application of the CIL regime is R (on application of Hall Hunter Partnership) v Waverley BC and Others\textsuperscript{656}. This was a contest over the validity of an enforcement notice issued with regard to polytunnels erected without planning permission. In this case the tunnels were found to

\textsuperscript{647} [1971] 22 P & CR 710
\textsuperscript{648} [2000] 2 PLR 102
\textsuperscript{649} [1994] 3 PLR 1
\textsuperscript{650} [1912] 1 CH. 83
\textsuperscript{651} (1877) 2 Ex 429
\textsuperscript{652} APP/N4720/W/18/3216727 decision date 12th April 2019
\textsuperscript{653} Para. 11
\textsuperscript{654} Para. 8
\textsuperscript{655} APP/M0655/C/18/3206121 Decision date: 2nd April 2019 Planning Inspector D Hartley
\textsuperscript{656} [2006] EWHC 3482 (Admin)
be substantial in bulk and volume. Their height varied from 3.2m to just under 4m. Their width was up to 8m and their lengths varied from 50m to 400m. Machines and a considerable number of man hours were involved in their installation. The legs attaching them to the land went into a depth of up to 1m. The tunnels covered up to 99 acres. They were erected for periods from three months to seven. On the facts such a project was regarded as having the characteristic of permanence which did not require it to be everlasting but more than temporary. The appeal upheld the findings that these were buildings for the purposes of the planning legislation because they were substantial, firmly attached to the land and permanent. That definition is not the same as for CIL. With the increased use of polytunnels in farming to protect crops one can see plenty of scope for battles with local authorities.

At present the likelihood is that such use will be either zero-rated (as currently in Huntingdonshire and Shropshire) or at a low rate for CIL as with Leeds which charges agricultural use at a CIL rate of £5 psm within the category of all other uses. With the introduction of the new permitted development rights for redundant agricultural buildings this may be looked at again. Agricultural buildings can be converted without the need for planning permission to residential use or for use as a state-funded school or nursery. Such developments will be chargeable at the relevant CIL rate for such types of development subject to the application of possible exemptions and exclusions but it may draw attention to agricultural land and the possibility of raising revenues.

The polytunnel case also indicates another point. It involved the use of an enforcement notice seeking to bring under the control of the local authority such activities. With the introduction of CIL there is an added reason for issuing such notices in appropriate cases. It can be a means of protecting the authority’s revenue. Presently farmland should not often give rise to real CIL problems due to a combination of low rates and excluded developments if it either relates to less than 100 square metres (provided it does not concern a new dwelling) or involves buildings into which people do not normally go or only for the purpose of inspecting or maintaining plant. There is scope for issues and there has been an appeal concerning whether two barns qualified as buildings into which persons did not normally go. With other types of land enforcement notices may be a further option for authorities seeking to protect CIL receipts.

9.2.6 Poultry units – in R (oao Save the Woolley Valley Action Group Limited) v Bath and North East Somerset CC the question was raised whether poultry units could be buildings for the purposes of planning law. The Council had found that they were not. The units housed 1000 hens and weighed two tonnes on their own. They measured roughly 20 metres by 6 metres and were 3.5 metres high. They rested on metal slides so that they could be moved around. They were connected to a water supply and electricity. Lang J DBE held that they were buildings for planning purposes because the statutory definition included erections and structures and so that definition would

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657 Development: Retention of building to form 3 holiday lets (not in accordance with approved plans). Decision date 19th June 2018 the issue was whether the internal floor area of a polytunnel could be offset against the GIA of the new building and the claim failed because even if a building it was not an in-use building so there was no need to decide whether it was a building. It had been removed from the suite before the grant of the retrospective permission.

658 See section 10.1 below

659 [2012] EWHC 2161 (Admin)
cover structures which would not normally describe as buildings. This may be a reason for distinguishing that outcome in the context of CIL. McCloskey J. when discussing the Save the Woolley Valley Action Group case stated that “I accept that the court must be alert to avoid an unduly narrow or excessively technical approach to the question of what constitutes a “building.”

9.2.7 Marquee – the Hall Hunter partnership decision applied Skerrits of Nottingham Limited v Secretary of State and Harrow LBC supra which had held for planning purposes that a marquee was a building.

9.2.8 Caravans - one area which could throw up issues is caravans. For the purposes of planning law a wooden self-build chalet/shed resting on pillars and not forming part of the land has been held by the Court of Appeal to be a building (R v Swansea City Council ex parte Elitstone). One reason for this decision was that it had a prospect of permanence. There would seem no good reason why such a chalet should not be a building for the purposes of CIL. In contrast in Tewkesbury BC v Keeley it was held that a wooden caravan mounted on a steel chassis with wheels which could be moved round the site was not a building for planning purposes. The unit was manufactured off site in two parts and transported to the site to be erected and a roof placed on it. The crucial factor appeared to be from para. 34 of Jack J’s judgment that “in none of the cases has a structure been held to be building which is mobile to the extent of having wheels so that it can be freely moved around the site”.

If so will this apply equally to caravans? Such a home is a structure for the purposes of section 13 of the Caravan Sites Act 1968 and section 29 of the Caravan Sites and Control of Development Act 1960 and this includes structures comprising two sections. These Acts impose a separate regime from the planning regime by which to control

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660 In R (oao McPhee) v South Downs National Park Authority [2015] EWHC 16661 (Admin) pig arcs were held to be buildings for purposes of planning law.

661 Alexander v Causeway Coast NI 21 June 2018

662 See also Islam v SSCLG [2012] EWHC 1314 (Admin) concerning two large umbrellas fitted in tubes on decking with sidepieces

663 [1993] 2 EGLR 212

664 [2004] EWHC 2594. The judge reached a similar decision in Brightling Sea Haven Limited v Morris [2008] EWHC 1928 (QB) concerning a log cabin produced in two parts and joined on site which qualified a caravan because it was capable of being moved slowly by lorry. Section 29 of the Caravan Act 1960 defines a caravan as 'Any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include – (a) any rolling stock which is for the time being on rails forming part of a railway system, or (b) any tent.' It is further provided in section 13 of the Caravan Act 1968 that 13 Twin-unit caravans (1) A structure designed or adapted for human habitation which – (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer). shall not be treated as not being (or as not having been) a caravan within the meaning of Part 1 of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled. (2) For the purposes of Part I of the Caravan sites and Control of Development Act 1960, the expression "caravan" shall not include a structure designed or adapted for human habitation which falls within paragraphs (a) and (b) of the forgoing subsection if its dimensions when assembled exceed any of the following limits, namely – (a) length (exclusive of any drawbar): [65.1516] feet ([20] metres); (b) width: [22.309] feet (16.8] metres); (c) overall height of living accommodation (measured internally from the floor at the lowest level to the ceiling at the highest level): [10.006] feet ([3.05] metres).
caravans. However, for planning purposes a caravan is not a building and the placing of a caravan on land does not constitute operational development (Wealden DC v Secretary of State for the Environment as following cases such as Guildford RDC v Fortescue as has been noted in the Mayor of London’s Guidance. Jack J. considered the regime applicable to caravans in para. 36 of his judgment in the Tewkesbury BC case supra and concluded it did not help with the issue he had to decide because “the law has put “caravans” in a special category of their own.”

Some local authorities such as Waveney take the firm view that as mobile homes are not a building for the purposes of the planning regime the CIL regime will not apply. As regards ordinary mobile caravans that should be correct. Clearly such caravans are capable of being moved freely round the site. With static caravans there is more doubt. Other authorities are uncertain. Requests for official guidance have not so far as I am aware resulted in guidance. Normally such static homes will have an air of permanence. They may even be combined with a brick construction. How will the grant of planning permission for a site comprising such static mobile homes be dealt with under the CIL regime? Will it depend on whether the static caravan rests on pillars or some similar means of support or whether it will continue to have wheels attached to it? For the purposes of the CIL regime I can see no real distinction between such a park and a park comprising log chalets. There is certainly none as regards demands on the local infrastructure. It seems that the definition of building for the purposes of planning law is not intended to automatically apply for the purposes of the CIL regime. If that is so then will the decision in ex parte Elitstone supra or Tewkesbury BC supra govern the outcome? Although some consider the matter to be clear it seems to me as regards static caravans to be uncertain.

There have been two statutory appeals. In one the charging authority sought to charge CIL on a Measor caravan. This was on the basis that it could not easily be moved and was connected to the drainage facilities. The appointed person accepted the conclusions drawn above from the authorities that the primary factors are size, permanence and physical attachment to the land. As it was not particularly large and the only affixation was by the connection to the drainage the appeal was successful and the caravan was held not to be a building. In the other appeal the owner sought to set off the internal area of a caravan against the GIA of a new house. The caravan was accessed by wooden steps and the sewerage and hot water pipes were connected to a plant room. The appointed person found the mobile home to be a caravan within the definition in section 29 of the Caravan Sites and Control of Development Act 1960 which was capable of being moved and not permanently attached to the land. In consequence it was not a building. These appeals concerned caravans which were mobile even if not easily and did not concern static caravans.

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[665] [1988] 1 EGLR 187
[666] [1959] 2 QB 112
[667] Para. 5.7
[668] 14th August 2018: provision of mobile home as holiday let
[669] Para. 5
[670] Para. 10
[672] Para. 12
Such an issue may arise if there is a chargeable development involving the placing of static caravans on land or if there is a change of use and the availability of a deduction is considered. In such circumstances if for the purpose of CIL a static caravan is a building then how will CIL be chargeable? What will be the gross internal area for the purposes of the CIL calculation? Should it be based on the maximum internal area of the static caravans with the possibility of a revision if some of the static caravans are smaller? My understanding is that official guidance had been sought on this issue but so far as I am aware no answer has been provided.

9.2.9 Mobility – apart from with regard to caravans mobility may be an important factor in other cases in determining whether something is a building for the purposes of CIL. In the Tewkesbury BC case the ability to move the caravan/shed round the site was crucial. Similarly in Cheshire CC v Woodward a large mobile coal hopper and conveyor was held for planning purposes not to be a building but it was accepted in the judgment of Lord Parker CJ that the ability to move a thing was not conclusive. In contrast in Barvis v Secretary of State a mobile crane 89 feet in height which ran on tracks fixed in concrete and could be dismantled to move to the next site was held notwithstanding the limited degree of mobility to be a structure or erection requiring planning permission. The facts of neither case are likely to be relevant to CIL which is focused on the internal area of a building. However, they do highlight that the facts of each case will need to be investigated to ascertain quite how mobile the subject matter of the issue actually is.

9.2.10 Designs - the introduction of CIL may cause designs to be modified. It may encourage attempts at reducing the gross internal area of a building by converting what would have been parts of the building for the purposes of CIL to areas which are not. Instead of providing access between buildings by a wholly enclosed link a covered walkway may be used. Instead of an internal or detached garage a carport could be included in the design. This is an area which is likely to give rise to a number of appeals. There have been two already in relation to areas not fully enclosed – one a garage with an open front and the other loading bays which were not fully enclosed.

9.3 Development – a development has a wide meaning contained in section 209 of the Planning Act 2008 which provides that “‘development’ means - (a) anything done by way of or for the purpose of the creation of a new building, or (b) anything done to or in respect of an existing building.” There is excluded from this developments relating to a building which is not usually gone into or a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery; the installation of mezzanines; and the conversion of a single dwelling into two or more dwellinghouses.

673 See section 9.2.7 above
674 [1962] 2 QB 126
675 (1971) 22 P & CR 710
676 see section 1452.1.3 below
677 The planning definition of “development” contained in section 55 TCPA 1990 does not apply – see Development: Erection of extensions and above. Decision date 16th March 2016 – para. 11
678 Reg. 6(1)(a) and (b) and reg. 6(2) as to which see section 10.1 below
679 Reg. 6(1)(c) to which see section 10.4 below
680 Reg. 6(1)(d)
What constitutes the actual development in any case is determined by the scope of the planning permission granted. Patterson J. DBE stated that “It is axiomatic that one interprets a planning permission within its four corners and on its face, save in certain limited exceptions which it is not suggested are applicable here.” In some cases it is possible to choose as to the extent of the scope of the operation of the planning permission. It may, for example, be limited to an extension to a house or cover both the house and the extension. If the residential extension exemption is not available or lost for some reason then this could affect the amount of the CIL liability.

It is not possible to remove the past works from a retrospective planning permission even if originally intended to be carried out pursuant to an earlier planning permission and thereby limit the scope of the chargeable development to the authorised future works.

9.4 Change of use – A material change in the use of a building can be a development for the purposes of planning and therefore require a fresh planning permission. When a single dwelling house is changed to two or more separate dwelling houses that inevitably will be a development for planning purposes due to section 55(3)(a) 1990 Act but not for the purposes of CIL. For the reason explained in section 10.3.1 below it is unlikely that a change of use will give rise to a CIL charge. Similarly the creation of buildings within reg. 6(2) or works relating to such buildings will not constitute development for the purposes of CIL. These are buildings into which people do not normally go or which house fixed plant or machinery.

There is considerable scope for changing use under the authorisation of a general consent such as the Town and Country Planning (General Permitted Development) Order 1995. For example, Class E of Part 3 Schedule 2 permits a change of use to any other use which would have been originally authorised by the planning permission. This is consistent with the general exclusion from developments for the purposes of planning conferred by section 55(2)(f) 1990 Act and article 3(1) TCP (Use Classes) Order 1987 which provides that a change of use does not involve development if the change if use for any other purpose of the same class. There are fifteen use classes as well as those which are sui generis.

This means that it may be important to determine whether a change in use constitutes a material change of use which in turn constitutes a development thus giving rise both to the need for a new planning permission and a possible CIL charge. In planning law this is a matter of fact and degree (Birmingham Corp. v Habib Ullah applied in Panayi v DDE) taking into account the whole site and not just the area of change (Bendles Motors Limited v Bristol Corp.). Account has to be taken not just of the impact of the change on amenities and the environment but wider planning considerations such as the

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681 R (oao Orbital Shopping Park Swindon Limited) v Swindon BC [2016] EWHC 448 (Admin) at paragraph 53
682 Development: The construction of a roof and side extension to create an additional dwelling. Decision dated 9th February 2017 para. 10
683 Section 55(1) of the 1990 TCPA
684 Reg. 6(1)(d) and see section 10.2 below
685 see section 10.1 below
686 [1964] 1 QB 178
687 (1985) 50 P & C R 109
688 [1963] 1 WLR 247
impact on services and the character of the area (Westminster CC v Great Portland Estates plc). The off-site effects of a use such as the generation of traffic or noise should be a factor to take into account (Forest of Dean DC v SSE applied in Westminster City Council v SSCLG).

In the latter case involving Westminster City Council the issue was whether there had been a change from hotel use (C1) to a mixed hotel and hostel use (C1 and sui generis). It illustrates that the need for a fresh planning permission can arise not only when there is a change from one use to another wholly different use but also to a mixed use including the old use but added to which there is also another use. There is no need that the mixed use is carried on exclusively in different areas but a composite use is possible with the different uses not being associated with different parts of the premises. That case illustrates how problems could arise with a change in the manner in which a business is operated and the fine line between a hostel and budget hotel.

One especially uncertain area is intensification of user and whether this constitutes a material change for planning purposes (see Peake v Secretary of State for Wales and Kensington & Chelsea v Secretary of State for the Environment). Another will be when there is a resumption of a planning user which had been previously abandoned. The abandonment will not be a material change of use but the resumption will be (Hartley v Ministry of Housing and Local Government).

A further particularly difficult issue can be whether a proposed conversion of a number of residential units into one single dwelling will be a material change of use requiring a fresh planning permission. The argument that a reduction in the number of residential units with no significant change to the external appearance of the building will not constitute a material change of use was rejected in Richmond upon Thames BC v SSETR. The conversion of seven one bedroom flats and studios in a two storey semi into a single dwelling was held to be a material change justifying the refusal of a certificate of lawful user. It was accepted that the loss of a certain type of residential unit in the area was a factor which should be taken into account when determining the issue. If it is a material change of use then planning permission will be needed and it will be a chargeable development because the development comprises a dwelling. In those circumstances it will be necessary to rely on a deduction if no CIL is to be payable.

CIL will have been charged on the actual use adopted by the original planning permission (assuming that the CIL regime applied to it) rather than on the basis of any use which is authorised by the planning permission and then when there is a change the CIL position needs to be reconsidered afresh. If the change constitutes a development for the purposes of planning law then a new CIL charge could arise.

A change in use will normally not by itself give rise to a CIL liability because of the second of the two reasons given here. However, before that needs to be considered there

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689 [1985] AC 661
690 [1995] JPL 937
691 [2015] EWCA Civ 82
692 (1971) 22 P&CR 889
693 (1981) JPL 50
694 [1970] 1 QB 413
695 [2000] 2 PLR 115
is an argument that by itself it does not give rise to a CIL charge due to the minor development exemption in reg. 42.\textsuperscript{696} A building which is just subject to a change of use or is subject to works only involving the conversion or sub-division of the building might not be liable to CIL provided there is no increase in internal floor space in excess of 100 sqm and the development does not involve a dwelling. This would mean a conversion of a factory to an office or vice versa will not be liable to CIL if there is no increase in area. This would be regardless of whether the building has been in use during the last three years. Such a situation arose in respect of a place of worship and the appointed person held on a statutory appeal that there was no CIL charge even though the in-use building deduction did not apply. The development did not involve any new build nor a dwelling and so was within the minor development exemption in reg. 42.\textsuperscript{697} The trouble is that many local authorities and the MHCLG do not view the operation of reg. 42 in the same light as discussed in section 10.3 below and consider that a mere change of use of a building which does not qualify as an “in-use building” will be chargeable to CIL on the GIA of the building.

This means that the second reason is important. Even if otherwise liable to CIL, a change in use may not by itself give rise to a CIL liability. If the development is liable to CIL the gross internal area of the building which is subject to the change of use may be a deduction when calculating the CIL liability arising from the permission if the building is an “in-use building”\textsuperscript{698} or if the Kr(ii) deduction is available.\textsuperscript{699} If either deduction is available then there may remain no area to be charged to CIL.\textsuperscript{700} However, in some cases a change of use when combined with either prior non-use of the building preventing it satisfying the vacancy test or prior unlawful use can give rise to a CIL liability because the gross internal area of the relevant building will not be available as a deduction and in consequence the whole of the gross internal area of that building will be chargeable to CIL.

9.5 Extension of unused building – if it is intended to extend a building which has been unused for three years by say 70 square metres there will be no CIL charge if the planning permission relates only to the extension. The new build will be within the 100 square metres limit.\textsuperscript{701} Even if the extension exceeds 100 square metres the CIL will be charged only on the area of the extension unless it is now exempt from CIL due to the application of the exemption for residential extensions.\textsuperscript{702} The position would be different if there has been an abandonment of the planning permission so that a fresh planning permission for the whole building is needed.

9.6 Unlawful use –

9.6.1 General - when there has been user of the building in the three years (or twelve months if the liability notice relating to the development was issued prior to 24\textsuperscript{th} February 2014) prior to the day that the planning permission first permits the

\textsuperscript{696} See section 10.3 below  
\textsuperscript{697} 15\textsuperscript{th} December 2013: Use of premises as a place of worship  
\textsuperscript{698} See section 15.2.5.3 and 15.2.5.4 below  
\textsuperscript{699} See section 15 below  
\textsuperscript{700} See section 10.3 below  
\textsuperscript{701} See section 11.6 below
development but it is unlawful use then the gross internal area of the existing building will not be deductible when determining the area to be charged to CIL. The deduction is only available if there has been lawful user of the building or a part continuously for at least six months within the three years (or twelve months if the development is prior to the operation of the 2014 Regulations) immediately prior to the development first being permitted. This means that a grant of retrospective permission or a deemed grant on the quashing of an enforcement notice on appeal will give rise to a possible CIL liability. In addition there will be a possible surcharge due to the failure to serve a proper commencement notice.  

9.6.2 **Unlawful change of use** - when changing the use of a building a failure to obtain the appropriate planning permission before acting will have the potential to increase the CIL liability when the position is finally legitimised. It may create a CIL liability when one should not have arisen. This could be a substantial penalty.

9.6.3 **Mixed lawful and unlawful use** - the position is unclear if there is a mixed user of a building in the sense that there is lawful user of part and an unlawful user of another part. The definition of “in-use building” now in para. 1(10) of Schedule 1 and previously in the added reg. 40(11) (previously covered by reg. 40(10)) appears to be intended to apply to a building which is only partly in use. It would not seem to apply if the building is wholly in use but only part is lawful. Even if that is the case what happens if part is not used part is used lawfully and the final part is used unlawfully. One argument is that so long as part of the building is used lawfully that is sufficient and it does not matter for these purposes what happens with the remainder of the building. On the strict wording that would appear to be correct. The alternative would be to apportion so that the area of the part lawfully used will be a deduction but not the remaining area of the building including the part in unlawful use. There seems to be no justification for this in the regulations.

9.7 **Unlawful development** –

9.7.1 **Options** - there will be no charge to CIL arising from the commencement of an unlawful development as there will be no actual or deemed planning permission authorising the works. Similarly there will be no CIL charge if there is subsequently a successful application for a certificate of lawful use.

As has been pointed out in the guidance prepared by PAS the matter would be dealt with by the authority’s planning enforcement team with four possible outcomes:-

9.7.1.1 **Demolition** – no CIL liability;

9.7.1.2 **No action** – this is only likely with small infringements and there would not be likely to be a CIL liability in any event;

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703 See section 19.3.4 below
704 As in Proposed Development: Conversion of a disused barn to single residential unit. Decision date 18th June 2019 – works converting disused barn to residence undertaken prior to introduction of CIL and regularised by retrospective permission in respect of which CIL charge upheld.
705 See sections 15.2.5.3 and 15.2.5.4 below
9.7.1.3 Retrospective planning permission – CIL becomes due as a result of the planning permission;

9.7.1.4 Enforcement notice quashed on appeal – deemed planning permission as a result triggers CIL liability.

9.7.2 Surcharges on unlawful development - surcharges may be imposed if CIL becomes due in these circumstances as no commencement notice will have been given. CIL could be due even though the development commenced before a charging schedule was in place for the area if a deemed or retrospective planning permission occurred after the charging schedule is in place.

9.7.3 Proceeds of crime – the powers in the PoCA 2002 have been invoked for an infringement of planning law (see, for example, R v del Basso706 followed by R v Kohali707 and R v MA Kelly’s Estate Limited708). If a planning department is going to adopt such an approach then it will not be concerned to authorise the development so as to raise the CIL. Alternatively, committal proceedings may be used.

9.7.3 Scope of the chargeable development – the CIL is charged on the area which is the subject matter of the planning permission. This requires not just the grant and attached conditions to be considered but also the approved plans and drawings. The ascertainment of this area, therefore, has an important role to play in determining the amount of CIL payable.

It was emphasised by Lord Carnwath in Lambeth LBC v SSHCLG709 that when interpreting a planning permission there are not a special set of rules and that it is the natural and ordinary meaning of the words used which will be given by the reasonable reader to the planning permission viewed in their particular context and in the light of common sense. The case was concerned with a failure to repeat conditions attached to the earlier permission which were intended to apply to a section 73 permission but were omitted. As a matter of construction the Supreme Court unanimously set aside the Court of Appeal decision and held that the correct construction of the section 73 permission included those conditions attached to the earlier permission. The construction of the permission adopted was such that there was no need to consider implication. However, as regards the possibility of implication Lord Carnwath stated “I observe in passing (in agreement with Mr Lockhart-Mummery’s submission as to the limited scope of the judgments in Trump) that it is difficult to envisage circumstances in which it would be appropriate to use implication for the purpose of supplying a wholly new condition, as opposed to interpretation of an existing condition.”

Further it is not possible to restrict the scope of the chargeable development by only building out part of the development authorised by the development. For example, if part of the development comprises an extension to an existing building and it is not built that will not reduce the CIL liability unless a section 73 planning permission is obtained which reflects the loss of the extension. The chargeable development is determined by the planning permission and not subsequent works.

706 [2010] EWCA Crim 1119
707 [2015] EWCA Crim 1757
708 [2018] EWCA Crim 2722
709 [2019] UKSC 33 at para. 19
The scope derived from the planning permission may be greater than expected. The plans may go further than the core works and this will extend the scope of the chargeable development and accordingly increase the CIL bill. The development authorised by the planning permission will not be reduced because the work has been carried out before the grant or has been included in the planning application by mistake. For example, in one surcharge appeal the demolition covered by the planning permission had been carried out 18 months before the grant and was stated to have been retained in the planning application by mistake but the appointed person took the scope of the chargeable development from the wording of the planning permission.  

An example is provided by a statutory appeal which concerned two planning permissions. The first authorised the formation of a flat in the roof space of a building. A CIL liability notice was issued. Then whilst the works were being carried out a second planning permission was granted for an additional second flat to be formed in the roof space so reducing the first in size. The plan with the second planning permission covered the whole of the roof space due to the change in layout. The charging authority charged CIL with regard to the second planning permission by reference to whole of the roof space and not just the floorspace of the second flat. This was upheld by the appointed person who pointed out that an abatement in respect of CIL paid in relation to the first planning permission might be available.

Similar issues arose in another appeal in which a planning permission for the erection of semi-detached houses with two bedrooms was followed after work had been carried out by the grant of planning permission to retain two two-storey houses. There were substantial differences between the semi-detached houses authorised by the two planning permissions. Under the second permission the houses had four bedrooms, the houses are 50% larger and there were significant changes to floor layouts and elevations. The work under the first permission resulted in the service of a planning enforcement notice requiring the works to cease because they deviated significantly from the approved drawings. It was argued that parts of the first construction were retained and the second permission applied only to the enlargement of the houses. This was rejected by the appointed person who concluded that due to the substantial differences and on reading the description of the development in the planning application and the second planning permission the chargeable development comprised the whole of the development. This meant that no parts already constructed at the date of the grant of the second permission could be excluded from the chargeable development. Further no deductions were available as the earlier partial construction did not qualify as an “in-use building”. Even if it did that would not have allowed a deduction for a retained part because the appointed person considered that to claim such a deduction it must be a retained part of the building there at the date that the development is first permitted and not a retained part of a previously existing building.

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710 APP/T5720/L/16/1200061 decision date: 10th February 2017
711 Development: to form additional [ ] in existing loft space. Decision date 9th September 2016
712 Development: Retention of 2 x two-storey houses with…Decision date 25th November 2016 at para. 12
713 Para. 17
The same point arose in an appeal concerning a building in relation to which permission to create new flats by extension was granted in stages. A consolidating permission was then granted and the appellant argued that the additional units authorised by earlier permission should be excluded from the chargeable development. This was rejected by the appointed person even though no representations were made by the charging authority. The chargeable development is the development authorised by the planning permission and this covered the whole development. It meant that the owner had to rely on a deduction from the GIA in order to reduce the CIL bill but a rear outrigger had been demolished before the consolidating planning permission had first permitted development and so its area could not be deducted.\textsuperscript{714}

Appointed persons, however, have the opportunity to exercise common sense in determining the scope. For example, in one appeal\textsuperscript{715} the development was principally concerned with converting the first and second floors and the addition of a third floor but the approved plans referred to in condition 2 attached to the planning permission covered the basement and ground floor. The ground floor works involved alterations to the access and the stairs to the upper floors. These were described as “of a minor internal nature and do not affect my decision regarding the extent of the chargeable development.”\textsuperscript{716}

The formulation of the chargeable development was crucial in one appeal.\textsuperscript{717} A house had been constructed pursuant to pre-CIL planning permissions but was wider than appeared on the approved plans. In consequence a retrospective planning permission was granted varying a variation of a condition attached to an earlier planning permission but after the introduction of CIL in the area. The application was described as an application to allow “extensions of the side elevations”. The appointed person considered that the chargeable development comprised the extensions to the side elevations and not the whole development.\textsuperscript{718} It would seem implicit in this that it also authorised the remainder of the building which was part of a building which had not been constructed in accordance with the planning permissions granted prior to the retrospective permission. The result of that formulation was that the CIL liability was greatly reduced when the self-build housing exemption was not available because the permission was retrospective.

It is not just a question of the formulation of the development in the planning permission but in some instances the number of planning permissions may affect the CIL liability. For instance, if more than two or more houses are to be constructed and one qualifies for the self-build housing exemption it may be advantageous to have two planning applications rather than one. One planning application relating only to the self-build house will result in the full benefit of the exemption being gained. Whilst the other planning application can result in a planning permission which will take the benefit of a demolition deduction if there is to be a building demolished during the development

\textsuperscript{714} Development: Demolition of existing rear outrigger and construction of part one, part four storey extension…Decision date: 4\textsuperscript{th} September 2018 – para. 11 and see also Development: Retention of Detached Outbuilding to be used as ancillary guest accommodation. Decision date: 2\textsuperscript{nd} October 2018 – para. 15
\textsuperscript{715} Development: Conversion of first and second floor levels into ….Decision date: 16\textsuperscript{th} May 2016
\textsuperscript{716} Para.11
\textsuperscript{717} Development: Retrospective application for variation of condition 14…Decision date: 30\textsuperscript{th} April 2019
\textsuperscript{718} Para.16
and it is located on the site for the new houses which are not subject to the exemption. This will enable the enjoyment of the full benefit of the demolition deduction. If such a development is authorised by a single planning permission the demolition deduction would have to be applied to the GIA of the whole chargeable development including the self-build house thereby not utilising the full benefit of the demolition deduction.

9.8.1 **Starting point** – the chargeable development is the development for which planning permission is granted.\(^{719}\)

9.8.2 **Development under general consent** – where there is no actual planning permission granted but the development is under a general consent then the development will be that identified in the notice of chargeable development given to the collecting authority or in default prepared by the collecting authority.\(^{720}\)

9.8.3 **Phased planning permission development**\(^{721}\) –

9.8.3.1 **Prior to 24\(^{th}\) February 2014** - each phase of a development pursuant to an outline planning permission was treated as a separate chargeable development and so the subject matter of each phase comprised a separate chargeable development. The CIL regime was applied separately to each phase of the development. This had obvious advantages for arranging the cash flow of the development expenditure but was limited only to outline planning permissions and not full or hybrid planning permission.

However, the phasing of the development could give rise to problems when computing the CIL liability. One problem could be with regard to the demolition of buildings and the deduction of the area when operating the reg. 40 formula. Another was if there was a long period between the grant of planning permission and the commencement of a phase preventing a retained building being in lawful use for a period of six months in the twelve month period prior to the commencement for the particular phase. There could also be complications where different parts of the development have different uses. A number of these issues were addressed by the 2014 Regulations by amending the formulae in reg. 40.

9.8.3.2 **Post 23\(^{rd}\) February 2014** - The treatment of each phase of a development as a separate chargeable development for the purposes of CIL now applies not just to outline planning permission but to all types of planning permission.\(^{722}\) It now applies to all phased planning permissions which expressly provide for development to be carried out in phases and so it does not matter whether it is an outline, full or hybrid planning permission. This applies from 24\(^{th}\) February 2014.\(^{723}\)

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\(^{719}\) Reg. 9(1)

\(^{720}\) Reg. 9(3)

\(^{721}\) Reg. 9(4)

\(^{722}\) Reg. 9(4) inserted by reg. 4(2) of the 2014 Regulations

\(^{723}\) There is nothing in the transitional provisions in reg. 14 of the 2014 Regulations which prevents the change applying to phased planning permissions granted before the coming into force of the 2014 Regulations. In the case of outline planning permissions granted before 24\(^{th}\) February 2014 there is no change but as regards full or hybrid planning permissions it will be interesting to see whether this phased treatment will be accepted by authorities as applying.
The 2014 Regulations made a number of amendments to the formulae in reg. 40 with a view to addressing issues that had arisen with regard to phasing. In particular the deduction available for the purposes of CIL in respect of the internal area of a demolished building can be carried forward to later phases of the development to the extent not used in an earlier phase.

9.9 **Choice of developments** – if there is more than one planning permission still live with regard to a site it is for the owner to decide which is carried out. If the authority starts the CIL process with regard to one planning permission but the owner has commenced work implementing a different planning permission the authority has to start again and cannot switch the CIL proceedings across to that planning permission. This can pose a problem for an authority if the works start with no commencement notice or notice of chargeable development having been given by the owner. The authority is left to guess which planning permission is being implemented. If the authority imposes surcharges and the owner shows that it is a different planning permission which is being implement then the surcharges will be quashed without the appointed person being able to determine a revised commencement date. An award of costs would seem to be justifiable in such circumstances because the failure of the owner to inform the authority of the development being carried out has been the sole cause of the appeal being made and the authority’s costs being wasted.

Although the owner is free to decide which planning permission is implemented once work has started under the selected planning permission it is not possible to go back on that decision and substitute a different permission as from the start. It is possible to switch planning permissions but only from the date of the switch and not retrospectively subject to the special rules applicable to section 73 permissions.

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724 See section 15.7 below
725 APP/E0345/L/17/1200130 decision date: 21st December 2017
726 Para. 2
727 APP/Q3115/L/17/1200104 decision date: 21st December 2017
10. **Excluded developments** – it will be important to know which developments are outside the scope of the CIL regime and which are not. This is so that the amount of the CIL liability can be ascertained and the owner or developer appreciate the financial burden that will result from commencing development. There is plenty of scope for confusion with such proposals when clients do not have a detailed grasp of the CIL regime. For this reason I am including in this section the exemption for minor developments.

10.1 building into which people do not normally go or only for purpose of inspecting or maintaining fixed plant or machinery\(^{728}\) – any works relating to the construction, repair or improvement of such a building are not treated as development for the purposes of CIL. This covers buildings such as substations or pumping stations. In the Mayor of London’s guidance on CIL it is stated that the Mayor has been advised that this only applies to separate buildings and does not apply to parts only of a building. This is supported by the VOA CIL Appeals Guidance Note. In Appendix 1 example 17 it gives as an example a thirty storey building with the basement and fifteenth floor of the building to be occupied solely for the purposes of plant and machinery such as boilers and air conditioning. In calculating the chargeable GIA of the building no deduction is made for the GIA of the two floors. The justification for this approach is that the two floors are part of a larger building and do not comprise a separate building. In an appeal it was held that an electric sub-station was not excluded from the GIA of the building because it was part of the building and not separate.\(^{729}\)

This exclusion from CIL has been claimed in respect of two agricultural buildings in an appeal.\(^{730}\) The buildings were two barns which were to be used for keeping calves over the winter months until they were eighteen months rather than being sold between three and five months. Hay, straw, machinery and equipment were also to be stored in them. The appointed person held that the barns did not qualify as such buildings because they would be entered on a daily basis for the purpose of feeding, checking on and looking after the calves. For these purposes the appointed person considered that one person entering was sufficient.

It is possible to envisage tricky issues arising in respect of large sites such as railway stations, airports and power stations. Three separate issues will arise. First, what on the site is actually a building? For instance how are extendible walkways, tunnels, luggage ducts or platforms with a partial cover to be treated? Second, if a building will it be excluded by either limb of reg. 6(2)? This could raise the third issue as to whether the area is part of a bigger building or constitutes a separate building?\(^{731}\) Once these issues are dealt with there then may a fourth difficult issue. How will the various parts of the large site be categorised as regards use.

10.2 Change of use from single dwelling to two or more dwellings\(^{732}\) – 

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\(^{728}\) Reg. 6(1)(a) and (b) and reg 6(2)

\(^{729}\) Para. 26 in Variation of condition [ ] (development in accordance with the approved drawings) of planning permission ref[ ]…dated 3rd March 2017

\(^{730}\) 26th January 2015 Development: Erection of 2 agricultural buildings

\(^{731}\) See section 15.2.1.6 below

\(^{732}\) Reg. 6(1)(d)
10.2.1 General – there is a specific exemption when converting a single dwellinghouse into two or more which excludes such a conversion from constituting development.\textsuperscript{733} This means that a conversion to flats of a single house which had not been in lawful use for six months or longer in the three years prior to the date the planning permission first permits the conversion will not be subject to CIL. It has been argued by an authority that if at the date of the grant of planning the building is a house in multiple occupation it will not qualify as a single dwellinghouse. In that case the owner’s agent stated that the property had been temporarily occupied by a number of individuals for security purposes only. The appointed person noted that the wording of reg. 6(1)(d) does not include any link to the Town and Country Planning (Use Classes) order 1987. Consequently in the absence of evidence of structural or other alterations the property was “to all intents and purposes still what could be described as a single dwellinghouse for the purposes of regulation 6(1)(d).”\textsuperscript{734}

Reliance on reg. 6(1)(d) is not, however, straightforward. Whether it applies depends on the nature of the works authorised to be undertaken by the planning permission. The exclusion covers any works relating to the change of use of a single dwelling house to two or more separate dwelling houses if those works would not require planning permission. This covers for instance installing kitchens, doors, bathrooms and openings.\textsuperscript{735} If there are substantial structural works which would require planning permission then the permission is concerned with not just a change of use but works and thus reg. 6(1)(d) will not apply if those works relate to the existing building. In that appeal external walls had to be removed, a staircase removed and other extensive works. As a result of the substantial nature of the alterations to the existing building the appointed person considered that what was authorised on balance went beyond a mere change of use with an extension less than 100 sqm and was more than just a change of use within reg. 6(1)(d) but rather the chargeable development comprised the existing building as well as the extension.\textsuperscript{736} This meant that the minor development exemption did not apply as the development comprised a new dwelling rather than just an extension. However, the GIA of the existing dwelling was deductible.

Similarly in a later appeal\textsuperscript{737} the appointed person stated that the “question is whether there are other works to the existing house in its entirety that required planning permission, or are the works just installing kitchens, bathrooms, doors and openings etc. that did not in themselves comprise development under either the TCPA 1990 or the CIL definition? I consider this to be a matter of fact and degree with each case being looked at on its own merits.”\textsuperscript{738} With redacted decisions it is not easy to determine what works are involved but included excavation of part of the rear garden, the removal of

\textsuperscript{733} It is similar to reg. 4 of the Town and Country Planning (Use Classes) Order 1987/764 which provides that “in the case of a building used for a purpose within class C3 (dwellinghouses) in the Schedule, the use as a separate dwellinghouse of any part of the building or of any land occupied with and used for the same purposes as the building is not, by virtue of this Order, to be taken as not amounting to development.”

\textsuperscript{734} Development: Use as [ ] self-contained flats………….Replacement windows and internal alterations. Decision date 18\textsuperscript{th} June 2019 para. 12

\textsuperscript{735} Development: Conversion of a single family dwelling into [ ] involving the erection of a [ ] extension and [ ] extension. Decision date 2\textsuperscript{nd} March 2017 para. 12

\textsuperscript{736} Para. 14

\textsuperscript{737} Development: Use as [ ] self-contained flats………….Replacement windows and internal alterations. Decision date 18\textsuperscript{th} June 2019

\textsuperscript{738} Para. 13
most of the original back elevation, demolition of an extension, the addition of a mezzanine floor and a new extension. To arrive at an assessment of the scope of the works the appointed person took account of the approved plans, the design and access statement and the planning statement.\textsuperscript{739} This led the appointed person to conclude that due to “the substantial nature of the alterations to the existing building” on balance the chargeable development “goes beyond just a change of use from a single dwellinghouse to two or more dwellinghouses”. In consequence the chargeable development extended to the whole of the development covering the retained part and the new extension.\textsuperscript{740}

It has been suggested that this exclusion is limited to conversion to two separate houses as opposed to flats but in my view notwithstanding the continuing problems over the construction of “dwellings” in tax legislation this limitation is not correct. Support for this is gained from an appeal relating to the conversion of existing property to two self-contained flats in which the appointed person found that CIL was not due although the authority put in no representations.\textsuperscript{741}

10.2.2 Extension included - It is not immediately apparent what is to happen if there is an extension of the building. Will this increase in the internal space be excluded or be used to calculate a CIL charge or could the whole gross internal area be caught? It seems to me that it is the increase in area which will be caught but there is a risk that the need for such works will take it wholly outside the exclusion and so the question will be what deduction if any is available with regard to the existing building. This is a matter which will need to be explored before works start.

10.2.3 Conversion of flats to single dwelling house - in contrast a conversion of flats to a single dwelling in such circumstances will give rise to a CIL even if there is no increase in the internal space subject to the availability of any deduction in relation to retained buildings.\textsuperscript{742}

10.3 New build less than 100 square metres\textsuperscript{743} –

10.3.1 General - if the development does not result in 100 square metres or more of new build then it will be outside the CIL regime unless the development comprises one or more new dwellings. This is an important exclusion. It should mean that if the development does not involve any “new build” or one or more dwellings then it will be exempt from a charge to CIL. A replacement building will be a new build for these purposes as will the enlargement of an existing building. In consequence planning permission only for a change of use of an existing building should not result in a charge to CIL unless the development comprises one or more dwellings or there are additional works.\textsuperscript{744}

However, many local authorities on their websites state that a change of use of an unused building will only avoid a charge to CIL if the building qualifies for a deduction under Kr(ii) as an “in-use building”. In the debates of the Second Delegated Legislation

\textsuperscript{739} Para. 14
\textsuperscript{740} Para. 15
\textsuperscript{741} 15th December 2013 Development: Conversion of existing property to two self-contained flats.
\textsuperscript{742} See section 15.2.5 below
\textsuperscript{743} Reg. 42
\textsuperscript{744} See section 9.3
Committee on the draft 2019 (No. 2) Regulations reference was made to the peculiarity that a change of use in an unused shop would give rise to a CIL charge and the Minister for Housing stated that he thought “he is right that in the regulations such properties will not be exempt.” This seems to depend on whether reg. 42 applies to only to developments which include new build or to all developments. I consider that the wording favours the second construction but that is not the construction applied by local authorities.

Planning permission authorising the change of use of a building to residential when previously part was used for commercial purposes together with a small extension will not qualify for the minor development exemption as it comprises a dwelling. Similarly a development to convert two flats back to a single dwelling plus an extension did not qualify for this exemption because the development comprised a new dwelling. It was argued that there had not been planning permission for the two flats and so it was merely converting the building back to its lawful use and no new dwelling was being created. The appointed person pointed out that the development merely had to comprise one or more dwellings and the dwelling did not have to be new. However, an extension of an existing dwelling will be within this exemption if the extension is less than 100 square metres contrary to the argument of an authority in an appeal that the exemption did not apply because the development related to a dwelling. As the development was an enlargement of an existing basement flat and does not create a new or an additional dwelling the exemption was held to apply.

An extension to a dwelling can be within this exemption but not necessarily. In a case in which the permission authorised the change of use from a single dwelling to two flats and extensions it was decided that the nature of the works to the existing building were so substantial that the existing building was included in part of the development and so the minor development exemption could not apply to just the extension. Had the works of conversion been less substantial and not by themselves require planning permission then the works relating to the existing building would have been excluded from the development by reg. 6(1)(d) and then the minor development exemption would have applied to the extension.

A building which is ancillary to a dwelling but which is not itself a dwelling will not be treated as a dwelling for the purposes of reg. 42 and so will be subject to the exemption if less than 100 sqm. A new garage with planning permission for storage of vehicles with a condition that the use of the garage is ancillary to the dwelling was treated as an annex by a charging authority so that the exemption would not apply. It relied on there being a WC and, therefore, considered that there was scope for the building to function as a separate dwelling without the need for a further planning permission to be applied for. The appointed person held that this was not sufficient as to exclude the minor development exemption it was necessary that the building will comprise one or more dwellings. The building was a replacement garage and there was no evidence it would

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746 Proposed development: Change [ ] to [ ] dwelling and [ ]. Decision date 17th June 2016
747 Proposal: Deconversion of 2 residential units into a dwelling house …Decision date: 14th August 2018.
748 Development: Excavation and enlargement of existing [ ] level to provide a [ ] self-contained unit…Decision date: 18th June 2019 para. 9
749 Development: Conversion of a single family dwelling into [ ] involving the erection of a [ ] extension and [ ] extension. Decision date 2nd March 2017 para. 14
be used as a dwelling. It was relevant that there is no provision which deems a building to be a dwelling either the building is or is not a dwelling.\footnote{Proposed Development: Retrospective consent for replacement garage. Decision date 26th June 2018 – para. 7-9}

If the “new build” is 100 sqm or more then the floorspace of an existing building which remains part of the development will be included within the gross internal area of the development subject to the availability of one of the deductions.\footnote{See section 15.2.5 below}

The particular GIA is crucial with regard to this exemption. There is no definition of GIA within the CIL regulations and so reliance is placed on the definition contained in the RICS Code of Measuring Practice (6th Edition) (“RICS Code”).\footnote{See section 15.2 below} Inevitably the landowner will be seeking to reduce the area otherwise chargeable to CIL. This will involve arguments over whether particular areas should be included. There have been a number of appeals relating to such issues.\footnote{See section 15.2.1.3 and 15.2.1.4 below}

For these purposes new build comprises either a new building or an enlargement of an existing building. In calculating the area it does not allow for the internal area of the new or enlarged building to be reduced by the internal area of any building demolished as part of the development. It is focused on the internal area of the new building that is constructed in place of the demolished part.

The whole of an extension exceeding the 100 square metres limit will be chargeable to CIL and not just the amount by which it exceeds 100 square metres. This has been confirmed by a decision on a statutory appeal\footnote{21st June 2013: Remodeling and extension to single dwelling with a detached double carport - para. 10} that reg. 42 does not provide an exemption for the first 100 square metres of new build in any development.

10.3.2 Example –

(i) Conversion of building – a factory with GIA of 600 sqm is to be converted into a supermarket. The building is not to be extended. There should be no CIL because the development does not increase the GIA and does not comprise a dwelling. Whether the factory has been in use during the last three years and qualifies as an “in-use building” should be immaterial as there is no CIL calculation pursuant to reg. 40. However, the CIL information on many local authority websites states that there will be no CIL charge only if the Kr(i) deduction is available because the factory qualifies as an “in-use building”.\footnote{See 10.3.1 above}

The CIL position is different if the factory is to be converted to a mixture of retail and flats. Reg. 42 will not apply because the development includes dwellings. In such circumstances CIL will be chargeable on the whole of the GIA apportioned between the retail and the residential use unless the first retained buildings deduction applies.\footnote{See section 15.2.5} If the deduction applies then the whole of the GIA of the factory will be deductible
from the chargeable GIA so that there will be no CIL liability if the development does not result in an increase in GIA. To be entitled to the deduction the factory must qualify as an “in-use building” by being in lawful use for a continuous period of at least six months in the three years ending with the date that the development is first permitted. If the planning permission authorises a mixed retail and residential development in an extended building then only the GIA of the extension will be chargeable to CIL if the deduction is available.

(ii) Extensions to buildings

An office building is to be extended by 130 sqm. The LPA’s CIL rate is £40 psm in relation to office use

CIL charge on the extension is $130 \times £40 = £5200$

If the development covers the building and the extension then the GIA of the development will be reduced by either the first retained building deduction or if the building does not qualify as an “in-use building” by the second retained building deduction, Kr(ii).

If the extension had been 95 sqm then there would be no CIL charge. If instead of an office the building was a sole or main residence of the owner then the residential extension exemption may apply or the minor development exemption if the development is the extension and not the whole house.

10.3.3 Appeals – an appeal involving a dispute over the application of this exemption is possible under reg. 114. In an appeal concerning the use of premises as a place of worship there had been a temporary permission to use premises for worship (use class D 1) and then subsequently a full unconditional planning permission was granted for use as a place of worship and to carry out minor works. The authority assessed CIL on the gross internal area of the building notwithstanding that the building was found to have been in lawful use due to the temporary permission. This was set aside on appeal. It was held that there was no new build on the basis that the appeal papers showed that the style and size of the church was largely the same before and after the grant of planning permission. In consequence the reg. 42 exemption was applied.

10.3.4 New build with dwelling - If any part of the development comprises one or more dwellings then that would appear to be sufficient to prevent the benefit of this exemption being gained. The exemption will not only be lost if the whole of the development is one or more new dwellings. This is subject to the application of the new exemptions for self-build housing, residential annexes and residential extensions. The term “dwelling” has always caused problems in both fiscal and non-fiscal legislation. An extension to a school or college dormitory with an increase in internal floor area of less than 100 square metres should not give rise to a CIL charge whereas

757 See sections 15.2.5.3 and 15.2.5.4
758 See section 11.6
759 Reg. 42
760 15th December 2013: Use of premises as a place of worship
761 Para. 12
762 See section 11.6
prior to the introduction of the new exemption for residential extensions the same extension to a house would if the development comprised the house being extended.

10.3.5 Extensions/annexes – the significance of this exemption for minor developments has been reduced in its most contentious area which is with regard to extensions to a home or the construction of an annexe within the curtilage of a home. The new exemptions will remove from the CIL regime the majority of extensions to residential property provided that the owner complies with the CIL requirements. It may even encourage larger extensions which otherwise would have been smaller to avoid CIL. The non-availability or limitations of the minor developments exemption will still be material with houses where the work started before 24th February 2014 because the new exemptions will not apply. It seems harsh in cases in which the extension had not been completed by that date. Issues will still arise in relation to extensions of buildings other than dwellings. One issue may be whether the extension relates to an area which is already treated as part of the GIA of the building or whether it is caused to become part of the GIA as a result of the works. There have been two appeals already on such issues.

One problem that still occurs is if the extension to a dwelling is intended to be less than 100 sqm but when carried out is 100 sqm or more. CIL will as a result become chargeable. It will be too late to claim the residential extension relief because the development has commenced. Reducing the extension to less than 100 sqm is unlikely to avoid the CIL charge although it has happened in one case. If the larger than intended area is a breach of planning law than such reduction could be argued to be compliance and justify the minor development exemption applying to the reduced area. The cautious answer may be to claim the residential extension exemption but even that will not provide a fail-safe answer if the actual extension exceeds in area the subject matter of the claim.

10.3.6 Staggered developments - In attempting to come within this exemption clients may make mistakes and carry out schemes which raise interesting legal issues. One obvious route for developers to consider is to design a development in separate parts with the objective that each part is within this exemption. Such staging will be harder with new dwellings as the minor works exemption does not apply so the internal area cannot be disregarded if below the limit of 100 sqm when determining whether the development is chargeable to CIL. To defer say a garage to a second application may not be successful if the garage is viewed as a matter of law as part of a dwelling but as it will not by then be a new dwelling included in the development that point should not succeed. Now there will also be the question whether the construction of the garage would qualify for the residential extension exemption. Some authorities will only apply the residential extension exemption if the extension is physically attached to the building.

A development will not face the same problems or issues if instead of a dwelling it concerns say an office. If the internal area of the office is 95 square metres and the garage 45 square metres then dealing with the development in two stages could result in a CIL advantage. There is as yet no provision which allows the two developments to

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763 See section 11.6 below
764 see section 15.2.1.3 below
765 See section 11.6.3 below
be aggregated.\textsuperscript{766} Such provisions are to be found in property taxes such as stamp duty land tax and may be inserted into the CIL regime if this were to become a problem for charging authorities. At present the principal hurdle, therefore, is the practical one whether the planning authority will grant permissions for the two separate stages.

10.4 Mezzanine floors – This is a topic which has thrown up a significant amount of uncertainty. An improvement or alteration of the interior of a building which does not materially affect the external appearance of a building will not be a development for the purposes of the TCPA 1990.\textsuperscript{767} This will exclude works which only add a mezzanine floor from the CIL regime. However, there is one special case involving mezzanine floors which is brought within the planning regime. The increase of the floor space of a building by more than 200 squares metres will be a development if the building is used for the retail sale of goods other than hot food and such a building will include a retail warehouse club.\textsuperscript{768} A mezzanine floor within that article 44 will, however, not be a development for the purposes of CIL because a planning permission is required only because of provision made under section 55(2A) of the TCPA 1990.\textsuperscript{769} This in turn means that it will not be a chargeable development.

Oddly the February 2014 CIL Guidance states that mezzanine floors “of less than 200 square metres inserted into an existing building are not liable for the levy unless they form part of a wider planning permission that seeks to provide other works as well”\textsuperscript{770}. This appears to leave open the possibility of mezzanine floors exceeding 200 square metres being a chargeable development which is not correct. Any other mezzanine floors will not be a development for the purposes of CIL because it is not a development for the purposes of the TCPA 1990. The new build limit of 100 square metres will not apply. Thus the addition of mezzanines should not give rise to a charge to CIL.

However, it should be noted that mezzanine floors in a new development will be taken into account for the purposes of CIL. The RICS Code includes the floor space of a mezzanine floor in the computation of internal floor space provided that there is a permanent means of access. Similarly, additional floor space created by an underground development will be caught for CIL unless the residential extension exemption applies.

\textsuperscript{766} The attempt by Swindon BC to amalgamate two planning permissions failed in R (oao Orbital Shopping Park Swindon Limited) v Swindon BC [2016] EWHC 448 (Admin) – see section 4.4.3
\textsuperscript{767} Section 55(2(a)
\textsuperscript{768} Article 44 of the Town & Country Planning (Development Management Procedure) (England) 2015/2184 pursuant to section 55(2A) TCPA 1990
\textsuperscript{769} Reg. 6(1)(c) as acknowledged in R (oao Orbital Shopping Park Swindon Limited) v Swindon BC [2016] EWHC 448 (Admin) in paragraphs 46 and 47
\textsuperscript{770} Para. 2.1.2
E. Exemptions

11. Exemptions – there are limited exemptions from CIL although the number has been slowly growing. With some the charging authority has the discretion as to whether or not they will be applicable. Even if such discretionary exemptions are applied by an authority the operation of the discretion will be limited. There are no exemptions for bodies such as local authorities (including the charging authority) or the emergency services. However, it may be that developments relating to such bodies will be zero rated in the charging schedule which is an approach adopted by some authorities but not all. There have been three principal exemptions – charities, social housing and self-build. Social housing relief was to be extended to include the starter homes by the 2019 Regulations but that extension has been omitted to enable further consultation to be undertaken. There is one standard form – Form 2 – which covers all the exemptions.

11.1 Charitable exemption – there is a compulsory exemption available in all areas and an additional discretionary exemption which the charging authority can elect to offer. It should be noted that there is no specific exemption for buildings for purposes such as education, defence or emergency services. To qualify for these charitable exemptions an owner with a material interest in the building has to be a charity. This exemption may be available, for example, to academies or free schools.

11.1.1 Compulsory charitable exemption - Subject to three qualifications\textsuperscript{771} a charity which owns a material interest in a development site will be wholly exempt from CIL if the chargeable development will be used wholly or mainly for charitable purposes whether by that charity alone or with other charities\textsuperscript{772}. It is provided that use of a chargeable development for charitable purposes includes leaving it unoccupied\textsuperscript{773}.

11.1.2 Treble Warning - a charity qualifying for the benefit of the charitable exemption may easily lose it. There are three steps that must be taken before the commencement of the relevant development. These are:-

11.1.2.1 Claim – the benefit of the exemption must be claimed\textsuperscript{774} and this claim must be made before the commencement of the development\textsuperscript{775}. After 31\textsuperscript{st} August 2019 if charitable relief was granted prior to the commencement of a development and then after commencement of that development it changes a claim for charitable relief can be made even though the development has commenced\textsuperscript{776}. This should allow a fresh claim for charitable relief to be made in respect of the changed development but this is subject to uncertainty as discussed with regard to the self-build housing exemption. The government comments in June 2019 in the summary of the responses to the technical consultation suggest that it is intended to be limited to changes effected by a section 73 permission\textsuperscript{777}.

\textsuperscript{771} See para. 11.1.5 below
\textsuperscript{772} Reg. 43(1)
\textsuperscript{773} Reg. 43(3)
\textsuperscript{774} See section 11.1.8 below
\textsuperscript{775} Reg. 47(2)(a)
\textsuperscript{776} Reg. 47(3A) inserted by reg. 6(3)(c) of the 2019 (No. 2) Regulations
\textsuperscript{777} Para. 32
A fresh claim in relation to a section 73 permission is not needed in such circumstances if the amount of the charitable relief is not changed. The charitable relief is automatically carried over to the development authorised by the section 73 permission.778 Everything done in relation to the original development for the relief is treated as if it was done in relation to the development authorised by the section 73 permission.779

11.1.2.2 Notification of decision – there must have be a wait before starting the development to receive notification of the decision on the claim from the collecting authority. If the development is commenced before that notification the claim will lapse780. The collecting authority is obliged to respond as soon as practical notifying the claimant of the decision, the reasons for it and if granted the amount of the relief781. There is a right to appeal against the decision.782 After 31st August 2019 notification is not required to be given before commencement of the development if the claim is made in relation to a change in the development after it has commenced.783

11.1.2.3 Commencement notice – having got this far the benefit of the exemption would have been lost if a commencement notice had not been submitted to the collecting authority before the date the chargeable development is commenced784. Failure to give such a notice caused the exemption to be lost and a surcharge to be payable. With effect from 1st September 2019 this statutory provision has been omitted785. There is still a need to give a commencement notice but failure to do so will not cause the charitable exemption to be lost.

Instead it will result in a surcharge equal to 20 per cent of the notional chargeable amount or £2,500 whichever is the lower.786 The notional chargeable amount is the charge which would arise if the exemption did not apply.787 It is not a matter of discretion whether the collecting authority imposes the surcharge in these circumstances because the collecting authority “must” impose it. If the collecting authority is satisfied that the amount of the surcharge is less than any reasonable administrative costs which it would incur in relation to the surcharge then it is not compelled to impose the surcharge.788

11.1.3 Protection - care must, therefore, be taken to ensure that the development does not start before the claim has been properly made, the collecting authority’s decision has been notified and a commencement notice has been submitted before the commencement of the development although the later will not after 1st September 2019

778 Reg. 58ZA added by reg. 7(1) of the 2019 (No. 2) Regulations
779 Reg. 58ZA(1) which is the equivalent to reg. 50(7) which was introduced in relation to social housing relief by reg. 7(6) of the 2014 Regulations.
780 Reg. 47(3)
781 Reg. 47(5) and after 31st August 2019 the authority must provide an explanation of the requirements of reg. 67(1) (reg. 6(3)(d) of the 2019 (No. 2) Regulations.
782 See section 20.4 below
783 Reg. 47(3A) inserted by reg. 6(3)(c) of the 2019 (No. 2) Regulations
784 Reg. 47(7) – prior to 24th February 2014 submission on the date of commencement would have been sufficient but after 23rd February 2014 this was changed by reg. 7(3) 2014 Regulations
785 Reg. 47(7) omitted by reg. 6(3)(d) of the 2019 (No. 2) Regulations
786 Reg. 83(1A) inserted by reg. 6(8)(b) of the 2019 (No. 2) Regulations
787 Reg. 83(5) inserted by reg. 6(8)(c) of the 2019 (No. 2) Regulations
788 Reg. 83(1B) inserted by reg. 6(8)(b) of the 2019 (No. 2) Regulations
cause the loss of the exemption. Contractual provisions to impose responsibility for taking such steps at the right time should be considered between the charity and the developer and possibly the inclusion of an indemnity to protect against any failure resulting in the development commencing before these steps have been completed.

11.1.4 Extent of exemption - this exemption will not cover any part of the actual CIL liability attributable to the development which is not exempt because part of the development is not to be used for charitable purposes. In consequence if the charity becomes responsible for that part of the CIL liability it will have to pay it and cannot rely on the charitable exemption. This can occur if a person has assumed such liability then defaulted in payment and the outstanding CIL is transferred back to the charity as an owner.

11.1.5 Limitations on availability of charity exemption – the application of the charitable exemption will be excluded in three sets of circumstances:-

11.1.5.1 No control or occupation by charity – it is not enough that the chargeable development is to be used for charitable purposes but it must also be either occupied by a charity or under the control of a charity. It need not be the charity which is the owner but can be any charity. It would seem from the wording and in particular the use of the words “will not be” that whether this requirement has been satisfied is to be tested by the circumstances prevailing at the time the development has been completed and the site is to be used. In consequence a liability notice is likely to be issued on the basis that this limitation will not apply but if it is found that it does then a revised liability notice can be issued. This may come as shock to any person who has assumed liability and finds the liability unexpectedly increased. It is something which the person assuming liability may want to protect against and take an indemnity from the charity so that the risk lies with the charity.

11.1.5.2 Joint ownership of material interest with non-charity – if the material interest owned by the charity is jointly owned with a person who is not a charity then the exemption will not apply. However, if there is more than one material interest and the charity is the sole owner of a material interest then the exemption will apply to the charity but not to the owners of any other material interests in the site. For example, if a charity develops a site that it leases from L then the charity will be exempt from the CIL liability apportioned to the charity’s leasehold interest but L will be liable to pay the CIL portion apportioned to the owner of the freehold reversion. Similarly, if the development site consists of two parts and one part is owned by a charity and the other part is owned by a person who is not a charity the site is jointly owned but not their respective interests in the site. In consequence the charity will be entitled to an exemption from the portion of CIL apportioned to it. In such circumstances the CIL liability will be apportioned between the charity and the other owner in accordance with the value of their respective interests in the site and only the portion of CIL apportioned to the other owner will be payable.

11.1.5.3 State Aid – no charitable exemption is available if it would constitute State Aid. The guidance from the Mayor of London raises the query whether an indemnity

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789 Reg.43(2)(a)
790 Reg. 43(2)(b)
791 Reg. 43(2)(c)
should be sought by the collecting/charging authority from a charity against the possibility that the relief is State Aid. It is hard to understand the basis on which such an indemnity could be compelled. Either the claimant qualifies for the relief or not and if it does then it should be given without negotiation.

11.1.6 Meaning of “charitable” – whether or not a body qualifies as a charity will be determined under the general law. For the purposes of CIL a “charitable institution” is defined as:

(i) a charity which is any person or trust established for charitable purposes only. Charitable purposes are defined by section 2 of the Charities Act 2011. These will comprise charities registered as such with the Charity Commission; exempt charities listed in Schedule 3 of the Charities Act 2011 which cannot register; and excepted charities which do not need to register but are supervised by the Charity Commission.

(ii) a trust of which all the beneficiaries are charities;

(iii) a unit trust scheme in which all the unit holders are charities.

Registration with HMRC as a charity will be a strong indicator but will not be conclusive. The regulations do not require such registration and there will be bodies which qualify as a charity but are not registered with HMRC.

11.1.7 “Wholly or mainly” – to qualify for the exemption the development must be used “wholly or mainly” for charitable purposes. There is no definition or test for this phrase in the regulations and it is one the application of which has given rise to problems in the context of rating matters. It has been indicated that it means that more than half the development will be used for such purpose. I take this to mean more than half of the area of the development. The test is similar to that which arises in respect of business rates which particularly in the context of attempts to avoid rates on vacant commercial premises has resulted in a number of cases. In such cases it has been held that use of less than 50% of the premises can still satisfy the requirement.

Whether premises have been used for charitable purposes was considered in the context of section 40 of the General Rates Act 1967 in Oxfam v Birmingham City Council. Lord Cross stated that “A line has therefore to be drawn somehow or other between the user of premises for purposes which are charitable purposes of a charity within the meaning of the subsection on the one hand and their user for purposes which though purposes of the charity are not charitable purposes of the charity on the other.” He drew this line “so as to exclude from relief use for the purpose of getting in, raising or earning money for the charity, as opposed to user for purposes directly related to the achievement of the objects of the charity …” Lord Morris stated as regards the line to be drawn that “things done by a charity, or a use made of premises by a charity, which greatly help the charity, and which in one sense must be connected with the charitable purposes of the charity and which are probably within the powers of the

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792 Reg. 41(1)
793 Reg. 41(1)
794 [1976] AC 126
795 Page 135
796 Page 146
charity, but yet which cannot be described as being the carrying out, or part of the carrying out, of the charitable purposes themselves. The nature of the user may not be sufficiently close to the execution of the charitable purpose of the charity. ...”

As a result an Oxfam shop which sold goods which as to 80% had been donated by the public failed to qualify for the charitable relief.

With a view to the owner avoiding paying rates on vacant premises leases have been granted to a charity on a peppercorn rent with a break clause on a short notice allowing the charity to install a transmitter to broadcast messages on crime prevention and public safety. Such arrangements have been successfully challenged on the ground that the hereditament was not “wholly or mainly used for charitable purposes.” For example in Public Safety Charitable Trust v Milton Keynes Sales J. stated that in “the context of this legislation [section 43(6) Local Government Finance Act 1988] and having regard to the language used, it is reasonable to infer that Parliament intended that the substantial mandatory exemption from rates for a charity in occupation of a building should depend upon the charity actually making exclusive use of the premises for charitable purposes (i.e. use of the building which is substantially and in real terms for the public benefit, so as to justify exemption from ordinary tax in the form of non-domestic rates), rather than leaving them mainly unused.”

This would apply equally to the mandatory exemption from CIL. It applies the Court of Session decision in English Speaking Union Scottish Branches v Edinburgh City Council which held that premises were not wholly or mainly in use for charitable purposes when a charity occupied one of eight floors in a building. The purpose of the use was wholly charitable but that was not sufficient as the whole building was not used for such purpose. It was possible to look not just at the purpose of the use but also at the extent or amount of the use. There is an important distinction between occupation and use in this context. A charity as in the English Speaking Union case may be in occupation of the whole building but that does not mean that the building is wholly or mainly in use for charitable purposes.

However, in reaching a decision on this requirement account is not to be taken as to whether the charity is making the most efficient use of the building nor whether it really needs to occupy all the space actually occupied (Kenya Aid Programme v Sheffield CC). Issues of necessity or efficiency are not material. In that case two units were leased by a registered charity to use as a store for furniture which was to be shipped to Kenya. The charity was funded by donations from the landlord and as a result of the arrangement the landlord did not have to pay non-domestic rates on the vacant building. When rejecting the claim for charitable relief on the grounds that the units were not used wholly or mainly for charitable purposes the District Judge took into account that only one unit would have been sufficient and that the furniture was spread out through the units making poor use of the space. The Divisional Court held that these factors should not have been taken into account and remitted the case to be reheard. Treacy LJ stated that the “natural reading and meaning of the words used are, in my judgment, apt to cover not only consideration of the purpose of the use, but also the extent or amount

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797 Page 149
798 [2013] EWHC 1237 (Admin)
799 Para. 34
800 [2009] SLT 1051
801 [2013] EWHC 54 (Admin)
of the actual use. It follows therefore that I would hold that the Judge was right to take account of and place weight upon the extent to which the premises were used.”

Elias LJ stated in South Kesteven DC v Digital Pipeline Limited\(^{803}\) that “the test is not whether the activity being conducted on the premises is wholly or mainly charitable; it is whether the premises are being used wholly or mainly for charitable activity. The English Speaking Union case provides a clear example of the distinction between the two approaches.”\(^{804}\) In the South Kesteven DC case use was being made of 42% of the premises. Elias LJ stated that it did not follow from this that it could not be said that the premises were not being used wholly or mainly for charitable purposes and nor could it be said that there was a rebuttable presumption to that effect.\(^{805}\)

The last authority to date concerning this point is My Community Space v Ipswich BC\(^{806}\) in which the charity’s claim for relief failed because the District Judge held that the public exhibitions relied on to establish the necessary use lacked the appearance, purpose or intent of a public exhibition for “charities to obtain volunteers and for the public to seek opportunities to participate and contribute to charitable volunteering”\(^{807}\) and so the claim failed. This was upheld on appeal by Walker J. who agreed that the facts fell the wrong side of the line.

The development will not be eligible for this exemption if the property is to be let out to achieve an income for the charity. However, it is expressly provided that using a chargeable development includes leaving it unoccupied.\(^{808}\)

11.1.8 Claim –

11.1.8.1 Prior to 1st September 2019 - in order to benefit from the exemption a claim must be made.\(^{809}\) If it complies with the requirements of reg. 47(2) then it is a valid claim.\(^{810}\) The claim by the charity must be written and submitted to the collecting authority.\(^{811}\) As warned above the claim must be received by the collecting authority before the commencement of the development\(^{812}\). This is now subject to a qualification due to the 2019 (No. 2) Regulations considered below.

The claim must be in, or substantially similar to, the prescribed form and contain the particulars required by the form\(^{813}\) and include the particulars specified or referred to in the form.\(^{814}\) The first port of call for such a form will be the relevant authority’s website. A link should be present to enable the form to be downloaded. This will be to Form 2 and section A1 relates to a claim for charitable relief.

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802 Para. 35
803 [2016] EWHC 401 (Admin)
804 Para. 13
805 Para. 25
806 [2018] EWHC 3313
807 Para. 87
808 Reg. 41(3)
809 Reg. 47(1)
810 Reg. 47(6)
811 Reg. 47(2)
812 Reg. 47(2)(a)
813 Reg. 47(2)(b)
814 Reg. 47(2)(c)
Care has to be taken to ensure that the claim is accompanied by an apportionment assessment when there is a material interest in the development site owned by a person other than the charity. The collecting authority may substitute its own apportionment assessment. As soon as practicable after receiving a valid claim the collecting authority must notify the claimant not just of its decision but the reasons for it and if the relief is granted the amount of relief granted.

As highlighted above in section 11.1.2.2 as well as making the claim before the commencement of the development it is essential that notification of the authority’s decision is received before such commencement.

In addition the charitable relief would be lost if a commencement notice was not submitted to the collecting authority before the day the chargeable development is commenced.

11.1.8.2 On and after 1st September 2019 – four changes were introduced by the 2019 (No. 2) Regulations. First and importantly it is no longer necessary that a commencement notice be submitted before commencement of the development in order to retain the charitable relief. Failure to do so will not result in the loss of the relief but a surcharge must be imposed equal to 20 percent of the notional chargeable amount or £2,500 whichever is the lower amount. If the collecting authority is satisfied that the amount of the surcharge is less than any reasonable administrative costs which it would incur in relation to the surcharge then it is not required to impose this surcharge.

Second and less importantly the authority when notifying its decision on the claim must provide an explanation of the requirements of reg. 67(1) which concerns commencement notices.

Third there is a qualification of the need for the claim to be made and the authority’s decision notified to the claimant before the commencement of development. If charitable relief has been granted in relation to a chargeable development which is then commenced and the development changes after commencement neither of these time requirements apply. This means that a fresh claim for charitable relief can be made in relation to the changed development notwithstanding that the development has commenced. As discussed with regard to the self-build housing exemption even though the need to give a commencement notice prior to the commencement of the development is no longer required I have a concern that the requirement that liability be assumed for the dwelling can only be satisfied prior to the commencement of the development.

815 Reg. 47(2)(d)
816 Reg. 47(4)(b)
817 Reg. 47(5)
818 Reg. 47(7)
819 Reg. 47(7) is omitted by reg. 6(3)(e) of the 2019 (No. 2) Regulations
820 Reg. 83(1A) inserted by reg. 6(8)(b) of the 2019 (No. 2) Regulations
821 Reg. 83(1B) inserted by reg. 6(8)(b) of the 2019 (No. 2) Regulations
822 Reg. 47(5) amended by reg. 6(3)(d) of the 2019 (No. 2) Regulations
823 Reg. 47(3A) inserted by reg. 6(3)(c) of the 2019 (No. 2) Regulations
824 Sections 11.5.6.1 and 11.5.6.6.2
Fourth a fresh claim is not needed in relation to a section 73 permission in such circumstances if the amount of the charitable relief is not changed. The charitable relief will be automatically carried over to the development authorised by the section 73 permission.\textsuperscript{825} Everything done in relation to the original development for the relief is treated as if it was done in relation to the development authorised by the section 73 permission.\textsuperscript{826}

Subject to these four changes the requirements applicable prior to 1\textsuperscript{st} September 2019 continue to apply.

11.1.9 Example - a charity owns a site and obtains planning permission to build a hostel for the homeless which would have a GIA of 200 sqm. CIL would be chargeable at the rate of £30 psm and amount to £6,000. A claim for charitable relief is made by the charity and as a result the charity is not liable to CIL.

If the site is owned by a developer and a long lease has been granted by the developer to the charity then there will need to be an apportionment based on the respective values of the two interests. If the freehold reversion is valued at £100,000 and the leasehold interest at £300,000 then the portion of the CIL liability apportioned to the charity will be £4,500 (CIL liability \times \frac{\text{value of leasehold interest}}{\text{aggregate value of freehold reversion and leasehold interest}}). The charity will not be liable to pay this sum. The developer will be liable to pay £1,500.

11.1.10 Appeal – an interested person aggrieved by a decision made with regard to charitable relief may appeal to an appointed person on the ground that the value of the interest in the land to which the claim for relief applies was incorrectly determined.\textsuperscript{827} Such an appeal must be made within 28 days of the issue of the decision.

11.1.11 Clawback – the benefit of the charitable exemption can be lost during the seven year period beginning with the commencement of the chargeable development and the CIL previously exempted clawed back if one of the following occurs:-

11.1.11.1 Cessation of qualification for charitable exemption\textsuperscript{828} – the initial satisfaction of the requirements set out above\textsuperscript{829} may cease. For example, the charity may lose its charitable status or the development may no longer be used wholly or mainly for charitable purposes. If this occurs during the seven year period there will be a charge to CIL.

11.1.11.2 Transfer of charity’s material interest\textsuperscript{830} – a transfer of all the charity’s material interest in the development to a non-charity during the seven year period will trigger a claw back of CIL. A transfer to another charity will not lose the benefit of the exemption. It would seem that a transfer of part will not trigger this provision but it has

\textsuperscript{825} Reg. 58ZA added by reg. 7(1) of the 2019 (No. 2) Regulations
\textsuperscript{826} Reg. 58ZA\subscript{(1)} which is the equivalent to reg. 50(7) which was introduced in relation to social housing relief by reg. 7(6) of the 2014 Regulations.
\textsuperscript{827} reg. 116 – see section 20.11.4 below
\textsuperscript{828} Reg. 48(1)(a)
\textsuperscript{829} see in particular section 11.1.5
\textsuperscript{830} Reg. 48(1)(b)
to be borne in mind that one of the pre-conditions to be satisfied if the exemption is to apply is that the material interest must not be jointly owned by the charity and a non-charity. To effect a transfer which causes a non-charity to become joint owner of the material interest with a non-charity will cause the clawback provisions to be triggered.

11.1.11.3 Termination of charity’s lease – when the charity’s material interest was a lease which expires, or is forfeited, broken or otherwise terminated during the seven year period and then reverts to a non-charity landlord that will trigger a clawback.

11.1.11.4 Liability for clawback – the amount of CIL relieved by the operation of the charitable exemption will be the amount clawed back and it must be paid by the person who owns the material interest immediately before the event triggering the clawback.

11.1.11.5 Notification and surcharge - the person liable to pay the CIL on the withdrawal of the exemption is obliged to notify the collecting authority within 14 days of the occurrence of the event and if there is failure to do so then the collecting authority can impose a surcharge equal to 20% of the CIL liability triggered by the disqualifying event or £2500 (whichever is the smaller). The surcharge is payable immediately if the development has started but if it has not started then on the commencement day. It is apportioned between the owners of material interests in the relevant land in respect of which charitable relief was granted. This provision does not make clear for these purposes at what time the material interest must be owned. It presumably is the same time as applies regarding the determination of liability for the clawed back CIL which is immediately before the disqualifying event. Further it does not limit the liability to pay the CIL to the person failing to give notice of the disqualifying event. This is in contrast to reg. 48 regarding liability for the clawed back CIL. It appears to apportion this surcharge liability amongst all the owners of material interests in the development regardless of whether or not they have received the benefit of the charitable exemption.

11.1.11.6 Protection – the ability to clawback CIL due to a disqualifying event means that if a charity which has claimed the benefit of this exemption from CIL transfers its material interest there will be a need to consider what contractual provisions should be included to cover the CIL thereby clawed back if the transfer is to a non-charity or which might in the future be clawed back if the transfer is to another charity. The provisions will need to be more elaborate if they are to protect against an unexpected surcharge liability due to a failure to give notice of a disqualifying event. Similar provisions may be needed by other owners of material interest in the development who have not had the benefit of the charitable exemption. These will probably have to be obtained at an earlier stage when the arrangements regarding the proposed development are being negotiated. It is at that stage that such owners will have a say. Once the development is completed it is unlikely that the other owners will be in a position to require indemnities or other such protection.

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831 see section 11.1.5.2 above
832 Reg. 48(1)(c)
833 Reg. 48(2) and (4)
834 Reg. 48(3)
835 Reg. 84
836 Reg. 84(6)
11.2 Discretionary charitable relief –

11.2.1 Availability - a charging authority may elect to offer a discretionary charitable relief. To do this it must issue an appropriate document giving notice that discretionary charitable relief will be available in the area and whether under both or one of reg. 44 and 45; gives the date that the collecting authority will start to accept claims; and includes a policy statement setting out the circumstances in which the relief will be granted in the area.837

The authority must also publish this document on the authority’s website and make it available for inspection at its principal office and other appropriate places in its area.838 A copy of the document should also be sent to the collecting authority if not the charging authority.839

In the absence of such document or publication the discretionary relief is not available in the area. It is open to the authority to revise its policy840 or revoke it.841 Similar publicity must be given to the revision or revocation as when the relief was made available although in the case of revision the authority can change the places at which such documents are available for inspection.842 If the relief is to be revoked then the authority must state when is the last day that the collecting authority will accept claims for such relief and the revocation can be no earlier than 14 days from the publishing on the website of the statement relating to the revocation.843 Any claim for discretionary charitable relief received on or before the date mentioned in the document under reg. 46(3)(a) stating the relief is not to be available must be considered by the collecting authority.844

Newark and Sherwood DC have elected not to offer it. In contrast Swindon and Shropshire has elected to offer it. It is stated in the draft notification of relief notice on the Shropshire website that it is available “where the chargeable development delivers facilities, services or infrastructure that have been identified as a requirement in the LDF Implementation Plan or Place Plans. The amount of relief granted will be in direct proportion to the proposed development’s benefit to the community, as assessed by Shropshire Council in consultation with the Parish or Town Council.”

11.2.2 Discretionary relief – provided that this relief is available in the relevant area and subject to the satisfaction of certain specified statutory limitations845 and any additional limitation imposed by the charging authority846 there is an additional charitable exemption847. This applies if a charity or charities hold the whole or the greater part of the chargeable development as an investment from which the proceeds will be applied for charitable purposes whether of the holding charities or any other

837 Reg. 46(1)(a)
838 Reg. 46(1)(b) and (c)
839 Reg. 46(1)(d)
840 Reg. 46(2)
841 Reg. 46(3)
842 Reg. 42(6)(c)
843 Reg. 46(4)
844 Reg. 47 (8) and (9)
845 see para. 11.2.3 below
846 see Shropshire’s limitation quoted in para. 11.2.1 above
847 Reg. 44(1)
charities. For these purposes it has been stated that a greater part is 51% or more. It is open to the charging authority to impose its own additional criteria as to eligibility. Examples of such criteria given by the DCLG are the extent of the benefit provided by the charity to the local community; the annual income of the charity; and the annual rent payable on the charity’s investment.

11.2.3 Limitations – this exemption is not available if one of the three following limitations applies.

11.2.3.1 Occupation for an ineligible trade – a charity will not be entitled to the benefit of the exemption if it is going to occupy that part of the development and use it for ineligible trading activities which are trading activities other than the sale of donated goods and from which the proceeds less any expenditure are applied for the charity’s charitable purposes. It is not enough that the net proceeds are applied for charitable purposes not involving this charity.

11.2.3.2 Joint ownership with non-charity – as with the mandatory exemption the charity must own the material interest in the development alone or jointly with other charities but not with a non-charity. Ownership of a different material interest in the development by a non-charity will not cause the benefit of the discretionary charitable exemption to be lost.

11.2.3.3 State Aid – a collecting authority cannot grant such exemption if satisfied that it would constitute State Aid which must be notified to and approved by the European Commission. However, if the CIL relief constitutes State Aid but the collecting authority is satisfied that it does not need to be notified to and approved by the European Commission then the CIL relief will be available if the charity otherwise qualifies. This particular relief must be specified in the document and publication making such discretionary exemption available in the area. It is not enough that relief under reg. 44 is made available by such method.

11.2.4 CIL rate – it is for the relevant Charging Authority to decide what rate is to be applicable.

11.2.5 Claim and warnings – the provisions relating to claims for mandatory charitable exemption will also apply to this discretionary exemption. In consequence the same warnings will apply. Section A1 of Form 2 will need to be completed.

11.2.6 Example – a charity owns land which has planning permission for a mixed retail and residential block. It grants a long lease of the site. It will hold the freehold reversion as an investment and the rents paid by the lessee will be applied for charitable purposes. The value of the freehold interest is £750,000 and the value of the lease £3 million.

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848 Reg. 44(1)(c) and see para. 2.7.2.6 February 2014 CIL Guidance
849 Reg. 46(1)(a)(iii)
850 Reg. 44(3)(a) and (4)
851 Reg. 44(3)(b)
852 Reg. 44(5)
853 Reg. 45
854 See para. 11.1.8 above
855 See para. 11.1.2 above
retail GIA is 200 sqm which is chargeable at a CIL rate of £120 so that the CIL attributable to the retail area is £24,000. The GIA of the flats in the development is 600 and the CIL rate for residential in that zone is £85 so that the CIL attributable to the residential area is £51,000. The total CIL liability is, therefore, £75,000. The portion attributable to the charity is 20% as the value of the freehold reversion is one fifth of the aggregate value of the freehold reversion and the leasehold interest. This means that the developer is liable for £60,000 whilst the charity would be liable for £15,000. However, the charging authority has elected to offer discretionary charitable relief at 50%. Following a claim for this relief the charity is liable to pay £7,500 by way of CIL.

11.2.7 Clawback – when available this relief can be withdrawn and the CIL clawed back in the same manner as the mandatory charitable relief. The disqualifying event will be similar but ceasing to hold or apply the profits as specified in para. 11.2.2 will be disqualifying events.

11.3 Social Housing - a development which includes social housing or a communal area for more than one occupier of such housing will be eligible for relief from CIL to the extent that the development is intended to be used for social housing. It will cover most lettings for social rent, affordable rent and intermediate rent provided by a local authority or private registered provider and shared ownership dwellings. It has been extended. The 2015 Regulations extended it to landlords who are not registered providers of social housing which will include charities. It was proposed to extend this relief to include starter homes but the 2019 (No. 2) Regulations have not included this so that there can be further consultation.

The qualifying amount of the relief is set against the whole of the potential CIL liability as it must be claimed by the person who has assumed liability for the CIL even though not necessarily the owner of the land to be used for social housing. As well as the mandatory social housing relief the 2014 Regulations have also introduced a discretionary social housing relief which a charging authority may make available in its area in relation to discounted market sales. The discretionary relief is to be given in the same manner as the mandatory relief.

11.3.1 Qualifying dwellings – to be entitled to this relief the development must include “qualifying dwellings” either wholly or in part. To constitute such a dwelling one of the six (originally four) prescribed conditions must be satisfied.

11.3.1.1 Condition 1 (social rented housing by local authority) – to satisfy this condition two requirements must be met being one as to the type of landlord and one as to the type of letting.

(i) Landlord – the landlord of the dwelling must be a local housing authority.

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856 See para. 11.1.9 above
857 Reg. 49(10)
858 Reg. 49A
859 Reg. 49(1)
860 Reg. 49(2)
861 Reg. 49(3)
(ii) **Lettings** – in addition the letting of the dwelling must be any one of the following specified types of tenancy being a demoted tenancy; an introductory tenancy; a secure tenancy; or an arrangement which would be such a tenancy but for para. 4ZA or 12 Sch. 1 Housing Act 1985.

11.3.1.2 **Condition 2 (shared ownership arrangements)**\(^662\) – covers a shared ownership arrangement which complies with all the following requirements

(i) the dwelling is occupied in accordance with shared ownership arrangement within section 70(4) Housing and Regeneration Act 2008;

(ii) not more than 75% of the market value of the dwelling (being the price which would reasonably be expected to be received on a sale on open market) is paid by way of premium on the day that a lease is granted under the arrangement;

(iii) at the date of the grant of the lease the annual rent is not more than 3% of the value of the unsold interest (being the freehold or leasehold interest owned by the person providing the dwelling);

(iv) the annual rent cannot increase by more than the increase in RPI for the year to the September immediately preceding the anniversary of the lease plus 0.5%.

11.3.1.3 **Condition 3 (social housing letting by registered social landlord)**\(^663\) – covers lettings satisfying the following requirements:-

11.3.1.3.1 **Landlord** – must be private registered provider of social housing;

11.3.1.3.2 **Lettings** – must be one of following, namely:-

(i) assured tenancy including assured shorthold tenancy;

(ii) assured agricultural occupancy;

(iii) arrangement that would be assured tenancy or assured agricultural occupancy but for paragraph 12(1)(h) or 12ZA of Schedule 1 to the Housing Act 1988;

(iv) demoted tenancy.

11.3.1.3.3 **Prescribed criteria** – the rent must satisfy one of the following three sets of circumstances\(^664\):-

(i) the rent is subject to the national rent regime and regulated under a standard controlling rents set by the Regulator of Social Housing under section 194 of the Housing and Regulation Act 2008;

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\(^{662}\) Reg. 49(4)  
\(^{663}\) Reg. 49(5)  
\(^{664}\) Reg. 49(6)
(ii) the rent is neither subject to the national rent regime nor regulated under a standard controlling rents set by the Regulator of Social Housing but is not more than 80% of market rent;

(iii) the rent is not subject to the national rent regime but is regulated under the standard controlling rents set by the Regulator of Social Housing which requires the initial rent to be no more than 80 per cent of the market rent\(^{865}\) (including service charges).

The national rent regime is the rent influencing regime set out in the Social Rent Guidance within the Rent Standard Guidance as published by the Regulator of Social Housing for matters prior to 1st April 2015 in March 2012 and for matters on or after 1st April 2015 in January 2015.

11.3.1.4 **Condition 4 (letting in Wales by registered social landlord)**\(^{866}\) – covers:

(i) a letting in Wales by a registered social landlord;

(ii) which is an assured tenancy or an assured agricultural occupancy or a demoted tenancy or an arrangement that would be an assured tenancy or assured agricultural occupancy but for paragraph 12(1)(h) or 12ZA of Schedule 1 to the Housing Act 1988; and

(iii) the rent is no more than 80% of market rent\(^{867}\).

11.3.1.5 **Condition 5 (discounted letting in private sector)**\(^{868}\) – this extension of the social housing relief has been added by the 2015 Regulations with effect from 1st April 2015\(^{869}\). It covers lettings at a discounted rent when the landlord is not a local housing authority or a private registered provider of social housing or a registered social landlord (within the meaning of Part 1 of the Housing Act 1996). It is intended to encourage the provision of affordable housing by the private sector and not just the voluntary sector. The following requirements must be satisfied:-

11.3.1.5.1 **Lettings** – must be one of the following\(^{870}\):

(i) assured tenancy including assured shorthold tenancy;

(ii) assured agricultural occupancy;

(iii) arrangement that would be assured tenancy or assured agricultural occupancy but for paragraph 12(1)(h) of Schedule 1 to the Housing Act 1988.

11.3.1.5.2 **Prescribed criteria** – each of the following must be complied with

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\(^{865}\) Which is the rent which the lease might reasonably be expected to fetch at that time on the open market – reg. 49(11)

\(^{866}\) Reg. 49(7)

\(^{867}\) Which is the rent which the lease might reasonably be expected to fetch at that time on the open market – reg. 49(11)

\(^{868}\) Reg. 49(7A)

\(^{869}\) Reg. 4(1)(b) of the 2015 Regulations

\(^{870}\) Reg. 49(7A)(a)
(i) the dwelling is let to a person whose needs are not adequately served by the commercial housing market (on which there is no guidance);\textsuperscript{871}

(ii) the rent is no more than 80 per cent of market rent (including service charges);\textsuperscript{872} and

(iii) a planning obligation under section 106 TCPA 1990 designed to ensure compliance with both (i) and (ii) has been entered into in respect of the planning permission which permits the chargeable development\textsuperscript{873}.

11.3.1.6 Starter homes (Condition 6)\textsuperscript{874} but not yet in force – It was proposed in the first set of draft amendments that relief for starter homes would be added as a new relief included within social housing relief. It would have covered qualifying homes which are acquired by individuals with a total household income not exceeding £90,000 in the case of homes located in Greater London or £80,000 in the case of homes located elsewhere. This would have applied to the purchase of both freehold and leasehold interests in a building or part of a building.

The relief was left out of the 2019 (No. 2) Regulations. The government is proposing later in 2019 to introduce the secondary legislation for the delivery of starter homes. Along with this the CIL relief will be introduced in a subsequent set of regulations.\textsuperscript{875} This section sets out what was proposed although what may come into force in the future may be different. Hence this section is in italics.

The prescribed criteria to be met to qualify for this relief was to be:

(I) Qualifying home – it was to be a dwelling which is a starter home within the meaning contained in section 2 of the Housing and Planning Act 2016.\textsuperscript{876} This section provides that “’starter home’ means a building or part of a building that—

(i) is a new dwelling\textsuperscript{877};

(ii) is available for purchase by qualifying first-time buyers only;

(iii) is to be sold at a discount of at least 20\% of the market value;

(iv) is to be sold for less than the price cap which is £450,000 if located in Greater London and £250,000 if located elsewhere; and

(v) is subject to any restrictions on sale or letting specified in regulations made by the Secretary of State (for more about regulations under this paragraph, see section 3)”

\textsuperscript{871} Reg. 49(7A)(b)(i)
\textsuperscript{872} Reg. 49(7A)(b)(ii)
\textsuperscript{873} Reg. 49(7A)(c) in first draft
\textsuperscript{874} Reg. 49(7B) in first draft
\textsuperscript{875} Para. 7 and 75 of the MHCLG’s Government response to reforming developer’s contributions June 2019
\textsuperscript{876} Reg. 49(7B)(a) in first draft
\textsuperscript{877} A “new dwelling” is defined by section 2(2) as meaning a building or part of a building that (a) has been constructed for use as a single dwelling and has not previously been occupied, or (b) has been adapted for use as a single dwelling and has not been occupied since its adaptation.
For these purposes “qualifying first-time buyer” is defined in section 2(3) of the 2016 Act as an individual who—
(a) is a first-time buyer;
(b) is at least 23 years old but has not yet reached the age of 40; and
(c) meets any other criteria specified in regulations made by the Secretary of State (for example, relating to nationality).

A “first-time buyer” for these purposes is defined in section 2(4) of the 2016 Act as having the meaning given by section 57AA(2) of the Finance Act 2003 which section conferred the first time buyer’s relief for stamp duty land tax. It provided that a first-time buyer is a person who
(a) has not previously been a purchaser in relation to a relevant acquisition of a major interest in land which consisted of or included residential property;
(b) has not previously acquired an equivalent interest in such land under the law of a territory outside the United Kingdom;
(c) has not previously been, or been one of the persons who was, “the person” for the purposes of section 71A, 72, 72A or 73 in a case where the first transaction within the meaning of the section concerned was a relevant acquisition of a major interest in land which consisted of or included residential property; and
(d) would not have been such a person for those purposes in such a case if the provisions mentioned in paragraph (c) had been in force, and had had effect in the territory concerned, at all material times (subject, where required, to appropriate modifications).

(II) Total household income – the dwelling would have had to have been sold to individuals whose “total household income” for the relevant tax year is £90,000 if the dwelling is located in Greater London and £80,000 if located elsewhere. When the number of individuals buying the dwelling exceeds two then the total household income would have been the sum of the two highest total incomes of the individuals. For these purposes the total income of each individual would have been the sum of the amounts of income on which the taxpayer is charged to income tax for the tax year. The relevant year for the calculation was to be the tax year preceding the calendar year in which the date of sale of the dwelling falls.

Section 57AA of the FA 2003 was inserted by section 6(2) FA 2010 and repealed by section 41(6)(a) FA 2018 with effect from 15th March 2018.

“relevant acquisition of a major interest in land” means “an acquisition of a major interest in land other than- (a) the grant of a lease for a term of less than 21 years, or (b) the assignment of a lease which has less than 21 years to run.” section 57AA(3) FA 2003

Section 71A relates to alternative property arrangements with financial institutions; section 72 to sales to financial institutions and lease to individual; section 72A applies to Scotland and relates to arrangements under which land is sold to a financial institution and individual in common; and section 73 relates to a sale to a financial institution and then resold to an individual.

Reg. 49(7B)(b) of first draft

Taken from section 23 Income Tax Act 2007
11.3.2 Qualifying communal development - the relief was extended by the 2014 Regulations to cover qualifying communal development such as stairs, corridors and car parking as well as qualifying dwellings.\(^{883}\)

11.3.2.1 Qualifying area - subject to the exclusions in reg. 49C(3) the qualifying communal development is so much of the development as is for the communal benefit of the occupants of more than one qualifying dwelling whether or not also used by others.\(^{884}\) This is to ensure that the relief applies to the whole area used for social housing and not just the internal area of the dwellings. The exclusions in reg. 49C(3) are any parts of the development:-

(a) comprising one or more dwellings;

(b) used wholly or mainly by the public;

(c) used wholly or mainly for the benefit of occupants of development which is not relevant development (being that part of the development which is authorised by the same planning permission as the qualifying dwellings but which does not include such dwellings or communal area);\(^{885}\)

(d) used wholly or mainly for commercial purposes.

11.3.2.2 Area of qualifying communal development – a formula is provided in reg. 49C(4) to calculate the area of the qualifying communal development. It is

\[
\frac{(X \times A)}{B}
\]

Where—

X = the gross internal area of the communal development;

A = the gross internal area of the qualifying dwellings to which the communal development relates; and

B = the gross internal area of the qualifying dwellings and the relevant development, provided that the communal development is for the benefit of those dwellings and that relevant development. The relevant development is the development under the planning permission authorising the qualifying dwellings but excluding the parts which are not such dwellings or communal development.

11.3.2.3 Claim for relief for qualifying communal development – the claim must be made at the same time as the claim for social housing relief in relation to the qualifying dwellings to which the communal area relates or if a phased development in relation to

\(^{883}\) Reg. 49C added by reg. 7(5) of the 2014 Regulations with effect in relation to developments regarding which a liability notice is issued on or after 24\(^{th}\) February 2014 because the changes to reg. 50 including qualifying communal development (reg. 7(6) of the 2014 Regulations) take effect in such a manner (reg. 14(3) of the 2014 Regulations).

\(^{884}\) Reg. 49C(1) and (2)

\(^{885}\) Reg. 49C(5)
any phase of that development. This applies in relation to discretionary social housing relief as well as to such mandatory relief.

11.3.3 Discretionary social housing relief – this was introduced by the 2014 Regulations but is covered by the description social housing relief. It extends the relief to sales at a discounted market price so that the qualifying amount can be set against what would otherwise be the chargeable amount of CIL for the particular chargeable development. As regards discounted rents the similar change had been introduced to the mandatory social housing relief through condition 3 (see section 11.3.1.3 above as regards registered social landlords and section 11.3.1.5 for the extension by the 2015 Regulations to landlords who are not so registered). It is for each authority to decide whether to make this relief available. Some have such as Swindon. The amount of the relief will be the same as with the mandatory social housing relief and will be given in the same manner. The intention is that such relief should meet EU requirements which are that:

(a) there is an obligation that the house is used in a certain way;

(b) the house is for persons who needs are not met by the market which is stated to be “disadvantaged citizens or socially less advantaged groups who due to solvency constraints are unable to obtain housing at market conditions”;

(c) the total aid must not exceed the cost of providing the social housing

11.3.3.1 Availability – the charging authority must decide that it wishes to make the discretionary relief available. To achieve this it must issue a document giving notice that relief available in area; giving the date when claims will begin to be accepted; setting out the authority’s policy on how housing to be granted relief is to be allocated in the area to extent that the authority is responsible. This document must be published on the authority’s website and be available for inspection at its principal office and such other places as it considers appropriate. A copy must be sent to the collecting authority if different to the charging authority. Any revision of the charging authority’s policy of allocation of such housing in the area must be set out in a document giving notice of the revision; stating the date it is to take effect; and setting out the revised policy. That document must be published on the website and made available for inspection at its principal office and the other places at which the original policy was made available or if no longer appropriate at such places as are considered appropriate. A copy must be sent to the collecting authority if different from the charging authority.

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886 Reg. 49(8)
887 Reg. 49A
888 Reg. 7(5)
889 Reg. 49(9)
890 Reg. 49A(4)
891 Reg. 49B(1)(a)
892 Reg. 49B(1)(b) and (c)
893 Reg. 49B(1)(d)
894 Reg. 49B(2)(a)
895 Reg. 49B(2)(b) and (c)
896 Reg. 49B(2)(d)
A similar process must be gone through if the availability of the discretionary relief is to be withdrawn but the last date on which the authority will accept a claim for this relief must be not less than 14 days after the day on which the withdrawal is published on the website. Any claim form for discretionary relief received by the collecting authority on or before that day must be considered by the authority.

11.3.3.2 Qualifying dwelling for discretionary relief – this relief is intended to meet the needs of those whose needs are not met by the market taking into account local income levels and local house rent/prices. To qualify for the discretionary relief all the following criteria in reg. 49A(2) must be satisfied:

(a) the dwelling is sold for no more than 80% of its market value;
(b) the dwelling is sold in accordance with the authority’s published policy;
(c) the CIL liability in relation to the dwelling remains with the person claiming the relief.

11.3.4 Qualifying amount – this is determined in accordance with the provisions of reg. 50 and paragraph 6 of Schedule 1. As with the calculation of the CIL liability in accordance with para. 1 of Schedule 1 the sensible way to calculate the qualifying amount is to use a special calculator designed for the specific purpose. Such a calculator may be available on the relevant authority’s website. It seems to be a feature of CIL that the formulae are complicated and off putting to an unusual degree. It is unfortunately a further feature that they are regularly amended which adds to the complications. As with the formulae originally in regulation 40 for the calculation of CIL these have been changed by the 2012 Regulations, the 2014 Regulations and now the 2019 (No. 2) Regulations.

11.3.4.1 Applicable sets of formulae - The changes in the 2012 Regulations to the formulae took effect with regard to planning permissions granted on or after 29th November 2012. Such changes in the 2014 Regulations took effect with regard to developments if a liability notice was issued in relation to it on or after 24th February 2014. Such changes in the 2019 (No. 2) Regulations take effect in relation to planning permissions granted on or after 1st September 2019. It means that so far there are four

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897 Reg. 49B(3)
898 Reg. 49B(4)
899 Reg. 51(10)
900 The market value at any time is the price which the dwelling might reasonably be expected to fetch if sold at that time on the open market – reg. 49A(2)(a)
901 Inserted by reg. 5(3), 5(12) and Schedule 1 of the 2019 (No. 2) Regulations
902 Reg. 6(a) of the 2012 Regulations
903 The transitional provisions in reg. 10 of the 2012 Regulations exclude cases in which the planning permission was granted before the coming into force of the 2012 Regulations on 29th November 2012 (reg. 10(4)) and developments under a general consent regarding which a notice of chargeable development had been given before 29th November 2012 (reg. 10(5)).
904 Reg. 7(6) of the 2014 Regulations
905 The 2014 changes do not apply to developments if a liability notice had been issued in relation to it before 24th February 2014 (reg. 14(3) 2014 Regulations).
906 Reg. 1(3) of the 2019 (No. 2) Regulations. Liability notices issued on or after 1st September 2019 will not be subject to the 2019 provisions if the planning permission was granted before that date.
different sets of formulae that have applied for the purposes of calculating the qualifying amount.

(i) developments under planning permissions granted before 29th November 2012 unless liability notice issued on or after 24th February 2014 – three formulae contained in original reg. 50 of the 2010 Regulations (see original reg. 50 in the 2010 Regulations) (“original reg 50”);

(ii) developments not within (i) above but in relation to which development a liability notice has been issued prior to 24th February 2014 – two formulae resulting from amendment by reg. 6 of the 2012 Regulations (see section 11.3.4.4) (“2012 reg. 50 ”);

(iii) developments in relation to which a liability notice was issued on or after 24th February 2014 – two formulae resulting from amendments (see sections 11.3.4.2 and 11.3.4.3 below) (“2014 reg. 50”);

(iv) developments in relation to which the planning permission was granted on or after 1st September 2019 (“2019 para. 6”)

The discussion in sections 15.1 and 15.2 below with regard to the calculation of CIL pursuant to para. 1 Schedule 1 previously reg. 40 of the 2010 Regulations will be relevant also to the operation of these formulae. There used to be one significant difference as between the calculation of the CIL liability under para. 1 Schedule 1 previously reg. 40 and the calculation of the qualifying amount for the purposes of social housing relief. The relevant areas were determined in a different manner. For the CIL liability the formulae used the gross internal area of the relevant building or buildings whereas the formulae for social housing relief used the gross internal area of the relevant dwellings which left out of the calculation the common parts of a building in which the dwellings were situate and any ancillary areas such as car parking. That could result in a significant difference. That has sought to be tackled by extending the relief to include qualifying communal areas.

11.3.4.2 Original reg. 50 – the qualifying amount is determined by three formula contained in reg. 50(5), (6) and (7). The first formula is the principal formula and the other two are formulae for determining an element of the principal formula. The third formula enables the deduction in relation to demolished in-use buildings to be apportioned between the part of the chargeable development which comprises qualifying dwellings and that part which does not. The application of that formula will determine the deemed net area of the part of the chargeable development which will comprise qualifying dwellings. The second formula then determines the portion of the deemed net area apportioned to the gross internal area of the qualifying dwellings. This is needed because the gross internal area of the part of the chargeable development which will comprise qualifying dwellings will be greater.

The principal formula is

907 See section 11.3.5 below
908 reg. 49C and see section 11.3.2 above
909 In the event that there is more than one rate applicable but for the social housing relief then the formulae in reg. 50 are applied for each of the relevant rates and the qualifying amount equals the aggregate of the qualifying amounts for each of the relevant rates (original reg. 50(2)).
\[
\frac{R \times NR \times Ip}{Ic}
\]

Where-

\( R \) = the relevant CIL rate at which CIL would be chargeable but for the social housing relief in relation to the part of the chargeable development which will comprise qualifying dwellings\(^9\)

\( NR \) = the deemed net area chargeable at rate \( R \);

\( IP \) = the index figure\(^9\) for the year in which planning permission was granted; and

\( IC \) = the index figure for the year in which the charging schedule containing rate \( R \) took effect.

To determine the deemed net area chargeable at the relevant CIL rate, \( NR \), the two other formulae have to be used. \( NR \) represents the product of the following formula\(^9\):

\[
\frac{(QR \times N)}{Q}
\]

Where -

\( QR \) = the gross internal area of the part of the chargeable development which will comprise qualifying dwellings\(^9\), and in respect of which, but for social housing relief, CIL would be chargeable at rate \( R \);

\( Q \) = the gross internal area of the part of the chargeable development which will comprise qualifying dwellings; and

\( N \) = the deemed area of the part of the chargeable development which will comprise qualifying dwellings.

\( N \) is in turn determined by the third formula\(^9\) which apportions the gross internal area of any in-use building which is to be demolished during the course of the development.

\[
Q - \frac{(Q \times E)}{C}
\]

Where

\( Q \) = the gross internal area of the part of the chargeable development which will comprise qualifying dwellings;

\( E \) = the gross external area of the part of the chargeable development which will comprise qualifying dwellings.

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\(^9\) The original reg. 50(3). This includes part of a chargeable development which comprises qualifying dwellings as well as will comprise qualifying dwellings (original reg. 50(9)).

\(^9\) This has the same meaning in use to be in reg. 40 (original reg. 50(8)) as to which see section 15.1.2.

\(^9\) The original reg. 50(6)

\(^9\) As noted above it is the internal area of the dwelling and not the outbuildings.

\(^9\) The original reg. 50(7)
E = an amount equal to the aggregate of the gross internal areas of all buildings which—

(a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use, and
(b) are to be demolished before completion of the chargeable development; and

C = the gross internal area of the chargeable development

11.3.4.3 2012 reg. 50 – the 2012 Regulations introduced a new second formula which incorporated elements relating to the deductions for the demolition and the retention of an “in-use building”. In consequence the third formula in the original reg. 50 was deleted. The new second formula which determines the element $N_R$ (the deemed net area chargeable at rate $R$) in the principal formula (contained in section 11.3.4.2 immediately above) was:

$$Q_R - K_{QR} - \frac{(Q_R \times E)}{G}$$

Where -

$Q_R =$ the gross internal area of the part of the chargeable development which will comprise the qualifying dwellings, and in respect of which, but for social housing relief, CIL would be chargeable at rate $R$;

$K_{QR} =$ an amount equal to the gross internal area of all buildings (excluding any new build) on completion of the chargeable development which—

(a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use;
(b) will be part of the chargeable development upon completion; and
(c) will be chargeable at rate $R$ but for social housing relief;

$E =$ an amount equal to the aggregate of the gross internal area of all buildings which—

(a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use; and
(b) are to be demolished before completion of the chargeable development; and

$G =$ the gross internal area of the chargeable development.

The new second formula caters for the deductions in relation to “in-use buildings” by introducing elements $K_{QR}$ and $E$. For these purposes building and new build have the same meaning as in reg. 40. The deduction in $K_{QR}$ relates to the part or parts of any

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915 Building for the purposes of reg. 50 has the same meaning as in reg. 40 (reg. 50(11)) as to which see section 9.
916 For the purposes of reg. 50(7) “a building is in use if a part of that building has been in use for a continuous period of at least six months within the period of 12 months ending on the day planning permission first permits the chargeable development.” (original reg. 50(10)). See section 15.2.2 as regards in-use buildings.
917 as regards the effect of demolition see section 15.7 below
918 Reg. 50(12) introduced by reg. 6(c) of the reg. 2012 of the Regulations
“in-use building” which are retained and would have been charged to CIL at the relevant rate but for the social housing relief. It deducts the actual gross internal area of the retained parts qualifying for social housing relief rather than apportioning the gross internal area of all the retained buildings comprised in the chargeable development. The deduction based on E is concerned with the portion of the gross internal area of any demolished “in-use building” which is the whole of that gross internal area apportioned between the part of the chargeable development qualifying for the social housing relief and the remainder of the chargeable development.

However, this required more refinement which lead on to some of the changes in the formula introduced by the 2014 Regulations and set out in section 11.3.4.4 below. In particular it was not possible to carry forward to future phases of the development such amount of the internal floor space of a demolished building as had not been utilised in the phase in which the demolition occurred.

11.3.4.4 2014 reg. 50 – the principal formula is subject to a change in form in that the deemed net area charged at the relevant rate is changed by substituting A for NR so that this formula is

\[ R \times A \times \frac{I_p}{I_c} \]

For these purposes reg. 40(6) applies to determine the index figure for a given year.919

More importantly the formula was amended to cater for the extension of the social housing relief to qualifying communal development as well as qualifying dwellings.

Then there were changes to the second formula. Instead of having a complete formula set out the 2014 Regulations substitute the following formula which is based on the formula in reg. 40 but with modifications so as to apply it to the part of the chargeable development qualifying for the social housing relief. This is achieved by substituting Qr for Gr and Kqr for Kr in the formulae in reg. 40(7)-(10). Using the new reg. 40 formula as the basis is a means of incorporating the changes in that formula made to more accurately reflect the allowances for retained buildings and buildings that are demolished and their treatment in the context of phased developments.

The substituted formula with these modifications is:

\[ QR - KQR - \frac{(QR \times E)}{G} \]

Where -

919 Reg. 50(5) introduced by reg. 7(6) of the 2014 Regulations

QR = the gross internal areas of the part of the chargeable development which will comprise the qualifying dwellings or qualifying communal development, and in respect of which, but for social housing relief, CIL would be chargeable at rate R; and
\( K_{QR} = \) the aggregate of the gross internal areas of the following—

(i) relevant retained parts of in-use buildings; and

(ii) for other relevant buildings, relevant retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development.

\( G = \) the gross internal area of the chargeable development (see section 9.3.1 above as regards measuring the area);

\( E = \) the aggregate of the following—

(i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development, and

(ii) for the second and subsequent phases of a phased planning permission, the value \( Ex \) (as determined under reg. 40(8)) (see immediately below), unless \( Ex \) is negative,

provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

(as regards effect of demolition see section 15.2.5 and 15.7 below)

\( Ex \) - There is yet another formula (reg. 40(8)) to enable the value \( Ex \) to be calculated for the purposes of determining the treatment of demolished buildings when the development is phased. It is a means of carrying forward to subsequent phases so much of the internal floor space of a demolished building as has not been deducted from the GIA of a phase of the development. The following formula is used for this purpose-

\[
EP - (GP - KPR)
\]

where—

\( EP = \) the value of \( E \) for the previously commenced phase of the planning permission;

\( GP = \) the value of \( G \) for the previously commenced phase of the planning permission; and

\( KPR = \) the total of the values of \( K_{QR} \) for the previously commenced phase of the planning permission.

The phrases used in the formula will have the same meanings as in reg. 40 save as modified by reg. 50(8) to allow for their adaption to retained buildings which qualify for social housing relief.

11.3.4.5 2019 para. 6 – the principal formula for determining the qualifying amount is changed by the 2019 (No. 2) Regulations. It was to be expanded to allow for the proposed changes with regard to indexation introduced by those regulations. However,
it was decided not to proceed with the full proposals and only a much more limited change to indexation has been introduced. In consequence the principal formula has remained the same as in the previous reg. 50(4). The qualifying amount for the purposes of reg. 50 is an amount equal to the aggregate of the qualifying amounts at each of the relevant rates.\footnote{920 Para. 6(1) Schedule 1}

The principal formula\footnote{921 Para. 6(3) Schedule 1} remains:

\[
\frac{R \times A \times I_P}{I_c}
\]

Where —

A is the deemed net area chargeable at rate R;

Ip and Ic have the same meaning as in paragraph 1 Schedule 1 which means Ip - is the index figure for the calendar year in which planning permission was granted; and Ic - is the index figure for the calendar year in which the charging schedule containing rate R took effect.\footnote{922 Para. 1(4) Schedule 1}

Rate R is the relevant rate taken from the relevant charging schedules at which but for the social housing relief CIL would be charged in respect of the parts of the chargeable development which comprise either qualifying dwellings or qualifying communal development.\footnote{923 Para. 6(2) Schedule 1}

To arrive at the deemed net area paragraphs 1(6) to (9) of Schedule 1 are applied.\footnote{924 Para. 6(4) Schedule 1} These provisions are the same as invoked by the previous reg. 50(6). The formula is

\[
\frac{QR - KQR - (QR \times E)}{G}
\]

This formula operates as discussed in section 11.3.4.4 with the only change being the addition to the definition of new build in para. 1(10) Schedule 1 so that any new buildings or enlargement of a building authorised by a parent permission cannot be taken into account as an “in-use” building in relation to a section 73 permission.

11.3.5 Internal area of qualifying dwellings – Prior to the extension of the relief to qualifying communal development (by the addition of reg. 49C in the 2014 Regulations\footnote{925 Inserted by reg. 7(5) of the 2014 Regulations}) the amount of social housing relief granted was not as great as would have been expected. The calculation of the gross internal area of such dwellings could be significantly less than the gross internal area of the building comprising such dwellings. The area of the dwelling will be the area let (original reg. 49) and thus this was likely to exclude parts of the building. For example, the aggregate internal space of the flats in a block of flats would be less than the gross internal area of the block.
Common parts and other spaces not included within the flats were included in the block’s gross internal area but not in the aggregate gross internal areas of the flats. For example, stairways, corridors, reception areas and internal car parks were not included. This meant that the CIL relief applied to an area which was less than expected and in turn the CIL liability was greater. The extension of the relief to communal areas by the addition of 49C sought to rectify this and the relief will now be applied to a wider area and not just the aggregate of the gross internal area of the qualifying dwellings.

11.3.6 Claim –

11.3.6.1 Claim form - this relief must be claimed in accordance with reg. 51. This requires a written claim to be submitted to the collecting authority in the prescribed form for the relief and include the particulars specified or referred to in the form. Form 2 is provided on the Planning Portal website. Section A3 of the form applies to mandatory social housing relief and section A4 applies to the discretionary social housing relief. The claim must be accompanied by a relief assessment (which must identify the qualifying dwellings and qualifying communal development (if any) to be constructed; state their gross internal area; and include a calculation of the qualifying amount). In addition the assessment must be accompanied by evidence to establish that the development qualifies for the relief (by reference to the conditions mentioned in regulation 49, the criteria mentioned in regulation 49A(2) or regulation 49C).

Concerns have been expressed that some claims for social housing relief are being made in order to achieve an improved cash flow with the CIL liability being paid but at a date later than when it would otherwise be paid. It is open to an authority to require that sufficient evidence is provided to establish that the intention is to carry out the development in such a manner as to qualify for the social housing relief.

The collecting authority must notify its decision on a valid claim as soon as practicable after receipt. Reasons for the decision must be given and if the relief is granted then the qualifying amount must be specified. Further after 31st August 2019 the authority must explain the requirements of reg. 67(1) which concerns commencement notices.

11.3.6.2 Claimant - the claimant must have assumed liability for the CIL arising from the development and also be the owner of the relevant land. A developer who does not own a material interest in the site cannot if assuming liability for the CIL claim the benefit of this relief.

11.3.6.3 Prior to Commencement of development – before starting the development the claimant must (i) make the claim; (ii) receive notification of the authority’s decision; and (iii) in relation to a development if any liability notice or revised

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926 Reg. 51(1)
927 Reg. 51(3)(a)
928 Reg. 51(3)(c)
929 Reg. 51(3)(d)(i)
930 Reg. 51(8) as amended by reg. 7(7)(d) of the 2014 Regulations
931 Reg. 51(3)(d)(ii) as amended by reg. 7(7)(a) of the 2014 Regulations
932 Reg. 51(5)
933 Inserted by reg. 6(4)(a) of the 2019 (No. 2) Regulations
934 Reg. 51(2)
935 Reg. 51(3)(b)
936 Reg. 51(4)
liability notice is issued before 1st September 2019 give a commencement notice. Failure to comply with these requirements will result in the loss of the exemption. After 31st August 2019 the link has been severed between the loss of the exemption and the giving of a commencement notice prior to the commencement of development. Although failure to give a commencement notice before the commencement of the development will not cause the exemption to be lost a surcharge must be imposed equal to 20% of the notional chargeable amount or £2,500 whichever is the lower. This surcharge need not be imposed if the collecting authority is satisfied that the amount of the surcharge is less than any reasonable administrative costs which it would incur in relation to the surcharge.

The claimant will cease to be entitled to this relief if liability for the CIL is transferred under reg. 32 or the assumption of liability is withdrawn or ceases to have effect prior to commencement of the development.

Until the 2014 Regulations these restrictions precluded any change to the amount of social housing relief if there was a change in the provision of qualifying dwellings after the development had commenced. The restrictions will still apply to the original claim for relief but as regards a subsequent change in the provision of qualifying dwellings and qualifying communal development neither the claim nor notification of the decision need occur before commencement of the development. This means that there is now an ability to revise the CIL liability even after the development has commenced. This applied as from 24th February 2014. It would appear to apply to a development which had commenced before that date but not been completed by then. This amendment had particularly in mind a transfer to a body such as a housing association after the commencement of the development and then a change in the number of qualifying dwellings. Such arrangements are known as Golden Brick arrangements and the housing association acquires the development after the foundations have been laid. Such a provision has now been extended by the insertion of a new reg. 58ZA to the charitable relief, the self-build housing exemption and the exemption for residential annexes and extensions as well as social housing relief.

11.3.6.4 Subsequent section 73 planning permission – if social housing relief has been granted in relation to a development and then there is a section 73 permission granted but the relief does not change then all that has been done under reg. 51 with regard to the social housing relief will be treated as done with regard to the development under the second section 73 permission. This provision has been replaced by reg. 7 of the

937 Reg. 51(7)(a)
938 Reg. 51(7)(a) omitted by reg. 6(4)(b) of the 2019 (No. 2) Regulations
939 The notional chargeable amount is the amount of CIL that would have been payable calculated in accordance with reg. 40 in relation to the development as if no relief had been granted (reg. 83(5) inserted by reg. 6(8)(c) of the 2019 (No. 2) Regulations.
940 Reg. 83(1A) inserted by reg. 6(8)(b) of the 2019 (No. 2) Regulations
941 Reg. 83(1B) inserted by reg. 6(8)(b) of the 2019 (No. 2) Regulations
942 Reg. 51(7)(c)
943 Reg. 51(7)(b)
944 Reg. 51(7)(a)
945 Reg. 51(4A) inserted by reg. 7(7)(c) of the 2014 Regulations
946 Reg. 7(1) of the 2019 (No. 2) Regulations
947 Reg. 50(7) as regard any liability notice or revised liability notice issued under reg. 65 prior to 1st September 2019 and then reg. 58ZA inserted by reg. 7 of the 2019 (No. 2) Regulations as regards any
11.3.6.5 **Warnings** – the warnings given with regard to the charitable exemption set out in para. 11.1.2 will apply equally to this relief but with the addition that the claimant must have also assumed liability.

11.3.7 **Example** – a registered social housing provider owns an unbuilt on site and obtains planning permission for the construction of twenty houses. The GIA of each house is 100 sqm. The owner intends to let five to qualifying tenants under assured tenancies. The others are to be sold to a developer. The CIL rate for residential use is £80 psm. The CIL liability would be £160,000 (£80 x [20 x 100]) if all the housing was private. However, a claim for social housing relief is made in respect of the five houses to be let to qualifying tenants. This relief amounts to £40,000 (£80 x [5 x 100]) so that the CIL payable is £120,000.

If there is an existing building on the site which needs to be demolished then the demolition deduction will be available if the building qualifies as an “in-use building”. In the example above if the building has a GIA of 600 sqm then this will be apportioned between the area subject to CIL and the area with the benefit of the social housing relief in accordance with their respective GIAs. In consequence the CIL charge prior to any social housing relief being claimed would be [2000 (GIA of chargeable development) – 1000 (GIA of existing building to be demolished)] x £80 = £80000. This will then be reduced by the applicable social housing relief. The demolition deduction has to be taken into account when determining the GIA of the area with the benefit of the relief. It will be 1000 (total GIA of five houses qualifying for social housing relief) x 1000/2000 = 500. In consequence the relief will be 500 x £80 = £40000 leaving a CIL charge of £40,000.

11.3.8 **Disposal of land before available for occupation** – the benefit of social housing exemption which has been granted will transfer in the following circumstances. There must a material disposal of land on which any qualifying dwelling or qualifying communal development will be situate. The disposal must be made before the dwelling is available for occupation or the communal area is made available for use. In such circumstances the disposal will result in the transfer of the benefit of the social housing relief to the transferee. Once the dwellings are available for occupation or the communal area is made available for use the benefit of the relief cannot be passed on to any subsequent transferees.

The transferee will be entitled to the amount of social housing relief equal to the qualifying amount for the qualifying dwellings or qualifying communal development which will be situate on the land disposed to the transferee. This qualifying amount is calculated in accordance with reg. 50 and in relation to planning permissions granted as follows:

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### Footnotes:

948 See section 15.7 below
949 Reg. 52
950 Reg. 52(1)(b)
951 Reg. 52(1)(c)
952 Reg. 52(2)
on or after 1st September 2019 para. 6 of Schedule 1 but for the purposes of such calculation

(a) QR is the gross internal area of the part of the chargeable development comprising the qualifying dwellings and qualifying communal development on the land disposed which otherwise would qualify for social housing relief;\textsuperscript{953} and

(b) the value of E (concerning demolished buildings) is the value of E calculated at the time the social housing relief was granted in respect of the chargeable development.\textsuperscript{954}

The social housing relief granted before the disposal will then be apportioned between the transferee and the person who assumed liability for CIL prior to the disposal (“P2”). The qualifying amount calculated in accordance with reg. 52(3) will be passed to the transferee. The difference between the benefit of the social housing relief prior to the disposal and the qualifying amount the transferee is entitled to after the transfer is described as “the residual amount”\textsuperscript{955} and will be deemed to benefit the person who prior to the disposal was entitled to the benefit of the social housing relief in relation to the land disposed, (P2).\textsuperscript{956}

The transferor is obliged to inform the collecting authority of the disposal as soon as practical after it occurs.\textsuperscript{957} This notification must state the gross internal area of the qualifying dwellings or qualifying communal development on the disposed land\textsuperscript{958} and state the name and address of the transferor, the transferee and P2 if not the transferor.\textsuperscript{959} The notification must be accompanied by a map or plan which identifies the location of the relevant qualifying dwellings or qualifying communal development.\textsuperscript{960} Upon receiving the notification the collecting authority must send an acknowledgement of receipt to the transferor, the transferee and P2 if not the transferor.\textsuperscript{961}

A copy of the notification must be sent by the transferor to the transferee and P2 if not the transferor.\textsuperscript{962} After a disposal made before the dwellings or communal area are available for occupation or use (as appropriate) a new revised liability notice will be issued adding the transferee as a beneficiary and stating the amount of the transferee’s relief and the transferor’s revised relief.

11.3.9 Withdrawal of relief –

\textsuperscript{953} Reg. 52(3)(a)
\textsuperscript{954} Reg. 52(3)(b)
\textsuperscript{955} Reg. 52(5)
\textsuperscript{956} Reg. 52(4)
\textsuperscript{957} Reg. 52(6)
\textsuperscript{958} Reg. 52(7)(a)
\textsuperscript{959} Reg. 52(7)(c)
\textsuperscript{960} Reg. 52(7)(b)
\textsuperscript{961} Reg. 52(9)
\textsuperscript{962} Reg. 52(8)
11.3.9.1. **Disqualifying event** - as with charitable relief the social housing relief can be clawed back if a disqualifying event occurs. The occurrences must be in the seven year period from the commencement of the chargeable development save

(a) as regards social housing relief applied to discounted rent lettings by condition 5 (section 11.3.1.5 above) when the disqualifying event must occur within seven years of the date of the first letting of the qualifying dwelling; and

(b) an extended definition of the clawback period was proposed in the following terms to account for the inclusion of starter homes but then the 2019 (No. 2) Regulations did not extend social housing relief to include starter homes. The extension of the definition proposed was as regards social housing relief in respect of starter homes the clawback period is the period beginning with the day of the commencement of the chargeable development and ending in relation to a qualifying dwelling when that qualifying dwelling is sold in accordance with Condition 6 of the relief.

A disqualifying event will occur when there is any change causing the qualifying dwelling or qualifying communal development to cease to be a qualifying dwelling or qualifying communal development. For example, with a dwelling that is a social letting if the landlord ceases to be one of the types specified in Condition 1 this will be a disqualifying event. This is subject to the exception within para. 11.3.9.2 below.

11.3.9.2 Application of proceeds to purchase new qualifying dwelling or qualifying communal development - a material disposal of a qualifying dwelling or qualifying communal area will not be a disqualifying event if

(a) the proceeds are applied in the purchase of a new qualifying dwelling or qualifying communal development; or
(b) the proceeds are transferred to one of the Secretary of State, Welsh Ministers, a local housing authority, the Greater London Authority, or the Home and Communities Agency; or
(c) the disposal is to the Welsh Ministers under paragraphs 15 or 27 of Schedule 1 to the Housing Act 1996; or
(d) the disposal is made to the Regulator of Social Housing under section 167 or 253 of the Housing and Regeneration Act 2008; or
(e) discretionary social housing relief has been granted in relation to a qualifying dwelling or qualifying communal development and the dwelling or development is disposed of at a market discount in accordance with the criteria set out in reg. 49A(2).

In the case of the purchase of a new qualifying dwelling there is no provision which expressly states that the new qualifying dwelling will be treated and have the CIL

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963 Reg. 53(1)
964 Reg. 2 paragraph (c) of clawback definition
965 Reg. 2 paragraph (aa) of clawback definition
966 The draft paragraph (ab) of the definition of the clawback period in reg. 2 added by reg. 8 of the original draft 2019 Regulations which was not included in the 2019 (No. 2) Regulations.
967 Reg. 53(2)
968 Reg. 53(3)
969 See section 11.3.3.2 above
regime apply to it as if it were the original qualifying dwelling. In consequence it is not clear whether a sale of that new qualifying dwelling will be a disqualifying event.

The payment of a commutation sum to a local authority because of the sale of affordable housing on the open market will not constitute the application of monies for social housing. The commuted sum is for a variation of a planning obligation.

11.3.9.3 Liability for payment on withdrawal – when there has been a disqualifying event there will be a payment which is equal to the difference between the qualifying amount immediately prior to the disqualifying event and the qualifying amount immediately after that event. Such calculations of the social housing relief will be in accordance with reg. 50 and in relation to planning permissions granted on or after 1st September 2019 para. 6 of Schedule 1 and for these purposes the value of E shall be the value of E as calculated at the time the social housing relief was granted in respect of the chargeable development.

The person liable to make the payment will be the person entitled to the benefit of the social housing relief in relation to the qualifying dwelling or qualifying communal development which has ceased to qualify for the relief. This will be the person who owned the land on which the dwelling is situated immediately prior to the dwelling becoming available for occupation provided that the owner has assumed liability for CIL.

Such person is obliged to notify the collecting authority within 14 days of the disqualifying event. This notification must give details of the gross internal area of the dwelling or communal development which has ceased to be a qualifying dwelling or qualifying communal development. Such a notification must be accompanied by a plan identifying the location of the dwelling or communal development. Failure to comply with this obligation to notify the collecting authority of a disqualifying event may result in the imposition of a surcharge of 20% of the CIL or £2,500 (whichever is the lower). The collecting authority must as soon as practicable after receipt of the notification notify the person liable to make payment of the withdrawn amount. The notification from the collecting authority must also be accompanied by an explanation as to how the qualifying dwelling or qualifying communal area ceased to qualify.

11.3.9.4 Collection of withdrawn relief – the amount to be paid by reason of the withdrawal of the relief will be calculated by the collecting authority by redoing the social housing relief calculations in reg. 50 or in relation to planning permissions on or after 1st September 2019 para. 6 of Schedule 1. This must be notified to the beneficiary of the relief as discussed and a new liability notice and demand notice will be served.

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970 Reg. 53(4)
971 Reg. 53(5) as amended by reg. 5(4) of 2019 (No. 2) 2019
972 Reg. 53(10)
973 Reg. 51(2)
974 Reg. 53(6)
975 Reg. 53(7)(a) (as regards dwellings) and (aa) (as regards communal development)
976 Reg. 53(7)(b)
977 Reg. 84 see section 19.3.5 below
978 Reg. 53(8)
979 Reg. 53(9)
980 in section 11.3.9.4 immediately above
In a case in which the disqualifying event relates to a dwelling which had previously qualified for social housing relief under condition 5 (discounted rent letting by private landlord who not registered as provider of social housing – section 11.3.1.5) late payment interest will be payable under reg. 87 on the withdrawal amount from the date of the commencement of the chargeable development.  

11.3.9.5 **Protection** – it will be necessary to consider on the disposal of a qualifying dwelling or qualifying communal area what implications the disposal will have for the social housing relief applicable to it and whether any contractual provisions need to be included to deal with the possibility of future disqualifying events. Should a transferor disposing of a qualifying dwelling or qualifying communal development after it has become available for occupation seek to include an indemnity to cover against having on the occurrence of a disqualifying event to repay CIL? The occurrence of such a disqualifying event will be outside the control of the transferor once the disposal has completed unless a right of pre-emption is reserved.

11.3.10 **Information** – a collecting authority has power to require the provision of information in relation to a claim for social housing relief or the calculation of the qualifying amount. Some authorities have had concerns that claims are being made for social housing relief by developers in order to obtain a cash flow benefit. One means of addressing such a suspicion on the part of an authority is to use this power.

This power is exercised by serving an information notice on the claimant, or a person who has made a material disposal of the land in accordance with reg. 52, or a person required to notify the collecting authority of a disqualifying event in accordance with reg. 53(6). The notice may request information, documents or materials as specified in the notice which are in the possession or control of the recipient of the notice and which the authority considers relevant to (a) determining the extent to which a chargeable development is eligible for social housing relief; and (b) calculating the qualifying amount in respect of the chargeable development. The notice must state the possible consequences of failure to comply with the notice. Such a notice will be complied with by the provision of the information in writing or sending the documents or material within a period of 14 days running from the date the notice is served. In the event of a failure to comply then the authority may impose a surcharge.

11.4 **Exceptional circumstances** – the third type of relief from CIL may be available if the particular development is not financially viable because of the CIL charge. It is discretionary. If available then a charging authority may grant it if:

(a) it appears to the charging authority that there are exceptional circumstances which justify doing so; and

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981 Reg. 53(4A) added by reg. 4(2) of the 2015 Regulations
982 Reg. 54
983 Reg. 54(1)
984 Chargeable development in this regulation includes a part of the chargeable development – reg. 54(5)
985 Reg. 54(2)
986 Reg. 54(3)
987 Reg. 54(4)
988 Reg. 86
989 Reg. 55
990 Reg. 55(1)
(b) the charging authority considers it is expedient to do so.

Some authorities have elected for it to be available but many have not. Brent, Swindon, and Barnet are examples of authorities which have. A number of authorities have been deterred by the fear that there could be a large number of applications for such relief. Norwich has elected in 2018 to make available this relief having introduced CIL in July 2013. This has caused a little difficulty as the CIL receipts of Norwich are combined with those of Broadland and South Norfolk and granting the relief has the potential to reduce the CIL receipts from the Norwich area. It has been made available to deal with some sites which have complex issues. From research carried out by officers from Norwich it appears that around half the authorities introducing CIL have made the relief available. A possible site which might be eligible for a grant of exceptional circumstances relief by Norwich council is Anglia Square which may be the subject of planning permission for a scheme involving a shopping complex, cinema, 20 storey tower block and a chapel. The potential CIL liability is estimated at £8.8 million unless the relief is granted.

Even if made available in the relevant area it would only have been in rare cases that it applied in its original form due to the need to satisfy the viability condition (the costs of complying with the relevant section 106 planning obligations must have exceeded the amount of the CIL charge). This resulted in concern that the conditions were too strict. Proposals were put forward in the 2013 Consultation that it could be removed or limits be introduced as to the proportion of the costs of the planning obligations to the amount of CIL. As a consequence the viability condition was removed altogether with the intention that this relief could be available with regard to “sites with specific and exceptional costs burdens.” The application of this relief will allow projects relating to such sites to be financially viable. Even with this change the relief should still only be available in a limited number of cases because when setting the CIL rate the charging authority will have taken into account the viability of developments in the area, development costs and policy requirements across the area.

The removal of the strict financial condition means that some authorities will make use of the availability of this relief imaginatively to allow developments to be implemented which otherwise would not happen.

One example of the actual operation of this relief is a development in Neenton, Shropshire involving the construction of seven houses and the renovation of the Pheasant pub as a community pub owned by Neenton Community Society. Shropshire Council approved that application for relief in relation to this development provided that an appropriate section 106 planning agreement was entered into so that the project regarding the pub could go ahead. No CIL was paid and this enabled the developer to provide funds for the renovation. The pub had been listed as an asset of community value. It is an interesting example of such a listing then being taken forward with the assistance of the authority.

Another example is the development of Eden Walk which is an important part of the town centre of Kingston and which had become dated. The regeneration scheme related to buildings which were let and so there was a risk to the developer. The potential CIL

\[991\] para. 75 April 2013 Consultation Document
bill was just over £7,700,000. In the report to the Council it was stated that the benefits of the scheme included “A transformed shopping offer to increase Kingston’s market share against other competing retail centres providing 28 retail units, 12 restaurants and a cinema; • Creating a vibrant retail and leisure destination for local people and visitors, in a highly sustainable location, with much improved connectivity to the rest of the town centre; • Providing 380 new homes, of which 39 are starter homes to be purchased at a discount of 20% from the market rate in perpetuity; • A step change in the quality of streets and public spaces, including Memorial Gardens, with opportunities for the new and improved spaces to host events such as Remembrance Sunday, and to events for a wide range of festivals; • Significant economic investment of £400million into Kingston Town Centre; • It is anticipated that the operational proposed development would generate £1,029 direct FTE. Additional indirect job generation is estimated to be c.214 FTE jobs; • The proposed development would increase employment by c.564 FTE jobs; • An employment, training and skills strategy will be implemented to ensure the maximum level of local employment is achieved. • A direct boost to the local construction industry and employment, with indirect benefits for the supply chain. • A community office unit for local organisations and or charities at discounted rent (900sqm); and • A community unit on Eden street (120sqm)”

It is stated in the report that “whether exceptional circumstances exist is a question of judgement for members taking into account all of the relevant factors. Members must consider whether the circumstances described in this report are indeed exceptional (that is to say unusual, and not typical). This report indicates that the principal matters that should be taken into account are as follows:

(1) that the requirement to pay CIL would have an unacceptable impact on the financial viability of the Scheme, as evidenced by the independently assessed viability information provided by the Developer in support of the ECR application;
(2) failure to grant ECR could prevent the Scheme from coming forward;
(3) the regeneration of Eden Walk is a key policy objective of the Council, and scheme would deliver compelling social economic and environmental benefits 39. Even where it appears that exceptional circumstances exist, members must also be satisfied that it is "expedient" to grant ECR. Members must consider whether the grant of ECR is convenient and practical, and a means of achieving a desired end. This report indicates that granting ECR would be expedient, because it would enable the development to come forward, thereby delivering a key policy objective of the Council.”

The authority may withdraw the availability of the relief by the same method of issuing a statement, publishing it on the authority’s website and making it available for inspection.992 The statement must give a date for withdrawal which is no earlier than 14 days after the publishing of the statement on the authority’s website.993 Portsmouth

992 Reg. 56(2)
993 Reg. 56(3)
withdrew the availability of the relief on 10\textsuperscript{th} March 2015 with the last day for receiving a claim being 25\textsuperscript{th} March 2015. The reason for the withdrawal was the relaxation of the requirements that have to be satisfied in order to qualify for the relief.

11.4.1 Qualification – there are a number of conditions which must be satisfied before this relief, namely:-.

11.4.1.1 Availability\textsuperscript{994} – many authorities will not make this relief available within their area. In consequence the first step that needs to be taken is to check the website of the relevant authority to find out whether it has made the relief available. If it has not then the relief cannot be claimed. To make it available the authority must issue a statement which is published on the authority’s website giving notice that the relief for exceptional circumstances is available in the area and the date from which claims for the relief will be accepted.\textsuperscript{995} The statement must also be made available for inspection at the authority’s principal office and at such other places in the area as are considered appropriate.\textsuperscript{996} A copy must be sent to the collecting authority if different from the charging authority.\textsuperscript{997} Any claim for relief received by the charging authority on or before the date in the statement must be considered.\textsuperscript{998}

A number of authorities such as Brent, Bedford, Dacorum, Southampton, Huntingdonshire, Shropshire and Plymouth have made the relief available in their areas. Portsmouth City Council originally made it available within its area from 5\textsuperscript{th} March 2012 but has now withdrawn it as from 10\textsuperscript{th} March 2015. Trafford has made it available but only in relation to defined Strategic Locations. In contrast other authorities have decided not to make it available such as Oxford, Bristol and the Mayor of London. The authority can revoke this by issuing a fresh statement, as Portsmouth has done, but this cannot take effect earlier than 14 days from the revocation statement appearing on the authority’s website. It emphasises the importance of keeping an eye on the websites of any authorities relevant to particular developments. Any application for this relief received on or before the last day announced for receiving such applications must be considered by the charging authority.\textsuperscript{999}

11.4.1.2 Planning obligation\textsuperscript{1000} – there must be a planning obligation in existence relating to the permission for the development but now no additional requirement as to the level of the costs of complying with such planning obligation. The nature of the section 106 planning obligation can be material to whether or not the relief if available is granted. An example is a garden centre which faced a CIL bill based on a CIL rate of £315 per sqm applicable to retail. The garden centre was subject to broad restrictions on the type of product that could be sold. The rate was more appropriate to high street retailers with an unrestricted retail use. The relief was granted and the rate reduced to £45 per sqm reducing the CIL bill by £83,000. In an area in which the exemption is not available the full retail rate would have had to be paid if the development were to proceed.

\textsuperscript{994} Reg. 55(3)(a)
\textsuperscript{995} Reg. 56(1)(a) and (b)
\textsuperscript{996} Reg. 56(1)(c)
\textsuperscript{997} Reg. 56(1)(d)
\textsuperscript{998} Reg. 57(15).
\textsuperscript{999} Reg. 57(15)
\textsuperscript{1000} Reg. 55(3)(b)
11.4.1.3 No longer need to determine section 106 costs – reg. 7(11) of the 2014 Regulations removed the need to satisfy an additional viability condition that the cost of complying with the section 106 planning obligations exceeded the chargeable amount.\textsuperscript{1001} There is still a requirement that there is a planning obligation in relation to the development\textsuperscript{1002} but there is no stated requirement as regards the cost of complying with the planning obligation. However, the original requirement may be imposed by the charging authority as one of its local requirements for the relief to be applicable. For example, Dacorum has imposed such a requirement. As it has been removed as a statutory requirement there must be a risk that it is open to challenge whether such a requirement can be imposed by the charging authority.

Although the viability condition has been removed the charging authority will still need to judge that the CIL charge “would have an unacceptable impact on the economic viability of a development”\textsuperscript{1003} and that it is expedient to grant relief.\textsuperscript{1004} This will require the circumstances of each individual case to be considered.

11.4.1.4 State Aid - the charging authority must also be satisfied that the relief will not constitute State Aid which has to be notified to and approved by the European Commission.\textsuperscript{1005}

11.4.1.5 Expedient – the satisfaction of the three (previously four) earlier conditions does not necessarily entitled the claimant to the relief as there is also a requirement that the charging authority considers that it is expedient to allow the relief.\textsuperscript{1006} There has been debate in the context of this point as to whether an authority should set out criteria to be satisfied and if so what they should be. Transparency is commendable but it will tie the authority down when it may prefer flexibility. Suggestions that the proposed developments must provide community benefits may be seen as varying the terms of the relief.

Some authorities have focused on the development contributing to local infrastructure, facilities and services which have been identified as priorities in local development or business plans. Leeds states in general terms that the development must contribute to wider regeneration or wider benefits within the area. Dacorum requires not only that the section 106 costs exceed the CIL but that

i) it can be demonstrated that the requirements of the section 106 planning obligations provide items of infrastructure which have been identified as a priority in the Infrastructure Delivery Plan;

(ii) the infrastructure items secured via the section 106 planning obligations are identified as being necessary to support development in a Development Plan Document or Supplementary Planning Document; or

\textsuperscript{1001} Previously provided in reg. 55(3)(c)(i)
\textsuperscript{1002} Reg. 55(3)(b)
\textsuperscript{1003} Reg. 55(3)(c)(ii)
\textsuperscript{1004} para. 2.7.4.2 of the revised February 2014 Guidance
\textsuperscript{1005} Reg. 55(3)(c)(iii)
\textsuperscript{1006} Reg. 55(1)(b)
(iii) the chargeable development would constitute a large scale major development. For these purposes a large scale development is one involving 200 or more dwellings or floorspace exceeding 10,000 sqm or a site area exceeding two hectares.

Cheshire West and Chester states on its website that the Council may also require demonstration of wider community benefits, such as, but not limited to:

- bringing a redundant, listed building back in to use
- contribution to the local economy providing a tourist attraction, bolstering the historic culture of Cheshire West and Chester
- providing facilities to accommodate a local charity/organisation

Torbay DC introduced CIL on 1st June 2017 and elected to make available the exceptional circumstances exemption. It has set out its policy with regard to the granting of this exemption in its CIL Accompanying Policies and Regulation 123 List (May 2017) which states: "The Council may consider granting exceptional relief to retail elements of large mixed use schemes where this would secure a more sustainable and viable development, particularly the early delivery of “Use Class B” employment land (and the criteria are met). Similarly, the Council will consider granting exceptional relief where developments would assist in the delivery of town centre masterplans. The criteria noted above must apply (i.e. there must be a s106 Obligation in place and a viability assessment has been carried out to indicate that the impact of CIL would render development unviable)."

Such local requirements suggest the type of factors that should be included in any claim for such relief even if the particular LPA has not specified any local requirements.

The relief may be applied to a phase of the development if authorised by a phased planning permission.

11.4.2 Claim - the relief must be claimed by a person who has a material interest in the land subject to the development. It is not sufficient that the claimant has assume liability for CIL. Further the claim must be made before the commencement of the development.

11.4.3 Form of claim – the exemption must be claimed in accordance with the requirements of reg. 57 save in the case of a chargeable development situated in the area of a London Borough Council or MDC when the claim must be in accordance with reg. 58. With the Mayor of London’s CIL the relief could only be granted if referred by a London borough council or MDC. However, as the relief is not currently available in respect of the Mayoral CIL these are not currently material.

1007 Para. 1.8.3
1008 Reg. 57(3) – see section 16.6.1 as to what constitutes a material interest
1009 Reg. 57(4)(b)
1010 Reg. 57(1)
1011 Reg. 57(2)
1012 Reg. 55(4)
A written claim must be submitted to the charging authority in the prescribed form including the particulars specified or referred to in the form. Such a claim must be accompanied by:

(i) an assessment carried out by an independent person as to the economic viability of the chargeable development. It is no longer necessary to provide an assessment as to the cost of complying with the planning obligation;

(ii) an explanation as to why in the claimant’s opinion the CIL payment will have an unacceptable impact on the economic viability of the development;

(iii) an apportionment assessment if there is more than one material interest;

(iv) a declaration that the completed claim form has been served on the other owners of material interests in the land.

As regards the appropriate qualifications and experience of the independent person there is no statement of what constitutes appropriate qualifications and experience so it is left to the authority to consider each person put forward by the claimant. One authority has been asked to authorise an individual for these purposes but this is not possible as there is no procedure or authority for this. An authority would be ill-advised to adopt such a course. It would have to set up a register and to monitor any persons so authorised to ensure that they retained the appropriate qualifications and experience.

11.4.4 Notification of decision – the charging authority must notify its decision as soon as practical after receipt of the claim and if granted must state the amount of relief granted. After 31st August 2019 it must also give in that notice an explanation of the requirements of reg. 67 (commencement notices).

On the grant of relief the charging authority must notify the collecting authority (if different) and the person by whom the planning obligations given in relation to the development will be enforced (if different).

11.4.5 Amount of relief – so far as I can ascertain most authorities that have introduced the relief have not publicised the level of relief that will be granted if a development qualifies. Dacorum is an exception and has stated that it will not exceed 25% of the CIL liability which means that it could be less.

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1013 Reg. 57(4)(a) and (c)
1014 Reg. 57(4)(d)
1015 An independent person is one who is appointed by the claimant with the agreement of the charging authority and “has appropriate qualifications and experience” – reg. 57(5)
1016 The claimant must send a copy of the claim to all other owners of material interests in the relevant land and notify them that the documents accompanying the claim are available on request and if requested must be sent a copy – reg. 57(6).
1017 Reg. 57(7)
1018 Added to reg. 57(7) by reg. 6(6) of the 2019 (No. 2) Regulations
1019 Reg. 57(8)
11.4.6 **Disqualifying event** – No development must commence before notification of the grant otherwise the relief will be lost.\textsuperscript{1020} It will also be lost if a disqualifying event occurs.\textsuperscript{1021} For the purposes of this relief disqualifying events will occur

(a) if prior to commencement of the chargeable development charitable or an exemption for social housing relief or self-build housing or residential annexes or extensions is granted;\textsuperscript{1022}

(b) if prior to commencement of the chargeable development an owner of a material interest in the site makes a material disposal of the interest;\textsuperscript{1023} or

(c) the chargeable development is not commenced within twelve months of the issue of the decision.\textsuperscript{1024}

In the event of the occurrence of a disqualifying event an owner of a material interest in the land is obliged to notify the charging authority within 14 days from the occurrence of the disqualifying event and send a copy of the notification to all owners of material interests in the relevant land.\textsuperscript{1025} Failure to give such notification will result in a surcharge of the lesser of 20\% of the chargeable amount or £2,500.\textsuperscript{1026} A copy of the notice must be sent by the charging authority to the collecting authority, if different, and the person who is responsible for enforcing the section 106 planning obligation.\textsuperscript{1027}

11.5 **Self-build** – there was considerable pressure to remove the CIL burden from individuals building their own homes. The view had been put that commercial developers can pass on the cost to the house purchasers but that self-builders had to bear that cost themselves and this deterred self-builds from going ahead. The government stated that it was keen to support and encourage self-builders and was seeking to encourage the increase of the self-build market. In consequence it introduced the self-build exemption. The problem is that the impact on the local infrastructure is the same whether the new house is occupied by a self-builder or a purchaser from a residential developer. The beneficial treatment under the CIL regime of the self-builder has been questioned and there is no obvious equitable answer. It is a political decision which distorts the underlying justification for the levy. As a result of the introduction of the exemption it was anticipated that over 5,000 self-build homes will be constructed.

Self-build has proved popular with many individuals adopting this approach in order to secure a home. Unfortunately, in the context of CIL it has been the source of many disputes. There has been a marked failure to appreciate that it is not enough for a development to be a self-build. In some cases the self-builder has been unaware of the CIL regime whilst in others there is a failure to understand that the CIL regime requires strict compliance and that failure to comply results in the loss of the exemption. It is a matter of regret that there is a regular stream of instances where the self-builder has unexpectedly received a CIL liability.

\textsuperscript{1020} Reg. 57(9)
\textsuperscript{1021} Reg. 57(10)
\textsuperscript{1022} Reg. 57(11)(a)(i)
\textsuperscript{1023} Reg. 57(11)(a)(ii)
\textsuperscript{1024} Reg. 57(11)(b)
\textsuperscript{1025} Reg. 57(12)
\textsuperscript{1026} Reg. 84 – see section 19.3.5 below
\textsuperscript{1027} Reg. 57(13)
11.5.1 **Exemption**\(^{1028}\) - the exemption from CIL arises in respect of any chargeable development comprising self-build housing or self-build communal development\(^{1029}\) and is known as the exemption for self-build housing.\(^{1030}\) The relevant planning permission does not need to relate exclusively to the self-build housing and communal area (if any). It can cover as well other parts of the developments which do not qualify for the exemption. With this exemption there is a two staged approach. The first stage is the making of a claim for exemption which will involve self-certification that the proposed development is a self-build project and that the requirements applicable to the exemption will be satisfied. Upon completion of the development the second stage will involve the production of the documents to corroborate the claim.

11.5.1.1 **Self-build housing exemption** – the basic concept is simple. A person who builds a dwelling to live in it as his or her sole or main residence is a self-builder.\(^{1031}\) There may be issues as to whether the dwelling is the sole or main residence which will be similar to those that arise in relation to the capital gains tax exemption in relation to residences. Subject to that issue the concept is readily understandable.

11.5.1.2 **sole or main residence** – this phrase has been used in a number of different legislative contexts mostly concerning some form of taxation. For there to be a residence there needs to be a resident. This is a concept which is core to the taxation of the income of individuals in this country. It does not have technical meaning but is used in its ordinary sense.\(^{1032}\) As regards the meaning of “reside” Viscount Cave LC stated:\(^{1033}\)

“**My Lords, the word "reside" is a familiar English word and is defined in the Oxford English Dictionary as meaning "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place." No doubt this definition must for present purposes be taken subject to any modification which may result from the terms of the Income Tax Act and Schedules; but, subject to that observation, it may be accepted as an accurate indication of the meaning of the word "reside." In most cases there is no difficulty in determining where a man has his settled or usual abode, and if that is ascertained he is not the less resident there because from time to time he leaves it for the purpose of business or pleasure. Thus, a master mariner who had his home at Glasgow where his wife and family lived, and to which he returned during the intervals between his sea voyages, was held to reside there, although he actually spent the greater part of the year at sea: *In re Young*(1);”

This passage emphasises the importance of permanence when determining such an issue. It is not enough that the occupation is on a temporary basis but there must be a degree of permanence, continuity or expectation of permanence.\(^{1034}\) Such a question is

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\(^{1028}\) Reg. 54A  
\(^{1029}\) Reg. 54A(1)  
\(^{1030}\) Reg. 54A(9)  
\(^{1031}\) Reg. 54A(2)  
\(^{1032}\) Fox v Stirk [1970] 2 QB 463 which is a case concerned with the residence qualification for the purposes of the electoral register.  
\(^{1033}\) Levene v IRC [1928] AC 217 at  
\(^{1034}\) Goodwin v Curtis [1998] STC 475 and see also Moore v Thompson [1986] STC 170 and Oliver v IRC [2016] UKFTT 796. All these cases were concerned with the capital gains tax relief available in respect of the sole or main residence (section 222 Taxation of Chargeable Gains 1992).
“essentially one of fact and degree”.\textsuperscript{1035} It is not possible to lay down absolute guidelines which will result in certainty and it may not be easy to determine the answer. This has been emphasised by Salmon LJ who stated that:

“It would be wrong to regard the case before the court as a decision on a point of law. There was an infinity of variations of circumstances to take into account in deciding which was a man's main home. Each case would differ from the other; there might be cases where it was very difficult to decide the question.”\textsuperscript{1036}

Nourse J. considered that a residence “is a place where somebody lives”\textsuperscript{1037} and an individual’s main residence would be the individual’s principal or most important residence\textsuperscript{1038}. Further he did not consider that this could not be determined by reference to the division of time between two residences.\textsuperscript{1039} The dicta of Nourse J. were approved by Lord Phillips MR in Williams v Horsham DC\textsuperscript{1040} as helpful guidelines and then went on to state:

“We think that it is probably impossible to produce a definition of "main residence" that will provide the appropriate test in all circumstances. Usually, however, a person's main residence will be the dwelling that a reasonable onlooker, with knowledge of the material facts, would regard as that person's home at the material time. That test may not always be an easy one to apply, but we have no doubt as to the conclusion to which it leads in the present case.”

There are two separate issues that can arise as identified and discussed by Sir Stanley Burton.\textsuperscript{1041} One is whether in a case of an individual owning a dwelling the owner resides there. The second is if the individual has more than one residence which is the main residence.

As regards the first issue the individual must have lived at the dwelling in order for it to become the individual’s residence and so it cannot be if the individual has never lived there.\textsuperscript{1042} In such circumstances there is no need to consider other factors. This becomes necessary if the individual has lived there but has ceased to as with the housemaster in Williams v Horsham DC supra ceasing to when he moved with his wife to live at the school. A temporary absence abroad will not be sufficient to prevent the dwelling being the individual’s residence.\textsuperscript{1043}

The following factors are relevant and may be taken into account when choosing between residences:

\textsuperscript{1035} Nourse J in Frost v Feltham [1981] 1 WLR 452 at page 455 which concerned the availability of interest relief paid under loans for the purchase or improvement of land and conferred by Schedule 9 of the FA 1972 but restricted by Schedule 1 of FA 1974 to inter alia land used as the only or main residence.
\textsuperscript{1036} Byrne v Rowbotham (1969) 210 EG 823 applied by Nourse J in Frost v Feltham supra at page 455
\textsuperscript{1037} Frost v Feltham supra at page 455
\textsuperscript{1038} Frost v Feltham supra at page 454 applying the definition of “main” given in the Concise Oxford Dictionary
\textsuperscript{1039} Frost v Feltham supra at page 455
\textsuperscript{1040} [2004] EWCA Civ 39 at para. 26
\textsuperscript{1041} Para. 16 in Parry v Derbyshire Dales DC [2006] EWHC 988 (Admin).
\textsuperscript{1042} R (oao Bennett) v Copeland BC [2004] EWCA Civ 672 Rix LJ at para. 33 following the dicta in Williams v Horsham DC supra.
\textsuperscript{1043} R (oao Navabi) v Chester-Le-Street DC [2001] EWHC 796 (admin)
(i) whole history of residences;
(ii) value of residences;
(iii) purposes for which used
(iv) time they have been used;
(v) amount of time spent at each;
(vi) security of tenure. In Frost v Feltham supra the couple were tenants of licensed premises in Essex determinable on twelve months’ notice and the owners of a house in Wales. The absence of real security of tenure in relation to the public house was an important factor in favour of the Welsh home. However, as shown by Williams v Horsham DC this should not have too great a significance attached to it.
(vii) the individual’s views should be taken into account albeit not conclusive as an objective test has to be applied;
(viii) extent of furnishings and equipment;
(ix) which is the matrimonial home where the spouse and children live;
(x) where is the individual registered for dentist, medical and electoral purposes;
(xi) place of registration for resident’s parking permit, vehicle registration and penalty charges;
(xii) to which dwelling housing benefit claims relate;
(xiii) where membership of clubs and societies;
(xiv) where bank;
(xv) where children go to school;
(xvi) where work.

It has been suggested that the availability of the exemption may be adversely affected if the use of the dwelling is subject to a condition that it must be occupied by a particular class of occupant such as an agricultural worker. If the requirements applicable to the exemption have been satisfied then this should not adversely affect the availability of the exemption. Such a restriction does not by itself prevent the dwelling being a sole or main residence.

11.5.1.3 Commission of dwelling - What is not so easily understood is the extension of the exemption to a dwelling “where built following a commission by P”. In the revised February 2014 Guidance it is stated that the exemption covers “anybody who is building their own home or has commissioned a home from a contractor, house

\[1044\] (i) to (v) are factors approved by Lord Denning in Fowell v Radford (1969) 21 P & CR 99 at page 100
\[1045\] Frost v Feltham supra at page 456
\[1046\] Frost v Feltham supra at page 457
\[1047\] Frost v Feltham supra at page 456
\[1049\] (ix) and (x) were factors mentioned by McCombe J. in para. 30 of his judgment quoted in para. 18 of Court of Appeal decision in Williams v Horsham DC supra.
\[1050\] Valuation Tribunal decision dated 14th May 2013
\[1051\] Valuation Tribunal decision dated 9th January 2014
\[1052\] (xiii) to (xvi) are from guidance given by Revenue Scotland with regard to Land and building Transaction Tax ref. LBTT10020
\[1053\] Reg. 54A(2)
builder or sub-contractor.” This clearly does not extend to a purchaser of a completed house from a residential developer. But does it extend to a purchaser off plan? To be eligible for the exemption does P have to be the owner of the land prior to work starting? To qualify does the contract relating to the development have to be exclusively a building contract? Does the dwelling to be constructed have to be in accordance with plans drawn up under instructions given by P or is it enough that there is a choice of plans and P selects the particular plan? Must the planning permission be applied for by P or can P take the benefit of a planning permission granted to a developer? Must the planning permission be limited to the one site or could it involve more than one site? What is involved in commissioning the construction of a dwelling for the purposes of this exemption is very far from clear and it is important.

There is not an express requirement that the self-builder has applied for and obtained the grant of planning permission. However, could the terms of the planning permission affect the availability of the self-build housing exemption? If the planning permission is obtained by a developer and the permission approves the drawings and specifications for the dwelling does that preclude the dwelling being commissioned by the self-builder? This point is particularly pertinent if the planning permission covers a number of dwellings. If their design and construction is fixed by the planning permission does that prevent there being a commission by a self-builder as that individual will not have given instructions for the dwelling as to the design. Alternatively is it enough that the individual owns the land before the commencement of development and gives the instructions as regards the construction? No real guidance is given by the wording of reg. 54A(2). Although not incorporated in the CIL regime it is provided that for the purposes of the Housing and Planning Act 2016 “self-build and custom house building” is defined as the building of houses by individuals or associations of individuals or persons with then to be occupied as homes by those individuals “but it does not include the building of a house on a plot acquired from a person who builds the house wholly or mainly to plans or specifications decided or offered by that person.”

Some authorities have challenged claims for self-build housing exemption on this ground so it is preferable either for the planning application to be made by the self-builder or for a developer to obtain an outline planning permission to be obtained and for the approvals of design and materials to be obtained on the instructions of the self-builder.

This could impact on the manner in which dwellings are constructed and sold. A developer could obtain a grant of planning permission for the construction of a dwelling and then complete the sale of the land whilst entering into a separate contract with the purchaser of the land to build the dwelling. The claim in such circumstances would be even stronger if the planning permission was obtained in the name of the purchaser. In some cases builders are obtaining planning permissions for the construction of a number of dwellings on a site and then selling the plots to individuals and transferring the liability to CIL before a claim for the self-build exemption is made. The attractions of such an approach from the point of view of the builder and the individuals is obvious.

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1054 Para. 2.7.5.1
1055 A2 of section 9(1)
11.5.1.4 Individual claimants only? There is nothing in reg. 54A which expressly excludes a claim being made by a company. It refers to a person being eligible for the relief rather than an individual.\textsuperscript{1056} However, the MHLG CIL guidance\textsuperscript{1057} on the government website is emphatic that the relief is for individuals. This is supported by the requirement that the claimant intends to live in the dwelling as the claimant’s sole or main residence. It is also consistent with the scope of the general self-build legislation which applies to individuals. To allow the relief to be claimed by a company with, say, a director in occupation of the dwelling would be to open up a very large loophole in the CIL regime. There would be no limit on the number of claims that could be made by the company. However, a claim by a company which holds the development site as bare trustee or nominee for an individual beneficial owner would appear to fall within the scope of the self-build exemption.\textsuperscript{1058}

11.5.1.5 Multiple claimants - if the planning permission authorises more than one dwelling can more than one claim for self-build housing exemption be made? As the exemption is conferred not only in respect of a chargeable development but also a part of a chargeable development\textsuperscript{1059} there is no reason why the exemption should not be applied to different parts of a chargeable development. Such claims have been accepted by authorities.

The practical problem in such circumstances is ensuring that each self-builder has satisfied all the necessary requirements by the time that the development commences. As there is a single planning permission there is a single chargeable development and so any operation on any part of the site will trigger the commencement. There will not be individual commencement dates for each of the self-build plots. The only way that can be avoided is by having a phased planning permission for each plot. With a non-phased planning permission this can be a trap as a self-builder may focus exclusively on his or her plot. With the changes introduced by the 2019 (No. 2) Regulations regarding commencement notices this is less of a trap but nevertheless still lurks there with, for example the need for each self-builder to assume liability in relation to his or her plot prior to the commencement of the development.

There is the separate concern that the occurrence of a disqualifying event in respect of one of the dwellings prior to the expiry of the clawback period will affect not just that dwelling but all of the dwellings for which self-build housing exemption has been claimed. This is certainly something which some charging authorities would have in mind and it is a real concern particularly as regards the production of the necessary documents on the second stage. It is preferable to avoid such a risk by providing for the construction of the dwellings to be authorised by a phased planning permission. In the absence of such a planning permission I consider that it should still only be the individual dwelling affected by the disqualifying event in respect of which CIL becomes payable and not all the exempt dwellings authorised by the same planning permission. Reg. 54A operates in my view by conferring separate self-build housing exemptions in relation to each of such dwellings and applying the provisions relating to such exemption to each dwelling separately. Such a view is encouraged by each dwelling having its own clawback period.

\textsuperscript{1056}Reg. 54A(1)
\textsuperscript{1057}Paragraph: 136 Reference ID: 25-136-20140612
\textsuperscript{1058}Reg. 38(1)
\textsuperscript{1059}Reg. 54A(1)
11.5.2 Self-build communal development exemption –

11.5.2.1 Exemption - the inclusion of self-build communal developments extends the exemption to communal areas provided for the benefit of a number of occupants of more than one dwelling that is self-build housing.\textsuperscript{1060} This is to cover areas such as shared facilities or guest accommodation. The amount of the self-build communal development that can claim the exemption is determined by reg. 54A(4) to (6).\textsuperscript{1061} It attributes such qualifying area between the self-builders in accordance with the formula in reg. 54A(6). The communal area will still qualify for the exemption if enjoyed not just by self-builders but also by persons who are occupants of the same development authorised by the planning permission but which does not qualify as self-build housing or the self-build communal development.\textsuperscript{1062}

11.5.2.2 Disqualified area - the area will not qualify as self-build communal development if it is:\textsuperscript{1063}

(a) wholly or partly made up of one or more dwellings;
(b) wholly or mainly for use by the general public;
(c) wholly or mainly for the benefit of occupants of development which is not relevant development. For these purposes relevant development is development which is authorised by the same planning permission as the self-build housing in question but does not include the self-build housing or self-build communal development\textsuperscript{1064};
(d) to be used wholly or mainly for commercial purposes.

11.5.2.3 Additional qualification – in order for the self-builder to claim the exemption in relation to the self-build communal development the self-builder must have assumed liability to pay CIL in respect of the development which it can do jointly.\textsuperscript{1065} As there will be a number of self-builders a joint assumption of liability will be required if all are to claim the benefit of the exemption. The claim by the self-builder must be made at the same time as the self-builder’s claim in respect of self-build housing\textsuperscript{1066} or if the planning permission is a phased permission then in relation to any phase of that permission\textsuperscript{1067}. The second opportunity does not expressly link the claim to the phase involving the self-builders dwelling but that is probably the intention.

An assumption of liability cannot take place after the development has commenced.\textsuperscript{1068} This means that considerable care will need to be taken with this aspect to ensure that there is proper compliance by all the self-builders.

11.5.2.4 Exempt amount of self-build communal development – in order to determine the amount of the communal area to be attributed to each self-builder so that the self-
builder can claim the exemption the following formula set out in reg. 54A(6) is to be applied.

\[ \frac{X \times A}{B} \]

where—

X = the gross internal area of the self-build communal development;

A = the gross internal area of the dwelling in relation to which P is claiming the exemption for self-build housing; and

B = the gross internal area of the self-build housing and relevant development, provided that the self-build communal development is for the benefit of that housing and that relevant development. For these purposes relevant development is development which is authorised by the same planning permission as the self-build housing in question but does not include the self-build housing or self-build communal development.\(^{1069}\)

11.5.3 **State aid** – the amount of the exemption for self-build housing will be reduced to the extent that the collecting authority is satisfied that it will constitute a State aid which is required to be notified to and approved by the European Commission.\(^{1070}\) The exemption must be granted to the extent that it does not constitute such State aid.\(^{1071}\)

11.5.4 **Residential annexes and extensions** – in addition there is a separate exemption for extensions and annexes to dwellings.\(^{1072}\)

11.5.5 **Taking effect of exemption** – surprisingly there is no provision in the 2014 Regulations stating how it is to take effect with the coming into force of those regulations on 24\(^{th}\) February 2014. If a development has commenced on or before that date then the exemption cannot apply as it is excluded by reg. 54A(3).\(^{1073}\) It is made clear in the revised 2014 Guidance that no CIL will be repaid as a result of the introduction of this exemption.\(^{1074}\) In cases in which planning permission has already been granted by that date but the development has not been commenced then the exemption should be capable of being claimed provided that the necessary steps can be taken before the development commences.

11.5.6 **Claim Procedure** – to benefit from this exemption a claim must first be made in accordance with reg. 54B.\(^{1075}\)

11.5.6.1 **Timing** – subject to one qualification a claim for the exemption must be made before the commencement of the chargeable development\(^{1076}\) and also the collecting

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\(^{1069}\) Reg. 54A(7)

\(^{1070}\) Reg. 54A(10)

\(^{1071}\) Reg. 54A(11)

\(^{1072}\) reg. 42A - see section 11.6 below

\(^{1073}\) see section 11.5.6.1 below

\(^{1074}\) Para. 2.7.5.2

\(^{1075}\) Reg. 54B(1)

\(^{1076}\) Reg. 54A(2)(b)
authority’s decision on the claim must have been notified before the development has commenced.\textsuperscript{1077} The qualification is if the self-build housing exemption has been granted and then after the development has commenced the provision of self-build housing or self-build communal development changes. In those circumstances a claim for the exemption need not be made and notified before the commencement of the development.\textsuperscript{1078} This means that a claim can be made for the exemption after the development has commenced provided that there had been a grant of the self-build housing exemption before commencement. This is not expressed to be limited to a change in layout of the dwelling or to a change which does not increase or decrease the GIA of the dwelling. In consequence it would appear to cover any change although it is implicit that it must be a change which is authorised.

Such a change may be authorised by a section 73 permission. The chargeable development under such a section 73 permission after 1\textsuperscript{st} September 2019 is the most recently commenced or re-commenced chargeable development.\textsuperscript{1079} A fresh claim for exemption will be possible if the chargeable development and the amount of relief has changed. There is now no requirement for the claim to be made prior to the commencement of the development nor need notification of the decision be received before such commencement and a commencement notice is not needed to be given before the development commences. What is not expressly addressed is the need for the claimant to have assumed liability to pay CIL in respect of the dwelling.\textsuperscript{1080} My concern is that reg. 31 provides for an assumption of liability in relation to a chargeable development but if a different chargeable development is carried out due to a section 73 permission that will not be covered by the original assumption of liability notice given prior to the commencement of the original development. A CIL liability cannot be assumed after the commencement of the development other than by a transfer of liability.\textsuperscript{1081} Will the original assumption of liability notice be treated as an assumption of liability in respect of the new dwelling or will the absence of the ability to assume liability block the fresh claim? This would defeat the apparent intention of these amendments.

A fresh exemption claim in relation to a section 73 permission is not needed in such circumstances if the amount of the self-build housing exemption is not changed. The self-build housing exemption is automatically carried over to the development authorised by the section 73 permission.\textsuperscript{1082} Everything done in relation to the original development for the relief is treated as if it was done in relation to the development authorised by the section 73 permission.\textsuperscript{1083}

The wording of reg. 54B(3A) does not expressly limit the scope of the change to one authorised by a section 73 permission. However, the comments in the Government’s summary of responses to the technical consultation issued in June 2019 stated “Changes to regulations have also been made in response to comments raised about how

\begin{itemize}
\item Reg. 54A(3)
\item Reg. 54B(3A) added by reg. 6(5)(c) excluding in such circumstances reg. 54B(2)(b) and (3)
\item Reg. 9(6) substituted for (6) to (8) by reg. 5(1)(a) of the 2019 (No. 2) Regulations
\item Reg. 54B(2)(a)(ii)
\item Reg. 31(7)
\item Reg. 58ZA added by reg. 7(1) of the 2019 (No. 2) Regulations
\item Reg. 58ZA(1) which is the equivalent to reg. 50(7) which was introduced in relation to social housing relief by reg. 7(6) of the 2014 Regulations.
\end{itemize}
Exemptions are treated when amendments to a planning permission are made under section 73 of the Town and Country Planning Act 1990. At present, if development has commenced, an amendment to a planning permission may not be able to benefit from an exemption or relief that applied to the original permission. The changes to regulations will ensure that, where a planning permission benefits from exemption or relief, this can be carried over into an amended permission. This appears to be limited to amendments effected by a section 73 permission.

Although an independent full permission would seem to be also covered on the wording there must be a real doubt. However, in practical terms a section 73 permission is more likely to be sought. Where this could be important is if there has been a failure to comply with the conditions attached to the original permission whilst carrying it out and this has resulted in an enforcement issue leading to a retrospective permission. Until the bringing into force of the 2019 (No. 2) Regulations the exemption would not apply to such a retrospective permission but now there would seem a possibility that it could. An authority might argue that if the conditions attached to the original planning permission have not been complied with then the development has not commenced and so the operation of the provision has not been triggered. This would not be consistent with how the CIL regime has been administered.

Subject to any State aid issue the authority is required as soon as practicable to grant the exemption and notify the claimant if there is a valid claim and provide an explanation of the requirements of reg. 67(1) which concerns commencement notices. Up until 1st September 2019 failure to submit a commencement notice prior to the commencement of the chargeable development caused the exemption to be lost even if the authority has granted it. From that date such a failure does not cause the self-build housing exemption to be lost. Instead the collecting authority must impose a surcharge which is equal to 20 per cent of the notional chargeable amount or £2,500 whichever is the lower amount. This is not a discretionary surcharge but a collecting authority is not required to impose it if the amount of the surcharge is less than any reasonable administrative costs which it would incur in relation to the surcharge.

In cases involving more than one dwelling it was suggested that a phased planning permission should obtained so as to avoid the commencement of the development in relation to the first unit triggering a charge in relation to all the units. Now a phased planning permission will avoid surcharges being imposed in respect of the other plots on the commencement of the development.

### 11.5.6.2 Claimant’s qualifications - the person making the claim must:

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1. Para. 32
2. Reg. 54B(4) as amended by reg. 6(5)(d) of the 2019 (No. 2) Regulations
3. Reg. 54B(6)
4. Reg. 54B(6) was deleted by reg. 6(5)(e) of the 2019 (No.2) Regulations
5. Reg. 83(1A) inserted by reg. 6(8)(b) of the 2019 (No.2) Regulations. For these purposes the notional chargeable amount is the amount of CIL that would have been payable but for the exemption for self-build housing – reg. 83(5) added by reg. 6(8)(c) of 2019 (No. 2) Regulations.
6. Reg. 83(1B) inserted by reg. 6(8)(b) of the 2019 (No.2) Regulations
7. para. 2.7.5.7 revised February 2014 Guidance
8. Reg. 54B(2)
(i) intend to build or commission the building of a new dwelling;\footnote{1092}

(ii) intend to occupy the dwelling as their sole or main residence for the clawback period which is three years starting with the date of the completion certificate;\footnote{1093}

(iii) have assumed liability to pay CIL in respect of the new dwelling whether or not liability has been assumed in respect of any other development.\footnote{1094} With multi-unit sites it is recommended that the planning permission is for a phased development so that each dwelling is a phase of the development. This will require that each self-builder assumes liability for their own phase but no other. As each phase is treated as a separate chargeable development this should be possible.\footnote{1095}

11.5.6.3 Form – there are two forms reflecting the two stages of the exemption claim. The original claim must

(i) be in a form published by the Secretary of State which is Form 7 SB1-1: Self-build Exemption Claim Form Part 1 which will be found on the relevant authority’s website to be downloaded or at www.planningportal.gov.uk or a form substantially to the same effect;\footnote{1096}

(ii) include the particulars specified or referred to in the form.\footnote{1097} This will require the claimant to certify:-

(a) the name and address of the claimant;
(b) that the project is a self-build project; that the claimant will occupy the dwelling as their principal residence for three years from completion;
(c) that the claimant will provide the required supporting documentation on the completion of the project to confirm that it qualifies for relief;
(d) the amount of de minimis State aid received by the claimant in the last three years prior to the submission of the claim.

(iii) if more than one person has assumed the CIL liability for the development then it must clearly identify the area that is subject to the claim;\footnote{1098}

(iv) be submitted to the collecting authority complying with the time requirements set out in 11.5.6.1 above.

11.5.6.4 Notification of decision – a claim for this exemption is valid if it complies with reg. 54B(2)\footnote{1099} and the collecting authority must give its decision on the claim as soon as reasonably practicable after receiving a valid claim.\footnote{1100} An explanation of the
requirements of reg. 67(1) must be included.\footnote{Added by reg. 6(5)(d) of the 2019 (No. 2) Regulations} The amount of the exemption should also be stated by the authority if appropriate.

11.5.6.5 Effect of exemption applying – to the extent that the exemption applies to a development the CIL will not be payable on the commencement of the development. The charging authority will register a local land charge to secure the payment of CIL if it should become payable during the clawback period of three years.

If a chargeable development is subject in part to the self-build housing exemption then the question will arise as to how the exemption is applied when there is a deduction to be set off against the GIA of the chargeable development. This is neatly illustrated in an appeal which arose in respect of a development comprising new semi-detached dwellings.\footnote{Development: \[\text{new semi-detached dwellings following the demolition of the existing dwelling.} \] Decision date: 2\textsuperscript{nd} January 2019 Para. 24} The appellant was granted the self-build housing exemption as one dwelling was to be occupied as the appellant’s residence. The development involved the deduction of the internal area of an existing building which was to be demolished during the course of the development. On behalf of the appellant it was claimed that the amount of the deduction should be set against the GIA of the dwelling not subject to the self-build housing exemption. This was rejected on the basis that the deduction is made from the total floor area of the chargeable development and not a part.\footnote{This was also the outcome in Development: 1 No. 2 storey \[\text{dwellinghouse with rooms in the roof and 1 No. [ ] with basement [ ] dwellinghouse (following demolition of existing dwelling at [ ]}. \] Decision date: 26\textsuperscript{th} March 2019 - para. 14 Para. 24}

Accordingly, the deduction had to be made against the GIA of the chargeable development and then that balance divided between the two semis in accordance with the proportions of their internal area. The self-build housing exemption applied to the part apportioned to the semi to be lived in by the appellant and not to the full internal area of that semi.\footnote{Development: Retrospective planning application \[\text{.} \] Decision date 4\textsuperscript{th} July 2017 para. 16 Para. 24}

11.5.6.6 Change in development –

11.5.6.6.1 Pre-1\textsuperscript{st} September 2019 - as discussed in section 8.4.2.4.2 difficulties have occurred prior to 1\textsuperscript{st} September 2019 when a planning permission has been granted which qualifies for the self-build relief and then after the development commences changes are carried out. The self-build relief has been lost as a result of the changes. In one appeal it was argued that the differences were minor and could have been remedied by an application for a section 73 permission. However, a section 73A permission had been granted and the appointed person held that this had to be charged to CIL regardless of such an argument.\footnote{In any event even if the planning permission had been granted under section 73 it is unlikely that this would have avoided a CIL charge. It is likely that the development will have already commenced. Further until the 2019 (No. 2) Regulations there has been no equivalent to reg. 50(7) and 51(4A) in relation to social housing relief which saves that relief if there is a subsequent change.} In any event even if the planning permission had been granted under section 73 it is unlikely that this would have avoided a CIL charge. It is likely that the development will have already commenced. Further until the 2019 (No. 2) Regulations there has been no equivalent to reg. 50(7) and 51(4A) in relation to social housing relief which saves that relief if there is a subsequent change.

It emphasises that the better course is to avoid the need for changes by ensuring that the development authorised is the one which is to be carried out and completed. If the
changes can be authorised as non-material pursuant to section 96A then this will not trigger a CIL charge as such a permission is not a planning permission for the purposes of CIL.\footnote{Reg. 5 – see helpful discussion in Denton’s planning blog by Rachel Herbert Self-build series Part 2: Options for retrofitting the exemption to future permissions 10\textsuperscript{th} June 2019}

In cases in which the change is not intentional it is important not to rush into a planning application even if suggested by the local authority’s planning department. Considerations should be given to the options – (i) comply with the conditions attached to the original planning permission; (ii) argue that the difference is de minimis and so any enforcement notice would be quashed; (iii) make a non-material variation application under 96A; (iv) make a section 73 application which will be much important after 1\textsuperscript{st} September 2019 due to reg. 58ZA providing for the carry over of relief; (v) retrospective permission under section 73A.\footnote{See section 8.8 concerning section 96A applications and de minimis Development: Retrospective application for variation of condition 14 \[\ldots\]. Decision date: 30\textsuperscript{th} April 2019} Too often owners rush into a planning application in such circumstances when the important course of action to take is to pause and consider the options and the respective CIL implications. Failure to do so can result in the loss of the benefit of the exemption or even in some cases a double CIL bill if the benefit of the exemption has not been obtained in the first place.

In one appeal it has been accepted that a retrospective section 73 planning permission could have the consequence of reducing the CIL liability when the self-build exemption could not be claimed.\footnote{Development: House. Decision date: 31\textsuperscript{st} December 2018} In that case a house had been constructed pursuant to pre-CIL permissions but the house was wider than appeared on the approved plans. A post-CIL section 73 permission was granted which retrospectively authorised the extensions at the side elevations. An application for the self-build housing exemption could not be made in those circumstances. The appointed person held that in consequence the chargeable development was the areas at the side and not the whole house thereby significantly reducing the CIL bill.\footnote{Para. 16} As regards the remainder of the house either it was left unauthorised under planning law and thus a continuing problem or impliedly authorised by the retrospective permission in which case the area of the remainder should have been included in the chargeable development.

In one such case after the self-builder had obtained a retrospective planning permission a further planning permission was obtained to demolish the new building and replace it with an identical building for which the self-build housing exemption was granted. An appeal was then made against the CIL liability arising from the retrospective permission and one argument relied on the authority’s liability notice for zero CIL liability in respect of the latest planning permission. The appellant sought to argue that the circumstances had changed and so the CIL liability notice in relation to the retrospective permission ceased to have effect under reg. 65(9) because CIL would no longer arise in respect of the development. This was rejected as the latest permission related to a development which had not commenced and was separate from the development covered by the retrospective permission.\footnote{Development: House. Decision date: 31\textsuperscript{st} December 2018}
Such issues do not apply solely to self-builders. In one appeal planning permission had been granted for the conversion of mixed use premises into two cottages. When the work started structural problems were encountered which required the removal of two walls and roof. This in turn meant the works had become new build and required new planning permission for erection of two cottages. It was held that the whole development was chargeable with no netting off of the area covered by the first planning permission nor any deduction in respect of the demolition of the existing building which occurred before the second permission first permitted development.\footnote{Proposed Development: Construction of 2 No. 3 bed dwelling house (including basement accommodation) with rear plot boundary alteration. Decision date: 4\textsuperscript{th} September 2018 – para. 10}

11.5.6.6.2 On or after 1\textsuperscript{st} September 2019 – as discussed above when a self-build housing development is commenced after the grant of the exemption and then there is a change in the provision of the self-build housing or the self-build communal development an application for the grant of the exemption to the changed development can be made notwithstanding that the development has started. The requirements that the application and the notification of the decision must be before the commencement of the development do not apply.\footnote{Reg. 54B(3A) added by reg. 6(5)(c) of the 2019 (No. 2 ) Regulations}

A change can be authorised by a section 73 permission and a self-build exemption.

11.5.7 Second stage additional evidence – within six months of the date of the compliance certificate\footnote{Reg. 54C(1) and (2)} relating to the development subject to the self-build housing exemption additional evidence must be supplied to confirm that the project is self-build.\footnote{Reg. 54C(3)(a) and (b)} The issue of the certificate may be some time after the practical completion of the house but that should not affect the CIL position. Failure to comply within the prescribed time will result in the CIL previously exempt becoming payable but the consequences of this failure can be avoided.\footnote{Reg. 54C(3)(c)} Compliance involves the submission of a form SB1-2 Self-Build Exemption Claim Form 7 – Part 2\footnote{See section 11.5.8.4} and the provision of the following documentation:\footnote{This is another indication that this exemption can only be claimed by an individual.}

(i) copy of building completion or compliance certificate for the dwelling providing proof of date of completion;

(ii) copy of title deeds to prove ownership;

(iii) proof of occupation as claimant’s principal residence by supplying Council Tax certificates and two further proofs of such occupation (such as utility bills, bank statements or confirmation that claimant is on local electoral roll). This will require the utility bill to be linked to the property so for example bill for telephone service not linked to individual building will not satisfy this requirement;
(iv) approved claim from HMRC under “VAT431C: VAT refunds for DIY housebuilders”\textsuperscript{1119} or specialised self-build warranty (latent defects insurance policy accompanied by certified stage completion certificates issued to the owner/occupier)\textsuperscript{1120} or self-build mortgage (approved mortgage to finance purchase of land or cost of building or both and provide funds to be paid in stages as work progresses) from a bank or building society.

It has become clear that providing one of the three types of documents within (iv) will prove to be a problem in some cases. Not all self-builders will fund the construction by borrowings. Not all self-builders will obtain a warranty. A self-builder who neither borrows nor obtains a warranty will have to rely exclusively on the HMRC approving a VAT refund but in some cases that aspect will have involved the builder and not the owner. In any event a VAT refund is not always quick and straightforward.

It is, therefore, crucially important that a self-builder gives consideration as to how this requirement is to be satisfied before commencing the development. An inability to satisfy this requirement at Stage 2 could result in the CIL liability falling due. This has happened and leaves the self-builder having to pay the CIL bill or if unable to do so having to sell the house. This is another aspect of the self-build exemption which is unsatisfactory and needs to be addressed.

11.5.8 Withdrawal of exemption – the amount of CIL exempted by the self-build housing exemption will be clawed back if a disqualifying event occurs within three years of the date of the compliance certificate relating to the relevant dwelling.\textsuperscript{1121} The amount of the clawback is the amount of CIL that would have been payable on commencement of the development if the exemption had not been granted or if reg. 54A(11) applied (State aid) the amount of relief granted.\textsuperscript{1122}

11.5.8.1 Disqualifying event\textsuperscript{1123} - for these purposes a disqualifying event is any one of the following:-

(i) any change causing the self-build housing or self-build communal development to cease to satisfy the specified requirements. For instance if the self-builder ceases to occupy the dwelling as the main or sole residence.

(ii) a failure to comply with reg. 54C requiring additional evidence confirming self-build project (see section 11.5.7 above);

(iii) the letting out of a whole dwelling building comprised in the self-build housing or self-build communal development;

(iv) sale of the self-build housing or the self-build communal development.

\textsuperscript{1119} The obtaining of such a refund is not always straightforward as illustrated by Swales v HRMC [2019] UKFTT 277 (TC)

\textsuperscript{1120} In some cases authorities have been offered a CML Professional Consultants Certificate which is different to a warranty as, for example, it is only for six years rather than ten years. It is unclear whether this will be accepted as sufficient.

\textsuperscript{1121} Reg. 54D(1) and the clawback period for this exemption is defined by paragraph (c) in the definition in reg. 2

\textsuperscript{1122} Reg. 54D(3)

\textsuperscript{1123} Reg. 54D(2)
This list does not include a death of a self-builder but such a death may be a change which causes the dwelling to cease to qualify as self-build housing.

11.5.8.2 Phasing – when the self-build project involves more than one unit the revised February 2014 Guidance recommends that a phased planning permission is obtained with each unit being a separate phase of the development. One reason for this is so that the commencement of work on the first dwelling will not trigger the CIL liability for all the dwellings. Another reason is so that the occurrence of a disqualifying event definitely only affects one unit and does not trigger the payment of CIL in relation to all the units. This will require each self-builder to assume liability in relation to the relevant phase which should be possible.

11.5.8.3 Notification of disqualifying event – the person losing the benefit of the self-build housing exemption due to a disqualifying event (“the relevant person”) must notify in writing the collecting authority within 14 days beginning with the date of the disqualifying event. Failure to do so may result in a surcharge of the lesser of 20% of the chargeable amount or £2,500. Copies of this notice must also be sent to all owners of material interests in the land. Subject to 11.5.8.4 below as soon as practical after notification the collecting authority must notify the relevant person of the amount of CIL payable as a result of the revocation of the self-build housing exemption.

11.5.8.4 Failure to provide additional evidence required by reg. 54C – if the self-builder fails to submit the prescribed form and supporting documentation in accordance with reg. 54C then before taking any action the collecting authority must first give at least 28 days’ notice. This notice must state the date at which the collecting authority intends to take any action. Additionally on the expiry of the period specified in reg. 54C the collecting authority must notify the relevant person of the amount of CIL due regardless of receiving notice from the relevant person. This will be another matter for the authority to monitor. The threatened action by the collecting authority can be preempted by the submission to the collecting authority of the form and documents required to comply with reg. 54C before the date stated in the collecting authority’s notice. This will prevent the exemption being lost and the authority can take no further action.

11.5.8.5 Failure to provide a compliance certificate – under the Building Regulations 2010 there is an obligation to request a completion certificate but that is not carried over into CIL. A failure to make such a request is a reach of building control but not the CIL regime. However, this is not a way of avoiding the loss of the CIL self-build housing exemption. Until the expiry of the clawback period a sale or letting will cause the exemption to be lost and such period cannot commence until a compliance certificate has been issued. The absence of such a certificate will also pose a threat.

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1124 Para. 2.7.5.7
1125 see section 11.5.6.2(iii) above
1126 Reg. 54D(8)
1127 Reg. 54D(4)
1128 Reg. 84
1129 Reg. 54D(7)
1130 Reg. 54D(5)
1131 Reg. 54D(6)
1132 Reg. 14(4) and (5)
considerable difficulty on a proposed disposal of the dwelling. The position may be resolved by obtaining the issue of a regularisation certificate but that will not be a compliance certificate for the purposes of CIL and thus on a sale with such a certificate the CIL will be clawed back.

11.5.9 Appeals – an appeal to the appointed person can only be made by an interested person if the collecting authority has granted an exemption for self-building housing and the ground of the appeal is that the collecting authority has incorrectly determined the amount of the exemption allowed. The appointed person has the power to amend the amount of the exemption. There is no express statutory right of appeal against a refusal of a claim for this exemption which is a point repeatedly made in appeal decisions. As the scope of an appeal under reg. 116B relates only to the amount an appeal under reg. 114 is arguably possible as it concerns the amount of the CIL liability which is inevitably in issue if there is a dispute over the amount of the exemption. However, the view of the VOA is that exemptions and reliefs are irrelevant to the calculation of the CIL liability under reg. 40 and so this route of appeal would not be open to a claimant. In such circumstances a challenge to the authority’s refusal must be by way of judicial review.

An appeal under this provision must be made within 28 days of the decision by the collecting authority. It would appear to be the intention that this appeal procedure is independent from the review procedure in reg. 113 as the time limits do not permit both to be carried out. In consequence requesting a review is not a necessary pre-condition to the making of this appeal unlike an appeal under reg. 114 (appeal regarding chargeable amount).

If the appellant commences the development before a decision is made on the appeal then the appeal will lapse. Reg. 116B is silent as to the position in the event that the development has already commenced before an appeal is made. In reg. 114 it is expressly provided that an appeal under that provision cannot be made subject to one qualification. Notwithstanding the absence of such express provision it is most unlikely that an appeal under reg. 116B in such circumstances will be accepted by the VOA.

11.6 Residential annexes and extensions – having exempted self-builds it was logical to also exempt extensions of dwellings and the construction of annexes in the grounds of homes provided that they satisfy similar requirements to those applying to self-builds. Prior to this an extension which was less than 100 square metres would be exempt under the minor development exemption unless the development comprised a dwelling. However, if the extension was 100 square metres or more the exemption did not apply and the development was chargeable. An annexe will be subject to CIL unless exempted. The charging of CIL on such works gave rise to a considerable number of

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1133 Reg. 18
1134 Reg. 116B and see section 20.11.6
1135 Reg. 116B(1) and no right of appeal if no grant of exemption - para. 7 Development: Erection of a detached house. Decision date 9th September 2016.
1136 Reg. 116B(4)
1137 Development: House. Decision date: 31st December 2018 – para. 11 and 18(d)
1138 Reg. 116B(2)
1139 Reg. 116B(4)
1140 Development: Erection of ancillary building Decision date 17th November 2015 – para. 8
complaints and so this exemption has in many but not cases removed this thorn from the side of many houseowners.

However, this exemption has not removed all issues. One area that still continues to give rise to problems is extensions which are expected to be less than 100 square metres but which when carried out actually exceed that limit. The owner may have relied on the minor development exemption in reg. 42 and so will have become unexpectedly chargeable to CIL. That charge would have been avoided if the residential extension exemption had been claimed as the area comprised in the development is irrelevant to the application of that exemption. My understanding is that authorities will not accept that the reduction of the extension to bring it back within the minor development exemption avoids the CIL charge. In the event that the larger extension is a breach of planning law it is arguable that the reduction is necessary to comply and thus the reduced extension is the relevant development for the purposes of CIL. In one case the authority has accepted such a reduction and applied the minor development exemption.

Another area which continues to be a problem is if the development is a building constructed physically separate from the dwelling but the use of which is ancillary to the dwelling. This may a swimming pool or a garage which is not physically connected to the house. Some authorities require physical connection if the residential extension exemption is to be granted whilst other do not.

11.6.1 Exemption – the exemption applies in favour of a person who has a material interest in a dwelling which that person occupies as their sole or main residence. It covers a residential extension or residential annexe. The exemptions are known as exemption for residential annexes and exemption for residential extensions.

11.6.2 Residential annexes – this is a new dwelling which is wholly within the curtilage of the main dwelling. A garage with a WC will not be a dwelling for the purposes of the minor development exemption as an annex is an actual dwelling rather than a building which has scope for future use as a dwelling. In the context of VAT an annexe has been described as a supplementary building which is an adjunct or accessory to a building. That case concerned the construction of a separate self-contained dementia unit in the grounds of a nursing home. Morritt VC considered that the function of the new building was separate from and not supplementary to the existing nursing home.

Whether a new building was an annexe for the purposes VAT arose again in Colchester v HMRC which involved a detached garage with living accommodation over described in the planning permission as an annexe. In the judgment Judge McKenna stated:

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1141 Reg. 42A
1142 A material interest is a freehold estate or leasehold estate with a term of more than seven years on the day when the development is first permitted – reg. 4(2).
1143 Reg. 42A(1)
1144 Reg. 42A(4)
1145 Reg. 42A(2)
1146 Proposed Development: Retrospective consent for replacement garage. Decision date 26th June 2018 – para. 7-9
1147 Morritt VC in Cantrell v CCE [2003] EWHC 404 (Ch) at para. 17
1148 [2013] UKFTT 45 (TC)
“26. However, in following the decision of the Vice-Chancellor in the second Cantrell appeal we note that, when looking at the case of an alleged annexe, we are entitled to look beyond the mere functionality of the new building. In making the “wider enquiry” contemplated by the Court in that case, we have considered the functional relationship between the existing dwelling and the new building and taken into account the justification for the new building provided to the planning authority as described at paragraph 6 above. We reject the Appellant’s submission that, when considering the characteristics of an annexe, we are limited to assessing the functionality of the new building only.

27. This was a case in which the entire rationale for seeking planning consent was based upon the enumerated shortcomings of the existing dwelling and the need to provide additional facilities in a new building, to be in common ownership and use. The new building was specifically designed to be in keeping with the main dwelling and was said to enhance not only the amenities but also the character of the main dwelling. We find that, as a matter of fact, the new building is a supplementary structure, an adjunct or accessory to the main house. There is, in our view, a functional connection between the new building and the main house sufficient to render it an annexe. The new building is designed to meet the deficiencies of the main house and to operate in conjunction with it. We therefore find that the new building falls within the meaning of an annexe, using the ordinary meaning of that term, and so engages note (16) (c).”

It is not enough that there is a new building constructed within the curtilage. It must be supplementary to the main dwelling. Further there is the issue as to whether the new building is within the curtilage. This concept is an ancient one which the judges have steered clear of defining. It has been used with regard to the law applied to planning permission, listed buildings and the transfer of sewers and lateral drains. There is scope for disputes but the likelihood is that in this context few will arise. A fuller discussion of the topic is contained in the Fourth Appendix at the end of this guide.

11.6.3 Residential extensions\textsuperscript{1149} – this is an enlargement of the dwelling which is the main or sole residence which does not comprise a new dwelling. This will apply to basement extensions. As mentioned above it could throw up practical issues. Is a detached garage an extension? If not when is a garage detached and when is it an extension of the main dwelling? Some authorities are applying a literal interpretation and requiring the extension to be physically attached whilst others are allowing claims in respect of a detached building ancillary to the main dwelling.

The circumstances giving rise to such a point may have arisen in an appeal against Preston City Council\textsuperscript{1150} but it did not have to be decided. A landowner had obtained planning permission to build a single storey extension to the rear of a dwelling to form a swimming pool. A claim was made for exemption of the extension which was rejected by the Council on the basis that the development had already been commenced. This was upheld on the appeal. It was not clear from the recital of the facts whether the pool was detached from or attached to the house. If it was separate would it qualify for the

\textsuperscript{1149} Reg. 42A(3)
\textsuperscript{1150} APP/N2345/L/14/1200007 Decision date: 5\textsuperscript{th} June 2014
exemption? It would seem unlikely that it should have been intended that it would lose out from the benefit of the exemption.

In an appeal concerning a single storey garage extension to an existing block the appointed person decided that it was proper to charge this to CIL at the rate applicable to a residential use but then raised the issue whether this residential extension exemption applied although he did not jurisdiction to decide that issue. He raised this point on the basis that if charged as being part of a dwelling then should the extension be treated as an extension of a dwelling?

11.6.4 State Aid – as with the self-build housing exemption this exemption cannot be granted to the extent that the collecting authority considers that it would constitute State aid which would be required to be notified to and approved by the European Commission\textsuperscript{1151} but the exemption will be granted to the extent that the amount does not constitute State aid.\textsuperscript{1152}

11.6.5 Coming into force of exemption – surprisingly there is no provision in the 2014 Regulations stating how it is to take effect with the coming into force of those regulations on 24\textsuperscript{th} February 2014. If a development had commenced on or before that date then the exemption cannot apply as it is excluded by reg. 42B(3).\textsuperscript{1153} In such circumstances an extension will be still be exempt under the minor development exemption if less than 100 square metres. In cases in which planning permission has already been granted by that date but the development has not been commenced then the exemption should be capable of being claimed provided that the necessary steps can be taken before the development commences.

11.6.6 Claim procedure – this is very similar to that relating to the self-build housing exemption. A claim must be made to the collecting authority which is accepted in order to benefit from either of these exemptions.\textsuperscript{1154} Form 8 applies to the self-build residential annex exemption and Form 9 applies to the self-build residential extension exemption.

11.6.6.1 Timing – up until 1\textsuperscript{st} September 2019 it has been important to comply with the usual CIL timing requirement that steps must be taken before the commencement of the development. The claim must have been received by the collecting authority\textsuperscript{1155} and the authority’s decision notified before the commencement of the development.\textsuperscript{1156} On or after 1\textsuperscript{st} September 2019 these requirements are subject to a qualification. They do not apply if a development in respect of which a residential extension exemption or residential annex exemption has been granted is commenced and then subsequently the annex or extension changes.\textsuperscript{1157} This allows for a fresh claim to be made for the appropriate exemption even though the development has commenced particularly as a commencement notice is no longer required to be given before the development commences. The discussion of the similar provision applicable to the self-build housing

\textsuperscript{1151} Reg. 42A(5)
\textsuperscript{1152} Reg. 42A(6)
\textsuperscript{1153} see section 11.6.6.1 below
\textsuperscript{1154} Reg. 42B(1)
\textsuperscript{1155} Reg. 42B(2)(a)
\textsuperscript{1156} Reg. 42B(3)
\textsuperscript{1157} Reg. 42B(3A) added by reg. 6(2)(c) of the 2019 (No. 2) Regulations
exemption is also relevant as regards these two exemptions.\textsuperscript{1158} For the reasons given in that discussion I have a concern that the requirement as regards the assumption of liability might have the effect of defeating the intention of reg. 42B(3A).

As with the self-build housing exemption if either of these exemptions have been granted and then after the commencement of the development a section 73 permission is granted in relation to the development which does not change the amount of relief for which the development is eligible then the relief is carried over without the need for a fresh claim.\textsuperscript{1159} Anything done in relation to the original application for relief in respect of the development shall be treated as if it was done in relation to the development authorised by the section 73 permission.\textsuperscript{1160}

Further prior to 1\textsuperscript{st} September 2019 as regards the residential annexes exemption a commencement notice must be submitted before the day that the development is commenced and if it is not then the benefit of the exemption will be lost.\textsuperscript{1161} On or after 1\textsuperscript{st} September 2019 such a failure does not cause the self-build housing exemption to be lost.\textsuperscript{1162} Instead the collecting authority must impose a surcharge which is equal to 20 per cent of the notional chargeable amount or £2,500 whichever is the lower amount.\textsuperscript{1163} The collecting authority need not impose the surcharge if it is satisfied that the amount of the surcharge is less than reasonable administrative costs which it would incur in relation to the surcharge.\textsuperscript{1164}

As regards the exemption for residential extensions it was provided on its introduction that regulation 67 (concerning commencement notices) does not apply to developments subject to the grant of such an exemption.\textsuperscript{1165} As a result no commencement notice needs to be given. However, on the face of it this conflicts with the provision that a person granted the exemption cease to be eligible if a commencement notice is not submitted to the collecting authority before the commencement of the development.\textsuperscript{1166} The guidance given on the Planning Portal makes clear that no commencement notice is needed if the development is subject to the exemption. It has been made clear by the DCLG and now the MHCLG in statements that no commencement notice is required and so the exemption will not be lost when one is not given. Notwithstanding this some authorities have charged CIL on the basis that the benefit of the exemption has been lost through the failure not to give a commencement notice.

Although there is an apparent conflict between reg. 67(1A)(aa) and reg. 42B(6) the effect of reg. 67(1A)(aa) prevents a commencement notice being given as it is defined as a “notice submitted under regulation 67”. Even if a person with the benefit of the exemption for residential extensions purported to give such a notice it would not be a commencement notice as it would not have been submitted pursuant to reg. 67. In any

\textsuperscript{1158} See sections 11.5.6.1 and 11.5.6.6.2 above
\textsuperscript{1159} Reg. 58ZA inserted by reg. 7(1) of the 2019 (No. 2) Regulations
\textsuperscript{1160} Reg. 58ZA(1)
\textsuperscript{1161} Reg. 42B(6)
\textsuperscript{1162} Reg. 54B(6) was deleted by reg. 6(5)(e) of the 2019 (No. 2) Regulations
\textsuperscript{1163} Reg. 83(1A) inserted by reg. 6(8)(b) of the 2019 (No. 2) Regulations. For these purposes the notional chargeable amount is the amount of CIL that would have been payable but for the exemption for residential annex – reg. 83(5).
\textsuperscript{1164} Reg. 83(1B) inserted by reg. 6(8)(b) of the 2019 (No. 2) Regulations
\textsuperscript{1165} Reg. 67(1A(aa)
\textsuperscript{1166} Reg. 42B(6)
event when imposing what is in substance tax the taxing body should not be able to take advantage of such a conflict.

The omission of reg. 42B(6) as regards the exemption for residential extensions is intended to clarify the position that no such notice was required\footnote{Para. 24 of the Government’s summary of responses to the technical consultation issued in June 2019. Para. 31 stated “The Government acknowledges comments suggesting that the regulations should apply retrospectively. The Government has made its position on the existing regulations clear, that a commencement notice is not required for a residential extension, through Planning Practice Guidance and in a letter from the Chief Planner to all charging authorities. However, the Planning Act 2008 does not provide powers to make regulations in relation to the Levy retrospective.”} but the provision is not retrospective as it is contended by the MHCLG that there is no power to amend the regulations retrospectively. In these circumstances it is unsatisfactory that some have been charged CIL whilst others under the same statutory provisions have been treated as exempt from CIL. There is a clear unfairness in this outcome.

11.6.6.2 **Form** – the claim must be in the prescribed form (or a form substantially to the same effect) which is form SB2 Self-build Annex or Extension Claim Form which will be found at either the website of the relevant authority or www.planningportal.gov.uk.\footnote{Reg. 42B(2)(b)} It must be submitted to the collecting authority. If the claim form complies with the requirements of reg. 42B(2) then it is a valid claim and must be considered by the collecting authority.\footnote{Reg. 42B(2)(c)}

The particulars specified or referred to in that form must be given.\footnote{Reg. 42B(2)(d)} These include the name and address of the applicant;

(i) the planning application reference;

(ii) identification of the main dwelling; election for residential annex or extension exemption;

(iii) applicant’s declaration that the applicant

(a) intends to occupy main dwelling as sole or main residence for three years following completion of annex or extension;
(b) received de minimis State aid in last three years less than 200,000 Euros;
(c) appreciates that benefit of exemption will lapse if the development is commenced before receive authority’s decision or if no commencement notice is submitted before developments starts; and
(d) understands what is meant by disqualifying event for the purposes of residential annex exemption and required to give notice to collecting authority within 14 days if occurs.

The form makes no mention of any accompanying documents in contrast with an application for self-build housing exemption but if any are specified or referred to in the form then these need to accompany the form.\footnote{Reg. 42B(5)}
11.6.6.3 Collecting authority’s response – as soon as practicable after the receipt of a valid claim the collecting authority must grant the exemption subject to any issue concerning State aid and notify in writing the claimant.\textsuperscript{1172} In relation to the exemption for residential annexes an explanation of the requirements of regulation 67(1) must be provided.\textsuperscript{1173}

11.6.7 Withdrawal of residential annex exemption\textsuperscript{1174} –

11.6.7.1 Withdrawal - as with the self-build housing exemption it is possible for the residential annex exemption to be lost on the occurrence of a disqualifying event before the end of the clawback period.\textsuperscript{1175} In contrast the residential extension exemption cannot be withdrawn once it has been granted and the development commenced in compliance with the requirements of reg. 42B (subject to the issue over the need for a commencement notice as to which see section 11.6.6.1 above). This will happen if the disqualifying event occurs during the clawback period which is a period of three years from the date of the compliance certificate (pursuant to reg. 17 Building Regulations 2010 or section 51 Buildings Act 1984) relating to the annex.\textsuperscript{1176}

11.6.7.2 Disqualifying event\textsuperscript{1177} – for the purposes of residential annex exemption such an event is:-

(i) the use of main dwelling\textsuperscript{1178} for any purpose other than as a single dwelling;

(ii) the letting of residential annex\textsuperscript{1179};

(iii) the sale of the main dwelling or residential annex unless both are sold at same time to same person.

This means that the exemption will not be withdrawn if the main dwelling ceases to be occupied by the claimant as the claimant’s sole or main residence during the clawback period provided that both are still used as a single residence and not let.

11.6.7.3 Notification of disqualifying event – the person benefitting from the residential annex exemption (“the relevant person”)\textsuperscript{1179} must notify the collecting authority in writing within 14 days of the period beginning with the occurrence of a disqualifying event.\textsuperscript{1181} Failure to do so may result in a surcharge of the lesser of 20% of the chargeable amount or £2,500.\textsuperscript{1182} Upon receipt of this notice the collecting authority must as soon as practical notify the relevant person of the amount of CIL due as a result of the withdrawal.\textsuperscript{1183}

\begin{itemize}
  \item\textsuperscript{1172} Reg. 42B(4)
  \item\textsuperscript{1173} Added to reg. 42B(4) by reg. 6(2)( e) of the 2019 (No. 2) Regulations
  \item\textsuperscript{1174} Reg. 42
  \item\textsuperscript{1175} Reg. 42C(1)
  \item\textsuperscript{1176} The clawback period definition is contained in paragraph (a) of the definition in reg. 2
  \item\textsuperscript{1177} Reg. 42C(2)
  \item\textsuperscript{1178} Main dwelling has the same meaning as in reg. 42A – reg. 42B(6)(a)
  \item\textsuperscript{1179} Residential annex has the same meaning as in reg. 42A – reg. 42B(6)(a)
  \item\textsuperscript{1180} Reg. 42C(6)(b)
  \item\textsuperscript{1181} Reg. 42A(4)
  \item\textsuperscript{1182} Reg. 84
  \item\textsuperscript{1183} Reg. 42C(5)
\end{itemize}
11.6.7.4 **Payment** – the relevant person must pay an amount equal to the amount of CIL that would have been payable upon the commencement of the development had the exemption not applied to the development or if reg. 42A(6) (State Aid) applied the amount of the relief granted.\(^{1184}\)

11.6.7.5 **No withdrawal of residential extension exemption** – the withdrawal provisions of reg. 42C do not apply to the residential extension exemption. With that exemption there has to be a declaration that the claimant intends to occupy the dwelling to be extended for three years from completion of the extension as the main or sole residence. That declaration has to be honest and if it is not then the claimant has committed a criminal offence and the claim is invalid so that the CIL liability avoided could be recovered. However, if the declaration is honestly made then the CIL liability will not be subsequently triggered if the extended house is sold or let during the three year period running from the completion of the extension.

11.6.8 **Appeal**\(^ {1185}\) – an appeal can be made to an appointed person in relation to the decision of the collecting authority to grant an exemption for residential annexes but is limited to cases in which the ground of appeal is that the collecting authority’s determination that the development is not wholly within the curtilage of the main dwelling is incorrect.\(^ {1186}\) In order to qualify for the exemption for residential annexes the annexe must be wholly within the curtilage of the dwelling.\(^ {1187}\) It is not possible to grant the exemption but only to a part of the development which is within the curtilage. In consequence the operation of reg. 116A must be triggered by the authority refusing a claim for the grant of such exemption and for there to be an appeal the only reason for the refusal must be because the development is not wholly within the curtilage of the dwelling. If such an appeal is successful then the appointed person is given the power on the appeal to amend the amount of the amount of the exemption for residential annexes granted.\(^ {1188}\)

Such an appeal must be made within 28 days of the date of the decision of the collecting authority.\(^ {1189}\) This is a tight time limit when the issue is one which could give rise to a need for considerable factual investigation and be legally difficult. As with the self-build housing exemption the time table means that a request for a review pursuant to reg. 113 by the appellant will not be a pre-condition to the making of an appeal under reg. 116A. In the event that such an appeal is made and the development is commenced then the appeal will lapse.\(^ {1190}\)

Oddly there is no appeal in respect of a refusal of a claim for the exemption for residential extensions which is confirmed by para. 2.7.6 of the revised February 2014 Guidance. The VOA will not accept an appeal made under reg. 114 on the basis that the exemption is irrelevant to the CIL calculation under reg. 40.

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\(^{1184}\) Reg. 42C(3)

\(^{1185}\) Reg. 116A and also see section 20.9

\(^{1186}\) Reg. 116A(1)

\(^{1187}\) Reg. 42A(2)(a)

\(^{1188}\) Reg. 116A(4)

\(^{1189}\) Reg. 116A(2)

\(^{1190}\) Reg. 116A(3)
F. Procedure

12. **Procedural sequence** - the operation of the CIL regime involves the giving of a number of notices. It is important that the procedures relevant to the particular development are fully complied with so as to avoid the possible loss of exemptions or reliefs or the imposition of surcharges. It is equally important to understand that the CIL regime is rigid and no powers of waiver or modification are conferred on the charging authorities.

Many for the forms needed will be found on the relevant charging authority’s website. Another useful source for forms relating to CIL can be found at the government’s planning portal website at [http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil](http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil)

12.1 **The anticipated sequence** – dependent on the circumstances it is likely to take the following course:-

12.1.1 Information sharing between charging authority and collecting authority in cases in which they are not the same. This may involve a request for information by collecting authority (reg. 78).

12.1.2 Additional information from applicant – when an application is made for planning permission the authority will request additional information in order to be able to determine the CIL liability. Forms have been prepared for this purpose. Each authority may have a link to a Planning Application Additional Information Form.

12.1.3 Notice of chargeable development in case where no grant of planning permission but reliance on general authority (see section 8.3.2 above);

12.1.4 Assumption of liability notice expected to be given to collecting authority (see section 16.2 below regarding assumption of liability);

12.1.5 Liability notice from collecting authority specifying the amount of the CIL charge and payment details (see section 13 below);

12.1.6 Commencement of development notice informing collecting authority when development will start (see section 14 below);

12.1.7 Demand notice from collecting authority setting out payment dates (see section 17 below);

12.1.8 Request for suspension if appropriate (see section 17.6 below)

12.2 **Compliance** – it is for the owner or developer to comply with the requirements of the CIL regime. Ignorance is not a defence and there is usually nothing that can be put forward by way of successful mitigation. The charging authority will not be obliged to advise or warn the owner or developers about what is needed in order to comply or to chase for documents.
12.3 Service of CIL notices and documents – this aspect of the CIL regime has been the subject of a number of statutory appeals because the valid service of a notice such as a commencement notice was until 1st September 2019 required to retain many of the CIL exemptions. In consequence reg. 126 which deals with service of CIL notices and other documents is a significant provision in the administration of the CIL regime. In the case of the service of a CIL notice or document on an authority it has been suggested that service on the Building Control Department will not suffice.\textsuperscript{1191}

A number of general points have been clearly established by the appeal decisions. These are:-

(i) the onus lies on the server to prove that the CIL document has been served;

(ii) the decision whether or not the CIL document has been served is made on the basis of the facts supplied to the appointed person which may include new evidence provided after the statutory review;

(iii) in reaching that decision the appointed person applies the normal civil standard of proof - the balance of probabilities;

Reg. 126 does not provide that service must be served in one of the specified ways in that provision but that may be the consequence.

Subject to any contrary provision in the Regulations\textsuperscript{1192} the specified methods of service in reg. 126\textsuperscript{1193} are:

(i) delivering to the person who is to be the recipient;\textsuperscript{1194}

(ii) leaving it at the recipient’s usual or last known place of abode or at an address given for service by the recipient;\textsuperscript{1195}

(iii) by sending by post to an address within (ii) above.\textsuperscript{1196} Section 7 of the Interpretation Act 1978 provides that in such circumstances unless the contrary intention appears service is deemed to be effected by properly addressing, pre-paying and posting a letter and again unless the contrary intention is proved service is taken to have been effected at the time the letter would be delivered in the ordinary course of time. In many of the appeal decisions the problem for authorities often is that it can be proved that a notice has been issued but not that it has been posted. The return of a notice sent by recorded

\textsuperscript{1191} APP/W0340/L/18/1200222 decision date: 28th March 2019 at para. 4
\textsuperscript{1192} Reg. 126(8)
\textsuperscript{1193} Reg. 126 is similar to the service provisions in section 229 Planning Act 2008 which does not apply to Part 11 (CIL) due to section 220(6) but which sub-section (6) provides that similar regulations to section 229 can be made.
\textsuperscript{1194} Reg. 126(1)(a)
\textsuperscript{1195} Reg. 126(1)(b)
\textsuperscript{1196} Reg. 126(1)(c) – in APP/F0114/L/17/1200096 decision date: 19th June 2017 at para. 2 it was accepted that the authority could take an address given in the planning application form which was the development site and tenanted. Similarly in APP/W5780/L/17/1200106 the liability notice was sent to the site address given in the planning application and not to the home address given in a commencement notice which had not been received by the authority. It is the owner’s responsibility to provide the authority with a change of address.
delivery as not collected by the recipient will not stop the notice being treated as properly served.\textsuperscript{1197}

(iv) by sending in a pre-paid registered letter or by recorded delivery service addressed to the recipient at an address within (ii) above;\textsuperscript{1198}

(v) by electronic communication\textsuperscript{1199} to an address for service using electronic communication given by the recipient\textsuperscript{1200} provided that the notice or other document must be:\textsuperscript{1201}

\begin{enumerate}
  \item (a) capable of being accessed by the recipient\textsuperscript{1202};
  \item (b) legible in all material respects which means that it must be available to the recipient to no lesser extent than if had been provided with notice or other document in printed form\textsuperscript{1203},
  \item (c) in a form sufficiently permanent to be used for subsequent reference.
\end{enumerate}

(vi) in the case of an incorporated company or body service is by\textsuperscript{1204}:

\begin{enumerate}
  \item (a) delivery to the secretary or clerk of the company or body at the registered or principal office;
  \item (b) sending by post addressed to the secretary or clerk of the company or body at the office within (a);
  \item (c) sending in a pre-paid registered letter or by recorded delivery service addressed to the secretary or clerk of the company or body at the office within (a).
\end{enumerate}

In the case of joint owners of an interest in land it is provided that service on one of the joint owners suffices.\textsuperscript{1205} This means that care has to be taken by joint owners that some are not left unaware when a CIL document or notice is served on one of the joint owners only. The imposing of an obligation on each of the joint owners to supply a copy of such notice or document forthwith should be considered.

The Local Government Act 1972 contains provisions relating to services on local authorities (section 231) and by local authorities (section 233). Section 231 provides

\begin{enumerate}
  \item \textsuperscript{1197} APP/D3315/L/16/1200045 decision date: 15\textsuperscript{th} September 2016 – para. 4
  \item \textsuperscript{1198} Reg. 126(1)(d). In a case in which it was alleged that a commencement notice had been sent by e-mail the authority used software by which it was possible to discover whether an e-mail had been received including those which had been deleted and so was able to rebut the allegation – APP/X4725/L/17/1200123 decision date 5\textsuperscript{th} December 2017
  \item \textsuperscript{1199} If received outside the recipient’s business hours it shall be treated as received on the next working day which is a day other than Saturday, Sunday, a Bank holiday or other public holiday (reg. 126(4)). If sent to an incorrect e-mail address it has not effect – APP/U5360/L/17/1200510 decision date: 16\textsuperscript{th} May 2018. If sent to the correct e-mail address but marked FAO of the wrong person that is not valid service APP/G1250/L/19/1200250 Decision date: 19\textsuperscript{th} June 2019.
  \item \textsuperscript{1200} Reg. 126(1)(e). Use of e-mail address given in assumption of liability notice valid – APP/U5360/L/18/1200224 decision date: 3\textsuperscript{rd} April 2019
  \item \textsuperscript{1201} Reg. 126(2) – a communication satisfying the three conditions in this provision will be treated as written for the purposes of any regulations requiring a notice or other document to be written (reg. 126(5)).
  \item \textsuperscript{1202} APP/Z2830/L/17/1200116 decision date: 16\textsuperscript{th} November 2017 accepted as a valid service of a Liability Notice an e-mail which included a link to the documents associated with the planning Decision Notice including the liability notice even though the e-mail made no mention of the liability notice. The appointed person noted that it would have been preferable for such a mention to have been included.
  \item \textsuperscript{1203} Reg. 126(3)
  \item \textsuperscript{1204} Reg. 126(1)(f)
  \item \textsuperscript{1205} Reg. 126(7)
\end{enumerate}
that a notice, order or other document required or authorised by an enactment or instrument "shall be given or served by addressing it to the local authority and leaving it at, or sending it by post to, the principal office of the authority or any other office of the authority specified by them as one at which they will accept documents of the same description as that document." Section 233 applies as regards service of notices, orders or other documents by or on behalf of local authorities or by any officer. It is extended to service by or on behalf of a chairman of a parish meeting. The methods of service under this provision are in addition to any other methods authorised by other statutory provisions.

Other than for documents which are to be given or served in any court proceedings section 233 permits service by:

(i) delivering to the recipient;

(ii) leaving at the recipient’s proper address;

(iii) posting to the recipient at that address;

(iv) in the case of a body corporate by giving or serving on the secretary or clerk of the body;

(v) in the case of a partnership by giving or serving on a partner or a person having the control or management of the partnership business;

(vi) in the case of any owner, lessee or occupier of land who cannot be found after reasonable enquiry the documents may be given or served by leaving in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land.

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1206 Sub-section (3) provides that it does not apply to documents given or served in court proceedings but otherwise the methods of giving or serving documents by this provision are in substitution for methods provided for in other enactments or instruments made under an enactment. As reg. 126 is subsequent to this provision it will not substitute that regulation.

1207 Section 233(8) LGA 1972
1208 Section 233(10) LGA 1972
1209 Section 233(9) LGA 1972
1210 Section 233(2) LGA 1972
1211 Section 233(2) LGA 1972 the proper address shall be the last known address of the recipient save that in the case of a body corporate or their secretary or clerk it shall be the address of the registered or principal office of that body and in the case of a partnership or the person having the control or management of the partnership business it shall be the principal office of the partnership (section 233(4)). The principal office of a company registered outside the UK or a partnership carrying on business outside the UK shall be the principal office within the UK. The proper address shall also include any address for service for documents of the same description given by the recipient (section 233(5)).
1212 Section 233(2) LGA 1972
1213 Section 233(4)(a) LGA 1972
1214 Section 233(4)(b) LGA 1972
1215 Section 233(7) LGA 1972
Reg. 126 is stated to be without prejudice to section 233 LGA 1972 but no mention is made of section 231 of that Act. It may be that in the context of the CIL regime section 231 does not apply.

12.4 Additional Information - Failure to provide the additional information may prevent the planning application proceeding until it is supplied or alternatively the authority may do the best it can on the available information and estimate the CIL liability which will allow it to serve a Liability Notice and comply with its duty under reg. 65. It will have the information provided in the planning application form which should provide enough to allow the GIA of the development to be determined. Some authorities require an Additional Information form to be provided as part of the validation process and so if such a form is not provided no planning permission will be granted. There would appear to be definite advantages to such a requirement. It is in the interest of the owner/developer that a fully completed additional information form is provided so that the authority has all the necessary information at the earliest possible time from which to calculate the deductions to be made from the GIA. It should also make the owner or developer aware that CIL is applicable to the proposed development although regrettable this is not always the case.

When the charging authority and the collecting authority are different the additional information must be passed to the collecting authority on the grant of planning permission.

An example of an additional information form can be found on the Planning Portal website which can be downloaded. There is also a guidance to completing the form which can also be downloaded.

The provision of additional information by the applicant will be particularly important if one or more of the deductions from GIA is being claimed. The onus lies on the applicant to prove the entitlement. It is not for the authority to investigate the matter. If such a claim is to be made then it is preferable that the supporting information is compiled before the planning application is made. Then it can be provided with the application and the authority will be able to make a considered decision. In the event that the authority does not accept the claim provided the development has not commenced the applicant can then ask for a review and if the claim is still refused can appeal. Commencement of the development will cause any such review or appeal to lapse. Failure by the applicant to provide the full information with the planning application will leave the applicant having to assemble such information after the service of a CIL Liability Notice and with the task of seeking to convince the authority that it should revise its CIL Liability Notice. The task will be made even harder if the applicant commences the development. In such circumstances even if the authority is prepared to consider further information the applicant will not be able to pursue the statutory routes of review and appeal to challenge the authority and will need to fall back on the more expensive and protracted route of judicial review. This was the course followed unsuccessfully by the developer in R (oao Hourhope Limited) v Shropshire CC. The lesson for any developer is to investigate the position regarding any

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1216 Reg. 126(6)
1217 Previously reg. 40(9) now para. 1(8) Schedule 1
1218 See section 13.6 below
1219 [2015] EWHC 518 (Admin)
deduction which is to be claimed before the planning application is made and to supply the full information to the authority before the CIL Liability Notice is issued.
G Liability notice

13.1 **Objective** - it is for the collecting authority to issue a CIL liability notice which sets out the CIL liability arising as a result of a proposed chargeable development. This should take account of any applicable reliefs. My understanding is that the notice is a statement of what will be payable when the development commences. The issue of the notice is not expressed to be a pre-condition of the CIL liability. However, a demand notice has to identify the relevant liability notice so unless there is a liability notice issued there can be no complete demand notice. It alerts the owner to the application of the CIL regime and the precise amount of CIL which will be due for payment once the development starts. It also provides the reference number which is needed by the owner or developer to complete the Form 6 commencement notice.

Reg. 65 does refer to the liability notice having effect and this may be a reference to it being prima facie evidence of a continuing CIL liability or to it justifying a demand notice. This point may be particularly relevant to the issue as to when a local land charge can be registered. I suspect that there will be an automatic reflex action that when a liability notice is issued a local land charge is also registered. As discussed in that section there is a doubt that this is strictly authorised by reg. 66 and it could in some cases pose problems for the owner when attempting to deal with the land.

13.2 **Timing** – the collecting authority is required to issue the liability notice “as soon as practicable after the day on which a planning permission first permits development”. This is a mandatory duty. In most cases this will be the date of the granting of planning permission but need not be particularly if the planning permission is outline or a phased development. For example, an outline phased planning permission may be subject to reserved matters and it is only on the final approval of the last reserved matter that it will first permit development for the purposes of CIL. This may be some time after the original grant of the planning permission. Should the collecting authority wait until then? It is unlikely that authorities will. A similar point arises with regard to phased developments. Will separate CIL Liability Notices be issued in respect of the individual phases and if they are when will they be issued?

Failure to issue a liability notice timely in accordance with reg. 65(1) may be relied on to have a surcharge for failing to give a commencement notice quashed on appeal under reg. 117. The failure to issue a liability notice as soon as practical cannot be the subject of or a ground for a reg. 114 appeal. In one appeal the delay had been nearly twelve months.

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1220 See section 17.8
1221 Reg. 65(1)
1222 Reg. 8(2)
1223 See section 6.2.3 as regards the operation of reg 8
1224 APP/L5810/L/18/1200197 decision date: 6th December 2018 at paras 3-5. However, in APP/W0340/L/19/1200246 Decision date: 10th July 2019 an appeal under reg. 117(1)(b) failed because the CIL Liability Notice was served eight months after the grant of retrospective planning permission but the appointed person, Mr. McEntee, expressly made the point that the delay was not a matter before him to consider in the appeal.
1225 Para. 10 Development: Erection of [ ] single storey self storage units decision date 16th December 2013
For the reasons given in section 13.1 above the requirement that the authority must issue a CIL Liability Notice as soon as practicable must be borne in mind by developers. It is far better to provide to the authority supporting information by way of an additional information form for any claim which will reduce the CIL liability before the authority issues a CIL Liability Notice.

13.3 Monitoring of planning permissions - To wait until all necessary approvals have been given will require the authority to monitor compliance with such conditions. Do authorities have the resources to undertake this? A pragmatic answer that has been suggested is that a liability notice or draft liability notice should be given when planning permission is granted and then a fresh or revised liability notice when the development is “first permitted”. The second “go” at setting out the CIL liability may be needed in any event if there has been a change in the local CIL rate between the grant of the planning permission and the development becoming “first permitted”. It may also be affected by a change in the buildings which in turn affects the deductions from the gross internal area of the development that are permitted. It should be noted that this timing issue will not affect the impact of indexation as that is related to the date of the grant of the planning permission and not when the development is first permitted nor when the development actually commences.

13.4 Required form – there is a prescribed form for this notice and the notice issued must be in that form or to “substantially the same effect”. It must include

13.4.1 a description of the chargeable development; 
13.4.2 the date of the issue of the notice; 
13.4.3 a statement of the chargeable amount; 
13.4.4 whether the chargeable amount is capable of being payable by instalments (including a copy of the authority’s policy); 
13.4.5 state the amount of any charitable relief or relief for exceptional circumstances or exemption for residential annexes or extensions granted in respect of the chargeable development; 
13.4.6 where social housing relief or an exemption for self-build housing exemption has been granted then state the particulars of each person benefitting from the relief or exemption and the amount of relief each benefits from; 
13.4.7 the other information required by the prescribed form.

1226 Reg. 65(2)(a)  
1227 Reg. 65(2)(b)  
1228 Reg. 65(2)(c)  
1229 Reg. 65(2)(d)  
1230 Reg. 65(2)(da)  
1231 Reg. 65(2)(e)  
1232 Reg. 65(2)(f)(i) and (ii)  
1233 Reg. 65(1)(g)
Such a notice may contain errors such as names or addresses but still be held to be effective in appeals against surcharges.\textsuperscript{1234}

13.5 Service\textsuperscript{1235} – the liability notice must be served by the collecting authority on:-

13.5.1 the relevant person\textsuperscript{1236} who is

(a) any person who has submitted a notice of chargeable development;\textsuperscript{1237}

(b) any person applying for approval of any matter the subject of a condition to a phased planning permission requiring the obtaining of further approval before the development can be commenced;\textsuperscript{1238} and

(c) in all other cases the person who has applied for the planning permission.\textsuperscript{1239}

13.5.2 any person who has assumed liability;\textsuperscript{1240}

13.5.3 all owners of material interests in the site.\textsuperscript{1241}

The onus is on the authority to prove that the liability notice has been served. Often the authority will be able to prove that it was issued but not that it was posted.\textsuperscript{1242} Registered post or e-mail will be methods of service which provide evidence that the notice has been served but not ordinary post.\textsuperscript{1243} It will enable signed proof of delivery to be produced as has been done in one case.\textsuperscript{1244} In the event that the owner has changed address then the onus is on the owner to inform the authority.\textsuperscript{1245} Reliance has been placed on the Exacom system operated by some authorities to generate notices. However, even with a written statement that a particular notice was placed in the Out Tray that did not suffice to prove that the notice had been served.\textsuperscript{1246}

It has previously been held that sending an e-mail to an agent is not sufficient as an agent is not a relevant person within reg. 65(12) as the planning application had been

\textsuperscript{1234} APP/T5720/L/14/1200015 decision date 5th June 2015 para. 4
\textsuperscript{1235} Reg. 65(3) and see section 12.3 as regards service
\textsuperscript{1236} Reg. 65(a)
\textsuperscript{1237} Reg. 65(12(a)
\textsuperscript{1238} Reg. 65(12)(b)
\textsuperscript{1239} Reg. 65(12)(c) which in relation to planning permissions granted before 1\textsuperscript{st} September 2019 or a liability notice or revised notice whenever issued (reg. 1(3) of 2019 (No. 2) Regulations referred to applicants for a phased planning permission but was changed by reg. 5((7) of the 2019 (No. 2) Regulations to applicants for any planning permission. The earlier limited definition was a mistake.
\textsuperscript{1240} Reg. 65(3)(b)
\textsuperscript{1241} Reg. 65(3)(c)
\textsuperscript{1242} APP/F0114/L/17/1200096 decision date: 19\textsuperscript{th} June 2017 at para. 3 and APP/B1740/L/17/1200156 decision date: 24\textsuperscript{th} May 2018. Proof of posting still required if failure in re-directing of post due to fire may have been reason not received by appellant – APP/X4725/L/18/1200208 decision date: 28\textsuperscript{th} November 2018
\textsuperscript{1243} APP/B1255/L/15/1200022 decision date: 5\textsuperscript{th} June 2015 - para. 4
\textsuperscript{1244} APP/E0345/L/18/1200227 decision date: 10\textsuperscript{th} April 2019
\textsuperscript{1245} Para. 3
\textsuperscript{1246} APP/G5750/L/17/1200092 decision date: 27\textsuperscript{th} September 2017 at para. 2 and APP/U5930/L/17/1200147 decision date: 15\textsuperscript{th} May 2018
made by the appellant and not the agent. However, that approach is no longer followed as what is required is that the e-mail is sent to an e-mail address provided by the owner for the purpose and if, for example, that is the agent’s e-mail address provided in the planning application that e-mail address can be used by the authority. The liability notice need not be attached to or set out in the e-mail. It is possible for the e-mail to include a link to the documents associated with the relevant Decision Notice including the liability notice although it is preferable that mention of this is made in the e-mail. Posting the liability notice to an agent will not suffice. However, sending the liability notice by e-mail to the correct e-mail address but marked “FAO” the wrong person is not valid service. This was emphasised by the statement in the e-mail that it and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed.

When served on a previous owner this will not allow a surcharge to be avoided if the liability notice was registered as a local land charge because such registration will bind the land and any owner and the owner of the property is deemed to have full knowledge of such burden. It will not bind the original owner so if the authority cannot prove service of the liability notice on that owner there will not have been valid service. Similarly if the original owner dies and no local land charge has been registered it will still be necessary to prove service on the deceased owner and that will require evidence of posting if post was the method of service used.

Surcharges imposed when an authority has not served a liability notice may be quashed if this may have prejudiced the owner. The risks of prejudice are that the owner is not alerted to the CIL liability or if alert to it is unaware of the precise amount of CIL which has to be paid.

13.6 Revised liability notices – a collecting authority has the power at any time to issue a revised liability notice. There are no pre-conditions to be satisfied. In one appeal it was argued that a liability notice was issued merely to help the owner and was not an official liability notice. As there was nothing to indicate that it was other than a valid liability notice it was held to be a revised liability notice.

It means that this is an easy means by which to correct any errors as well as accommodating any change. The collecting authority is only expressly obliged to issue

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1247 APP/F0114/L/17/1200096 decision date: 19th June 2017 at para. 4.
1248 APP/Z2830/L/17/1200116 decision date: 16th November 2017 and APP/N5090/L/18/1200164 decision date 3rd August 2018 and APP/G1250/L/18/1200171 decision date: 3rd August 2018
1249 Para. 2
1250 APP/E0345/L/17/1200120 decision date: 18th December 2017 at para. 1 considered as regards service by e-mail in APP/N5090/L/18/1200164 decision date 3rd August 2018 and APP/G1250/L/18/1200171 decision date: 3rd August 2018
1251 APP/G1250/L/19/1200250 Decision date: 19th June 2019
1252 APP/D1780/L/15/1200028 decision date: 5th November 2015 – para. 3; APP/P3610/L/16/1200055 decision date: 2nd December 2016; APP/Y1945/L/17/1200126 decision date: 12th December 2017; and APP/A1910/L/18/12100234 decision date: 15th May 2019
1253 APP/L3245/L/18/1200207 decision date: 21st February 2019
1254 APP/L5240/L/18/1200162 decision date: 20th June 2018
1255 APP/G5750/L/17/1200092 decision date: 27th September 2017 at para. 5
1256 Reg. 65(5)
1257 Development: Demolition of existing block of garages; erection of bedroom detached and provision of associated parking. Decision date 16th May 2016 para. 12
a revised liability notice in specified circumstances. These are if there is a change in the chargeable amount or the availability of a relief or exemption (whether on appeal or otherwise) or a change in the charging authority’s instalment policy relating to the chargeable development. My reading of this regulation is that the changes have to have occurred subsequent to the earlier CIL Liability Notice in order that the authority can be compelled to revise the existing CIL Liability. Accordingly reg. 65(5) does not impose a general obligation on an authority to revise when appropriate but only in those specified circumstances.

This point becomes material if after the CIL Liability Notice further information is supplied in support of a claim to reduce the CIL liability. Does the authority have to take it into account? There is nothing in the regulations covering this. It seems to me that the practical answer is that at least until the date that the development is commenced the authority should take into account further information. There is no express guillotine on providing information by a specific date and so I would expect that if there is a review or appeal the further information would be taken into account. If this correct then so also should the authority take it into account. It is in any event most unlikely that an authority would refuse to do so.

This point becomes more pressing if the further information is only supplied after the development has commenced. There must be a strong argument that as payment of the CIL liability has been triggered it is too late after that date to provide further information in support of a claim to reduce the CIL liability relating to matters existing before the date the development was first permitted. As regards deductions the onus lies on the person liable to pay the CIL. If that onus has not been discharged before the commencement of the development then an authority may argue that it is too late to attempt to do so after commencement. If this is not the case then it would be possible for further information to be provided at any time in the future and such a possibility would mean that the authority would not have certainty and in particular its budgets could have to be retrospectively varied.

In the Hourhope case supra the first batch of the further information in support of the claim to a demolition deduction was supplied together with the notice of commencement of the development which was to occur a few days after the notice was sent. The point considered above would have arisen but for Shropshire Council stating that it would consider the further information and if appropriate would revise the CIL Liability Notice. The Council never resiled from that position but did not accept that the demolition deduction was available. Had the Council resiled then the developer could have argued that the authority should be required to consider the further information as based on the Council’s statement the developer had a legitimate expectation. This in turn could have raised the issue whether the developer had relied on the statement and if not whether reliance was a necessary element of such a claim. The legitimate expectation point was raised in Hourhope’s case but did not arise for consideration because of the stance adopted by the Council. It is to be expected that in the light of the challenge by way of judicial review in the Hourhope case authorities will be much less willing to accept further information and to consider it after the commencement of development. To do so puts them at risk of a much more expensive,

1258 Reg. 65(4)(a) and (b)
formal and time consuming challenge and that certainly does not accord with the
general approach adopted when formulating the CIL regime.

This serves to emphasise to developers the importance of collating and providing the
full information at the right time and certainly before commencing the development.

Any revised liability notice must be served in accordance with para. 13.5 above.\footnote{Reg. 65(6).} It
will replace any previous liability notice in respect of the chargeable development
which will be automatically cancelled.\footnote{Reg. 65(8)} Currently a section 73 permission may result
in the need for a revised liability notice.\footnote{Reg. 65(9)} With the new abatement procedure for
subsequent standalone planning permissions\footnote{Reg. 65(10)} there may not be a need for the service
of a revised liability notice in such circumstances. The CIL liability arising from the
earlier planning permission will stand but be capable of being set off in part against the
subsequent CIL liability. This should not require the authority to revise the earlier CIL
liability.

13.7 \textbf{Ceasing to have effect} – a collecting authority may at any time withdraw a liability
notice as opposed to issuing a revised liability notice.\footnote{Reg. 65(7)} This is carried out by giving
notice of the withdrawal to all those persons on whom the liability notice was served.
In addition to withdrawal or a subsequent liability notice replacing it a liability notice
ceases to have effect

(i) if a liability to CIL would no longer arise in respect of the chargeable
development;\footnote{Reg. 65(9)}

(ii) subject to a clawback period applying (as to which see (iii) below) all outstanding
amounts of CIL in relation to the chargeable development have been paid to the
collecting authority;\footnote{Reg. 65(11)}

(iii) on the expiry of a clawback period in relation to charitable or social housing relief
or an exemption for residential annexes or self-build housing (if applicable) without the
occurrence of a disqualifying event or if a failure to comply with reg. 54D(2)(b)
(provision of additional evidence for purposes of self-build housing relief) has occurred
regarding which the collecting authority cannot take any further action.\footnote{Reg. 65(12)}

One consequence of a liability notice ceasing to have effect is that the local land charge
registered in relation to the chargeable development must be cancelled.\footnote{Reg. 65(13)}
13.8 **Response to liability notice** - liability notices are still taking some owners and developers by surprise. This is likely to be the case for some time as CIL continues to be introduced into new areas. Some points to be borne in mind on receipt of such a liability notice are:-

(i) The time limit for appeal runs from that notice and not the review decision. It is a period of 60 days and there is no power to extend it.

(ii) It is not possible to appeal once the development has started. However, the 2014 Regulations have relaxed this stringent limitation in the limited case of planning permissions granted after the commencement of development (see section 18.14 below).

(iii) No appeal can be made unless a request for a review has been made.

(iv) The appeal must be made even if the review decision has not been received within the 60 day time limit.

(v) Once an appeal is made if the development is started before a decision the appeal will lapse.

(vi) The liability notice does not trigger the liability to pay CIL. The commencement of the development does that.

(vii) Notice of intended commencement of development must be given prior to the start.

(viii) Failure to give that notice and/or late payment may result in stiff surcharges.

(viii) Upon receipt it is important to consider whether there is any justification for seeking a reduction in the amount of the CIL liability. If there is and this has not already been done then the supporting information needs to be collated as fully and quickly as possible and certainly before the commencement of the development.

**Important point** – service of a liability notice triggers the running of a very tight timetable for appeals and developers taken by surprise need to take advice promptly and to act fast.
H. Commencement notice

14.1 Commencement – a crucial event in the context of the operation of the CIL regime is the commencement of development.\textsuperscript{1268} It is this event which causes the CIL charge to become payable whether immediately or by instalments with payment dates determined from the commencement.

14.2 Importance of commencement notice – this has been a controversial area of CIL. Although not the only reason the main reason for this has been the loss of CIL exemptions if no commencement notice has been given properly before the commencement of the development. This has resulted particularly with self-build housing developments in wholly unexpected demand notices for large CIL charges. It has been recognised that this penalty for failing to give a proper commencement notice is disproportionate. It had been proposed that a period of grace be provided in which to give a commencement notice. Instead in relation to liability notices and revised liability notices issued under reg. 65 on or after 1\textsuperscript{st} September 2019 failure to give a proper commencement notice will result in a mandatory surcharge but not the loss of any exemption granted in relation to the development.\textsuperscript{1269} This is not retrospective and so in relation to liability notices and revised liability notices issued under reg. 65 before 1\textsuperscript{st} September 2019 any granted exemptions will be lost other than residential extensions.

The giving of a commencement notice in compliance with reg. 67 is important for a number of other reasons in the CIL regime. It avoids a surcharge being imposed.\textsuperscript{1270} It allows for the payment of the CIL liability by instalments rather than as an immediate once and for all payment.\textsuperscript{1271} Further such a notice informs the collecting authority that the CIL liability is about to fall due. It will also alert an authority to the need to monitor developments if exempt from CIL but subject to a clawback period.

14.3 Giving a commencement notice - before commencing the development authorised by a planning permission a commencement notice must be submitted on the collecting authority no later than the day before the day on which the chargeable development is to be commenced.\textsuperscript{1272} This is a strict requirement. A commencement notice stating an intended commencement date which is the same date as the submission of the commencement notice will not comply and will not be a valid commencement notice submitted in accordance with reg. 67. For instance, a commencement notice which stated that the intended commencement date was 19\textsuperscript{th} June 2017 was hand delivered to the collecting authority on 19\textsuperscript{th} June 2017. This was held not to be a valid commencement notice.\textsuperscript{1273} This was notwithstanding that the appellant stated that the intended commencement date was 20\textsuperscript{th} June 2017 which if stated would have caused the notice to be valid. In that appeal the appointed person considered that he could only look at the notice and not take account of any mistake. The same appointed person has taken into account a genuine mistake.\textsuperscript{1274}

\textsuperscript{1268} See section 6.3.2 above as to what constitutes commencement
\textsuperscript{1269} reg. 6 of the 2019 (No. 2) Regulations
\textsuperscript{1270} Reg. 83
\textsuperscript{1271} Reg. 70(1)(b)
\textsuperscript{1272} Reg. 67
\textsuperscript{1273} APP/D3315/L/17/1200129 decision date: 12\textsuperscript{th} December 2017 at para. 2
\textsuperscript{1274} APP/D1590/L/18/1200211 decision date: 7\textsuperscript{th} March 2019 of Mr. K McEntee and see section 14.4 below.
It is the date of submission which is important. This has given rise to a difference of approach in the appeals. Is the date of submission the same as the date of receipt or earlier when the sender has completed the process of sending?

Previously in appeals it was accepted that the date of submission could be earlier than the date of receipt. For instance a commencement notice dated 29th June 2016 stating that the intended commencement date is 4th July 2016 was said to have been posted 28th June 2017 but not received until 4th July 2016 which was the day the development was to start. The authority disputed that a valid commencement notice had been given. The appointed person held that it was valid as the date of submission was the important date and not the date of receipt.

More recently it has been treated as the date of receipt. In reaching this decision the appointed person, Mr. K McEntee, took into account the wording of reg. 83 which confers the power to impose a surcharge if the development is commenced before “the collecting authority has received a valid commencement notice”. Similarly in paragraph 053 of the CIL guidance it is stated that the commencement notice must be submitted and received a day before the commencement of the development. He also noted that the Oxford English Dictionary defines “submit” as to “present”. Account was also taken of the wording of the forms used by the council which referred to the notice being submitted and received. This had been signed by the appellant as having been read. When the wording of the form has been prescribed by the Secretary of State this is material but not if it is wording added by the authority itself. Taking all of this into account Mr. McEntee concluded that submission requires receipt in the possession of the authority.

The facts of that appeal were not simple. A commencement notice giving a commencement date of 19th April 2017 was submitted on that date possibly by post but it is not stated in the decision. The appellant claimed the commencement date was a mistake as the intention was to commence on 21st April 2017. The Council received it on 21st April 2017. There was uncertainty as to when the development commenced but even if it was on 21st April 2017 that was the date the commencement notice was received by the authority and so had not complied with reg. 67(1) which required it to by the day before the commencement.

It is not possible to jump the gun by giving a commencement notice before the grant of planning permission. It is not possible to give the reference number for the Liability Notice before the grant. Reg. 67 will not be complied with by such a notice and unless a compliant commencement notice is given after the grant a surcharge may be imposed

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1275 APP/L5240/L/18/1200174 decision date: 19th September 2018
1276 APP/H5960/L/16/1200049 decision date: 11th November 2016
1277 APP/D3315/L/17/1200094 decision date: 20th June 2017 at para. 1
1278 APP/L3245/L/17/1200114 decision date: 7th November 2017
1279 Para. 5
1280 Para. 6
1281 APP/G3110/L/16/1200051 decision date: 1st November 2017 and APP/X4725/L/18/1200188 decision date: 9th October 2018 at para. 3
and the other consequences of such a failure will flow. This means that it is impossible to give a commencement notice in respect of a retrospective planning permission. The development authorised by such a permission is deemed to commence at the date of the grant. In consequence there is no opportunity to give a commencement notice before the commencement of the development.

It can lead to confusion if the commencement of the development is delayed after a commencement notice has been given. It was considered in an appeal but in that case the commencement notice specified a date the same day as the notice and there was no notice of when it was posted. It was received the same day as an inspection which discovered that works had started. Not surprisingly the breaches of failing to serve a valid commencement notice and an assumption of liability notice were upheld. In such circumstances the sensible course of action would be for the owner to give a fresh updated commencement notice which will cause the earlier one to cease to be effective.

There is no requirement to serve such a notice if the development:

(i) is a minor development within reg. 42;

(ii) the chargeable amount in relation to it is zero; or

(iii) no CIL is payable in relation to the development because an exemption for residential extensions was granted. As discussed in section 11.6.6.1 above the exclusion of developments in respect of which the exemption for residential extensions has been granted has led to a sharp difference in approach between authorities and between central government and those authorities treating the failure to serve a commencement notice as a cause for the loss of the exemption.

In cases in which a commencement notice is required the onus lies on the person liable to pay CIL to give a commencement notice and production of a copy of the notice is not sufficient evidence without evidence that it was posted. It is not enough that the appellant provides evidence that he intended to submit a commencement notice evidence must be provided that the appellant actually did so.

14.4 Form – the notice must be in writing submitted to the collecting authority and in a form prescribed by the Secretary of State or to substantially the effect.
form which has been prescribed. The forms will usually be found by a link on the authority’s website or are available on the Planning Portal website.

To be valid the notice must comply with reg. 67(2). The notice must:

(i) identify the liability notice in respect of the chargeable development;

(ii) state the intended commencement date of the chargeable development; and

(iii) include the other particulars specified or referred to in the form.

The intended commencement date stated in the commencement notice will normally be a date subsequent to the date of the notice and before the date of the actual commencement of the development. Cases have been occurring when the intended commencement date specified in the commencement notice has been earlier than the date of the notice or the same date. How is the authority to respond to such a commencement notice? Obviously, if the date specified is correct then the notice is an invalid commencement notice as the requirements of reg. 67(1) has not been complied with. If the specified date is an error and the actual date of commencement of the development is subsequent to the giving of the notice can the notice be a valid commencement notice pursuant to reg. 67?

In the CIL regime the intended date of commencement is important. It has to be specified in the demand notice; it determines which instalment policy of an authority or the Mayor of London applies to the development; and if the CIL liability is payable in full it is the date of payment of that CIL liability. The intended date of commencement is defined as “the intended commencement date of a chargeable development as specified in a commencement notice submitted under regulation 67.” In consequence this links the date specified in the commencement notice as the intended commencement date for those regulations. Neither a collecting authority nor a charging authority has the power to replace the date specified in a valid commencement notice. The only power for a collecting authority to deem a commencement date is conferred by reg. 68 which operates if either no commencement notice is given or the development actually commenced before the date specified in the commencement notice. It does not operate if there is a commencement notice which incorrectly states the intended commencement notice. The CIL regime does not provide for the possibility of a valid commencement date specifying a mistaken intended commencement date.

\[\text{Submission of only the first page of Form 6 is not sufficient} - \text{APP/D33315/L/17/1200138 decision date: 6th March 2018}\]

\[\text{Reg. 67(8)}\]

\[\text{Reg. 67(2)(b) – it has been pointed out that this does not require the Liability Notice reference number but it is one of the particulars required in the details of the development - APP/D33315/L/17/1200138 decision date: 6th March 2018}\]

\[\text{Reg. 67(2)(c)}\]

\[\text{Reg. 67(2)(d)}\]

\[\text{Reg. 69(2)(d)}\]

\[\text{Reg. 70(3)(b), (4)(b) and (c), (5)(b), (5A)(b) and (6)(b)}\]

\[\text{Reg. 70(7) and 71(2)}\]

\[\text{Reg. 2}\]
In the prescribed form for a commencement notice there is a declaration by the server that “By signing this I acknowledge that if the intended date of commencement changes, failure to notify the CIL collecting authority before development commences of this date with a new commencement notice will result in the CIL amount being due for payment in full on the date of commencement. I also acknowledge that failure to notify the CIL collecting authority of the intended date of commencement by submitting a commencement notice in advance of this date may result in the CIL collecting authority imposing a surcharge of 20% of the amount of CIL due for payment, up to a maximum of £2,500.”

A genuine change of date requires a new commencement notice which causes the earlier commencement notice to cease to be effective.\textsuperscript{1300} Bearing in mind that in such circumstances the date specified in the commencement notice is the intended commencement date and it is not the correct date then it is arguable that the CIL regime operates by requiring a fresh commencement notice complying with the requirements of reg. 67 to be given.

This point has been considered in surcharge appeals. In the first appeal case the notice was submitted on 3\textsuperscript{rd} July 2018 and specified the date of 3\textsuperscript{rd} July 2018 as the intended commencement date.\textsuperscript{1301} The authority viewed the notice to be invalid and imposed a surcharge for failure to serve a commencement notice pursuant to reg. 83. The appeal was against the surcharge and the appellant argued that the notice was valid because the actual day on which the development commenced was 4\textsuperscript{th} July 2018 and, therefore, subsequent to the giving of the notice. Mr. McEntee noted that reg. 83(1) allows for a surcharge to be imposed where a chargeable development is commenced before the collecting authority has received a valid commencement notice. He then went on to state that it “would appear that the Council are content to accept the actual commencement date as 4 July 2018, as evidenced by the Demand Notice. That being the case, as there is no dispute that the Council received the CN on 3 July 2018, with a development commencement date of the same day (to be taken as the intended commencement date as per Regulation 67(2)(c)), it follows that a CN was submitted before development actually commenced.”\textsuperscript{1302} He, therefore, concluded that the alleged breach had not occurred and so the appeal was allowed. This outcome is similar to that in an earlier surcharge appeal when the date stated was 11\textsuperscript{th} July 2016 but was meant to be 13\textsuperscript{th} July because the owner had agreed with the next door restaurant that no works would take place on a Saturday. This commencement notice was held to be valid.\textsuperscript{1303} There has to be evidence showing the mistake otherwise in the absence of such evidence the date in the commencement notice will be conclusive.\textsuperscript{1304}

This decision was followed by the same appointed person in an appeal in which the commencement notice was submitted on 5\textsuperscript{th} December 2018 stating a commencement date of 18\textsuperscript{th} November 2018. This resulted in a surcharge for failing to submit a valid commencement notice in accordance with reg. 67(1). The appellant argued that a mistake had been made because the only works carried out were the installation of central heating and internal electrical works which did not constitute material

\textsuperscript{1300} Reg. 67(6)
\textsuperscript{1301} APP/D1590/L/18/1200211 decision of Mr. McEntee on 7\textsuperscript{th} March 2019
\textsuperscript{1302} Para. 3
\textsuperscript{1303} APP/H5960/L/16/1200049 decision date: 11th November 2016 – para. 6
\textsuperscript{1304} APP/L5240/L/17/1200159 decision date: 21\textsuperscript{st} June 2018 at para. 3
operations so the development had not commenced. This argument was accepted and the appointed person concluded that there had been no failure.\footnote{APP/L5240/L/18/1200243 decision date: 6th June 2019 at para. 3}

The difficulty is that reg. 83(1) requires not a notice to be given before the day that the actual commencement occurs but a commencement notice which is defined as a notice given pursuant to reg. 67.\footnote{Reg. 2} I do not consider that a notice specifying an earlier date than the date of the notice or the same date can be a valid commencement notice as it is not given in accordance with the requirements of reg. 67. In such circumstances the remedy is for the server to give a notice which complies with reg. 67. If the appeal decision is correct then the administrative burden on the authority is increased significantly and an appreciable degree of uncertainty is introduced to the operation of the CIL regime. What will constitute the intended commencement date for the regulations the operation of which rely on that date? What steps can be taken by the authority to deal with that when there are no regulations which cover the situation? Can the rationale of the appeal decision stand as against the basis of the decision in R (oao Shropshire Council) v SSCLG and Mr Jones.\footnote{[2019] EWHC 16 (Admin) see section 14.6 below}

\section*{14.5 Service of Form 6 – the commencement notice as with other CIL notices and documents can be served in accordance with reg. 126.\footnote{As to which see section 12.3 above} It must not only be submitted to the collecting authority but also to each person known to the server as an owner of the relevant land.\footnote{Reg. 67(3)} Whether it has been sent by e-mail to an authority can be checked by software.\footnote{APP/X4725/L/17/1200123 decision date: 5th December 2017}}\footnote{APP/W0340/L/18/1200222 decision date: 28th March 2019 at para. 4}

In one appeal the commencement notice was invalid for a number of reasons. It was sent on the day of the stated intended commencement date and did not include the reference number of the liability notice. In addition it was sent to the Building Control Department which was considered to be a failure because that department is not part of the collecting authority which operates a different statutory system to the CIL regime.\footnote{APP/D1590/L/16/1200060 decision date: 19th January 2017} This would suggest that a properly completed commencement notice sent to the Building Control Department would not be regarded as complying with reg. 67 which would be harsh.

\section*{14.6 Alternative manner of giving notice – in some cases in which a formal commencement notice has not been given an attempt has been made to argue that an alternative communication suffices to comply with the requirement to give a commencement notice no later than the day before the actual commencement. For example, communications to the building control department that the development is about to commence or notice that demolition is about to start have been relied on as satisfying reg. 67 and constitute a commencement notice.\footnote{Para. 2} In that appeal in which a demolition notice had been given it was stated that it is required under section 80 of the Building Act 1984 in order that the Building Control Officer can consider whether any precautions or conditions are needed for the protection of the public or property\footnote{Para. 2}. That\footnote{APP/D1590/L/16/1200060 decision date: 19th January 2017}}
“building control system is a separate statutory regime to that of CIL, which is a very formulaic process and makes clear, as explained in the Liability Notice, that a valid Commencement Notice must be submitted before development commences. A demolition Notice does not act as a substitute for a Commencement Notice.”

The successful appeal involved a Mr. Jones who had been granted an exemption for self-build housing by Shropshire Council in respect of a planning permission for a detached house with a triple garage. By an e-mail sent on 10th July 2015 to a Council official who had been dealing with Mr. Jones over a section 106 planning agreement Mr. Jones stated that site clearance works will begin on 11th July. On 13th August 2015 the Council issued a demand notice for £39,361.43 on the ground that no commencement notice had been served and so the benefit of the exemption had been lost.

It was argued on behalf of Mr. Jones that even if in mandatory terms non-compliance with statutory requirements was not automatically fatal and that substantial compliance was enough so that his e-mail was sufficient to be a commencement notice. This argument was accepted on a statutory appeal. The appointed person, Mr. Ghafoor, considered that it was sufficient that the e-mail referred to the site, the chargeable development and “unequivocally specified the intended date of commencement.” In his judgment the e-mail in substance had the same effect as Form 6. In consequence the alleged breach of failing to give a commencement notice no later than the day before the commencement of the development was held not to have occurred so that Mr. Jones would be entitled to retain the benefit of the exemption for self-build housing. This decision was challenged by the Council by judicial review as there is no appeal procedure in respect of an appointed person’s decision.

Mr. Ockelton sitting as a judge of the High Court decided in R (oao Shropshire Council) v SSCLG that a commencement notice has to comply with regulation 67 of the 2010 Regulations because such a notice is defined in reg. 2 as a notice submitted under reg. 67. The same argument as before the appointed person was put on behalf of Mr. Jones that there had been substantial compliance by the owner which sufficed in accordance with authorities such as R v Soneji and R v Secretary of State for the Home Department ex parte Jeyeanthan. The learned judge considered that such an approach to the issue in this case was wrong. At para. 29 relying on the Court of Appeal decision in R (Winchester College) v Hampshire County Council he stated:

“Jeyeanthan helps to answer the question what is to happen if a person undertaking a particular act has failed to comply with all the requirements prescribed for that act. But that can be a relevant question only if the actor has actually engaged in the regulated conduct. If the path of compliance has not, so to speak, been trodden at all, there is

1314 Mr. K McEntee at para. 3 and see APP/C3620/L/18/1200214 decision date: 17th January 2019
1315 APP/L3245/L/17/1200095 Para. 9
1316 Para. 10
1317 [2019] EWHC 19 (Admin)
1318 [2006] 1 AC 340
1319 [2000] 1 WLR 354
1320 [2008] EWCA Civ 431

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likely to be little scope or need for analysis of error or omissions in attempted or partial compliance.”

His reasoning was further explained in para. 37 where it is stated that: “In my judgment, a provision of the Regulations, which received scant attention in the submissions before me, places the present case in the same frame as Winchester. It is the provision to which I have already referred in reg 2: "commencement notice" means a notice submitted under regulation 67'. Given the provisions of reg 67, a separate definition of what amounts to a commencement notice would not have been necessary unless to say something in addition to those provisions, and if Ms Sheikh is right in her submissions it would not have been necessary. The definition chosen is not 'a notice informing the charging authority of the date of commencement of the development': it is "a notice submitted under regulation 67". On the ordinary meaning of the words it is extremely difficult to draw a conclusion other than that a notice that does not comply with the requirements of reg 67 (as to both content and timing) is not a commencement notice at all for the purposes of the Regulations.”

Both the statutory interpretation and the Winchester point precluded the nuanced approach to non-compliance from applying and so the appointed person’s decision was quashed. It may be that this decision will be subject of an appeal. In a more recent statutory appeal decision an attempt to reply on a demolition notice as having effect as a commencement notice was rejected.\footnote{APP/W0340/L/18/120022 28\textsuperscript{th} March 2019} The appointed person, Mr. McEntee, stated:\footnote{Para. 4} “In this case, it appears that the appellant submitted a Commencement Notice on 15 March 2018, but unfortunately it was sent to the Building Control Department on the same day as that of the stated intended commencement and it did not identify the Liability Notice as required by Regulation 67(2)(b). Therefore, the notice was invalid. The Building Control Department is not part of the CIL Collecting Authority and the building control system is a separate statutory regime to that of CIL, which is a very rigid and formulaic process. The necessary forms needed to be submitted to the Collecting Authority for the requirements 67(1) to be met.” As the notice in this case was not given later than the day before the day on which the development actually commenced it could not be a valid commencement notice but the statement regarding the difference between the Building Control Department and the administration of the CIL regime is a salutary reminder to owners and developers.

### 14.7 Factors to consider before giving commencement notice

It must be appreciated that when the development is commenced the right to have a review of the CIL liability or to appeal is automatically lost save in respect of developments authorised by a planning permission granted subsequent to the commencement. This means that if there is still a live issue regarding the CIL liability at best it can be addressed by judicial review and at worse the right to challenge the liability or the amount will be lost. As discussed in section 12.4 above the only prudent course for a developer to adopt is to ensure that the full information supporting a claim to reduce CIL is provided to the authority as soon as possible and certainly before the commencement of the development. There will be financial consequences flowing from the deferment of the
commencement of the development and these may outweigh the amount of CIL at issue and so mean that commencement is the sensible answer. However, even if this is the case an attempt should be made to put the information in as soon as possible. It may be that as in the Hourhope case it can be agreed with the authority that the information will be put in later although such agreement is much less likely to be given now after that case. The amount of the CIL liability will not be changed dependent on when the development commences. It is an amount which is fixed and will not, for instance, be increased by the application of indexation.

14.8 Failure to give commencement notice – if no such notice is given or it is given late and the chargeable development commences without a notice having been properly given then the collecting authority may determine the date on which the development was commenced. In fixing the deemed commencement date the authority may use communications from the owner such a date specified in a demolition notice. The date given in an invalid commencement notice can be used even if the pre-commencement conditions had not been satisfied at that date. The failure to serve a commencement notice properly may give rise to a surcharge. In relation to liability notices and revised liability notices issued under reg. 65 before 1st September 2019 many CIL exemptions will be lost. Failure to give a commencement notice before the commencement of the development will lose the ability to pay the CIL by instalments if otherwise available. Also the CIL liability must be paid by money and no agreed land payment or infrastructure payment will be acceptable.

14.9 Mitigation of failure – due to the importance of serving a commencement notice in compliance with reg. 67 there have been many appeals which have sought to mitigate the failure to give a commencement notice. This has been particularly so in cases in which the exemption for self-build housing has been granted but then lost due to the failure to serve a commencement notice. With one exception such attempts have met with sympathy but have failed. The one exception is where the liability notice was not served until 8th June 2018 when the planning permission had been granted on 22nd June 2017. This failed to meet the requirement of reg. 65(1) that the liability notice be served as soon as practical after the day on which the planning permission first permits development. The appointed person considered that this denied the appellant of the opportunity to give a commencement notice as the appellant could not identify a liability notice and so the appointed person could not be satisfied that the alleged breach had occurred so the appeal was allowed and the surcharge quashed. In a slightly more recent appeal the delay in serving the liability notice was six years and four months in a case in which the planning permission was granted on appeal when CIL was

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1324 Reg. 68 and see section 8.3.3 above as regards developments authorised under a general consent
1325 APP/D1590/L/16/1200060 decision date: 19th January 2017 para. 4
1326 APP/G2245/L/18/1200192 decision date: 15th November 2018
1327 Reg. 83 and see section 19.3.4 below
1328 Changed by reg. 6 of the 2019 (No. 2) Regulations
1329 Reg. 70
1330 Reg. 74(6)
1331 APP/L5810/L/18/1200197 decision date: 6th December 2018 at paras 3-5
introduced during the course of the planning appeal. Again the appeal was upheld and the surcharge quashed.\textsuperscript{1332}

The failed mitigating arguments have included

(i) ignorance of requirement – it has not been understood that the onus lies on the owner/developer but that is not a sufficient ground for avoiding a surcharge.\textsuperscript{1333} The outcome will be the same if the owner is aware of the CIL regime but finds it hard to understand.\textsuperscript{1334} A more refined misunderstanding was that it was only needed for habitable buildings and so did not apply to work on a garage.\textsuperscript{1335}

(ii) stupid oversight – whether a genuine mistake or not there is no escaping the consequences of a failure.\textsuperscript{1336}

(iii) difficulty contacting authority and could not find form on website – failed notwithstanding unfortunate difficulties as onus on owner.\textsuperscript{1337} In another appeal an alternative unsuccessful claim was made that the owner was informed in a telephone conversation with a Council officer that the Council would send a commencement notice (form 6) to complete.\textsuperscript{1338} In another case the liability notice stated that such a form would be sent with that notice but it was not. The appointed person considered that the owner should have contacted the authority to obtain the form and was responsible for the failure to give a commencement notice.\textsuperscript{1339}

(iv) agent’s failure – the contention by appellants that they had been let down by their architects made no difference.\textsuperscript{1340}

(v) clearing site – it was claimed that the demolition was only to clear the site ready for the development. This failed on the basis that demolition is demolition.\textsuperscript{1341}

(vi) delay in enforcing – a delay of five years in enforcing the CIL liability was not material in an appeal against failure to give a commencement notice.\textsuperscript{1342} Similarly the death of the appellant’s husband who looked after her planning matters did not affect the outcome.

(vii) delay in granting – if there has been an undue delay in granting planning permission which has the effect of subjecting it to the CIL regime when if granted earlier it would not have been.\textsuperscript{1343}

(viii) Liability Notice served on previous owner – the appellant claimed that the liability notice was not in the papers handed over on the purchase of the property but as the

\textsuperscript{1332} APP/U5360/L/18/1200230 decision date: 18\textsuperscript{th} April 2019

\textsuperscript{1333} APP/Q1255/L/16/1200036 decision date: 8\textsuperscript{th} July 2016 - para. 1 and APP/P2365/L/16/120065 decision date: 3\textsuperscript{rd} March 2017 at para. 3

\textsuperscript{1334} APP/M0933/L/17/1200112 decision date: 22\textsuperscript{nd} November 2017

\textsuperscript{1335} APP/W0340/L/17/1200141 decision date: 7\textsuperscript{th} February 2018

\textsuperscript{1336} APP/W0340/L/17/1200154 decision date: 23\textsuperscript{rd} May 2018

\textsuperscript{1337} APP/A1910/L/16/1200056 decision date: 11\textsuperscript{th} January 2017

\textsuperscript{1338} APP/X4725/L/16/1200077 decision date 10\textsuperscript{th} March 2017 para.3

\textsuperscript{1339} APP/W0340/L/17/1200121 decision date: 5\textsuperscript{th} December 2017

\textsuperscript{1340} APP/W0340/L/18/1200177 decision date: 19\textsuperscript{th} September 2018

\textsuperscript{1341} APP/X4725/L/16/1200071 decision date: 24\textsuperscript{th} May 2017

\textsuperscript{1342} APP/N5660/L/17/1200122 decision date: 11\textsuperscript{th} January 2018

\textsuperscript{1343} para. 1-2 APP/H1840/L/17/1200148 decision date: 27\textsuperscript{th} March 2018
notice had been registered as a local land charge the appellant was deemed to have full knowledge.\(^\text{1344}\)

(ix) waiting revised liability notice/outcome of appeal – an appellant had e-mailed the authority to point out that the CIL liability in the Liability Notice had been calculated incorrectly but the revised Liability Notice was not received until after the commencement of the development. It was held that the appeal could not succeed.\(^\text{1345}\) Similarly where the appellant was awaiting the outcome of an appeal against the CIL liability.\(^\text{1346}\)

(x) failure on the part of the authority - In an appeal against a surcharge imposed by Havant BC\(^\text{1347}\) the appellant had paid the CIL liability arising from the conversion of a single house into two houses over the telephone and claimed that they had been told that nothing more was needed. The Council’s answer was that the people that the appellants were talking to at the Council were not part of the Development Control section. The appointed person did not accept this but considered that the Council “have a corporate responsibility to ensure correct information is given out”.\(^\text{1348}\) If they had been given the correct answer or been referred to the correct section of the Council then the commencement notice would have been served on time. However, the relevant information was available on the Council’s website and on the CIL liability notice. In consequence although the appointed person considered that there were mitigating circumstances and had sympathy with the appellants the surcharge was upheld because the commencement notice was not served and there was a breach.

Similarly an appellant claimed that he was told that he did not have to pay CIL as he was a local resident but there was no written evidence of this.\(^\text{1349}\) In another appeal the appellant claimed that he had been told not to issue any further notices as the CIL was being looked into.\(^\text{1350}\)

Even if such complaints are justified they should be addressed through the authority’s established complaints procedure\(^\text{1351}\) and if this is not satisfactory then a case may be made to the Local Government Ombudsman.\(^\text{1352}\)

(xi) absence of warning in Liability Notice as to consequences of failing to give commencement notice – this was linked with the CIL liability requiring a nil payment but failed.\(^\text{1353}\)

(xii) works prior to full planning permission – following the grant of outline planning permission demolition works were carried out whilst a section 73 application was made

\(^\text{1344}\) APP/G1250/L/16/1200088 decision date: 16\(^{th}\) June 2017 at para. 1 and APP/Y1945/L/17/1200126 decision date: 12\(^{th}\) December 2017
\(^\text{1345}\) APP/L5240/L/18/1200186 decision date: 4\(^{th}\) October 2018
\(^\text{1346}\) APP/H1840/L/18/1200218 decision date: 26\(^{th}\) February 2019
\(^\text{1347}\) APP/X1735/L/14/1200017 decision date: 17\(^{th}\) July 2014
\(^\text{1348}\) Para. 5
\(^\text{1349}\) APP/P2365/L/16/1200065 decision date: 3\(^{rd}\) March 2017 at para. 2
\(^\text{1350}\) APP/K3415/L/17/1200137 decision date: 6\(^{th}\) March 2018 and APP/U5930/L/17/1200145 decision date: 11\(^{th}\) April 2018 confusing guidance given by Council
\(^\text{1351}\) APP/X4725/L/16/1200071 decision date: 24\(^{th}\) May 2017 at para. 2
\(^\text{1352}\) APP/L5240/L/18/1200186 decision date: 4\(^{th}\) October 2018 at para. 5
\(^\text{1353}\) APP/X4725/L/17/1200099 decision date: 16\(^{th}\) June 2017
to vary a condition and then a reserved matters application. It was argued that due to
the applications CIL was not payable and thus neither a commencement notice nor an
assumption of liability notice need be given. The section 73 permission did not change
the CIL liability so the development authorised by the original planning permission was
the chargeable development and the owner had been obliged to give the notices before
the demolitions.\textsuperscript{1354}

(xiii) delays at reception – an appellant’s attempts to hand deliver failed due to long
queues at the reception at the Council office but this did not overcome the failure to
deliver on time.\textsuperscript{1355}

(xiv) payment of CIL on receipt of liability notice does not preclude the need to serve
a commencement notice.\textsuperscript{1356}

(xv) waiting for invoice -the appointed person pointed out in rejecting the appeal that
the Liability Notice stated the amount of CIL due.\textsuperscript{1357}

(xvi) health issues preventing giving of commencement notice.\textsuperscript{1358}

14.10 Authority does not accept commencement date – a collecting authority may
determine that the commencement date is different from that stated in a commencement
notice if it has reason to believe that the development commenced earlier than that date
(reg. 68(b)). The LPA may carry out a site inspection to ascertain whether or not the
works have started as occurred in the appeal against a demand notice issued by Preston
City Council.\textsuperscript{1359} In that case the demand notice specified the date given in the
commencement notice and Preston Council produced photographs of the half-built
swimming pool in support of the contention that the work had started. Consequently
the CIL liability was payable. This is a distinct possibility if a claim for an exemption
may be affected by the commencement date.

The authority may rely on communications from the owner when determining the
deemed commencement date. In one appeal a demolition notice had been given to the
building control department which stated a date for the commencement of the
demolition works and this date was used by the authority to select the deemed
commencement date.\textsuperscript{1360}

14.11 Replacement or withdrawal of commencement notice - a commencement notice
can cease to be effective in one of two ways. It is possible for such a notice to be
withdrawn without any replacement notice taking effect.\textsuperscript{1361} This can take place at any
time before the commencement of the development. This is what had happened in one
appeal and the appellant failed to give a new commencement notice later but
commenced the development and so incurred a surcharge.\textsuperscript{1362}

\textsuperscript{1354} APP/R0335/L/17/1200103 decision date: 18\textsuperscript{th} October 2017
\textsuperscript{1355} APP/L5240/L/17/1200159 decision date: 21\textsuperscript{st} June 2018
\textsuperscript{1356} APP/H5960/L/18/1200196 decision date: 7\textsuperscript{th} November 2018
\textsuperscript{1357} APP/D1780/L/18/1200220 decision date: 12\textsuperscript{th} March 2019 and APP/L5240/L/1200237 decision date:
22\textsuperscript{nd} May 2019
\textsuperscript{1358} APP/L5810/L/18/1200223 decision date: 12\textsuperscript{th} March 2019
\textsuperscript{1359} APP/N2345/L/14/1200007 decision date: 5\textsuperscript{th} June 2014
\textsuperscript{1360} APP/D1590/L/16/1200060 decision date: 19\textsuperscript{th} January 2017 para. 4
\textsuperscript{1361} Reg. 67(7)
\textsuperscript{1362} APP/L3245/L/16/1200070 decision date: 4\textsuperscript{th} August 2017 at para. 13
Alternatively, a subsequent valid commencement notice can be given which will cause any earlier commencement notices to cease to have effect.\textsuperscript{1363} This is subject to the qualification in a case in which has an earlier commencement notice has ceased to have effect and then later the person who served that earlier commencement notice wants to implement the planning permission to which the earlier commencement notice related.\textsuperscript{1364} In those circumstances written notice must be given to the collecting authority that the earlier commencement notice is to have effect again before commencing the development relating to it.\textsuperscript{1365} It is not provided that this notice must comply with reg. 67. Upon receipt of this notice by the collecting authority the earlier commencement notice specified will revive and have effect whilst any other commencement notices previously received by the collecting authority in respect of the chargeable development shall cease to have effect.\textsuperscript{1366} This will mean that the intended commencement date is the date specified as such in the revived earlier commencement notice but due to the changes this may no longer be the correct date. What is not clear is whether the owner or developer is precluded from giving an effective fresh commencement notice by reg. 67(6A) specifying the correct commencement date.

\textbf{14.12 Notification} - The collecting authority must acknowledge receipt of such a notice.\textsuperscript{1367} The purpose for this acknowledgement is so the owner/developer knows that the authority has received the commencement notice and so it is safe to proceed with the commencement of the development without the risk of adverse CIL consequences. There is no obligation on the owner/developer to wait for the acknowledgement.\textsuperscript{1368} However, to commence the development after sending a commencement notice but before acknowledgement of receipt and without checking with the authority has been described as a high risk strategy by a number of appointed persons in appeal decisions.\textsuperscript{1369} In such circumstances the authority may not have received the commencement notice and thus the owner/developer will incur the adverse CIL consequences.

If charitable or social housing relief has been granted in respect of the chargeable development then the acknowledgement must state the date on which the clawback period ends assuming the development is commenced on the stated intended commencement date.\textsuperscript{1370}

\begin{itemize}
\item Reg. 67(6)
\item Reg. 67(6A)
\item Reg. 67(6B)(a)
\item Reg. 67(6B)(b)
\item Reg. 67(4)
\item Para. ??
\item APP/B1225/L/1200022 decision date: 5\textsuperscript{th} June 2015 at para. 5 and APP/Q1255/L/17/1200100 decision date: 20\textsuperscript{th} July 2017 at 3
\item Reg. 67(5)
\end{itemize}
I Computation of CIL

15. Calculation of CIL charge – as state above the focus is on the extent to which the development has resulted in an authorised increased internal area. What is important is the extent that the planning permission authorises development and not the extent to which it is actually carried out. Once the development is commenced then the full CIL will be payable (whether by instalments or a one off payment) regardless of the progress of the development. If the full development is not to be carried out or at least not in the short term then to avoid the full CIL liability it would be necessary to vary the planning permission. The owner/developer cannot reduce the amount of the CIL liability by opting not to complete the development once it has commenced.

Care has to be taken over how this area is determined. This is considered more fully in section 15.2. The basic formula is set out in section 15.1 below. To assist with the calculation some authorities have helpfully provided CIL calculators which can be downloaded from their websites. These will operate with the CIL rates applicable to that particular authority and so cannot be used for developments in other areas. One such authority is East Suffolk Council (combining the former Suffolk Coastal DC and the former Waveney DC) which currently has a calculator for each of the areas of the two former councils. By way of example, the calculator to be used for developments in the area formerly within the area of the Suffolk Coastal DC can be found at https://www.eastsuffolk.gov.uk/planning/community-infrastructure-levy/cil-rates-in-the-former-suffolk-coastal-area/

It must be borne in mind that it is sensible to check that these calculators take into account any recent changes particularly when matters such as social housing exemption are involved. The changes in relation to indexation introduced by the 2019 (No. 2) Regulations although much less than proposed will also take time to incorporate. The East Suffolk Council website has a table showing the effect of indexation on the individual CIL rates from the introduction of CIL.

15.1 Principal Formula - the basic formula for calculating the CIL liability, which has not changed despite the constant amendments, reflects the objective of applying the relevant CIL rate to the increase in the internal floor area subject to indexation. Until 1st September 2019 it was contained in reg. 40(5) but is now in para. 1(4) of Schedule 1.\(^\text{1371}\) Although the elements of the formula have not changed the manner in which the indexation elements have been determined has been changed by the 2019 (No. 2) regulations

15.1.1 The formula - is

\[
\frac{R \times A \times I_p}{I_c}
\]

Where —

R is the CIL rate in £/m2;

\(^{1371}\) Reg. 5(2) and Schedule 1 of the 2019 (No. 2) Regulations
A is the deemed net area chargeable at rate R, calculated in accordance with para. 1(6) in Schedule 1 (previously regulation 40(7)) (see section 15.2 – the formula is contained in 15.2.3 below);

IP - is the index figure for the calendar year in which planning permission was granted; and

IC - is the index figure for the calendar year in which the charging schedule containing rate R took effect

The key element in this formula is the net increase in the gross internal floor area. The latest changes introduced by the 2019 (No. 2) Regulations relate to indexation and are not as complicated as first proposed (see section 15.1.2 below as to their operation).

The formula is applied in respect of each of the CIL rates applicable to the development and the chargeable amount is the aggregate of the amounts of CIL chargeable at each of the relevant rates. The relevant rate is taken from the charging schedule in effect in the area in which the chargeable development is situated at the time the planning permission first permits the chargeable development. There is now one qualification to this. With effect from 1st September 2019 if outline planning permission is granted in an area which has a charging schedule in effect and before the date on which the permission first permits development a new or revised charging schedule comes into effect then the chargeable amount is determined by reference to the charging schedule in effect at the date the outline permission was granted. In such circumstances the indexation provisions will apply for IC the index figure for the calendar year in which that charging schedule took effect and not the new or revised charging schedule.

In the event that the chargeable amount is less than £50 it will be deemed to be zero.

15.1.2 Indexation – until 1st September 2019 indexation can be determined by reference to the national All-in Tender Price index but this has been subject to uncertainty and criticism. From that date the index figures are to be determined by para. 1(5) of Schedule 1 which brings a new bespoke index figure and provides:

“In this paragraph the index figure for a given calendar year is—

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1372 The reference to net area has been used to argue that it means something different from GIA and so the RICS Measuring Code should not be used. However this was rejected as the word “net” is used because of the possible deductions permitted by reg. 40 from the GIA - Para. 9 in Variation of condition [ ] (development in accordance with the approved drawings) of planning permission ref.[ ]…dated 3rd March 2017

1373 Para. 1(3) Schedule 1 previously reg. 40(4)

1374 Para. 1(3) Schedule 1 previously reg. 40(2).

1375 Para. 1(10) Schedule 1 and previously reg. 40(11)

1376 Para. 2(3)(a) Schedule 1 inserted by reg. 5(2) and Schedule 1 of the 2019 (No. 2) Regulations

1377 Para. 2(3)(b) Schedule 1

1378 Para. 1(2) Schedule 1 previously reg. 40(4)

1379 Replacing reg. 40(6) – reg. 5(2) and Schedule 1 to 2019 (No. 2) Regulations
(a) in relation to any calendar year before 2020, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;

(b) in relation to the calendar year 2020 and any subsequent calendar year, the RICS CIL Index published in November of the preceding calendar year by the Royal Institution of Chartered Surveyors;

(c) if the RICS CIL index is not so published, the figure for 1st November for the preceding calendar year in the national All-in Tender Price Index published from time to time by the Royal Institution of Chartered Surveyors;

(d) if the national All-in Tender Price Index is not so published, the figure for 1st November for the preceding calendar year in the retail prices index.”

There is one qualification which has been introduced by the 2019 (No. 2) Regulations. With effect from 1st September 2019 when an outline planning permission is granted and before the day on which the outline permission first permits development a new or revised charging schedule comes into effect then IC will be the index figure for the calendar year in which the charging schedule came into effect which was in effect at the date of the grant of the outline permission and not the new or revised charging schedule.1380

It had been proposed in the 2018/2019 consultation to provide for three indexes – BCIS (national All-in Tender Price Index), CPI (general index of consumer prices) and the local HPI index (the UK house price index for the authority’s area published by Office for National Statistics). It was further provided that as regards the local HPI index it would be averaged over three years. Instead what has been introduced is very much simpler.

15.2 Increase in gross internal area – A is the crucial figure in the principal formula because the charge is (subject to cases involving change of use as to which see section 9.4 above) on the amount by which the gross internal area of the building has been increased bearing in mind that this can in certain circumstances include areas already in existence at the date of the grant of planning permission. Which formula to be used to determine this figure is set out in section 15.2.3 below. When dealing with a development which is only subject to one rate of CIL the calculation will be straightforward and this aspect of the regime will involve the consideration of two features – the relevant CIL rate and the gross internal area (“GIA”). The calculation is less straightforward when dealing with a mixed user development which is subject to different rates of CIL. Although some authorities (such as Redbridge) have opted for the simplicity of a single CIL rate so far it is almost the norm to have quite complicated differential rates. A crucial element in the operation of the formula will be the measurement of the internal area.

15.2.1 Measuring the internal area –

15.2.1.1 General test - in measuring the gross internal area all internal parts will be included regardless of use subject to the special position applicable to social housing

1380 Para. 2 Schedule 1 inserted by reg. 5(2) and Schedule 1 of the 2019 (No. 2) Regulations
Certain buildings are excluded from the operation of Schedule 1. This is in line with the exclusion of certain types of development from the CIL regime. For the purposes of Schedule 1 “building” does not include - (i) a building into which people do not normally go; (ii) a building into which people go only intermittently for the purpose of maintaining or inspecting machinery; or (iii) a building for which planning permission was granted for a limited period. Effect was given to this in an appeal in which planning permission had been granted for a limited period in relation to a temporary Nissan hut on an equine establishment which was subsequently replaced for a full permanent planning permission. No deduction under Kr(i) was available because a building for these purposes does not include a building for which planning permission was granted for a limited period.

GIA is not defined in the CIL regulations and there is no guidance in the regulations aimed at assisting in determining what space is to be included in the calculation of the internal floor space. However, it is important to bear in mind that it is the gross internal area of the chargeable development. In consequence if the planning permission authorises the construction of a building with a number of units in it then the GIA to be ascertained is the GIA of the building and not the aggregate internal floorspace of the units. This point was made in example 15 of Appendix 1 to the former VOA CIL Appeals Guidance Note that in a block of flats the aggregate GIA of the flats may be significantly less than the GIA of the block because of the common parts. The chargeable development authorised by the planning permission is the building of the whole block and not just the individual flats so that the common parts need to be included in the determination of the floorspace. The GIA of the block will also be greater as the internal walls are included in contrast to a flat.

The measuring will be in accordance with the RICS Code of Measuring Practice (currently 6th Edition) (“RICS Code”) and in a CIL appeal decision the appointed person stated that “the definition of GIA in the RICS Code is the generally accepted method of calculation and I have therefore applied this definition in considering the extent of the net additional floor space”. This was also the view expressed in an appeal concerning a change of use from office to communal house.

A number of alternative measuring codes have been put forward by appellants but have all been rejected by the appointed persons. These include ‘The Valuation Office Code of Measuring Practice for Rating Purposes in England and Wales’; Net Sales Area

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1381 See section 11.3.5 above as regards the area of qualifying dwellings and section 11.3.2.2 as regards qualifying communal development
1382 Reg. 6(1)(a) and (b)
1383 Para. 1(10) Schedule 1 previously reg. 40(11)
1384 Development: Retention of a dwelling for occupation with equine enterprise. Decision date 18th June 2019 para. 12(ii)
1385 This is exemplified in Demolition of the [ ], change of use of offices and ancillary buildings…Decision dated 2nd January 2019.
1386 Development: Erection of single storey extension….erection detached part open fronted double garage .. dated 14th December 2013
1387 Para. 14
1388 Rejected in Erection of single storey extension…. erection detached part open fronted double garage dated 14th December 2013 para. 19
introduced by RICS in Appendix 8 and 21 of the RICS Code in respect of new build residential properties\textsuperscript{1389}, and Appendix 6 of the RICS Code\textsuperscript{1390}.

15.2.1.2 Specific inclusions – in the RICS Code there are lists of items which are set out as included and excluded from the core definition of Gross Internal Area which is defined “as the area of a building measured to the internal face of the perimeter walls at each floor level”. Amongst the items included are communal and service areas and accommodation used for such matters as providing heating or air-conditioning. Fuel rooms and tank rooms which are housed in a covered structure of a permanent nature will be included even if situate on the roof. Areas such as lifts (both wells and room), stair wells, toilets, showers, changing rooms and underground parking will be included. Also included will be any internal walls or partitions, chimney breasts, columns or piers (whether freestanding or projecting inwards from an external wall). Mezzanine floors with permanent access are included.\textsuperscript{1391} Voids over stairwells and lift shafts on upper floors are also included as are pavement vaults and areas with a headroom of less than 1.5 metres. Garages, loading bays and conservatories are expressly included.

Atria and entrance halls with clear height above are measured under the Code only at base level. In an appeal the plans included an area starting at ground floor level which is an internal enclosed double height space from the living room that cannot be assessed. The appointed person decided that the charging authority was wrong to include it both at basement level and ground floor level and should have adopted the RICS approach to entrance halls.

In the CIL guidance provided by Shropshire CC it states that it will include in the GIA the internal area of attic rooms if there is access by a permanent stairway but not if by means of a pull down ladder. This has been borne out by appeal decisions.\textsuperscript{1392}

15.2.1.3 Area not wholly enclosed - areas which are not wholly enclosed may give rise to issues. The RICS Code includes “internal open-sided balconies, walkways, and the like”. It excludes external open-sided balconies, covered ways and fire escapes. It was argued in one appeal that balconies recessed into the building so having enclosed sides and covering but being open externally should be excluded but this was rejected by comparison to loading bays which are not fully enclosed. The measurement of the area should be to the internal face of the external wall.\textsuperscript{1393}

\textsuperscript{1389} Variation of Condition 29…… dated 26\textsuperscript{th} March 2019 at para. 18. Demolition of the [   ], change of use of offices and ancillary buildings…dated 2\textsuperscript{nd} January 2019 – para. 14. The justification is that reg. refers to the gross internal area and not any modifications to it. NSA is used for valuation and marketing of new build residential properties.

\textsuperscript{1390} Rejected because relates to rating of property - para. 11 in Partial demolition of existing [ ] building and erection of a new [ ] dwelling dated 17\textsuperscript{th} June 2016

\textsuperscript{1391} See section 10.4 above

\textsuperscript{1392} In Conversion of existing house into 4 No. flats…dated 29\textsuperscript{th} January 2019 the issues was whether the loft area of an existing house was to be included in the GIA. The appellant claimed it should be because the area was boarded, had electric lighting and a large window. This was rejected by the appointed person because the area was accessed by a loft ladder which he did not regard as a permanent staircase (para. 14). Similarly, at para. 29 in Demolition of the [   ], change of use of offices and ancillary buildings…dated 2\textsuperscript{nd} January 2019.

\textsuperscript{1393} Para. 28 in Development: Demolition of existing building and erection of new [ ] building comprising [ ] apartments. Decision date: 26\textsuperscript{th} February 2019
In the appeal mentioned in section 15.2.1.1 above one of the issues raised was whether the internal floor area of a garage described as a car port should be taken into account. This garage was enclosed by three walls but with a wholly open front. The appointed person determined that the “car port accommodation” fell within the definition of GIA. The opening to the car port was bounded to either side by a small structural wall which provided a surface up to which the GIA could be assessed. The decision is really a determination that the building constitutes a garage. In that case the GIA exceeded 100 square metres and so did not qualify for the minor works exemption. A similar decision was given in another appeal in which the car port had four partial walls on four sides with a roof. If carried out now it would probably qualify for the residential extension exemption.

A similar issue arose with regard to an appeal concerning a development raising the height to the section of an existing building. There was a roadway with covered loading bays which was enclosed on two sides and had structural columns supporting three storeys above. The appointed person considered that it was originally a covered roadway combined with a loading area. It was referred to as a tunnel. This area was to be developed with more enclosure and the rerouting of the roadway to the north of the building. The appointed person considered both the RICS Code and the VOA Code as regards open sided areas and reached the decision that the original layout of the combined roadway and loading bays was included in the GIA of the building under both codes. It was noted in particular that the RICS Code included internal open-sided walkways and the like and also loading bays both of which were applicable to the case. In consequence the development did not increase the GIA save for a new covered loading bay added to the building. It had roller shutter doors on to the relocated road and so was definitely to be included in the GIA but that area was within the minor works exemption.

Undercroft parking raises a similar issue. In an appeal the parking area is located on the ground floor under the rear of the building which is supported by pillars. Two sides are wholly open, one side is two thirds open and one side walled. It was held that as the parking area is under a building and not a canopy it should be treated as part of the building and should be measured up to the internal face of the pillars at ground floor level. The same outcome was reached in an appeal concerning undercroft parking at ground level accessed from another building and which was covered by a podium on which the building stood and with side walls although not complete. It was argued that the undercroft could not be part of a building because it did not have a floor. It seemed it was at ground floor level and may have had a tarmac or concrete surface. Reliance was placed on the authority’s CIL Viability Study but the appointed person considered this to be different from calculating CIL under reg. 40. It was held that

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1394 Para. 16/18
1395 Para. 9 Development: Conversion of barns to provide…six..cottages Decision dated 2nd April 2015 – para. 11
1396 See section 11.6 above
1397 New …involving raising the height to a section of existing building…dated 15th December 2013
1398 Para. 32 in Development: Demolition of existing building and erection of new [ ] building comprising [ ] apartments..Decision date: 26th February 2019
1399 Para. 21 in Variation of Condition 29…… Decision date 26th March 2019
1400 Para. 17
there was a floor and the type of covering is immaterial. What was there suffices as it would in a warehouse.  

15.2.1.4 **Specific exclusions** - the width of the exterior wall will be excluded as will any external open-sided balconies and fire escapes. In addition the RICS Code excludes canopies, voids over or under structural, raked or stepped floors. Greenhouses, garden stores, fuel stores and the like in residential properties are also excluded. When the exclusion covers free standing structures which constitute buildings then these could be included by the authority. For example, bicycle stores have been included. Voids in roof space which have no flooring and no access have been held by an appointed person to be excluded from the GIA of the chargeable development.

There is a difference between the RICS Code and the Code of Measuring Guide provided by the Valuation Office Agency for rating purposes which excludes from GIA open balconies, open fire escapes, open-sided covered ways, open vehicle parking areas, terraces and the like, minor canopies, any area with ceiling height of less than 1.5m (except under stairways), and any area under the control of service or other external authorities. The RICS Code in contrast includes any area under the control of service or other external authorities and any area with a headroom of less than 1.5 metres. In the appeal mentioned in section 15.2.1.1 this was remarked on by the appointed person who followed the RICS Code which does not exclude such areas. It was noted that the VOA guide was for the purposes of rating. This is supported by an appeal in which one of the grounds for the appeal was that the charging authority had included second floor space which had less than 1.5 metres headroom within the computation of GIA. The appointed person applied the RICS Code which expressly includes such areas.

Large blocks of flats can give rise to a number of issues as to what areas are to be included in the GIA of the block. External corridors which are enclosed have been included as different from walkways as have enclosed staircases. In the same appeal risers and meters were included in the GIA because they were viewed as enclosed parts of the building rather than projections.  

15.2.1.5 **Car parking space** – in example 18 of Appendix 1 to the VOA’s former CIL Appeals Guidance Notes the question is raised as to how basement car parking is to be dealt with when determining the GIA of a block with mixed office and residential use.

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1401 Para. 21
1402 Garden wooden structures have been excluded when determining the area of the demolition deduction as akin to garden stores – para.10 Development: [ ] new semi-detached dwellings following the demolition of the existing dwelling. Decision date: 2nd January 2019
1403 Para. 24 in Variation of condition [ ] (development in accordance with the approved drawings) of planning permission ref.[ ]…dated 3rd March 2017
1404 Development: Erection of two 2 bed maisonettes. Decision date 1st November 2016 – para 13
1405 Areas under 1.5 metres in height included – para 11 in Partial demolition of existing [ ] building and erection of a new [ ] dwelling dated 17th June 2016
1406 Development: Part two storey/part single storey front extension incorporating a new garage with accommodation over…dated 15th December 2013
1407 Para. 23 and 25 in Variation of condition [ ] (development in accordance with the approved drawings) of planning permission ref.[ ]…dated 3rd March 2017
1408 Para. 22
Three options are considered:

(i) the first is that the basement car park is disregarded. However, the planning permission will have authorised the whole block including the car park so the GIA should include the basement area as it is part of the chargeable development. This then leads on to the question as to how the internal floor area of the basement is to be charged to CIL.

(ii) the second option is to include the basement’s internal area and for the purposes of charging CIL apportion the basement area between the office use and the residential use in the proportions that the office and residential areas bear to each other. So that if the residential area is twice that of the office area then the basement area is apportioned one third to the office area to be charged at the office CIL rate and two thirds apportioned to the residential area to be charged at the residential CIL rate.

(iii) the third option would be to apportion the basement area in the proportion to which the office occupants and the residential occupants are permitted to use the car parking spaces in the basement.

If the planning permission includes conditions regarding car parking then there is a justification for this approach rather than that in the second option. For example it could be specified that all the car parking is for the residential occupants rather than the commercial. Account needs to be taken of this condition as it is part of the formulation of the chargeable development. In such circumstances the expectation would be that the whole of the basement area would be charged at the CIL rate applicable to residential use. On the other hand if the division of the use of the basement car park between residential, and commercial occupants is dictated by the landlord then there is less justification to take that into account.

A fourth option not suggested by the VOA is that if there is no governing condition attaching to the planning permission then it is open to the LPA to decide on an apportionment which results in the maximum CIL. The reason that this option was not suggested is that the apportionment has to be justified by evidence and in the event there is none then the default position would seem to the be the second option using the respective GIA’s of the office and residential areas.

The area of a three sided garage with an open front is to be included in the GIA of a chargeable development but an uncovered car space to be replaced by the garage cannot be deducted from it.\textsuperscript{1409}

15.2.1.6 Separate buildings – a material point when determining the gross internal area is to ascertain what constitutes a separate building. External walls are excluded from the internal area but not internal walls. In the 6th Edition of this Guide it was stated that if the structure is not in a uniform type of construction then it should be regarded as a separate building but if there are contiguous elements and of a similar type of construction then the structure should be treated as a single building. This has yet to be tested but it may be that to be viewed as a single building it is enough that there is a

\textsuperscript{1409} Paras 14 and 15 in Partial demolition of existing [ ] building and erection of a new [ ] dwelling dated 17\textsuperscript{th} June 2016.
sufficient physical connection and it does not matter that the type of construction differs.

Whether structures comprise a single building or separate buildings will not only affect the measurement of the GIA of the structures but also the extent of any deductions available in relation to “in-use” buildings. If the use of part of one structure causes the structure to qualify as an “in-use building” then if another structure forms part of a single building with that qualifying structure then that other structure will as a result of such attachment also qualify as an “in-use building”.

A pair of semi-detached dwellings constitutes a single building and so the areas occupied by internal walls and partitions will be taken into account. A similar outcome arose in an appeal involving a development comprising a terrace of three houses and semi-detached house. This issue may arise with garages. Will each individual garage comprised in a terrace of garages constitute a building or will the whole terrace be a single building?

This point has been considered in an appeal. Two structures are linked by a first floor bridge and by a ground floor open sided (one side) covered walkway. The appellant argued that the two structures should be treated as a single building because one qualified as an “in-use building” and the other by itself did not unless it was part of a single building formed with the qualifying structure. The appointed person considered although there are the physical links between the two structures “I consider that they are just that; links between separate buildings and do not mean that two structures become one” so that in the absence of “a more integral connection” it led to the conclusion that they are two separate buildings.

This is very much a factual issue which requires consideration of matters such as the use of the structures and in particular whether there is a functional connection between the two structures; the history of the constructions and use of the structures including whether they were built at the same time or different times; their design and whether the connection is an integral part of the structures; and the building materials used.

15.2.1.7 Verification – the issue has been aired as to whether authorities should accept the figures for gross internal area provided by the developer or landowner or whether a system should be put in place by which to verify the figures. A pragmatic approach is likely to be adopted with inspections in the few cases in which the authority considers there is a need.

There have been issues as to the calculation of the GIA as opposed to issues as to which areas should be included in the GIA. The starting point will be the plans approved by

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1410 Reg. 40(11) now para. 1(10) OF Schedule l
1411 Development: The erection of a pair of semi-detached dwellings and the demolition of the existing dwelling. Decision date: 19th June 2018 – para. 16 and also Development: [ ] new semi-detached dwellings following the demolition of the existing dwelling. Decision date: 2nd January 2019
1412 Development: Full application for proposed erection of 5 dwellings – para. 13
1413 Development: Demolition of the [ ], change of use of offices and ancillary buildings…dated 2nd January 2019
1414 Para. 26
the planning permission even if they indicate that they should not be scaleable.\textsuperscript{1415} If alternative plans are to be put forward then there must be a good reason and the detail provided must match if not exceed that provided by the approved plans.

15.2.2 Deduction of area – there are certain areas which can be deducted from the gross internal area of the building resulting from the development. This may have a significant impact on the amount on which CIL is charged. As indicated below\textsuperscript{1416} it will be influenced by whether the building had been in use or was unused prior to the grant of permission and if used whether it was lawful or unlawful user. Prior to the 2014 Regulations two deductions were possible but now there are three:

(i) \textbf{retained building satisfying “in lawful use” test}\textsuperscript{1417} (first retained building deduction) – there is a deduction from the GIA of the aggregate gross internal area of the buildings in existence at the completion of the development which existed when the development was first permitted and also qualify as “in-use buildings”.\textsuperscript{1418} The building must have been in lawful use for a continuous period of at least six months in the three year period ending on the date that the permission first permits the chargeable development (previously twelve months). It suffices that it is a use of part only.

(ii) \textbf{continuing permitted user of retained building}\textsuperscript{1419} (second retained building deduction) – the internal area of a retained building which does not satisfy the “in lawful use” test will still be deductible if the permitted user immediately prior to the date when the development is first permitted continues after that date and is the permitted user for that building within the development not requiring any fresh planning permission.\textsuperscript{1420}

(iii) \textbf{demolished buildings}\textsuperscript{1421} (the demolition deduction) - the aggregate gross internal area of buildings on the land when the permission first permits the development but which are demolished before the completion of the development and qualify as “in-use buildings”.\textsuperscript{1422}

These three deductions and what qualifies as an “in-use building” are considered more fully in 15.2.5 below.

15.2.3 Formula for gross internal area – this is the formula which is used to determine A in the principal formula in para. 1(4) in Schedule 1 previously reg. 40(5). This formula was originally in reg. 40(6) and then after the 2014 Regulations became reg. 40(7) and from 1\textsuperscript{st} September 2019 is now para. 1(6) in Schedule1\textsuperscript{1423}. It has been replaced twice - once by reg. 5 of the 2012 Regulations and then again by reg. 6 of the 2014 Regulations.

\textsuperscript{1415} Para. 17 in Variation of condition [ ] (development in accordance with the approved drawings) of planning permission ref.[ ]…dated 6\textsuperscript{th} March 2017 in which the appellants sought to rely on plans attached to a section 106 planning agreement.
\textsuperscript{1416} See section 15.2.5 below
\textsuperscript{1417} K_{R(i)} in para. 1(6) of the First Schedule (inserted by reg. 5(2) and Schedule 1 to the 2019 (No. 2) regulations) previously reg. 40(7)
\textsuperscript{1418} See section 15.2.5 below
\textsuperscript{1419} K_{R(ii)} in para. 1(6) of the First Schedule previously reg. 40(7)
\textsuperscript{1420} See section 15.2.5 below
\textsuperscript{1421} E in para. 1(6) of the First Schedule previously reg. 40(7)
\textsuperscript{1422} See section 15.2.5 below
\textsuperscript{1423} Reg. 5(2) and Schedule 1 of the 2019 (No. 2) Regulations
The changes in 2014 were made in order to correct an error which could result in the overcharging of CIL first when there was both the first retained building deduction and the demolition deduction and then before that in respect of the demolition deduction. Coping with existing buildings which are to be retained or demolished and the phasing of developments has been a real headache. The present replacement formula is set out immediately below in section 15.2.3.1. This replacement formula does not apply in all cases as it was not retrospective and so both the first replacement formula and the original formula are set out in section 15.2.3.4 and section 15.2.3.5 below respectively.

15.2.3.1 Current formula – the operation of the formula looks complicated and appearances do not deceive. When there is a single CIL rate applying to the chargeable development it is greatly simplified because GR and G will be the same. This formula seeks to allow not only for the three deductions relating to retained and demolished buildings but also the apportionment of the deduction for such buildings between different phases of development.

\[ G_R - K_R - \left( \frac{G_R \times E}{G} \right) \]

Where—

\( G \) = the gross internal area of the chargeable development (see section 15.2.1 above as regards measuring the area);

\( G_R \) = the gross internal area of the part of the chargeable development chargeable at rate R;

\( K_R \) = the aggregate of the gross internal areas of the following—

(i) retained parts of in-use buildings (which are those retained buildings which satisfy the “in lawful use” test – see section 15.2.5 below); and

(ii) for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development;\(^{1424}\)

(as regards \( K_R \) see section 15.2.5 below)

\( E \) = the aggregate of the following—

(i) the gross internal areas of parts of in-use buildings that are to be demolished before before completion of the chargeable development;\(^{1425}\) and

\(^{1424}\) See section 15.2.5.3(ii) below
\(^{1425}\) See section 15.2.2(iii)
(ii) for the second and subsequent phases of a phased planning permission, the value Ex (as determined under para. 1(7) in Schedule 1 previously reg. 40(8)), unless Ex is negative,

provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

(as regards effect of demolition see sections 15.2.5 and 15.2.7 below)

Ex - There is yet another formula in para. 1(7) in Schedule 1 previously reg. 40(8) to enable the value Ex to be calculated. This is the amount of the demolition deduction in relation to an earlier phase of the development to the extent that it has not been fully deducted. This allows it to be carried forward to be deducted from the GIA of chargeable developments comprised in later phases. Ex is calculated using the following formula—

\[ EP - (GP - KPR) \]

where—

\[ EP \] = the value of E for the previously commenced phase of the planning permission;

\[ GP \] = the value of G for the previously commenced phase of the planning permission; and

\[ KPR \] = the total of the values of Kr for the previously commenced phase of the planning permission.

R is the relevant CIL rate. If the Charging Authority only has one rate or the development only involves one type of use then there will be a single calculation

15.2.3.2 When does the current formulae apply – the formulae in 15.2.3.1 above apply to all developments save those for which a liability notice has been issued before 24th February 2014. It is not intended to upset any calculations by the authority before the 2014 Regulations took effect but will apply no matter when the planning permission was granted authorising the development if the liability notice is issued on or after 24th February 2014. With effect from 1st September 2019 there is a change in how the deductions are calculated in respect of a section 73 permission which excludes any buildings constructed since the grant of the parent permission.\(^{1426}\)

15.2.3.3 First Replacement formula – This formula is not quite so complicated but that is because it does not work in all circumstances. It will only be effective in cases in which a liability notice has been issued prior to 24th February 2014 and then it will have been applied unless the circumstances are such that the original formula applies.\(^{1427}\) The formula is:

\[^{1426}\] The definition of new build in para. 1(10) in Schedule 1 is amended by reg. 5(2) and Schedule 1 of the 2019 (No. 2) Regulations and see section 15.2.5.3 below

\[^{1427}\] See section 15.2.3.4 below

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\[ G_R - K_R - \left( \frac{G_R \times E}{G} \right) \]

Where—

G = the gross internal area of the chargeable development;

\( G_R \) = the gross internal area of the part of the development chargeable at rate R;

E = an amount equal to the aggregate of the gross internal areas of all buildings which—
(a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use; and
(b) are to be demolished before completion of the chargeable development; and

\( K_R \) = an amount equal to the aggregate of the gross internal area of all buildings (excluding any new build) on completion of the chargeable development which—
(a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use;
(b) will be part of the chargeable development upon completion; and
(c) will be chargeable at rate R.

R is the relevant CIL rate

15.2.3.4 Original formula – the original formula will be applied if either there was a grant of planning permission before 29th November 2012 or the development is authorised by a general consent and a notice of chargeable development (including one given by the collecting authority under reg. 64A) was given before 29th November 2012 1428. It is

\[ \left( C_R \times (C - E) \right) / C \]

Where—

\( C_R \) = the gross internal area of the part of the chargeable development chargeable at rate R, less an amount equal to the aggregate of the gross internal area of all buildings (excluding any new build) on completion of the chargeable development which—
(a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use;
(b) will be part of the chargeable development upon completion; and
(c) will be chargeable at rate R.

C = the gross internal area of the chargeable development; and

E = an amount equal to the aggregate of the gross internal areas of all buildings which—

1428 Reg. 9 of the 2012 Regulations
(a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use; and

(b) are to be demolished before completion of the chargeable development.

15.2.4 Mixed user developments – the simplicity is lost and more than one calculation is required if the development involves more than one use and the relevant charging authority has put in place differential rates dependent on the type of use.\textsuperscript{1429} With such mixed use developments the formula has to be applied separately in relation to each CIL rate applicable to the development. The extent of the gross internal area of the chargeable development for the use which the relevant CIL rate applies to and the extent of the first retained building deduction and the second retained building deduction will be determined by the portion of the development to be put to that use. They will constitute GR and KR in the formula. The internal area of any demolished buildings will be apportioned between the CIL rates by reference to the proportions of the development attributable to the different uses in order to arrive at E.

15.2.5 Deductions from GIA -

15.2.5.1 General – when calculating the chargeable amount of CIL pursuant to Schedule 1 (previously reg. 40) there is in certain specified circumstances three deductions from the gross internal area in relation to existing buildings which exist at the date that the development is first permitted and which are either to be retained upon the completion of the development or demolished during the course of the development.\textsuperscript{1430} When a deduction is available the internal area of the relevant building is deducted from the GIA thereby reducing the GIA which is to be multiplied by the appropriate CIL rate to arrive at amount of the CIL liability. Such a deduction can make a significant difference to the CIL liability.

The original deduction in the 2010 Regulations related only to buildings which were to be demolished during the course of the development (“the demolition deduction”). In the 2011 Regulations a second deduction was added in relation to existing buildings which were to be comprised in the development on completion (“the first retained building deduction”). Then in the 2014 Regulations a third deduction was added in relation to buildings which were to be comprised in the development upon completion but did not qualify for the first retained building deduction but could have been lawfully used immediately prior to the date on which the development was first permitted for the same use as intended after the completion of the development (“the second retained building deduction”).

Getting the formula right to allow for the appropriate deductions has proved difficult. There have been a number of amendments. Some of the changes in wording have not affected the qualifying requirements as was accepted in the Hourhope case. However there has been an important relaxation of the qualifying requirements by the 2014 Regulations. What is crucial to each of the deductions is whether or not the relevant building qualifies as an “in-use building”. To be entitled to the demolition deduction and the first retained building deduction the relevant building must be an “in-use

\textsuperscript{1429} see Example 2 above in section 15.3 below
\textsuperscript{1430} See section 15.2.2 above
building”. To qualify for the second retained building deduction the relevant building must not be one.

To summarise the three deductions are:

(i) the demolition deduction – applies to a building which is in existence when the development is first permitted, qualifies as an “in-use building” and will be demolished during the course of the development;

(ii) the first retained building deduction – applies to a building which is in existence when the development is first permitted, qualifies as an “in-use building” and will be retained upon the completion of the development;

(iii) the second retained building deduction - applies to a building which is in existence when the development is first permitted, does not qualify as an “in-use building”, will be retained upon the completion of the development and will have a permitted use on completion of the development which is one that it had immediately before the date on which the development was first permitted.

15.2.5.2 Deductions prior to 2014 rules – as stated above there were two possible deductions available prior to the coming into force of the 2014 Regulations. These were the demolition deduction and the first retained building deduction. To qualify for either deduction a “vacancy test” had to be satisfied. This required that it had to be proved to the authority that the relevant building had been used for a continuous period of six months or more during the twelve month period preceding the day that the planning permission first permits the development. It is not the date of the grant of the planning permission which is material but the day when the development is first permitted. This especially needs to be borne in mind when dealing with phased developments. As a result of reg. 6 of the 2014 Regulations those provisions now only apply to developments in respect of which a liability notice had been issued prior to 24th February 2014.

15.2.5.3 2014 rules - These apply to any development in respect of which the liability notice is issued on or after 24th February 2014. The changes were made because the time limits in the original exclusion were found to be tight particularly in the context of sites regarding which the planning application was a lengthy process or the site has been vacant whilst a phased development is carried out. The site could be vacant pending the outcome of the planning application and as a result the benefit of the deductions was lost. The original proposal for change leading up to the 2014 Regulations was that the time limits should be removed all together and that the deduction would include any unused building unless the planning use had been abandoned.

These provisions have been continued from 1st September 2019 but in Schedule 1 and with an amendment to the definition of “new build” so as to exclude in the case of a

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1431 And is not part of a previously existing building – at para. 17 Development: retention of 2 x two-storey houses with...Decision date 25th November 2016
1432 Original reg. 40(4) and (10)
1433 See section 6.2.3 above
section 73 permission any buildings constructed under the original parent permission.\footnote{Para. 1(10) in Schedule 1}

(i) Relaxation of period of use - the original vacancy test was relaxed by allowing a deduction from the gross internal area if the relevant building has been in continuous use for six months in the three year period ending on the day when the relevant planning permission first permits development or if appropriate the relevant phase of the development. This is rather than in the period of twelve months ending on the day that development is first permitted and has allowed the deduction to be made in a greater number of cases. It should allow time for the building to remain vacant whilst planning permission is being sought or for a long term development with a number of phases to be carried out. The relaxation was achieved by replacing the original reg. 40(10) by the inclusion of a new definition for “in-use building” in the amended reg. 40(11) which from 1\textsuperscript{st} September is now para. 1(10) in Schedule 1. The definition reads:

“in-use building” means a building\footnote{A “building” does not include - (i) a building into which people do not normally go; (ii) a building into which people go only intermittently for the purpose of maintaining or inspecting machinery; or (iii) a building for which planning permission was granted for a limited period (originally reg. 40(11) and now para. 1(10) Schedule 1)} which—

(i) is a relevant building, and

(ii) contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development;”

For these purposes in para. 1(10) in Schedule 1 (previously reg. 40(11))

(a) “relevant building” means a building\footnote{A building which has been partially demolished and had its roof removed will not be a building for these purposes. Development: House. Decision date: 31\textsuperscript{st} December 2018 - para. 17 claim failed in respect of building left with part of front elevation and one side elevation.} which is situated on the relevant land on the day planning permission first permits the chargeable development;”  

(b) “retained part” means part of a building which will be—

(i) on the relevant land on completion of the chargeable development (excluding new build),

(ii) part of the chargeable development on completion, and

(iii) chargeable at rate R.

\footnote{A concession made by an authority that a demolition deduction is allowable when the building has been demolished before the date that the planning permission first permits development will not be accepted by an appointed person on an appeal and the full CIL liability will be charged. Development: Retention of Detached Outbuilding to be used as ancillary guest accommodation. Decision date: 2\textsuperscript{nd} October 2018 – para. 20}
(c) “new build” means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings. There is added to this definition with effect from 1st September 2019 “and in relation to a chargeable development granted planning permission under section 73 of TCPA 1990 (“the new permission”) includes any new buildings and enlargements to existing buildings which were built pursuant to the previous planning permission to which the new permission relates”. This excludes deductions being made in relation to the internal floorspace of buildings constructed pursuant to the parent permission which are lawfully used for a continuous period of six months before the section 73 permission first permits development.

The definition of an “in-use building” requires the definition of “relevant building”. This is important for the first retained building deduction and the demolition deduction. Whilst for the first and second retained building deductions the definition of “retained part” is important which in turn involves the definition of “new build”.

An attempt was made in an appeal to use the gross internal area of the whole of a retained building when the development related only to the roof space of the building. This failed on the ground that reg. 2 defines relevant land as the land to which the planning permission relates and the chargeable development is under reg. 9 the development for which planning permission is granted. In this case it was the bedroom flat and associated works authorised by the planning permission. The retained part was the roof space which had no GIA as there was no fixed staircase access or structural floor.

The extension of the new build definition in para. 1(10) of Schedule 1 is so that the GIA of buildings constructed since the grant of a parent permission and any enlargement of existing buildings since that date will not be included in the first retained building deduction in relation to a subsequent section 73 permission.

(ii) No change in permitted use - In addition to this definition relaxing the period during which the relevant building must be in continuous use for six months in order to qualify as an “in-use building” there was also an expansion of the wording as to what constitutes the deduction represented by Kr in the formula for calculating the chargeable internal floor area (for the current formula see section 15.2.3.1). This added a further deduction – the second retained buildings deduction.

The new Kr(ii) now in para. 1(6) in Schedule 1 and originally in reg. 40(7) allows the internal floor area of a retained part of a building which does not qualify as an “in-use building” to be deducted from the gross internal area of the chargeable development if the intended use of that part once the development has been completed is one which could have been lawfully and permanently carried on in that part on the day immediately before the day development is first permitted without the need for a further planning permission. This addition to Kr covers a part of a relevant building which

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1438 Para. 1(10) in Schedule 1 which is inserted by reg. 5(2) and Schedule 1 of the 2019 (No. 2) Regulations
1439 Proposal: Retention of [ ] roof extension to main roof of both properties...Decision date: 18th June 2019 paras 11, 14 and 18
1440 Applied by the appointed person in an appeal Development: Alterations to facilitate the conversion of [ ] and [ ] to provide [ ] No. residential flats. Decision date: 4th April 2017 – para. 9
has not been in use or not in use for the necessary continuous six month period provided that it could have been used in the same manner as intended under the development project without any need to apply for a further planning permission. If there is no need to obtain a new planning permission in respect of the use of the part once the development is completed then it can be deducted from the area chargeable to CIL.

The effect of this is that if the last permitted use of the relevant part is the same as the intended use after completion of the development then the internal area of that part of the building will be deductible from the GIA unless that last use has been abandoned. It may be that previously the relevant part would have been excluded from the planning permission if there is no need to authorise a change of use in which case it would not comprise part of the chargeable development. Now the relevant part can be included in the area covered by the planning permission without increasing the CIL liability unless the use has been abandoned for the purposes of planning law.\textsuperscript{1441}

It is noteworthy that the focus of qualification for this deduction is by reference to the permitted use to which the building can be put rather than the use to which it has been put. This is emphasised by it being provided that an “in-use building” cannot qualify for this deduction. This is a point which HHJ Cooke sitting as a judge of the High Court considered strongly indicated that to qualify as an “in-use building” required more than that the building has a permitted use under the planning laws but required the building to actually be in such use.\textsuperscript{1442}

In order to be entitled to the second retained building deduction the use relied on must not be a potential lawful use but an actual lawful use. This was confirmed in R (oao Giordano Limited) v Camden LBC\textsuperscript{1443} which concerned a six storey block which had been used for a mixture of warehouse and office uses but had been vacant for some time. A planning permission was granted for the extension of the building and the conversion of the first, second and third floors to six flats. The work started but then a fresh planning permission was granted for conversion to three larger flats in place of the original six. CIL had been introduced by Camden LBC between the grants of the two planning permissions. Following the grant of the second planning permission the Council issued a liability notice for just under £550,000 which the owner challenged on the basis that the GIA of the chargeable development should be reduced by the GIA of the development authorised by the first planning permission in accordance with K\textsubscript{R}(ii). It was argued that this deduction was available because the first planning permission had authorised residential use just as the second did. The building did not qualify as an “in-use building” and so the first retained building deduction was not available.

It was conceded that the residential use had not been established at the date that the second planning permission first permitted development. This was because the works under the first planning permission had not been completed. The extensions had been constructed and the internal steel beams refitted but the first second and third floors had been stripped out and the internal partitions on those floors had not been installed. Those floors were not capable of being used for residential purposes. The claimant’s contention was that it is enough that it could lawfully and permanently be used for such purpose. This was rejected by Mrs. Justice Lang DBE because the change of use from

\textsuperscript{1441} As to abandonment of use see section 15.2.5.9
\textsuperscript{1442} para. 23 in Hourhope case supra – see further discussion in section 15.2.5.4(i) below
\textsuperscript{1443} [2018] EWHC 3417 (admin)
warehouse and office to residential had not occurred at the date that the second planning permission first permitted development.\footnote{Para. 27} This was the reason why an application had to be made for the second planning permission rather than rely on the Permitted Development Rights regime. It was not enough that the owner had the ability to establish residential use. Such use had to have been established as a “potential use was not enough”.\footnote{Para. 28 and see also para. 18 Development: Retention of 2 x two-storey houses with…Decision date 25\textsuperscript{th} November 2016}

15.2.5.4 What constitutes an “in-use building”? – in deciding whether a deduction is available when calculating the CIL liability a prime question will be whether the building qualifies as an “in-use building”. It is a crucial element in qualifying for either the demolition deduction or the first retained building deduction and needs to be considered when deciding whether the second retained building deduction is available. This is an issue which has caused problems for both developers and authorities operating a CIL regime. There are two elements to lawful use in this context. First the use must be lawful and second it must be more than just a possible lawful use of the building. The second element has caused more disputes but the first is not without its difficulties

(i) lawful – normally the answer to the question as to whether the prior use has been lawful is straightforward. A Certificate of Lawful Development or Use may be used to establish the lawfulness of a particular use.\footnote{Development: Demolition of existing outbuildings and erection of a replacement building to be used for 2 holiday lets and one separate dwelling at [    ]. Decision date: 2\textsuperscript{nd} January 2019. The claim for a deduction failed because there had been no use as a holiday let and it is not enough to have a lawful use to which it can be put (para. 11(v)).} A building which has not complied with the conditions attached to the planning permission under which it is constructed will not be lawful.\footnote{Use of a Class C3 dwelling as a House in Multiple Occupation when there is an Article 4 direction preventing this and no new planning permission would prevent such use being a lawful use.\footnote{Development: Proposed development: retention of garage as built, and change of use to create holiday accommodation. Decision date: 26\textsuperscript{th} March 2019}} For example, a garage which has not been constructed in accordance with earlier planning permissions and the differences between the constructions and the approved plans are material which would require a fresh planning permission.\footnote{The point was relied on by the charging authority in the appeal: Development: Proposed conversion to create 2 x [ ] dwellings, 2 storey rear infill extension, loft conversion, 1 No. car parking space, 4 cycle spaces and refuse area Decision date: 16\textsuperscript{th} May 2016 para. 1(g). It did not need to be answered as the period of such occupation was outside the relevant three year.} Such use would be unlawful. However, in some circumstances there is doubt. There may have been a change in use without a planning permission. That is not necessarily unlawful. Such a change may be permitted by the Permitted Development Rights regime and will, therefore, be lawful.\footnote{Proposed Development: Erection of three x three bedroom terraced house with associated car parking and bin/cycle storage following demolition of existing single storey industrial unit Decision date: 14\textsuperscript{th} December 2013 – change of use from B1 to B8 not require planning permission - para. 6d} Linked to this is an issue as to whether the period of use has been such that even if when it started it was unlawful it has become lawful because it is no longer possible for enforcement proceedings to be taken. If there has been use for a continuous
period of six months after the expiry of the time limit for enforcement and it occurs during the three year period preceding that date on which the relevant planning permission first permits development then that can cause the building to qualify as “in-use building”.

There is a four year time limit on enforcement in relation to breaches of conditions relating to operational developments or to changes of use to use as a single dwelling.\textsuperscript{1451} In the case of any other breach of planning control it is ten years.\textsuperscript{1452} An example of this concerns two flats which were constructed within a larger building without the knowledge of the local planning authority.\textsuperscript{1453} Retrospective planning permission was granted and the issue was whether the internal floorspace of the two flats could be deducted. The evidence showed that there had been use of the flats for a continuous six month period following the expiry of the four year time limit in section 171B(2). In consequence the flats qualified as parts of an “in-use building” unless it could be shown that the appellants had concealed the breach of planning permission with the intention to deceive.\textsuperscript{1454} The charging authority had presented some evidence on this point but not enough to convince the appointed person that it can be said that the appellants clearly intended to conceal or deceive.\textsuperscript{1455} In consequence the appeal was successful and no CIL was chargeable.

Another example is an appeal concerning the conversion of a barn which had been described as redundant to holiday accommodation. It was argued that the barn was an “in-use building” as it has been used for the storage of equipment and other items. It was not possible to show that this was lawful by reason of the grant of a planning permission but the appointed person considered that it had been shown that the barn had been used for storage for a period of ten years and then a continuous period of six months. The expiry of the ten year period meant that no enforcement proceedings could be taken and the storage use had thereby become lawful and the GIA of the barn was deductible from the GIA of the chargeable development.\textsuperscript{1456}

It has been argued that if a building does not in part comply with the conditions attached to a planning permission it is still possible that part may be lawfully used. This was rejected in an appeal which considered that any use of the building would be unlawful.

\textsuperscript{1451} Section 171B(1) - there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. Section 171B(2) where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

\textsuperscript{1452} Section 171B(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

\textsuperscript{1453} Development: retention of two existing self-contained one bedroom [ ] flats Decision date: 16th May 2016

\textsuperscript{1454} Welwyn Hatfield Council v Secretary of State for Communities and Local Government [2011] UKSC 15

\textsuperscript{1455} Para. 9

\textsuperscript{1456} Development: Conversion of redundant barn to holiday accommodation (C1). Decision date 24th October 2017 - para. 16.
in planning terms. Similarly in an appeal it was claimed that a basement had been constructed in accordance with an earlier planning permission and proof of construction was provided. However, the earlier permission authorised use of the basement as a basement to the existing ancillary recreational accommodation but the remainder of the building did not accord with the approved plans or authorised use under the planning permission relating to it so the basement did not accord with the earlier planning permission and could not qualify as being in lawful use.

(ii) use - there is no definition or guidance as to when a building is in use. The definitions in the Planning Acts are expressly excluded from applying to the CIL regime which means in particular that the definitions in section 336(1) TCPA 1990 do not apply to CIL.

In Arbuckle, Smith & Co. v Greenock Corp Lord Radcliffe stated “‘Use’ is not a word of precise meaning, but in general it conveys the idea of enjoyment derived by the user from the corpus of the object enjoyed.” This would indicate that the nature of the building and its function will be major factors in determining whether it is being used.

The question as to what is meant by lawful use in the definition of “in-use building” has been considered by HHJ Cooke sitting as a judge of the High Court in the Planning Court in R (oao Hourhope Limited) v Shropshire CC. The dispute arose over the Red Lion public house in Alveley Shropshire which closed for business in May 2011. The manager continued to occupy the living accommodation whilst negotiations continued with the mortgagee. These came to nothing and in the middle of August 2011 the manager complied with a demand by the mortgagee and vacated the premises. Various items of furniture, fixtures and fittings used in the public house trade were left in the premises. The mortgagee took possession on 22nd August 2011 and the premises were marketed for sale. There was a fire in 2012 which partially destroyed the building. Subsequently it was sold for residential development. Planning permission was granted on 12th March 2014 for a residential development which involved the demolition of the Red Lion.

The developer claimed a demolition deduction. The information to support this claim was provided late so that no decision was made by Shropshire Council until after the development had commenced. The Council did not consider the information sufficient to justify the claim and refused to make the deduction. By then it was too late for the developer to request a review of the refusal under reg. 113 or to appeal under reg. 114 because development had commenced. The challenge had to be made by way of judicial review. The claim for a demolition deduction was possible because the planning permission was granted after the coming into force of the 2014 Regulations and so the relevant period for determining whether for the purposes of the demolition deduction

1457 Development: Retention of existing building (with alterations) [ ] comprising 6 flats...Decision date 1458 Development: Retention of Detached Outbuilding to be used as ancillary guest accommodation. Decision date: 2nd October 2018 – para. 17
1459 Section 235 PA 2008
1460 [1960] AC 813
1461 [2015] EWHC 518 (Admin)
1462 see sections 20.1 and 20.17 for discussion on this aspect
the Red Lion was an “in-use building” was a period of three years ending with the grant of planning permission on 12th March 2014 and not the original twelve month period. The issue was whether the Red Lion had been in lawful use for a continuous period of at least six months between 13th March 2011 and 12th March 2014. The pub had closed and the manager left within six months of the start date of that three year period. This meant that to qualify as an “in-use building” the circumstances existing after the manager had left must be sufficient to justify the deduction if the claim was to succeed.

Two arguments were put forward in support of the claim to a demolition deduction.

(i) Permitted use alone sufficient – the principal submission was that it was sufficient for a building to have a permitted use under the planning laws even if the building was not actually being used for that permitted use. If correct a building would only fail to qualify as being in lawful use if the permitted use had been abandoned which is very rare. The Council’s submission was that this was not sufficient and the building had actually to be used for such permitted purpose. It was agreed that for these purposes “lawful use” means a use which is lawful for planning purposes and that this was the case with regard to both the original regulations and the amendments effected by the 2014 Regulations.

HHJ Cooke stated at para. 17 that “the question is a normal one of statutory interpretation, starting with the ordinary meaning of the language used, considered in the context of the other provisions of the legislation itself, and the legislative purpose as shown by the terms of the legislation and such external material as it may be permissible for the court to have regard to.” On that basis he considered that all these considerations point in a direction which supported the Council’s position. The terms of the second retained building deduction added by the 2014 Regulations strongly indicated that this was correct.

In consequence when determining whether a building qualifies as an “in-use building” it is necessary to consider whether it has actually been in lawful use and not just whether it has a permitted use.

(ii) Continued presence of items – reliance was placed on the continued presence of furniture, fixtures and fittings after the vacation of the premises by the manager as constituting lawful use either because this continued the use of the Red Lion as a public house or because the Red Lion had been used for their storage as an ancillary use whilst open as a public house and such use carried on after closure and was lawful.

Cooke J. stated that whether “a building is “in use” at any time requires an assessment of all the circumstances and evidence as to what activities take place in it, and what are the intentions of the persons who may be said to be using the building”. With buildings having an active use there may be interruptions which will not cause it to cease to be in use. An obvious example is closing for a non-working day or a holiday. Another cited by the judge was the emptying of the building in order to refurbish and

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1463 Para. 18
1464 see section 15.2.5.3(ii) above
1465 Para. 23
1466 Para. 25
1467 Para. 27
then resume the same use. He left open the effect of emptying the building to refit and then sell or change the use which might be different.

This approach is in line with that suggested by the VOA in example 16 of Appendix 1 to the former CIL Appeals Guidance Note which concerned reliance on the storage of chattels in a room in an otherwise unused factory. The VOA indicated that the question whether the chattels in the room constituted a lawful use was one of fact and degree. Amongst the matters to be taken into account it put forward what was stored in the room; who owned it; whether there were any items of value; how often the room was visited; whether any items were removed or added; and whether the premises were treated as occupied for the purposes of business rates.

In the circumstances of this case the judge held that the Council had reached the right decision that the use had ceased when the public house closed for business “with no fixed or definable date for reopening”. The presence of items of furniture left behind was not sufficient to continue the business of the public house because the important characteristic of use as a pub is that it is open to serve drink and food. In the absence of circumstances indicating that the closure was only a temporary expedient the Council was entitled to conclude that the use had ceased when the trading came to an end. This would appear to exclude the period that the manager stayed on after the pub closed.

As regards the storage argument the judge accepted the argument that any storage as part of the business of a public house was not a separate use but ancillary to and part of the overall permitted use as a public house. Any use of a storage area was not a use for storage but use as a public house and that use ended when the use as a public house ended.

The judge did not take into account as part of the relevant circumstances the obtaining of relief from rates on the basis that the premises were vacant. Nor was the judge influenced by the arguments put forward regarding the treatment of plant, equipment and machinery in the context of rating by section 65(5) Local Government Finance Act 1988. For rating purposes if the building is not in use then such items are disregarded when determining whether the building is occupied. Both sides relied on this statutory provision. The Council because it showed that a building could be treated as not being in use even with such items present in the building. The developer because it showed that there had to be a statutory disregard for rating purposes to counter the presence of the items. The judge did not draw any assistance from the position under rating law. If relief from business rates has been obtained in relation to the building, as it was in this case, then this should be a factor as indicated by the VOA and the decisions in the appeals mentioned below.

Before the hearing in Hourhope the issue was considered in a CIL appeal decision concerning the first retained building deduction. The issue was whether the building to be converted had been in lawful use for a six month period in the three year period prior to the date when the development was first authorised. Account was taken of the

1468 Para. 28
1469 Para. 29
1470 Para. 30
1471 24th November 2014 entered on government website as 15th December 2013. Development of change of use from offices to use as a house
premises being treated as vacant for the purposes of rates relief which had been confirmed by a visit by the Business Rates team. The property was up for sale. In that case there were items present in the building but this did not cause it to be an in-use building. Further the appellant stated that the property had been used for storing tools and materials with occasional visits for hobbies and maintenance. HHJ Cooke placed no reliance on this decision but save as regards rates relief the approach adopted was in line with HHJ Cooke’s in Hourhope. The test as regards the standard of proof applied by the appointed person was the balance of probabilities.

In another appeal (concerning a development described as the erection of three terraced houses following demolition of an existing single storey industrial unit) the appellant was successful on the appeal in claiming the demolition deduction based on evidence as to occupation of the existing building which was not detailed. The authority had provided no evidence other than that the building had been treated as vacant for the purposes of business rates. Without any information as to the appellant’s evidence it is difficult to evaluate this decision. There are two points which come out of it. First it seems as if the authority had disputed the claim to the demolition deduction on the basis that the use of the building had been unlawful. It appears that the use of the building changed from a B1 use (office) to a B8 use (storage and distribution). This change did not require a fresh planning permission because it was a change from B1 use to B8 use and so the unlawful issue ceased to be an issue in the appeal. Second the application of the relief from business rates for vacant premises did not appear to be regarded as significant by the appointed person. Without knowing what the appellant’s evidence as to occupancy comprised this aspect cannot be fully understood.

The circumstances in which a building will not be occupied for rating purposes such as those indicated above should also be cases in which the building is not in use for the purposes of CIL. However, it does not follow that because the building is occupied for rating purposes it is in use for the purposes of CIL. The rating system is focused on occupation and it is well established that “occupation” comprises four elements following the Court of Appeal decision in Laing (John) and Son Limited v Kingswood Assessment Area Assessment Committee recognised by the House of Lords in LCC v Wilkins. These four ingredients are:-

(i) actual occupation or possession;
(ii) exclusive for the particular purpose;
(iii) the possession must be of some value or benefit to the possessor;
(iv) the possession must not be transient.

Possession by itself is not conclusive as to whether there is occupation for the purposes of rating or use for the purposes of CIL. Mere intention to occupy will not by itself be sufficient for either purpose (see Du Parqu LJ in Associated Cinemas Properties Limited v Hampstead BC). Equally an intention to let is a strong intention not to occupy (Collins MR in R v Melladew). However, for rating purposes combine intention with a slight use and that is sufficient for rating purposes. Merely keeping the

1472 Entered on 14th December 2013
1473 [1949] 1 KB 344
1474 [1937] AC 362
1475 [1944] KB 412 at page 415
1476 [1907] 1 KB 192 at page 202
premises maintained or cleaned will not by itself be sufficient. Supervision by a caretaker of unused sports grounds does not constitute occupation for rating purposes (Sheafbank Property Trust plc v Sheffield Metropolitan DC1477). Advertising premises for letting has been held to be insufficient for rating purposes (Crowther-Smith v New Forest Union1478) but if the advertisement relates to facilities in a warehouse this may constitute occupation (Borwick v Southwark Corpn1479). There will be borderline cases. A vacant building available for letting will be unused. An office block with facilities and staff ready for short term serviced lets could be regarded occupied for rating purposes.

An appointed person accepted a charging authority’s submission that the test of occupation for rating liability purposes is completely different with a much lower threshold item than for CIL purposes.1480 In that appeal consideration was given to Judge Michael Cooke’s comments on the effect of the interruption of use. The building had been boarded up and was neglected with broken windows, overgrown car park and the absence of any evidence that utility services were being provided to the building. The appellant relied on the storage of office furniture and intermittent use by salesmen for administrative and internal meetings. There was no evidence of the frequency of such use or its duration. Evidence of inspections for other purposes showed no one there at the time of such inspections. The appointed person concluded that there was not sufficient evidence to confirm continuous use of the premises.1481

What is clear from the Hourhope decision is that the issue is very much fact based. It strongly indicates how important it is for the person claiming the deduction to provide persuasive information in support of the claim. The onus is on that person to provide satisfactory evidence. Consequently it is an issue which needs to be addressed at an early stage and certainly before development is commenced.

On the basis of the Hourhope decision it will not be enough to have a caretaker or security guards looking after the building much as it was not by itself for rating purposes (Sheafbank Property Trust supra). In an appeal it has been held by an appointed person that it was not enough to prove continuous use that there was occasional use by a handperson working across a bigger site and use of an office for meetings by other staff or temporary visitors.1482 This was in a context of a rundown building and the absence of evidence as to frequency of use.

15.2.5.5 Evidence – often in the statutory appeals the issue is a factual one rather than an issue over the meaning of “in-use”. The starting point is that the onus is on the appellant “to provide sufficient information, and of a sufficient quality, to enable the charging authority to establish that the building is in use”.1483 A statement in the CIL Additional Information Form that there has been no part of the building in use during

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1477 [1988] 1 EGLR 164
1478 Ryders Rat. App. (1886-90) 311
1479 [1909] 1 KB 78
1480 Development: Demolition of existing building and erection of new [ ] building comprising [ ] apartments. Decision date: 26th February 2019 – para. 22
1481 Para. 23
1482 Demolition of the [ ], change of use of offices and ancillary buildings…dated 2nd January 2019 – para. 27
1483 Development: Redevelopment of the site to provide[ ] with associated facilities. Decision date 1st March 2017 para. 10 applying reg. 40(9) and (10)
the requisite period will not preclude a claim for deduction being made subsequently.\textsuperscript{1484} In that matter additional information was supplied on the review claiming that the ground floor shop had been occupied and that the first floor flats already existed. The only supporting evidence was an e-mail from a vacating tenant of a first floor flat. The charging authority provided evidence that the building had been boarded up. The appointed person rejected the claim for a deduction on the ground that the building was an in-use building but allowed a deduction in respect of the existing residential floorspace on the ground that the lawful use of such space was the same before and after the development. In a later appeal the same had occurred with the CIL Additional Information Form stating that there were no existing “in-use buildings” but then providing evidence to claim that there was.\textsuperscript{1485} This decision serves to emphasise the importance of statements made in planning applications including planning design and access statements. If it states as in this case that the building had not been used for many years that will be put forward against any claim for a deduction from the GIA.\textsuperscript{1486}

It is for the appointed person to decide the dispute on the balance of probability taking into account all the evidence presented from both sides on the appeal. The appointed person may take steps to investigate the issue if the information is publicly available.\textsuperscript{1487} In one appeal no evidence was put in by either side but the charging authority e-mailed to state that it now accepted the deduction in relation to the “in-use building”. The appointed person went to planning websites and other websites to research the point and in consequence held that the building qualified as an “in-use building”.\textsuperscript{1488}

Frequently there will not be a single document which decides the matter. Rather it will be the cumulative effect of all the evidence comprising documents and statements that decides the issue. A request that the appointed person inspect the premises is likely to be rejected on the basis that the state of the premises on a single day does not assist. The same point applies to claims that the authority should have inspected.\textsuperscript{1489}

An example is an appeal in which the information was piecemeal and incomplete – parts of two tenancies, part of one utility bill, bank statement showing rent receipts and e-mail regarding occupation by tenant. Although incomplete and with some inconsistencies it was held sufficient to establish an “in-use building”.\textsuperscript{1490} Interestingly account was taken of evidence which was stated to have been provided in an earlier hearing before the Valuation Tribunal. These were certificates that individuals were students during specified periods which was material to whether they would have been tenants.

\textsuperscript{1484} Development: Alterations to facilitate the conversion of [ ] and [ ] to provide [ ] No. residential flats. Decision date: 4\textsuperscript{th} April 2017 para. 6
\textsuperscript{1485} Development: Demolition of [ ] structure and erection of a [ ] bungalow. Decision date: 17\textsuperscript{th} April 2018 Para. 15
\textsuperscript{1486} The appointed person sought rating information from the VOA’s records in Development: change of use from [ ] (sui generis) to [ ] dwelling. Decision date 17\textsuperscript{th} June 2016
\textsuperscript{1487} Development: Demolition of existing building: erection of a two-storey building with roof accommodation...Decision date: 23\textsuperscript{rd} November 2016
\textsuperscript{1488} Development: Redevelopment of site including demolition of [ ] and construction of two [ ]. Decision date: 4\textsuperscript{th} April 2017 - para.15
\textsuperscript{1489} Development: Proposed conversion to create 2 x [ ] dwellings, 2 storey rear infill extension, loft conversion, 1 No. car parking space, 4 cycle spaces and refuse area Decision date: 16\textsuperscript{th} May 2016 para. 13
The fact that the premises have been treated as vacant for the purposes of business rates will not necessarily be conclusive. In another appeal not only were the premises treated as vacant for the purposes of business rates but the Business Rates team had visited and found the premises empty with the appearance that it had not been occupied for some time. There was also a written record of a telephone conversation with the appellant in which it was stated that the premises had been empty for years. In the light of this the use of the premise for storage of tools and material and some furniture with occasional visits for maintenance and hobbies was not enough to establish on the balance of probabilities that it is an “in-use” building.

In one appeal monthly tenancy agreements of garages were provided and details of a sale subject to the tenancies. This was not regarded as conclusive by the appointed person but as there was little contrary evidence this was held to be sufficient. In another the appellant relied on the premises being registered by the VOA as residential rather than commercial and council tax being paid with the benefit of the single occupant discount confirmed by a written statement by the previous owner who was registered on the electoral roll. There was no contrary evidence from the charging authority and although the appointed person considered the evidence not to be strong it was sufficient to establish that the building qualified as an “in-use building”.

The conflicting factual evidence resulted in a decision against the appellant in another appeal. The appellant had produced licences to occupy but these did not have plans attached. A rent sheet showing payment by licensees was supplied. Signed affidavits were also provided sworn by tenants. As against this the charging authority produced rating records which showed the premises as unoccupied or not assessed for ratings. Further it was pointed out that no utility bills had been produced and a licence to occupy does not mean that occupation occurred. In a planning application the premises were described as deserted, remained empty and having no commercial use. The Planning Case Officer had taken photographs showing the property as derelict. The appointed person rejected the appellant’s case because of the absence of plans; the conflict between the appellant stating that the premises were used for storage but the permitted use in the licences was for vehicle repairs; and although the affidavits stated when licensees went into occupation there was no statement as to the period of occupation. This exemplifies the need for a complete story to be told in the appellant’s evidence and how the scales favour the charging authority because the onus lies on the appellant.

The conflicting evidence may be as to whether there has been a period of use which triggers one of the time limits in section 171B TCPA 1990 and then allows the period

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1491 Proposed Development: Erection of three x three bedroom terraced house with associated car parking and bin/cycle storage following demolition of existing single storey industrial unit Decision date: 14th December 2013 – change of use from B1 to B8 not require planning permission (para. 6f)
1492 24th November 2014 entered on government website as 15th December 2013. Development of change of use from offices to use as a house – para. 7 and 8.
1493 Development: Demolition of existing block of …garages; erection of …bedroom detached…and provision of associated parking. Decision date 16th May 2016 – para, 14. Similar outcome when conflicting evidence in Development: Change of use of [ ] from a [ ] (Use class D1) into a 1 x 2 bed flat (Use class C3)…Decision date 17th April 2018
1495 Development: Redevelopment of the site to provide[ ] with associated facilities. Decision date 1st March 2017 para. 5 to 11
of lawful use to run. The onus is on the claimant to prove that the particular time limit has expired and no enforcement proceedings are possible. A poor state of repair or difficulty in accessing will not by themselves exclude an area or building from qualifying as “in-use”.

15.2.5.6 **Part of building** – when determining whether a building qualifies as an “in-use building” it is not necessary for the whole of the building to have been in lawful use in order to qualify. It is sufficient that part only has been. There are no limits as to the size of what constitutes a part of a building for these purposes. With regard to business rates it has been held in *R (Makro Properties Limited) v Nuneaton & Bedworth BC* that the occupation of 0.2% of the floor space of a large retail warehouse comprising 140,000 square feet for the purposes of storing documents on pallets constituted rateable occupation. When this user stopped it triggered a second period of grace from unoccupied property rates. On appeal it was held that the storage of the documents was not a trifling user and the de minimis principle did not apply. Although concerned with different statutory regulations albeit both are concerned with raising revenue for local authorities from property the decision indicates that the courts should be slow to find that such a set of circumstances is outside the wording used.

Not only is there no limitation as to area but there is no express requirement that the part must be accessible from other parts of the building. For example, if the building comprises a number of flats or self-contained offices and only one has been lawfully used for the required period that does not stop the building qualifying as an “in-use building”. Although the flats are separate dwellings they each comprise part of the building.

There has been a suggestion that for a part to cause a building to qualify as an “in-use” building the part must be comprised in a planning unit with the part to be development. For example, it is argued that if planning permission for the conversion of the office space in the upper floors of a building which space has been vacant for more than three years it will not be enough that the ground floor has been used as a restaurant for three years. However, the conditions to be satisfied before a building qualifies as an “in-use” building focus not on a planning unit but a building. It is enough that a part of the building qualifies.

15.2.5.7 **Application of demolition deduction** – an issue has arisen when part of a development is subject to the grant of the self-build housing exemption and an existing building is to be demolished during the course of the development giving rise to a demolition deduction. The owner will want the demolition deduction to be set against the part of the development not subject to the exemption. Attempts to achieve this have failed. The demolition deduction is required by Part 1 of Schedule 1 (previously reg. 40) to be set against the GIA of the chargeable development and not a part only. In the case of a development comprising semi-detached houses it was not possible to set off the area of the demolished building against the area of the semi which was not to be

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1496 Development: Retention of use as residential (C3)
1497 Development: Demolition of two houses and redevelopment of site to provide [ ] – para. 14
1498 Demolition of the [ ], change of use of offices and ancillary buildings…dated 2nd January 2019 – para. 26
1499 [2012] EWHC 2250
occupied as a residence by the owner. This is the case even if the new building which is not exempt from CIL is the site of the demolished building.

In consequence it will not be possible to combine the demolition deduction and the self-build housing exemption in a single development so as to avoid the CIL liability wholly. The CIL position might be different if it is possible to have separate planning permissions. In that case the self-build housing exemption can be granted for the house to be occupied as a residence for the owner and the demolition deduction can be set only against the GIA of the other house if the new house is to be constructed on the site of the building to be demolished. In those circumstances no CIL will be chargeable.

15.2.5.8 Review existing sites – the bringing into force of the 2014 Regulations was an opportunity to review the history of existing development sites in order to consider whether the relaxation of the period of the vacancy test would cause deductions to become available which were not under the regime prior to the 2014 Regulations. An example of this is the Hourhope case as the claim for the demolition deduction would not have been made but for the changes in 2014. The decision in that case meant that it would be sensible to review the history of development sites in respect of which a claim for a deduction is intended to be made. It will be necessary to assess whether on the facts concerning the particular site the decision will make it harder to obtain a deduction and whether it is possible to obtain further supporting information.

In the Hourhope case the claim had been made by a subsequent purchaser who had no personal knowledge of the circumstances during the six month period focused on and so was at a disadvantage when providing supporting information. At the time of the purchase the relevant period for the vacancy test was twelve months and not three years. In consequence it would not have been a point considered. Now that the period is three years the number of claimants not having personal knowledge of the building at the relevant time will increase significantly. When acquiring the building if it is expected that a deduction will be claimed it would be sensible to obtain from the vendor all such material information as the vendor has and if possible a continuing obligation to cooperate. In such cases purchases may often be from a mortgagee or liquidator and the task of obtaining such information may not be a simple one.

15.2.5.9 Abandonment of use – the second retained building deduction will only be available if there is a permitted use of the building which has not been abandoned. This introduces into the CIL regime a planning test which is uncertain. It has been held that the mere interruption of a use will not necessarily constitute abandonment (Fyson v Buckinghamshire CC). Changes of use or the cessation of one use in a mixture of uses can constitute abandonment (Hartley v Min of Housing and Local Government).

In deciding whether a use has been abandoned account will be taken of (i) the condition of the property; (ii) the period of non-use; (iii) whether there is an intervening use; and

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1500 Development: [ ] new semi-detached dwellings following the demolition of the existing dwelling.
Decision date: 2nd January 2019

1501 Development: 1 No. 2 storey [ ] dwellinghouse with rooms in the roof and 1 No. [ ] with basement [ ] dwellinghouse (following demolition of existing dwelling at [ ]). Decision date: 26th March 2019 - para. 14

1502 See section 15.2.5.3(ii)

1503 [1958] 1 WLR 634

1504 [1970] 1 QB 413
(iv) any evidence regarding the owner’s intention (Trustees of the Castelellyn-Mynach Estate v Secretary of State for the Environment[1505]). These factors have been repeated in para. 2.3.12 of the revised February 2014 Guidance which emphasises that each “case is a matter for the collecting authority to judge.”

15.3 Examples –

**Example 1** – single use development

Planning permission is granted for the construction of five houses on open land. The LPA’s CIL rate for residential development is £75 psm. The GIA for the five houses is 1000 sqm.

CIL charge = 10000 x £75 = £75,000

**Example 2** - mixed use development

In addition to the five houses the planning permission also permits an office building with a GIA of 500 sqm. The LPA’s CIL rate for office development is £40 psm.

CIL charge = [1000 x £75] + [500 x £40] = £75,000 + £20,000 = £95,000

**Example 3** – Demolition deduction in single use development

As in Example 1 save instead of the land being open there is a building on it with planning permission allowing it to be used as a factory. This building will be demolished to make way for the houses. The GIA of the factory is 600 sqm.

(i) if the factory has not been in use for three years prior to the grant of residential planning permission.

CIL charge is £75,000 as in Example 1 as there is no demolition deduction. The factory does not qualify as an “in-use building”.

(ii) The factory has been in use as a factory up until a year before the grant of residential planning permission. In those circumstances the factory qualifies as an “in-use building” and so there is a demolition deduction.

CIL charge = [1000 – 600] x £75 = 400 x £75 = £30,000

In an example in Appendix 1 to the VOA’s former CIL Appeals Guidance Notes (example 14) an issue is raised as to the calculation of the GIA of existing buildings for the purpose of a deduction which have a mezzanine floor. For example if the factory in this example had a mezzanine with a GIA of 50 sqm should the amount of the GIA the subject of the demolition deduction be 600 or 650? The RICS Code indicates that the area of a mezzanine floor should be included if there is permanent access to it. This would reduce the CIL liability by £3,750.

**Example 4** – Demolition deduction in mixed use development

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[1505] [1985] JPL 40
As in Example 2 save instead of the land being open there is a building on it with planning permission for use as a factory. This building will be demolished to make way for the houses. The GIA of the factory is 600 sqm.

(i) The existing office building has not been in use for three years prior to the grant of planning permission.

As in Example 3 there will be no demolition deduction because the factory is not an “in-use building”. Consequently, the CIL charge is £95,000.

(ii) The factory has been in use up until a year before the grant of residential planning permission. In those circumstances the factory is an “in-use building” and so there is a demolition deduction. In consequence the GIA of the existing factory will need to be apportioned between the parts of the authorised development relating to residential use and office use.

CIL charge –

(1) Residential part of chargeable development
Chargeable GIA of residential part after deduction = 1000 (GIA of five houses) - \[600 \times \frac{1000}{1500}\] (portion of GIA of existing factory attributed to residential part) = 1000 – 400 = 600

CIL charge on residential part = 600 x £75 = £45,000

(2) Office part of chargeable development
Chargeable GIA of office part after deduction = 500 (GIA of new office building) – \[600 \times \frac{500}{1500}\] (portion of GIA of existing factory attributed to office part) = 500 – 200 = 300

CIL charge on office part = 300 x £40 = £12,000

Total CIL = £45,000 + £12,000 = £57,000

Example 5 - Extensions to buildings

An office building is to be extended by 130 sqm. The LPA’s CIL rate is £40 psm.

CIL charge on the extension is 130 x £40 = £5200

If the extension had been 95 sqm then there would be no CIL charge

Example 6 – A further example of the operation of the deductions is as follows. A owns an empty property in the Royal Borough of Kensington and Chelsea which was originally built as a house but then used for a number of years as an office until three years ago since when it has been unused. It has a gross internal area of 300 square metres. A successfully applies after 6th April 2015 for planning permission to use it as a residence. CIL is chargeable at the rate of £750 because it is situated in the zone charging the highest CIL rate. There is, therefore, a CIL liability of £225,000 because there is no deduction. The first retained building deduction will not apply as during as during the whole of the three years prior to development first being permitted following the grant of the permission it has not been in lawful use. The second retained building deduction does not apply as there is a change in permitted use.
However, if during the last three years part of the building had been continuously used as an office and the rest of the building had been vacant then the whole of the gross internal area would be available as a deduction. This is because use of part suffices to allow the deduction in full. As discussed above it would seem this would still be the case if the building comprised a number of self-contained offices and only one was occupied prior to the permission first permitting the change from residential to office use. This use of one office should cause the whole building to qualify.

On the other hand if the Kensington building had been used as a house throughout the life of the building until it ceased to be used three years ago then on a successful application to convert it to three flats there would be no charge to CIL due to the specific exclusion in reg. 6(1)(d) and there would be no need to be concerned whether it qualifies as an “in-use building” unless in addition building works are to be carried out requiring planning permission.

15.4 Extension of unused building – if it is intended to extend a building which has been unused for three years by say 70 square metres there will be no CIL charge if the planning permission relates only to the extension. The new build will be within the 100 square metres limit. Even if the extension exceeds 100 square metres the CIL will be charged only on the area of the extension unless it is now exempt from CIL due to the application of the exemption for residential extensions. The position would be different if there has been an abandonment of the planning permission so that a fresh planning permission for the whole building is required and so the gross internal area of the building to be extended is included in the GIA of the chargeable development.

15.5 Internal areas deemed to be zero – the onus is placed on the person liable to CIL to provide to the collecting authority sufficient evidence of sufficient quality as to the use, history or internal areas of retained or demolished buildings for which a deduction is claimed when calculating the net chargeable area of the development. If there is insufficient evidence or if the evidence is of insufficient quality it is open to the collecting authority to deem that a building is not an “in-use” building or that a part of a building subject to a deduction has a GIA of zero. This will result in a CIL bill which possibly could have been lower or avoided.

The importance of collecting and providing such information to the LPA has been emphasised by the decision in the Hourhope case. This may particularly be a problem for purchasers of land who have no personal knowledge of the use of the building prior to purchase. It is not enough to rely on what the vendor says was the use. Evidence must be obtained to justify any claim that there has been a lawful use otherwise the purchaser may find that the contention cannot be proved and the CIL bill has unexpectedly increased accordingly.

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1506 Para. 1(10) in Schedule 1 previously reg. 40(11)
1507 See section 10.2 above
1508 See section 10.3 above
1509 See section 11.6 above
1510 Para. 1(8) and 1(9) in the Schedule previously reg. 40(9) and (10)
1511 See section 15.2.5
15.6 Indexation –

15.6.1 Pre-2019 (No. 2) Regulations - until 1\textsuperscript{st} September 2019 the CIL rates were increased or decreased annually by indexation related to the All-Tender Price Index in the manner set out in the simple formula in reg. 40(5). The justification for this was that the CIL rates were fixed on the basis of evidence as to the level of values and costs during the examination process. As time goes by the relationship between current values and costs with those on which the CIL rates were based will inevitably change and to attempt to mitigate against this indexation is applied. It means that as time passes the indexation element in the CIL calculation significantly increase the CIL bill.

These index figures are available from the Building Cost Information Service of the RICS but should also be held by the collecting authority. It should be noted that it was the index figure at the relevant November in the preceding year which was used regardless that the figure is subsequently changed as often happens more than once. In para. 2.3.3a of the revised February 2014 Guidance it is recognised that the figure is revised and finalised periodically. This seems to have resulted in different practices as to which figure to use. It is acknowledged that some authorities use the most recent finalised figure published before the previous November without suggesting that this practice is wrong. What is noticeable is that there is no guidance as to what is the correct practice which seems to be a feature of CIL. If a figure is used which is later revised it raises the issue as to whether the authority should then revise the CIL calculation. It has been held that it not wrong for an authority to adopt such an approach.\textsuperscript{1512} Whilst in another appeal the more recent figure put forward by the appellant was accepted by the appointed person even though it was still not the final figure. The charging authority had argued that the figures used should be the same throughout the year but this was not accepted.\textsuperscript{1513}

There is the further issue that an index has been used which requires a paid subscription to access. With the imposition and determination of tax liabilities the required information should be publicly available and at no charge. If the government wishes to adopt this approach then it should pay for the relevant part of the index to be made available to the collecting authorities and those subject to the CIL charge.

15.6.2 2019 (No. 2) Regulations – the government became concerned that as the value of developments increased there was a need to change the indexation element in the CIL calculation so that there was a closer link between the value of development and the CIL rates. As discussed above as a result it was proposed that residential developments would be subject to indexation using a local House Price Index and non-residential developments would be subject to indexation using a figure from the general index of consumer prices. The proposed provisions would have resulted in considerable complexity and there was a concern that it would increase the risk of legal challenge. In consequence the government has withdrawn the proposed indexation provisions and will consult further as regards the attempt to make the indexation provisions more responsive to increases in land and house prices with a view to introducing more amendments later.\textsuperscript{1514} In the meantime it has sought to make the indexation provisions

\textsuperscript{1512} Development: Conversion of first and second floor levels into ….Decision date: 16\textsuperscript{th} May 2016 para. 14

\textsuperscript{1513} Development: Demolition of two houses and redevelopment of site to provide [ ] – para. 17

\textsuperscript{1514} Para. 58 of the Government’s summary of responses to consultation issued in June 2019
simpler and more transparent by linking indexation to a bespoke index to be prepared by the RCIS once a year which will be published and so be available without payment.\textsuperscript{1515}

Prior to the calendar year 2020 the index will continue to be the national All-in Tender Price index published from time to time by the RICS. The figure for a calendar year will be the figure for that Index on 1\textsuperscript{st} November in the preceding year.\textsuperscript{1516} In relation to the calendar year 2020 and subsequent calendar years the index figure will be taken from the new bespoke index, the RICS CIL Index which will be published in November of the preceding year by the RICS and will be based on the BCIS.\textsuperscript{1517} In the event that the November figure for the RICS CIL Index is not published then the indexation reverts to the All-in Tender Price Index for that November\textsuperscript{1519} and if that is not available then the figure in the retail prices index for that 1\textsuperscript{st} November is used.\textsuperscript{1519} This should result in greater certainty and make the relevant index figures more easily accessible. At least that is until the next set of amendments.

15.7 Demolition –

15.7.1 Prior demolition – care needs to be taken that demolition does not commence too early resulting in adverse CIL consequences. In this context “too early” can mean before the grant of planning permission or after the grant but before the date on which the planning permission first permits development or even after these dates but before the intended commencement of the development.

There are still examples in the appeals of the mistaken belief that demolition does not constitute the commencement of the development.\textsuperscript{1520} In one appeal it was argued that there was a difference between demolition and construction and that a commencement notice was only needed for the latter. This disregards section 56(2) and 4) of the 1990 Act which provide that any work of demolition of a building is a material operation which commences the development.\textsuperscript{1521} It is unlikely to be avoided by arguing that the demolition is not the implementation of the planning permission but took place under the health and safety provisions in the Permitted Development Rights regime.\textsuperscript{1522} Similarly, an argument failed that the demolition had taken place 18 months before the grant of planning permission which only covered the demolition as it had been mistakenly left in the planning application.\textsuperscript{1523} CIL is charged on the development authorised by the planning permission and it is not possible to reduce the development authorized once a grant has been made. Describing the demolition as clearing the site so it is ready for development will not avoid those works constituting demolition and

\textsuperscript{1515} Para. 59 of the Government’s summary of responses
\textsuperscript{1516} Para. 1(5)(a) in the Schedule inserted by reg. 5(2) and Schedule 1 of the 2019 (No. 2) Regulations
\textsuperscript{1517} Para. 1(5)(b) in the Schedule
\textsuperscript{1518} Para. 1(5)(c) in the Schedule
\textsuperscript{1519} Para. 1(5)(d) in the Schedule
\textsuperscript{1520} APP/D1590/L/16/1200060 decision date: 19\textsuperscript{th} January 2017 and APP/K0235/L/17/1200101 decision date: 8\textsuperscript{th} August 2017 but the Council’s application for costs was reject as the appellant had believed the common misconception that demolition does not constitute the commencement of development.
\textsuperscript{1521} Para. 2
\textsuperscript{1522} APP/W0340/L/16/1200052 decision date: 12\textsuperscript{th} January 2017 para. 2 and APP/M1710/L/18/1200212 decision date: 18\textsuperscript{th} January 2019 at paras. 2-3 and PP/W0340/L/18/1200241 decision date: 22\textsuperscript{nd} May 2019
\textsuperscript{1523} APP/T5720/L/16/1200061 decision date: 10\textsuperscript{th} February 2017
being the commencement of the development. In another appeal demolition carried out by the purchaser ahead of completion of the purchase of the property without a commencement notice being given first was a failure by the purchaser. Demolition work to enable construction of retaining wall structures to proceed is still the commencement of a development. Similarly, demolition claimed to be necessary to enable a contamination survey to be carried out as required by a pre-commencement condition does not cause that not to commence the development which involves demolition.

It has been argued that demolition requires the removal of the whole building and that demolition of part only is not demolition but an alteration of the building. In one case in which this was put forward the evidence showed that only about 25% to 30% of the building was retained and so the argument failed.

The risks are:

(i) the part demolished not being included in the deduction from the chargeable internal floor area as part of figure E in the formula now contained in para. 1(6) in the Schedule (previously reg. 40(7)) because that deduction requires that the demolished building should still be in place on the day that the relevant planning permission first permits development.

(ii) the planning permission is caused to be in part a retrospective planning permission if the demolition was prior to the grant but the permission covers the demolition as well as construction works. This may result in the loss of an exemption such as self-build housing exemption.

(iii) if the demolition is before the service of a valid commencement notice that failure will have consequences including before the 2019 (No. 2) Regulations the loss of exemptions.

(iv) if the demolition is before the giving of a valid assumption of liability notice that can have CIL consequences.

(v) the commencement of demolition will trigger the CIL liability.

15.7.2 Deduction from gross internal floor area – the deduction allowed from the gross internal floor area when calculating the chargeable amount in relation to demolished parts is after the 2014 Regulations came into force more limited than in respect of retained buildings. Each must be situate on the relevant land at the time that development is first permitted. As regards retained buildings to be deductible one of two tests needs to be satisfied – either lawful user for a continuous six month period

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1524 APP/X4725/L/16/1200071 decision date: 24th May 2017 at para. 5
1525 APP/G1250/L/16/1200088 decision date: 16th June 2017 at para. 3
1526 APP/J4423/L/17/1200151 decision date: 12th April 2018
1527 APP/F0114/L/18/1200229 decision date: 2nd May 2019
1529 Development: Conversion and extension of disused barn [actually a [ ] to form a single dwelling. Decision date 18th June 2019 para. 20
1530 Originally reg. 40(6)
1531 See section 15.2.5.3 above
during a three year period or no change in authorised user. With regard to demolished parts only the first test will apply. The area will be included in the E figure if the relevant part has been in continuous use for any continuous period of six months in the three years (previously twelve months) preceding the day on which the relevant development is first permitted. The original test applicable to the twelve month period will apply in the case of a development regarding which the liability notice has been issued prior to 24th February 2014. The second test will not apply as regards demolished parts and so if the demolished building did not qualify as an “in-use building” then the demolition deduction is not available and CIL will be charged on the GIA without the area of the demolished building be deducted from it.

15.7.3 Site clearance - It was proposed in the April 2014 consultation that site clearance may be treated as a separate phase which will be neutral for the purposes of CIL but this was not included in the 2014 Regulations. This could have caused problems when each phase is treated as a separate chargeable development. However, it would have alleviated cash flow problems that arise when there is a lengthy gap between site clearance and the start of construction.

15.7.4 Evidence – it is important that evidence is retained as to both the nature and use of buildings demolished in the course of the development. There may be subsequent issues as to the size or use or period of user during the three years (previously twelve months) preceding the commencement of the development. The onus is on the developer or owner to provide such evidence. If not satisfied with the evidence the authority can disregard it.

15.7.5 Phased developments – as each phase under a phased planning permission is treated as a separate chargeable development consideration should be given, if possible, as to how the phases are carried out and to which phases the deductions for demolition or existing buildings should be applied. The figure Ex was added in reg. 40(8) now para. 1(7) of Schedule 1 to cope with the phasing of developments and demolition. The CIL consequences may vary particularly when there are differential rates in the area and mixed user developments. The importance of this has been increased with the extension of the treatment of phased developments to full and hybrid planning permissions as well as outline permission.

15.8 Section 106 agreements – there is no set off against the CIL liability for the costs of discharging the section 106 obligations relating to the site. If CIL is introduced just before a planning permission is granted that may justify an application to vary the section 106 obligations if they did not take account of the CIL liability.

15.9 Remediation costs – similarly there is no deduction allowable against the CIL liability in respect of the costs of removing contamination or otherwise remedying a brown field site.

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1532 Reg. 9(4)
J. Liability for CIL

16.1 General position - the expectation is that prior to the commencement of the development someone, normally the developer, will assume responsibility for the CIL liability. Section 208 PA 2008 requires that regulations must make provision for an owner or developer of land to be liable if nobody has assumed responsibility or other specified circumstances arise such as withdrawal by person who has assumed liability.\textsuperscript{1533} For these purposes it is provided that (a) “owner” of land means a person who owns an interest in the land, and (b) “developer” means a person who is wholly or partly responsible for carrying out a development.\textsuperscript{1534}

If no assumption of liability notice is served then a surcharge can be demanded and the CIL liability cannot be paid by instalments. In the absence of such a notice prior to the commencement of the development then the owner or owners of any material interests in the site will be liable for the CIL\textsuperscript{1535} which if there is more than one material interest will trigger the more complicated procedure of apportionment.\textsuperscript{1536} If there is more than one such owner then the CIL liability will have to be apportioned.

16.2 Assumption of liability – this will be an important element in any development and should be covered by agreement between the landowners and the developer. A person can assume liability for CIL “in respect of a chargeable development”\textsuperscript{1537} and need not have a property interest in the development site. With a phased development this should mean that different persons can assume liability for different phases as each phase is treated as a separate chargeable development.\textsuperscript{1538}

16.2.1 Effective notice - in order that there should be an effective assumption of liability a valid written notice must be given by the person assuming responsibility\textsuperscript{1539} in the prescribed form (or a form to substantially the same effect) containing the particulars specified or referred to in the form.\textsuperscript{1540} For these purposes Form 1 is available on the Planning Portal website.

The onus is on the owner to prove that it was given. Failure to prove that an assumption of liability notice was posted will mean that the onus has not been discharged and so the notice has not been given.\textsuperscript{1541} A surcharge may be imposed for failure to give an assumption of liability notice.\textsuperscript{1542} It will not be avoided by the CIL being paid following receipt of the liability notice.\textsuperscript{1543} However, if the authority has delayed the serve of a liability notice that will justify an appointed person on appeal treating the alleged breach of failure to give an assumption of liability notice as not proved and quashing the surcharge.\textsuperscript{1544} Although in an earlier appeal it was only the failure to give a

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\textsuperscript{1533} Subsection (4)
\textsuperscript{1534} Section 209(7) PA 2008
\textsuperscript{1535} Reg. 33
\textsuperscript{1536} See sections 16.6.3 and 16.8.3 below
\textsuperscript{1537} Reg. 31(1)
\textsuperscript{1538} Reg. 9(4)
\textsuperscript{1539} Reg. 31(1)
\textsuperscript{1540} Reg. 31(2)
\textsuperscript{1541} APP/X4725/L/16/1200077 decision date 10\textsuperscript{th} March 2017 para.2
\textsuperscript{1542} APP/J1860/L/18/1200180 decision date: 4\textsuperscript{th} October 2018
\textsuperscript{1543} APP/H5960/L/18/1200196 decision date: 7\textsuperscript{th} November 2018
\textsuperscript{1544} APP/U5360/L/18/1200230 decision date: 18\textsuperscript{th} April 2019 (over six years delay)
commencement notice which was found not to have been proved when the delay in serving the liability notice was a year. The failure to give an assumption of liability notice was found to be proved. An important point may be that the appellant by mistake gave a transfer of liability notice after the commencement of the development. Even so it is not immediately apparent that the two notices should be treated differently in this context. If one breach is not to be treated as not proved then the same should be the case with the other notice.

Any form complying with reg. 31(2) will be a valid assumption of liability notice. Usually each charging authority will have such a form on the authority’s website to be downloaded or a link to the Planning Portal website. On that website Form 1 relates to the assumption of liability and can be downloaded. It contains declarations that those signing the form assume liability for the CIL charge for the development described in the form; if signing on behalf of a company the person is authorised to do so; it is understood that a commencement notice must be submitted; there is an awareness of the surcharges that will be incurred if the correct procedures are not followed regarding payment of the CIL charge; and it is understood that any communications or actions by the collecting authority pursuing the assumed liability will be copied to the site owners. It is pointed out at the end of the form that if two or more persons have assumed liability to pay CIL they shall be jointly and severally liable. Lastly it is pointed out that it is an offence for a person to knowingly or recklessly supply information which is false or misleading in a material respect to a collecting or charging authority.

The correctly completed notice must be given to the collecting authority rather than the charging authority in cases where the two are different authorities.

The assumption of liability notice takes effect on receipt by the collecting authority. An assumption of liability notice will not be effective if received by the authority after the commencement of the development. If it is given after the commencement of the development then the landowners will be liable for the CIL. The collecting authority must send an acknowledgement of receipt to the person or persons assuming liability.

A person assuming liability for CIL under reg. 31 will be liable on commencement of the chargeable development to pay the chargeable amount less any relief granted. If two or more persons assume liability to pay CIL in respect of a chargeable development then each will be jointly and severally liable to pay the CIL.

16.2.2 Assumption of partial liability – it is not provided in reg. 31 whether it is possible for a person or persons to assume part of the CIL liability arising in respect of a chargeable development or whether the whole CIL liability has to be assumed. The format of Form 1 does not appear to cater for this as the box for the description of

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1545 APP/L5810/L/18/1200197 decision date: 6th December 2018
1546 Reg. 31(8)
1547 Reg. 110
1548 Reg. 31(4)
1549 Reg. 31(7)
1550 Reg. 33(1)
1551 Reg. 31(5)
1552 Reg. 31(3)
1553 Reg. 37(2)
1554 Referred to in section 16.2.1 above
the development seems to relate to the whole of the chargeable development and not anticipate only part being included. I consider it to be questionable whether it is possible to assume liability for only part of the CIL liability. It is provided in section 208 PA 2008 that regulations may be made about “assumption of partial liability” and the making of provision for the owner to be liable if liability has not been wholly assumed.1555 However, there is nothing in the regulations which expressly provides for the owner to be liable to the extent that liability has only been assumed in part. Further it is provided that in the event of the commencement of the development the person who has assumed liability is liable to pay the chargeable amount less any relief granted.1556 There is nothing in the wording to indicate that the person who has assumed liability may be liable to pay a portion of the chargeable amount. The same is the case with the provision relating to a transfer of liability.1557 The express wording only caters for one transfer by the person who has assumed liability.

One area where this may arise is with regard to the self-build housing exemption. It is a pre-requisite that the claimant self-builder has assumed liability.1558 The dwelling to be constructed by the self-builder does not have to be the whole of the chargeable development as the exemption may apply to “part of a chargeable development”.1559 The manner in which the requirement is formulated also supports this as the exemption claim must be made by a person who “has assumed liability to pay CIL in respect of the new dwelling, whether or not they have also assumed liability to pay CIL in respect of other development.”1560 If this is correct then it is possible for a planning permission to be granted in respect of a number of sites and for a self-builder in respect of each site to assume liability for CIL in respect of that self-builder’s site only. The alternative is for the application for the planning permission to assume liability and then make transfers of that liability in respect of each site to the individual self-builders.

16.2.3 Withdrawal – a person having assumed such responsibility may withdraw provided that this occurs before the commencement of the development.1561 To do so written notice of withdrawal must be given to the collecting authority. Form 3 on the Planning Portal website is provided for this purpose. It contains a declaration that the withdrawal is being made before the commencement of the development and this statement is made in good faith. It further states that the it is understood that the withdrawal will annul any social housing relief which has been granted. When there are contractual provisions relating to the assumption of liability these need also to deal with the possibility of withdrawal. Such provision may need only to block the possibility.

It is important that this ability to withdraw before the commencement of development is borne in mind. If a person acts on the basis that some other party has assumed liability it has to be appreciated that it is possible that the person assuming liability may withdraw that assumption of liability. In those circumstances the owners will become liable if no other person assumes liability. There is no escaping such liability even if not notified of the withdrawal. In an appeal the appellants claimed that the previous

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1555 Subsection (5)(c)
1556 Reg. 31(3)
1557 Reg. 32
1558 Reg. 54B(2)(b)
1559 Reg. 54A(1)
1560 Reg. 54B(2)(b)
1561 Reg. 31(6)
owners had agreed to continue to assume liability but in fact they withdrew so that the
purchasers became liable and were obliged to give an assumption of liability notice and
commencement notice. Not only were they liable to pay the CIL but also the surcharges
imposed due to their failures to give the notices.\textsuperscript{1562}

16.3 Transfer of liability – after the commencement of the development it is not possible
to assume liability or to withdraw from assumption of liability.\textsuperscript{1563} The only manner in
which another person may take on such liability is by transfer.\textsuperscript{1564} It is possible for a
person who has assumed liability to transfer that liability to another by giving a liability
transfer notice to the collecting authority.\textsuperscript{1565} This is possible before as well as after the
commencement of development and at any time up until the date when the final
payment of CIL is due.\textsuperscript{1566} If a person having assumed liability then transfers the
property the CIL liability remains with the transferor and does not automatically pass
unless and until there is a formal valid transfer of liability.\textsuperscript{1567}

There is nothing to indicate in the wording of reg. 32 that it is possible to transfer part
only of the liability. Section 208 PA provides for regulations to be made regarding
transfer of liability whether or not liability has been assumed but makes no mention of
a transfer of part which is in contrast to the provision concerning assumption of
liability.\textsuperscript{1568} This could be important if a developer has assumed liability for a residential
development and then purports to transfer liability in relation to individual plots to
individuals who will then seek to claim self-building housing exemption.

Again the notice must be in a prescribed form or a form to substantially the same effect
and include the particulars specified or referred to in the form.\textsuperscript{1569} Form 4 on the
Planning Portal website is provided for this purpose. It contains a declaration by the
transferor that the assumption of liability by that person is being withdrawn and that it
is understood that transferring the liability will annul any social housing relief that has
been granted. It confirms that the transfer has been completed prior to the due date for
the CIL final payment. It also includes fuller declarations by the transferee that liability
for CIL and surcharges including those already accrued is assumed; it is understood
that a commencement notice will need to be submitted; the transferee is aware that
failure to comply with the correct procedures for paying CIL will result in surcharges
and penalties; it is understood that any communications and actions by the collecting
authority pursuing the assumed liability will be copied to the site owners; and if the
transfer is prior to commencement of the development any existing social housing relief
will be null and void and a new claim will need to be made. A liability transfer notice
which complies with the requirements as to form and particulars is a valid notice.\textsuperscript{1570}

The liability transfer notice takes effect on the day received by the collecting authority
unless after the date on which the final payment is due in which case it is ineffective
even if that payment remains outstanding. On receipt of such a notice the collecting

\textsuperscript{1562} APP/L3815/L/17/1200149 decision date: 13\textsuperscript{th} June 2018
\textsuperscript{1563} Reg. 31(7) and (6)
\textsuperscript{1564} Reg. 31(7)
\textsuperscript{1565} Reg. 32(1)
\textsuperscript{1566} Reg. 32(3)
\textsuperscript{1567} APP/L3245/L/16/1200070 decision date:4\textsuperscript{th} August 2017 at para. 14
\textsuperscript{1568} Subsection (5)(g)
\textsuperscript{1569} Reg. 32(2)
\textsuperscript{1570} Reg. 32(6)
authority must send an acknowledgement of receipt to both the transferor and the transferee of the liability.\textsuperscript{1571} From the date of receipt by the collecting authority the named transferee will assume liability and be liable for so much of the CIL liability as remains outstanding.\textsuperscript{1572} The collecting authority cannot object to the transferee and is required to send an acknowledgement to the person liable to pay the CIL and the person applying for the transfer of liability. This means it is open to a person who has assumed liability to transfer to a “man of straw” and the collecting authority can raise no objection. In such circumstances when default occurs the collecting authority will not look to the transferor but to the owners of the site.\textsuperscript{1573} When there are contractual provisions regarding the assumption of liability it will be necessary to deal with the possibility of a subsequent transfer of liability.

16.4 Obligation to assume liability - an important feature of arrangements regarding a proposed development will be who is to assume liability for CIL and give the required notice. Merely to require a person such as the developer to give such a notice will not be sufficient protection. After giving the notice it may then be withdrawn or a subsequent transfer of liability notice be given. Any obligation relating to the giving of an assumption of liability notice needs also to prohibit any withdrawal or transfer of liability or at least require the prior written consent of the owners of material interests in the site. If the person assuming liability is an individual then the possibility of death before the commencement of development will need to be covered as well.

16.5 Death of person assuming liability –

16.5.1 Prior to commencement of development – reg. 39 only applies if the person who has assumed liability dies before the commencement of the development.\textsuperscript{1574} In such circumstances that person’s liability will not continue after death provided that it occurs before the commencement of the chargeable development.\textsuperscript{1575} Following the death the liability for CIL can be assumed by another before the commencement of the development.\textsuperscript{1576} The person seeking to assume liability must give a valid assumption of liability notice complying with reg. 31\textsuperscript{1577} but such notice will only be valid if accompanied by a death certificate for the person who assumed liability but then died.\textsuperscript{1578} There is no express provision stating what happens if there is such a death but no assumption of liability thereafter. As the original assumption of liability has ceased to have effect due to the death reg. 33 will apply on the commencement of the development and the owners will be liable.\textsuperscript{1579}

16.5.2 After commencement – the deceased’s CIL liability will pass to the personal representatives\textsuperscript{1580} but will not arise until notice requiring payment has been served requiring payment of the CIL due from the deceased.\textsuperscript{1581} Any such liability met by the

\textsuperscript{1571} Reg. 32(4)
\textsuperscript{1572} Reg. 32(5)
\textsuperscript{1573} See para. 16.8.1 below
\textsuperscript{1574} Reg. 39(1)
\textsuperscript{1575} Reg. 39(2)
\textsuperscript{1576} Reg. 39(3)
\textsuperscript{1577} Reg. 39(3) and see section 16.1 above
\textsuperscript{1578} Reg. 39(4)
\textsuperscript{1579} see para. 16.6 immediately below
\textsuperscript{1580} Reg. 108(1) and (2)
\textsuperscript{1581} Reg. 108(3)
personal representatives will be deductible from the estate and is a liability in the capacity of the personal representative.\textsuperscript{1582} The collecting authority may exercise any of the powers of recovery contained in Chapter 3 of Part 9 of the 2010 Regulations in respect of the CIL liability passed to the personal representatives.\textsuperscript{1583} This will not include the power to issues a stop notice which is in Part 8. Any subsisting right of appeal under reg. 117 (surcharge), 118 (deemed commencement) or 119 (stop notice) can be exercised by, continued or withdrawn by the personal representatives insofar as relevant to the personal representatives’ liability.\textsuperscript{1584} In the event that the deceased has paid any excess of the deceased’s CIL liability and it has not been repaid under reg. 75 then the personal representatives are entitled to the excess.\textsuperscript{1585}

16.6 Liability when no assumption of liability notice – reg. 33 applies if the development commences and nobody has assumed liability to pay CIL.\textsuperscript{1586} It also applies if an assumption of liability notice is withdrawn and no one else gives an assumption of liability notice.\textsuperscript{1587} In the absence of anyone assuming liability subject to one qualification\textsuperscript{1588} the CIL liability is by default apportioned amongst the owners of the material interests in the site.\textsuperscript{1589} The qualification is if the commencement of the development is due to works are carried out pursuant to the exercise of a statutory right of entry on the land without the agreement of the owner of the land.\textsuperscript{1590}

16.6.1 Material interests –

16.6.1.1 General – to be liable for CIL a person must be an owner of the relevant land and this requires the person to own a material interest in the land.\textsuperscript{1591} For these purposes a material interest is the freehold estate and any leasehold interest having a term which expires more than seven years after the planning permission first permits the chargeable development.\textsuperscript{1592} This may operate capriciously if the lease is for a term which is less than seven years but under which the tenant has statutory security of tenure. It means that a business tenant may not be liable for any part of a CIL liability arising from a development the tenant is carrying out even though having a right to occupy the premises possibly for an indefinite period. It emphasises the importance from the landlord’s perspective of having appropriate provisions in the lease to cover developments carried out by the tenant giving rise to a CIL liability.

16.6.1.2 Jointly owned interests - Jointly owned interests will give rise to a joint and several liability for any CIL liability falling on the owners.\textsuperscript{1593} This means that for the purposes of apportionment the jointly owned interest is valued and not the individual shares of the joint owners.

\textsuperscript{1582} Reg. 108(2) and (5)
\textsuperscript{1583} Reg. 108(7)
\textsuperscript{1584} Reg. 108(6)
\textsuperscript{1585} Reg. 108(4)
\textsuperscript{1586} Reg. 33(1)
\textsuperscript{1587} Reg. 33(3)
\textsuperscript{1588} Reg. 33(2)
\textsuperscript{1589} Reg. 33(4) and see section 16.6.2 below
\textsuperscript{1590} Section 208(4) and 209(7) of the Planning Act 2008 and reg. 4(1)
\textsuperscript{1591} Reg. 4(2)
\textsuperscript{1592} Reg. 37(1)
16.6.1.3 Trusts –

(i) **Bare trust/Nominee** - if the material interest is held by a nominee or bare trustee then the Regulations apply as if the interest is vested in the beneficiaries and the acts of the nominee or bare trustee are treated as the acts of the beneficiaries.\(^{1594}\) There is a definition of bare trust for these purposes which is a trust under which property is held by a person as trustee either for a person who is absolutely entitled as against the trustee, or who would be so entitled but for being a minor or other person under a disability or for two or more persons who are or would be jointly so entitled.\(^{1595}\) This definition is expressly extended to include “a case in which a person holds property as nominee for another”.

(ii) **Settlement** – a settlement is any trust which is not a bare trust.\(^{1596}\) Where a material interest is subject to a settlement and a CIL liability is payable then it is recoverable from the responsible trustees.\(^{1597}\) These are the trustees who were trustees on the day on which the chargeable development was commenced and any person subsequently becoming a trustee.\(^{1598}\) Any one or more of the trustees may be pursued.\(^{1599}\)

16.6.2 Statutory right of entry – the owners of the material interests in the site will not be liable by default if the development works are carried out on the site by a person who does not have a material interest in the land but has entered pursuant to the exercise of a statutory right of entry without the agreement of the owners and satisfies the pre-conditions attached to this provision.\(^{1600}\) Instead of the owners of the material interest the person exercising the statutory right will be liable to pay the CIL liability. This does not extend to persons who enter pursuant to a right of entry conferred not by statute but by deed.

For this provision to apply the following conditions must be satisfied:

(i) a person (described as P in the provision) or a person acting on behalf of that person must have entered and taken possession of the relevant land whether in whole or part.\(^{1601}\) It is not clear whether the need for the person to take possession limits the scope of this provision and will give rise to cases in which there has been entry and works carried out but these do not constitute the taking of possession.

(ii) the entry and taking of possession is pursuant to a power conferred by or under statute;\(^{1602}\)

(iii) is without the agreement of the owners of the material interests in the land.\(^{1603}\) If some agree and some do not it is not clear whether this provision will still apply.

\(^{1594}\) Reg. 38(1)
\(^{1595}\) Reg. 38(4)
\(^{1596}\) Reg. 38(4)
\(^{1597}\) Reg. 38(2)
\(^{1598}\) Reg. 38(3)
\(^{1599}\) Reg. 38(2)
\(^{1600}\) Reg. 33(4)
\(^{1601}\) Reg. 33(4)(a)
\(^{1602}\) Reg. 44(4)(a)(i)
\(^{1603}\) Reg. 44(4)(a)(ii)
(iv) P, or the person acting on behalf of P, carries out works on the relevant land which cause the chargeable development to commence;\textsuperscript{1604}

(v) P is not an owner of a material interest in the relevant land at the date that the chargeable development is commenced.\textsuperscript{1605}

When the provision applies P will be liable for the whole amount of CIL payable.

16.6.3 Apportionment – the owners of the material interests unless joint owners are not jointly and severally liable for the whole of the CIL liability but are solely responsible for the portion of the CIL liability apportioned to them.\textsuperscript{1606} The apportionment to ascertain the share of the CIL liability of an owner of a material interest, O, is carried out using the following formula:\textsuperscript{1607}

\[
\frac{V_o \times A}{V}
\]

Where—

\(V_o\) = the value of the material interest owned by O;

\(V\) = an amount equal to the aggregate of the values of each material interest in the relevant land; and

\(A\) = the chargeable amount payable in respect of the chargeable development.

Such an apportionment and valuation:-

(i) will be carried out using the evidence provided to the authority and does not involve a procedure akin to arbitration;

(ii) the value of a material interest is the price that it might reasonably be expected to obtain if sold on the open market on the day the apportionment takes place;\textsuperscript{1608}

(iii) on the assumption that the chargeable development has been completed on the day before the apportionment;\textsuperscript{1609}

(iv) on the assumption that the open market value will not be reduced by the whole of the relevant land being placed on the open market at the same time;\textsuperscript{1610}

(v) the open market value will take account of factors unrelated to the development such as hope value for further development;

\textsuperscript{1604} Reg. 44(4)(b)
\textsuperscript{1605} Reg. 44(4)(c)
\textsuperscript{1606} Reg. 33(2) and 34(1)
\textsuperscript{1607} Reg. 34(2)
\textsuperscript{1608} Reg. 34(4)(a)
\textsuperscript{1609} Reg. 34(4)(b)
\textsuperscript{1610} Reg. 34(5)
The value of each material interest is the open market value of that interest assuming that the chargeable development had completed the day before the apportionment.\textsuperscript{1611} This replaces the original reg. 34(4) which provided that “For the purposes of paragraph (2), the value of a material interest is the price (taking into account any value added by the chargeable development) that it might reasonably be expected to obtain if sold on the open market on the day the apportionment takes place.”\textsuperscript{1612} The change makes it clear that the what is being valued is the completed chargeable development and not the land with the benefit of the planning permission.

In addition it is not only value which is attributable to the particular development that is taken into account. The land may still have some hope value related to possible future developments. For example, parts of the land may not have been fully developed or may provide an accessway to other land which has yet to be developed. These will be factors to be taken into account when valuing the land for the purposes of apportionment even though they will not have influenced the amount of the CIL liability.

The portion of the CIL liability apportioned to O will be reduced by the amount of any relief granted to O in respect of the chargeable development.\textsuperscript{1613} This ensures that the CIL relief is not shared with owners of material interests in the land who are not eligible for the relief.

In order to carry out the apportionment the collecting authority may require information to be provided by an owner of a material interest in the relevant land by serving an information notice on such an owner.\textsuperscript{1614} The information notice may request information about the owner’s interest in the relevant land and any other information in the owner’s possession or control which the authority considers relevant to assist it in apportioning the CIL liability.\textsuperscript{1615} Such an information notice must inform the owner of the consequences of a failure to comply.\textsuperscript{1616} The owner has 14 days beginning with the day on which the notice is served in which to comply.\textsuperscript{1617} In the event that the owner fails to meet the time limit a surcharge may be imposed by the authority which is equal to the lower of 20 per cent of the amount of CIL the owner is liable to pay in respect of the chargeable development or £1,000.\textsuperscript{1618}

It is open to question as to how much care will be put into such apportionments. There is no procedure whereby the owners may have an input into the process save that there is a right to appeal.\textsuperscript{1619} The results may be controversial and unfair as between different owners of material interests. There could be further difficulties if the apportionment is delayed. Should the development wait or go ahead without knowing how the liability is to be shared and so face the prospect of a late payment of CIL.

\textsuperscript{1611} (ii) and (iii) immediately above
\textsuperscript{1612} Replaced by reg. 6 of the 2011 Regulations
\textsuperscript{1613} Reg. 34(3)
\textsuperscript{1614} Reg. 35(1)
\textsuperscript{1615} Reg. 35(2)
\textsuperscript{1616} Reg. 35(3)
\textsuperscript{1617} Reg. 35(4)
\textsuperscript{1618} Reg. 86
\textsuperscript{1619} Reg. 115 and see section 20.3 below
16.6.4 Example – a freehold site is owned by three brothers in equal shares. Planning permission is obtained to build twenty houses on the site. The brothers grant a long lease to a developer but the developer fails to assume liability before the development commences. For the purposes of the apportionment the valuation of the various interests assumes that the development has been carried out. The freehold estate is valued at £500,000 and the leasehold interest at £5,500,000. The CIL liability is £300,000. The developer is liable for £275,000 and each of the brothers is jointly and severally liable for £25,000.

16.7 Default by person assuming liability – for conveyancers there is one aspect arising from the provisions governing liability for CIL which will always have to be borne in mind and which will need to be covered in any arrangements between a developer and landowner. It will be expected that someone, normally the developer, will have assumed liability for the CIL. In the event that the person assuming liability fails to pay the CIL then the liability will revert to the persons who would have been responsible but for the assumption of liability. The landowners will not only be liable if there has been no assumption of liability notice given to the collecting authority but may be liable even though one has been given. Default for these purposes covers a failure to make a land payment and an infrastructure payment.\(^\text{1620}\)

16.8 Owners liability –

16.8.1 transfer of liability - in the event that a person has assumed liability to pay CIL but the collecting authority has been unable to recover the amount of CIL payable by that person then the position regarding liability will be governed by reg. 36.\(^\text{1621}\) When the collecting authority is unable to recover the full CIL liability from the person who has assumed liability then it can determine that the liability has been transferred to the owners.\(^\text{1622}\) If there is more than one material interest in the relevant land then the outstanding CIL liability will be apportioned between the owners of such interests.\(^\text{1623}\) This power is exercised by serving a default of liability notice.\(^\text{1624}\) A collecting authority can only do so after it has first made all reasonable effort to recover the CIL liability using one or more of the recovery powers contained in Chapter 3 of Part 9 of the 2010 Regulations.\(^\text{1625}\) This does not apply if the assumption of liability notice has been withdrawn.\(^\text{1626}\)

These recovery methods are extensive but no account is to be taken of the stop notice procedure which is contained in Chapter 2 of Part 9. This does not mean that the collecting authority cannot use this method in these circumstances but there is no obligation on it to do so. It is possible to foresee disputes between collecting authorities and landowners as to whether or not the collecting authority has used reasonable efforts to recover the outstanding CIL liability. From the landowners point of view it is far better that the collecting authority undertakes such an exercise and incurs the expense of doing so than they have to even if they are entitled to which they may not be.

\(^\text{1620}\) Reg. 74(2)
\(^\text{1621}\) Reg. 36(1)
\(^\text{1622}\) Reg. 36(2)
\(^\text{1623}\) Reg. 36(5)
\(^\text{1624}\) Reg. 36(4) and see section 16.8.2 immediately below
\(^\text{1625}\) Reg. 36(3)
\(^\text{1626}\) APP/L3815/L/17/1200149 decision date: 13th June 2018
16.8.2 Default of liability notice - in such circumstances the collecting authority must serve a “default of liability notice” and apportion the outstanding CIL liability between the owners of each material interest in the land. A default of liability notice must be in the prescribed form or a form to substantially the same effect. It must specify the outstanding amount of CIL payable and include the information specified in the form. The authority must serve the notice on each owner of a material interest in the relevant land.

Until the expiry of the period seven days beginning with the day on which the default of liability notice is issued no stop notice can be served nor any surcharge imposed by the collecting authority.

16.8.3 Apportionment - the apportionment under reg. 36 is between the various owners of material interests in the site. It will be dealt with in the same manner as an apportionment under reg. 34 when no assumption of liability notice is given. An apportionment in such circumstances will not necessarily result in the same figures as would have been produced if there had been an earlier apportionment because no-one had assumed liability. The values to be used for the apportionment will be the open market values as at the date of the apportionment and so if the value of a material interest has increased or decreased since the development that will be taken into account. The change in value may be unconnected to the development. For instance, a building completed as part of the development may have subsequently been extended. The resulting increase in value will be taken into account even though wholly unconnected with the development works.

The apportionment is amongst the owners at the time of the default. This requires the person to be the legal owner. A purchaser who has not completed will not be caught. Any apportionment will be to the vendor and not the purchaser. This means that if one house sale has been completed by the time of apportionment but another sale is yet to be completed then the purchaser who has completed will be liable for a portion of the outstanding CIL but not the purchaser who has yet to complete.

16.8.4 Example – a residential development has been carried out by a developer having assumed liability for CIL. One of the houses on the development has been sold. After completion the developer defaults on the payment of a CIL instalment so that the full outstanding amount of CIL, £100,000, becomes due. The value of the unsold residential estate at that time is £2,250,000 and the value of the house that has been sold is £250,000. On an apportionment of the CIL liability the purchaser of the house will be liable for £10,000 being

$$\text{the outstanding CIL x \ [value of house/ aggregate value of unsold residential estate and house]}$$
The developer will be liable for the remaining £90,000. If prior to default the developer has sold the estate then the purchaser will be liable.

If in this example the CIL default had occurred after the exchange of contracts for the sale of the house by the developer but before completion then the purchaser will not be liable for any portion of the CIL as at the time the purchaser is not the legal owner of the house. As with many features of CIL the emphasis is on robustness rather than fairness. However, in those circumstances the purchaser will purchase the house subject to any local land charge registered by the authority to protect the CIL liability unless it is discovered before completion and the purchaser refuses to complete until the charge is removed. Even if not registered the purchaser may take subject to such a local land charge.

16.8.5 **Response to default notice** - the service of a default of liability notice is a very important step for the owners and will require some speedy liaison and a fast response. It may occur part way through the development so that the subsequent service of a stop notice by the collecting authority would have substantial adverse financial consequences for the owners. It is to be expected that such a default of liability notice will not have come as a bolt out of the blue but it does emphasise the need for owners to keep a beady eye on the progress of the development and the financial well-being of the developer.

16.8.6 **Effect on prior exemption** - there is a further point to be borne in mind. A person may be exempt from primary liability for CIL but that will not protect that person from a CIL liability transferred due to a default by the person who assumed liability. For example, if a charity is involved and part of the developed site will be occupied wholly or mainly for charitable purposes it will be exempt but the charity will still be liable for any unpaid CIL liability transferred to it under reg. 36 and attributable to the part not to be used for charitable purposes.

16.8.7 **Appeals** – an owner of a material interest in land who is aggrieved by an apportionment decision may appeal to an appointed person. This appeal must be made within 28 days of the issue of the demand notice.

16.8.8 **Warnings** – when acting for a landowner it will be important to give a warning that even if the developer assumes liability for CIL there is a risk that the landowner could be responsible for payment of CIL if the developer later defaults. It is not just the owner as at the date of the grant of planning permission that needs to be warned. Any one acquiring an interest in the land before the discharge in full of the CIL liability can be at risk. In the event of default by a person who has assumed liability for CIL it is the owners at the time of default amongst whom the outstanding CIL liability is apportioned. For example, if there is a residential development and a house is sold then the purchaser will be liable for a portion of the outstanding CIL liability if the developer defaults on the payment of a CIL instalment after the completion of the sale of the house.

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1634 Reg. 115 and see section 20.3
The position is made even worse if the purchaser of the house improves it because any increase in value will in turn increase the portion of CIL for which the purchaser is liable notwithstanding that the increase in value has nothing to do with the development works. The apportionment of CIL in such circumstances will come as a complete surprise to the house purchaser. Take a simple example in which three houses are built and sold before the developer defaults leaving £28,000 CIL outstanding. At the date of the default each house is valued at £400,000 save that one has had an extension and is then valued at £450,000. The owners of two will each be liable for £8,960 of the outstanding CIL liability and the owner of the extended home liable for £10,080. The extension will have been exempt from CIL even if greater than 100 sqm but the resulting increase in value will be taken into account when apportioning an outstanding CIL liability. An outcome which is robust but lacking in fairness.
K. Demand Notice

17.1 **Requirement** - it is a mandatory requirement that a demand noticed be served by the collecting authority on each person liable to pay CIL in respect of a chargeable development.\(^{1635}\) Although not a ground of appeal complaint is often made that a demand notice is served too soon after a grant of planning permission. One reason for this may be because the permission is retrospective. It will not affect an appeal.\(^{1636}\)

17.2 **Form**\(^{1637}\) – as with the liability notice it must be either in the prescribed form or a form which is substantially the same. It must include:-

17.2.1 the date of issue;

17.2.2 identify the liability notice to which relates;

17.2.3 state the intended commencement date or, if the authority has determined it, the deemed commencement date;

17.2.4 state the amount due from the person on whom served (including surcharges and interest) and the date when payment is due\(^{1638}\);

17.2.5 if payable by instalments state the amount and payment date of each instalment;

17.2.6 any other information required in the prescribed form. This includes the statement in the form that “You may appeal against this surcharge of the Planning Inspectorate within 28 days of the date of this notice”

If the authority has deemed the commencement date then it must do the best it can with the information provided.\(^{1639}\)

17.3 **Defective demand notices** – the High Court in Hillingdon LBC v SSHCLG and McCarthy & Stone Lifestyles Limited\(^{1640}\) has had to consider the service of a demand form which had parts required by reg. 69(2) missing. The actual decision is significant but the factual history of the matter is also interesting. The developer did not give an assumption of liability notice or a commencement until more than two years after the commencement of the development. As the developer wanted to pay the CIL liability in order to release the development site from the Council’s local land charge which would then allow the residential units to be sold it prompted the Council to serve a demand notice. It served one which stated the amount due to be the amount specified in the liability notice without any surcharges or interest. The developer paid this sum but without prejudice to the developer’s contention that the Council had charged CIL on too great a GIA. At the developer’s request the CIL calculation was reviewed (albeit

\(^{1635}\) Reg. 69(1). A demand notice served by recorded delivery but returned as not collected by the addressee has still been validly served – para. 4 APP/D3315/L/16/1200045 decision date: 15\(^{th}\) September 2016.

\(^{1636}\) APP/P1235/L/17/1200144 decision date: 31\(^{st}\) May 2018 at para. 1 regarding demand notice served four days after grant of planning permission.

\(^{1637}\) Reg. 69(2)

\(^{1638}\) This will include any land payment and infrastructure payment – reg. 74(2)

\(^{1639}\) APP/F5540/L/14/1200013 decision date 17\(^{th}\) March 2015 - para. 14

\(^{1640}\) [2018] EWHC 845 (Admin)
not a statutory review under reg. 113 as the time limit had long passed). The Council accepted that there had been an error in determining the GIA and corrected the amount of the CIL liability but then added five surcharges (based on a failure to give assumption of liability notice, a failure to give a commencement notice and three failures to pay CIL) and interest. A second demand notice was then served by the Council specifying the amount due but giving no breakdown as to the amount of the surcharges. There was nothing in that notice that would indicate that surcharges were being imposed. The second demand notice was sent by e-mail and also by post. The posted demand notice was accompanied by an invoice which showed how the total amount was arrived at. That invoice was not included in the attachment to the e-mail. The invoice had been e-mailed to the developer just under two months previously.

Both demand notices omitted to attach details of the surcharges and how they were calculated and also omitted to include an informative statement notifying the recipient of its rights of appeal. The Council relied on the second demand notice as imposing the surcharges. The developer appealed against the surcharges under reg. 117 on the basis that it had only received the demand notice and invoice later and the appeal was within 28 days from that receipt. The Council claimed that the appeal was out of time and should not have been accepted by the VOA. It was accepted by both sides that the 28 day period for appealing could not be extended. As regards the omissions it was argued that the second demand notice was in a form substantially to the same effect as the Secretary of State’s form.

Mr. Martin Rodger QC sitting as a Deputy Judge of the High Court stated that the “imposition of a CIL surcharge is a formal matter. The Levy is a punitive imposition designed to penalise a developer which has failed to comply with the 2010 Regulations. It is agreed that such a developer has no opportunity to seek any extension of the 28 days allowed for bringing an appeal. It is therefore important that the procedure is complied with in a way which leaves no doubt either about whether an amount has been demanded, or about when the demand was made. The latter question is of particular important in this case, and in any case in which it is said a right of appeal has expired.”

He considered that the statutory requirements was an indication that these are considered to be important. As regards the hard copy which included the accompanying invoice this would have been sufficient as regards the details of the surcharge but the Council’s evidence did not establish on balance that it had been posted.

In respect of the argument on behalf of the Council that the form was substantially to the same effect as the prescribed form the learned judge stated

“57 I have been referred to the decisions of the Court of Appeal in R(Jeyeanthan) v Home Office [2000] 1 WLR 354 and of the House of Lords in R v Soneji [2005] UKHL 49 concerning the proper approach to procedural irregularity. In Soneji Lord Steyn cited the decision of High Court of Australia in Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355, on the utility of classifying statutory procedural requirements as either directory or mandatory. The High Court concluded that those classifications had outlived their usefulness because they tended to deflect
attention from the real issue, which is whether an act done in breach of the legislative provisions is invalid. A better test for determining the issue of validity is to ask whether it was a purpose of the legislation that an act done in breach of the provision should be invalid. That was the approach taken in Australia, and Lord Steyn endorsed it, describing the Project Blue Sky decision as a most valuable one.

58 The modern approach taken in the courts of this country (of which only Soneji was cited as an example, although there has been quite a lot of additional authority along the same lines in the subsequent 12 years), is to ask what the framers of the regulation or requirement intended the consequence of non-compliance to be, rather than to classify the requirement as mandatory, with the implication that non-compliance will be fatal to the validity of the procedure, or discretionary, when it may be forgiven and overlooked. In my judgment, that approach does not depend on the subjective knowledge or subsequent acts of the person receiving the notice, any more than any other question of statutory intention depends on the subjective knowledge or behaviour of a particular individual affected by the relevant non-compliance.”

He did not accept that it was material that the recipient was knowledgeable or professionally advised. Both the omissions were of “fundamental importance” and the specification of separate items to be included in the form meant that Parliament intended there to be no room for ambiguity. In consequence the effect of the two omissions was that the recipient would be left wondering if the this was intended to be a demand notice and it was not a compliant demand notice.

A number of points are illustrated by the decision:

(i) an appeal against a surcharge is possible even if the development has commenced.

(ii) further information can be provided to an authority even after the commencement of the development and it will be acted upon. In this case the Council had accepted that the figure for GIA needed to be corrected.

(iii) payment of the CIL liability does not preclude issues being raised as to whether the amount is correct. In this case the payment was made without prejudice to the developer’s issues and such a reservation is sensible.

(iv) it is unlikely that the omission of particulars from a notice required by the statutory provisions or the prescribed forms will result in a valid notice whether to be given by an authority or an owner/developer.

(v) failure to comply with the CIL regime carries a financial penalty. In this case five surcharges were imposed as well as interest

An error in a demand notice may be such that it does not mislead the recipient and thus can be overlooked. In one appeal a charging authority referred to a commencement notice being served when a deemed commencement date had been determined by the authority due to the failure to serve a commencement notice. The parties to the

1643 Para. 59
1644 Para. 60
1645 Para. 61
1646 Para. 62
subsequent appeal were aware that this was the case and no substantial prejudice had
been suffered by the recipient so there was no need for a revised demand notice.\textsuperscript{1647} However, as the planning permission was retrospective the commencement date was
deemed to be the date of the grant of the planning permission in accordance with reg.
7(5) and not the much later date specified by the charging authority. In consequence a
revised demand notice was required.\textsuperscript{1648}

17.4 Attempts to withdraw commencement notice – having served a commencement
notice it is still possible to withdraw it unless the development has commenced.\textsuperscript{1649} A
decision to defer development is particularly likely if a beneficial change is about to be
introduced to the CIL regime. For example, it would have been sensible to defer starting
work on a house extension before the introduction of the 2014 Regulations so that
advantage could be taken of the new exemption for residential extensions. The issue in
such circumstances is whether or not it is still possible to defer the triggering of the CIL
liability. If the development has commenced then the right to change the
commencement date will have been lost and the CIL liability triggered. This point arose
in an appeal against Preston City Council.\textsuperscript{1650} The demand notice specified the
commencement date given in the house owner’s commencement notice\textsuperscript{1651} but then the
owner sought to withdraw it. Preston Council made a site inspection and took
photographs showing that the work had started. The demand notice was upheld and the
owner remained liable to pay the CIL liability as it was too late to withdraw the
commencement notice.

17.5 Revised demand notices – the collecting authority has the ability to serve a revised
demand notice at any time so any errors can be quickly corrected.\textsuperscript{1652} There is no need
to serve one just because the enforcement process has been placed on hold due to a
complaint against the Council.\textsuperscript{1653} Such a revised demand notice must be served on any
person on whom an earlier demand notice was served if there have been changes to the
particulars regarding the intended commencement date or deemed commencement date,
the outstanding amount of CIL due from the person or the date when payment is due,
or the amount of any instalments or the date on which the instalments are due.\textsuperscript{1654} Once
a revised demand notice is served on a person any earlier demand notice served on that
person will cease to have effect.\textsuperscript{1655}

17.6 Suspension of liability –

17.6.1 Reason for ability to suspend - it is possible for a person who has received a
demand notice to request the collecting authority to declare that the CIL does not have
to be paid until the start of works forming part of the chargeable development on the land in which the person has a material interest.\footnote{Reg. 69A(1)} The reason for this provision is to protect owners whose land has been included in a planning application possibly without that person’s consent. There is no requirement that an applicant for planning permission has to be the owner of the land. An application may relate to a larger area than just that person’s land and development work may have started on another area. If no-one has assumed liability for the CIL arising upon commencement of the development then this would be sufficient to cause CIL to be payable by that owner although not involved in either the development or planning application. Reg. 69A seeks to relieve the owner in such circumstances on receipt of a demand notice. However, the conditions are rigid and there is still the prospect that the owner could be liable to pay CIL even though not involved in the triggering development.

17.6.2 Conditions - in order to benefit from this provision allowing suspension five conditions have to be satisfied. These are

(a) the CIL liability has been apportioned to the person making the request (P) (whether because there has been no assumption of liability by another or a default by another who had assumed liability) and not assumed by P;\footnote{Reg. 69A(3)(a)}

(b) no works which are part of the chargeable development have been commenced on the land in which P has a material interest;\footnote{Reg. 69A(3)(b)}

(c) P has not agreed to any such works being commenced on the land in which P has a material interest;\footnote{Reg. 69A(3)(c)}

(d) P has not agreed to transfer all or any part of P’s material interest in the land to any other person under a contract enforceable under section 2 Law of Property (Miscellaneous Provisions) Act 1989;\footnote{Reg. 69A(3)(d)}

(e) it is reasonable in all the circumstances that P should not have to pay the CIL stated in the demand notice until such development works are commenced on the land in which P has a material interest.\footnote{Reg. 69A(3)(e)}

17.6.3 Development works on P’s land – these conditions may operate in a harsh fashion and prevent P from claiming the benefit of this right to suspend the CIL liability. This will be most worrying when the owners of other parts of the land being developed may have the right to come on to P’s land and carry out works which are part of the chargeable development. For example, the owner of an adjoining land may have been granted or reserved the right to enter P’s land for the purposes of the development to install services or to construct a road. Will the exercise of this right trigger a CIL liability to be met by P even though no more works will be carried out? It is hard to see how this outcome can be avoided. It is unfair and places P in a vulnerable position. Before the planning application is put in P may be subject to pressure that unless P
agrees to be involved in the development P will be made subject to an unwelcome CIL liability which is outside P’s control. It means that before either granting such rights to come on to land to carry out such works or acquiring land subject to such rights careful thought must be given to the possible future CIL consequences and whether some form of protection is taken against future CIL liabilities arising from permission not approved by this landowner. No reliance can in such circumstances be placed on reg. 33(4) which applies only if works are being carried out on P’s land pursuant to a statutory right of entry.  

17.6.4 Contracts – the existence of a contract to transfer all or part of P’s material interest will prevent P being able to suspend the CIL liability. It seems strange that a contract to transfer to someone who has no involvement with the development should preclude P from being able to suspend the CIL liability. If the transferee is the developer or the adjoining landowner or an associate of either then it is understandable. Further there is a query as to how this will operate. If A the owner of the land has agreed to sell to X then will P be A or X. If A is regarded as the nominee or bare trustee of X then X will be P and so the contract will not be relevant to the question of the satisfaction of this condition.  

17.6.5 Request – a request by an owner to rely on this provision must be in writing and must include sufficient particulars to enable the collecting authority to decide whether it considers the conditions in section 17.6.2 are satisfied.  

17.6.6 Effect of suspension – once the collecting authority has made a declaration in response to a request for suspension then until a demand notice is issued under reg. 69A(6) or (7):  

(i) P’s liability to pay the CIL liability apportioned is suspended until development works commence on P’s land;  

(ii) P will not be liable for late interest under reg. 87;  

(iii) no recovery methods under Chapter 3 of Part 9 of the 2010 Regulations may be taken against P;  

(iv) no steps to recover CIL may be taken against P’s personal representatives in the event of P’s death.  

17.6.7 Subsequent works – where a declaration has been made under reg. 69A the intended commencement of development works on P’s land will require P to give written notice to the collecting authority no later than the day before the start of works.
that the works are being commenced.\textsuperscript{1669} If either P serves such a notice or the collecting authority believes that such work has started but P has failed to give such notice then the collecting authority may serve a demand.\textsuperscript{1670} Such a demand notice must comply with reg. 69(2).\textsuperscript{1671} This will remove the suspension of the CIL liability. If the demand is served without P having first given notice of intended commencement the collecting authority may impose a surcharge of 20% of the CIL payable by P or £2,500 (whichever is the lower).\textsuperscript{1672}

17.6.8 Subsequent contract – if the collecting authority believes that there is an enforceable contract by P to transfer all or part of P’s material interest to any other person then it must serve a demand notice on that person and not P.\textsuperscript{1673} Such a demand notice must comply with reg. 69(2).\textsuperscript{1674}

17.7 Abatement of liability – the CIL regime has been far from clear on issues of abatement and repayments. This was a problem particularly for charging authorities. One concern for such authorities was that any budget relating to the application of CIL receipts could be upset. There has been the lurking worry that monies received would have to be repaid if there was a subsequent change in the development and this would pose a problem if those monies had already been expended on infrastructure. Reg. 74B was introduced to address this problem but is subject to a number of limitations.\textsuperscript{1675} This abatement provision does not apply to a subsequent planning permission if granted pursuant to section 73 1990 Act. In those circumstances the provisions relating specifically to section 73 planning permissions including repayment by the authority of an overpayment will exclusively govern abatement and repayments.\textsuperscript{1676} Reg. 74B will govern all other subsequent planning permissions.

17.7.1 General Operation – any CIL payment which has been made in respect of a development that has commenced\textsuperscript{1677} but not been completed can be set against any CIL liability arising from a subsequent planning permission in relation to all or part of the land being developed\textsuperscript{1678} provided that the subsequent planning permission is not a section 73 planning permission.\textsuperscript{1679} There is the additional benefit under reg. 74B that the demolition deduction applied when calculating the CIL charge in relation to the planning permission currently being implemented can be carried forward to be used when calculating the CIL charge in relation to the planning permission which is to be switched to.\textsuperscript{1680} There are, however, limitations as regards buildings which have been completed prior to the request and uncompleted buildings which are completed subsequent to the request under the earlier planning permission.\textsuperscript{1681}
To qualify for this ability to abate the subsequent CIL liability the charging authority must receive notice from the person who has assumed liability to pay CIL in relation to that subsequent planning permission. The notice must be to the effect that the development in accordance with the earlier planning permission will cease and that the development in accordance with the subsequent planning permission will commence or re-commence. This needs to be an unambiguous statement. It is open to a developer to revert to the original development and even then revert again to the subsequent development. It is provided that the abatement process can operate more than once in relation to a planning permission. This could result in some complicated accounting for the purposes of CIL.

17.7.2 Pre-conditions to availability – in addition to the notice that there is to be a switch between planning permissions a request for abatement must be also be made. It must request that the CIL already paid in relation to the earlier planning permission is set against the CIL in relation to the planning permission about to be implemented. This request must be made before the commencement of the development in accordance with the subsequent planning permission or if it is the recommencement of a previous development before the recommencement of that development. The request must be accompanied by proof of the amount of the CIL already paid.

17.7.3 Abatement – when a valid notice and request is given pursuant to reg. 74B then the charging authority must grant the request and CIL that has been paid in respect of the earlier planning permission can be set off against the CIL liability arising from the commencement of development in accordance with the subsequent planning permission. This is, however, subject to limitations. It can only be credited to the extent that the CIL to be set off relates to buildings that have not been completed when the request for abatement is made and are not taken into account in reducing the chargeable amount when operating reg. 40 or Schedule 1 in relation to the subsequent planning permission. Hence any buildings which give rise to a deduction in reg. 40(7) or para. 1(6) of Schedule 1 when calculating the CIL charge in relation to the planning permission about to be implemented will be excluded from the determination of the abatement.

In the event that the amount of CIL paid in respect of the earlier chargeable development exceeds that due in respect of the later chargeable development that excess will not be treated as an overpayment which is repayable so that the provisions of reg. 75 will not be triggered. This is in contrast to the CIL consequences flowing from a section 73 planning permission. It means that abatement may not be used as a means of improving the CIL position. For example, if an extension to a home was started which was chargeable to CIL but not completed it will not be possible to make a fresh planning application for a new planning permission which due to the new exemption for

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1682 Reg. 74B(1)(c) and as to assumption of liability see section 16.2
1683 Reg. 74B(11)
1684 Reg. 74B(2)
1685 Reg. 74B(3)(a)
1686 Reg. 74B(3)(b)
1687 Reg. 74B(2)
1688 Reg. 74B(6)(a)
1689 Reg. 74B(6)(b) as amended by reg. 5(8) of 2019 (No. 2) Regulations
1690 Reg. 74B(14)
residential extensions will be subject to a nil CIL liability and then seek the repayment of the earlier CIL liability.

17.7.4 Phased development – any amount of CIL available for the purposes of abatement in relation to a subsequent phased planning permission will be applied against the CIL liability arising in respect of the first phase and then against successive phases until fully utilised.\textsuperscript{1691}

17.7.5 Demolished buildings – it is possible to take into account when operating para. 1 of Schedule 1 (previously reg. 40) in respect of the subsequent development authorised by the subsequent planning permission any parts of buildings which were demolished and taken into account in reducing the chargeable amount in relation to the earlier planning permission.\textsuperscript{1692} This continued availability of the demolition deduction will be possible if had the buildings not been demolished they would have been taken into account when determining the CIL liability arising from the subsequent development\textsuperscript{1693} and are not otherwise taken into account under reg. 40 or Schedule 1.\textsuperscript{1694} Such parts of buildings will as regard the planning permission which is being implemented be treated as “in-use buildings” that are to be demolished before the completion of the chargeable development under that permission.

However, this treatment of demolished buildings will only be possible if the request is made within three years of the grant of the earlier planning permission.\textsuperscript{1695} If the planning permission being implemented is a phased planning permission then the demolition deduction made available under reg. 74B(13) will be taken into account in the first phase of the permission. With large developments, particularly when the proposed development scheme has been revised, this time limit could pose a problem.

17.7.6 Completion of building as part of earlier development – it had been originally proposed that any abatement would be withdrawn if work authorised by the earlier planning permission continued after the grant of an abatement. The draft provision relating to the withdrawal was removed from the draft 2014 regulations. In the amended set of regulations the new reg. 74B(8), (9) and (10) were added. These provisions operate if a building is completed as part of the earlier development but the completion occurs after the request for an abatement whether before or after the commencement of the subsequent chargeable development.\textsuperscript{1696} In such circumstances if a reduced amount of CIL is paid with regard to the subsequent chargeable development as a result of the request for an abatement\textsuperscript{1697} then the person granted the abatement must pay to the collecting authority an amount equal to the CIL paid in relation to such building completed under the earlier planning permission after the request for the abatement to the extent that it was credited against the subsequent CIL liability.\textsuperscript{1698} A payment under these provisions is treated as CIL paid in relation to the planning permission being

\textsuperscript{1691} Reg. 74B(7)
\textsuperscript{1692} Reg. 74B(13)(a) and (b) as regards (b) as amended by reg. 5(9) of 2019 (No. 2) Regulations
\textsuperscript{1693} Reg. 74B(13)(c)
\textsuperscript{1694} Reg. 74B(13)(d)
\textsuperscript{1695} Reg. 74B(12)
\textsuperscript{1696} Reg. 74B(8)(a) and (b)
\textsuperscript{1697} Reg. 74B(8)(c)
\textsuperscript{1698} Reg. 74B(9)
implemented so that it will be included amongst the CIL paid which will be available to be set against any future CIL liability under the abatement provisions.

17.8 Local land charge – a collecting authority may register a local land charge in respect of the CIL liability. It is provided that the local land charge is “the chargeable amount payable in respect of a chargeable development”. This is a specific financial charge within section 1(1) Local Land Charges Act 1975 and will be registered in Part 2 of the register. It is not expressly linked to the issue of a CIL liability notice. There is no express provision in the Local Land Charge setting out the information which needs to be provided on registration so that it is sufficient to register the CIL liability. In particular there is no need to specify an amount and so changes in the chargeable amount during the course of the development would appear to be automatically taken into account.

Oddly there is no clear statement as to when this local land charge can first be registered. It is provided that the “chargeable amount payable in respect of a chargeable development is a local land charge”. This would suggest that the liability to pay the CIL has to have been triggered which means that the development must have been commenced. However, a liability notice is triggered not by the commencement of the development but by when the development is first permitted. The use of the term “liability notice” suggests that the payment of the CIL need not have fallen due before the liability is viewed as arising. In practice I would expect local land charges to be registered at the same time as the liability notice is issued which is likely to be when planning permission is granted rather than when the development is first permitted.

It serves as a warning to third parties. Any purchaser of the land will be deemed to have full knowledge of the CIL liability and so be aware of the need to give a commencement notice before the development commences. A local land charge is an overriding interest for the purposes of registered land.

The local land charge confers on the collecting authority all the powers of a mortgagee under a deed.

The local land charge must be removed

(i) once the CIL liability has been discharged in full;

(ii) in cases where charitable or social housing relief or an exemption for residential annexes or self-build housing apply the expiry of any clawback period without the occurrence of any disqualifying event or the occurrence of a failure to comply with reg.

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1699 Reg. 74B(10)
1700 Reg. 66
1701 Reg. 66(1)
1702 For the purposes of the 1972 Act the collecting authority is the originating authority (reg. 66(5)).
1703 Reg. 66(1)
1704 APP/P2365/L/16/12000065 decision date: 3rd March 2017 at para. 3 and APP/Y1945/L/17/1200126 decision date: 12th December 2017
1705 Para. 6 Schedule 3 of the Land Registration Act 2002
1706 See section 19.5.7 as regards enforcement of a local land charge
1707 Reg. 66(2)
54D(2)(b) (provision of additional evidence for purposes of self-build housing relief) regarding which the collecting authority cannot take further action.1708

(iii) if liability to CIL can no longer arise in respect of the chargeable development.1709
An example would be a planning permission which lapses without being implemented.

1708 Reg. 66(3)(a) and (b) and as to the disqualifying event under reg. 54D(2)(b) see sections 11.5.7 and 11.5.8
1709 Reg. 66(4)
18.1 When payable in full – if there has been no assumption of liability the owners will be liable to pay the CIL in full.1710 If a commencement notice has been served and the collecting authority has not determined a deemed commencement date then the CIL is due on the intended commencement date which will be the date specified in the commencement notice.1711 If no commencement notice has been given or one has been given but the collecting authority has reason to believe that the development commenced earlier than the intended commencement date specified in the commencement notice then the authority must determine a deemed commencement date.1712 If in such circumstances the collecting authority has determined a deemed commencement date that will be the payment date.1713 In neither case will it be possible to pay by instalments.

In the event that the collecting authority has transferred the CIL liability to the owners of the relevant land1714 payment of the CIL liability is due in full immediately.1715

If the triggering event is a disqualifying event in relation to previously granted CIL relief or exemption then the amount payable as a result is payable (a) if the collecting authority has received notice of the disqualifying event within a period of seven days beginning with the demand notice requiring payment1716 or (b) if no notification has been received by the collecting authority immediately upon the occurrence of the disqualifying event.1717

In contrast when an assumption of liability notice and a commencement notice have been served then unless an instalment policy is applicable to the chargeable development the CIL will be payable by the person who has assumed liability within 60 days of the intended commencement date of the development.1718 This emphasises the importance of there being an assumption of liability. Without it payment by instalments will not be available assuming that it is otherwise available.

18.2 Instalments –

18.2.1 General – Both the availability of the ability to pay CIL by instalments and the terms of the instalments policy will be crucially important as regards a development’s cash flow and possibly even the development’s viability. In order to be able to pay CIL by instalments it is a pre-condition that the relevant charging authority has published on its website an instalment policy.1719 This will need to state the date from which it is possible to pay by instalments (which can be no earlier than the date the policy is

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1710 Reg. 71(1) and (2)
1711 Reg. 71(1)
1712 Reg. 68
1713 Reg. 71(2)
1714 Reg. 36 applying in the event of default of liability by the person who has assumed liability (see section 16.8).
1715 Reg. 71(3)
1716 Reg. 71(4)(a)
1717 Reg. 71(4)(b)
1718 Reg. 70(7) and see section 18.2 immediately below as regards instalments
1719 Reg. 69(1)
published on the website), the number and amount or portions of the instalments, the
time the first instalment and subsequent instalments are due (such time to be calculated
from the commencement of the development) and any minimum amount below which
CIL cannot be paid by instalments.\textsuperscript{1720} The instalment policy must be made available
for inspection at its principal office and at such other places within its area as it
considers appropriate.\textsuperscript{1721} A copy must be sent to the collecting authority if different to
the charging authority.\textsuperscript{1722}

It will be the normal but not invariable practice for the policy to state a minimal amount
of CIL below which it cannot be paid by instalments. The timing of the instalments will
be related to the commencement of the development. I have seen a suggestion that the
timing could be linked to the progress of the development but in my view that is not
permissible because it is not just deferring payment of the CIL liability but introducing
a new contingency for which there is no statutory authority. The instalment policy
cannot take effect before the date it first appears on the website.

With regard to a charging authority which is not a London borough council or MDC or
the Mayor of London once an instalments policy has been issued any development
commencing on or after the date of issue can pay the CIL liability in accordance with
the instalments policy.\textsuperscript{1723} The position in London is complicated by the Mayoral CIL
which is payable by instalments but will defer to the instalment policy of the relevant
London Borough.\textsuperscript{1724} The Mayor of London’s instalments policy will only apply if the
relevant London borough council has not adopted a CIL charging schedule or has but
has no instalments policy.\textsuperscript{1725} If a London borough council has adopted a charging
schedule but the Mayor of London’s CIL (now MCIL2) does not apply then it will be
the London borough council’s instalment policy which applies.\textsuperscript{1726}

When the CIL liability is discharged in whole or part by payment in kind (whether land
or the provision of infrastructure) then this can be by instalments in the same way as
money payments.\textsuperscript{1727} An instalment can be paid by any combination of money, land
payment or infrastructure payment.\textsuperscript{1728} Further more than one instalment can be paid by
a land payment or infrastructure payment.\textsuperscript{1729}

In cases in which the owner or developer has a particular financial problem the charging
authority may agree a “bespoke” instalment plan. This is under the general powers
conferred on local authorities with regard to debt collection. This can occur, for
example, when a self-builder has lost the self-build housing exemption and is having to
face an unexpected CIL bill without the resources to pay it.

18.2.2 Qualifying person – in order that a person liable to pay CIL qualifies to pay by
instalments the person must have

\begin{itemize}
\item \textsuperscript{1720} Reg. 69B(2)
\item \textsuperscript{1721} Reg. 69B(3)(a)
\item \textsuperscript{1722} Reg. 69B(3)(b)
\item \textsuperscript{1723} Reg. 70(6)
\item \textsuperscript{1724} Reg. 70 and see section 21.6 below
\item \textsuperscript{1725} Reg. 70(5A) and (4)
\item \textsuperscript{1726} Reg. 70(5)
\item \textsuperscript{1727} Reg. 74(2) and (4) and as regards such payments see section 18.3 below
\item \textsuperscript{1728} Reg. 74(4)(a)
\item \textsuperscript{1729} Reg. 74(4)(b)
\end{itemize}
(i) assumed liability to pay CIL in respect of a chargeable development. There is something which requires this to have been assumed before the commencement of the chargeable development. An assumption by reason of a transfer of liability under reg. 32 after commencement should be sufficient. For this to happen it will have required another person to have assume liability pursuant to reg. 31 before commencement.\footnote{Reg. 70(1)(a)}

(ii) the collecting authority has received a commencement notice. This must be prior to the commencement of the chargeable development but nothing requires it have been given by the person who has assumed liability.\footnote{Reg. 70(1)(b)}

(iii) the collecting authority has not determined a deemed commencement notice in accordance with reg. 68.\footnote{Reg. 70(1)(c)}

18.2.3 Examples – Portsmouth has had a CIL charging schedule since 1\textsuperscript{st} April 2012. Payment by instalments is available for all amounts of CIL. If the chargeable amount is less than £250,000 then it is payable by two instalments – 25\% of the chargeable amount payable within 90 days of the commencement of the development and the remaining 75\% within 270 days of commencement. If the chargeable amount is more than £250,000 then the first instalment of 25\% is payable within 90 days of commencement, a further 25\% within 180 days of commencement and the final 50\% within 360 days of commencement.

Redbridge has gone for four levels of CIL. Any amount less than £100,000 is payable in full within 60 days of the commencement. Between £100,000 and £250,000 it is payable in two instalments - £100,000 payable within 60 days of commencement and the balance within 120 days of commencement. Between £250,000 and £500,000 it is payable by three instalments - £100,000 within 60 days of commencement and the balance in equal amounts within 120 days and 180 days of commencement. Above £500,000 it is payable by four instalments - £250,000 payable within 60 days of commencement and the balance payable by three equal instalments within 120, 180 and 240 days of commencement. Stroud has eight bands with the last band (£1,800,000 and over) payable by eight instalments with the last instalment due 2190 days from commencement.

Huntingdonshire DC has been even more generous with five tranches. The CIL is payable in full only when the chargeable amount is less than £16,000 and even then 120 days from the commencement is allowed. With all the other tranches the CIL can be paid by three instalments – the first being 25\% of the balance, the second 50\% and the third 25\%. The dates for payment of each of the three instalments is extended the greater the CIL liability. The last tranche is if the CIL liability is in excess of £500,000 when it is payable as to 25\% within 180 days of commencement then 50\% within 450 days and the remaining 25\% within 720 days. Although generous there is yet another of those paragraphs which are being put in at the bottom of some authority’s lists. This one speeds up payment by providing that if at any time 25\% or more of the chargeable development is occupied then any outstanding amount of CIL will be payable in full within the time under the instalment policy or 60 days whichever is the lesser unless
otherwise agreed in writing with the authority before commencement of the development. As is evident from these examples there is a great difference between instalment policies which will be a material factoring in costing and funding a development.

18.2.4 Revision or revocation – an instalment policy can be replaced by a new policy provided that it complies with reg. 69(1) to (3) but this cannot be earlier than 28 days from the policy being replaced taking effect. If the authority no longer wishes to have an instalment policy then notice has to be given on its website of the date that its instalment policy is to cease to have effect which must be not less than 28 days from the policy having come into effect. The notice must also be made available for inspection as with the publication of the policy and a copy sent to the collecting authority if different.

18.2.5 Application of instalment policy to section 73 permission – when CIL is payable under an instalment policy and a section 73 permission is then granted in relation to the development the instalment policy will apply to the amount of CIL payable in respect of the section 73 permission.

18.2.6 Loss of payment by instalments – the benefit of an instalment policy can be lost and the CIL payment accelerated in certain circumstances. These include:

(i) failure to pay instalment in full by due date – if the full amount of an instalment is not received by the due date then the full outstanding amount falls due immediately. In such an event the collecting authority can serve a revised demand notice. The collecting authority must send a copy of any demand notice served due to the non-payment to each person known to the authority as an owner of the relevant land. In such circumstances the unpaid balance must be paid by money and not by a land payment or infrastructure payment.

(ii) assumption of liability is withdrawn

(iii) commencement notice withdrawn rather than replaced by later notice

18.2.7 Precautions to take - it will be necessary, therefore, to establish with each development that the relevant charging authority has an instalment policy; that it has not been withdrawn; and the terms of the policy including whether it has an accelerator provision. Each authority will have its own instalment policy. As has been seen from the examples mentioned above there is a need to consider the list carefully and in particular to check if there are any traps set at the bottom of the list which seeks to

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1733 Reg. 69B(4) and as to reg. 69B(1) to (3) see section 18.1 above
1734 Reg. 69B(5)
1735 Reg. 69B(6)(a)
1736 Reg. 69B(7)
1737 Reg. 69B(6)(b) and (c)
1738 Reg. 70(9) inserted with effect from 1st September 2019 by reg. 7(2) of the 2019 (No. 2) Regulations
1739 Reg. 70(8)(a)
1740 Reg. 69(3)
1741 Reg. 70(8)(b)
1742 Reg. 74(5)
speed up payment. Whether and to the extent that the payment is spread will normally depend on the amount of the CIL liability. Any default in paying an instalment will cause the whole outstanding CIL to be payable in full immediately\footnote{Reg. 70(8)} and a fresh demand notice for the full amount of the outstanding CIL will be issued. It is, therefore, important to take care to ensure that each instalment is paid in full and by the date for payment.

18.3 Payment in kind –

18.3.1 Land\footnote{This covers existing buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land (reg. 73(14)).} - it is possible for CIL (including CIL payable by instalments) to be paid in full or part by the acquisition of land.Originally this option was only available if the CIL liability was greater than £50,000 but that was removed with effect from 6th April 2011.\footnote{Reg. 73(6)(a) which was removed by reg. 9(12) of the 2011 Regulations}

(i) **Transferor** - the acquisition must be from a person who both

(a) would be liable to pay CIL in respect of a chargeable development on commencement of that chargeable development;\footnote{Reg. 73(6)(c)} and

(b) has assumed liability to pay the CIL liability.\footnote{Reg. 73(6)(b)} This must be an assumption prior to commencement. Although liability can be assumed subsequent to commencement by a transfer of liability under reg. 32 that will not suffice because the agreement to provide the infrastructure must be entered into before commencement.\footnote{Reg. 73(6)(d)}

There cannot be an acquisition from anyone else liable for the CIL.

(ii) **Transferee** - the land must be acquired by the charging authority or a person nominated by the authority (with that person’s agreement).\footnote{Reg. 73(5)}

(iii) **Relevant purpose** – a charging authority must aim to ensure that acquired land is used for a relevant purpose.\footnote{Reg. 73(13)} For the purposes of this regulation land is used for a relevant purpose “if it is used to provide or facilitate (in any way) the provision of infrastructure to support the development of the charging authority’s area.”\footnote{Reg. 73(9)} In the event that the land is acquired but not used for a relevant purpose the charging authority must deem an appropriate amount of cash held by it to be CIL.\footnote{Reg. 73(10)} The appropriate amount is calculated using the following formula:ERT

\begin{align*}
\text{appropriate amount} &= \text{formula}\text{.}\footnote{Reg. 73(10)}
\end{align*}
where—
N = the area of the part of the acquired land not used for a relevant purpose;
A = the area of the acquired land; and
V = the value of the acquired land as stated in the land payment agreement entered into by the charging authority and the person liable to pay CIL.

(iv) Agreement - a land payment cannot be accepted unless an agreement regarding the acquisition of the land must be entered into before the commencement of the chargeable development.\textsuperscript{1755} It must be in writing and state the value of the land to be acquired.\textsuperscript{1756} Such an agreement must be separate from and not form part of any section 106 planning obligations.\textsuperscript{1757} Care must be taken to ensure that the agreement satisfies the requirements of section 2 Law of Property (Miscellaneous Provisions) Act 1989. If the land is being acquired by someone other than the charging authority then the charging authority cannot enter the agreement to accept the land payment unless it is satisfied that acquirer intends to use it for a relevant purpose.\textsuperscript{1758} Any agreement which purports to bind a charging authority to accept a land payment other than in accordance with the Regulations will be void.\textsuperscript{1759}

(v) Value of land – the amount of CIL paid by way of a land payment is equal to the value of the land acquired.\textsuperscript{1760} The value of the land shall be “the price that the land might reasonably be expected to obtain if sold on the open market on the day the valuation takes place” and must be determined by an independent person.\textsuperscript{1761} The price shall not be assumed to be reduced on the ground that the whole of the land to be acquired is to be placed on the open market at the same time.\textsuperscript{1762} The CIL liability is reduced by the value of the land which will not include the value of any works on the land pursuant to a section 106 agreement.

(vi) Discharge – in the event that the collecting authority has determined a deemed commencement notice then the CIL liability has to be paid by money in full and no agreed land payment will be acceptable.\textsuperscript{1763} The land payment is deemed to have been received on the date that the land is acquired.\textsuperscript{1764}
(vii) **Default** – if the default is by the person who assumed liability then this liability can be transferred by the collecting authority to the owner.\textsuperscript{1765} This will cover a failure to make a land payment.\textsuperscript{1766}

18.3.2 **Infrastructure** – It is now possible in certain circumstances to discharge a CIL liability in part or whole by the provision of one or more pieces of infrastructure.\textsuperscript{1767} The amount of CIL discharged will be the value of the infrastructure provided.\textsuperscript{1768} The provision will occur when the agreed funds are applied for that purpose and the infrastructure has been completed and ownership is transferred to the charging authority or nominated person (as appropriate).\textsuperscript{1769} This is a significant change because it will re-introduce the need for negotiation between the authority and the developer not dissimilar to that involved with section 106 planning obligations which the original CIL regime sought to exclude. The advantage for the developer is that it provides certainty that the work is carried out and for the authority that the works are carried out on its behalf without the need to incur the burden. The difficulty is that it cannot be an item of infrastructure which is needed to make the planning permission acceptable so it will not relate directly to the particular development. Further there is no credit to set against CIL if the developer’s overspends on providing the item of infrastructure.

18.3.3.1 **Availability in area** – before accepting a payment in kind the charging authority must have made the possibility of such payments available in its area. To achieve this the authority must issue a document which gives notice that it is willing to accept infrastructure payments\textsuperscript{1770}; state the commencement date from which it is willing to accept such payments\textsuperscript{1771}; and as regards an infrastructure payment include a policy statement as to the infrastructure projects or types of infrastructure which it will consider accepting the provision of as infrastructure payment possibly prior to 1st September 2019 by reference to its reg. 123 list of infrastructure.\textsuperscript{1772} This must be published on its website\textsuperscript{1773} and be made available for inspection at its principal office and other places it considers appropriate within the area.\textsuperscript{1774} A copy of the document should be sent to the collecting authority if different from the charging authority.\textsuperscript{1775}

18.3.3.2 **Revision of policy** – to revise the policy on allowing infrastructure payments in its area a charging authority must issue a document which gives notice of the revised policy, states the date from which the revised policy applies and includes a revision of the policy.\textsuperscript{1776} The notice must be published on the website; made available for inspection as when the policy being revised was set up save that if the places at which that policy was available for inspection are no longer considered appropriate then at

\textsuperscript{1765} Reg. 36
\textsuperscript{1766} Reg. 74(2)
\textsuperscript{1767} Reg. 73A(1) introduced by reg. 9(6) of the 2014 Regulations.
\textsuperscript{1768} Reg. 73A(3) which is determined by reg. 73A(11) and see section 18.3.7 below
\textsuperscript{1769} Reg. 73A(12)(c)
\textsuperscript{1770} Reg. 73B(1)(a)(i)
\textsuperscript{1771} Reg. 73B(1)(a)(ii)
\textsuperscript{1772} Reg. 73B(1)(a)(iii)
\textsuperscript{1773} Reg. 73B(1)(b)
\textsuperscript{1774} Reg. 73B(1)(c)
\textsuperscript{1775} Reg. 73B(1)(d)
\textsuperscript{1776} Reg. 73B(2)(a)
such alternative places as are considered to be appropriate; and a copy sent to the collecting authority if different.\footnote{Reg. 73B(2)(b), (c) and (d)}

18.3.3.3 Revocation of policy – this must also be effected by a document giving notice of the revocation and stating the last day on which the authority will consider entering an agreement to accept an infrastructure payment.\footnote{Reg. 73B(3)} This date cannot be earlier than 14 days from the publication of this revocation on the authority’s website.\footnote{Reg.73B(4)} The notice must be published on the website; made available for inspection as when the policy being revoked was set up, save that if the places at which that policy was available for inspection are no longer considered appropriate then at such alternative places as are considered to be appropriate; and a copy sent to the collecting authority if different.\footnote{Reg. 73B(3)(b), (c) and (d)}

18.3.4 Factors to be considered by authority before accepting infrastructure payment – there are a number of factors to be taken into account by the charging authority and so anyone negotiating with an authority which accepts infrastructure payments must also bear them in mind and focus on them. These are:-

(1) the aim of the authority “must” be to ensure that infrastructure provided in this manner will be used to support the development of its area.\footnote{Reg. 73A(5)} The authority can accept infrastructure which is to be provided outside its area if it considers that the infrastructure will support the development of its area;\footnote{Reg. 73A(6)}

(2) it must be satisfied that the person offering the infrastructure payment (“P”) has, or is likely to have, sufficient control over the land on which the infrastructure is to be constructed;\footnote{Reg. 73A(7)(a)(i)}

(3) P has provided the charging authority with evidence that P has obtained, or will be likely to be able to obtain, any relevant statutory authorisation that are necessary for the infrastructure to be constructed;\footnote{Reg. 73A(7)(a)(ii)}

(4) the infrastructure to be provided is “relevant infrastructure” which prior to 1\textsuperscript{st} September 2019 means a project or type of infrastructure listed on the authority’s reg. 123 list or if it did not have one then any infrastructure\footnote{Reg. 73A(7)(b)(i) with the definition of relevant infrastructure contained in reg. 73A(12)(d) substituted by reg. 9(5) of 2019 (No. 2) Regulations} but with effect on and after 1\textsuperscript{st} September 2019 relevant infrastructure means (i) the infrastructure projects or the types of infrastructure listed by a charging authority on its infrastructure list; and (ii) in relation to any time before 31st December 2020, where no such list has been published, any infrastructure.\footnote{Reg. 73A(12)(d) substituted by reg. 9(5) of 2019 (No. 2) Regulations} On or after 1\textsuperscript{st} September 2019 “infrastructure list” means before 31st December 2020, the list, if any, published by a charging authority of the infrastructure projects or types of infrastructure which it intends will be, or may be,
wholly or partly funded by CIL (other than CIL to which regulation 59E or 59F applies) and on or after 31st December 2020, has the meaning given in regulation 121A.¹⁷⁸⁷

(5) the infrastructure is not needed to make the relevant planning permission acceptable in planning terms.¹⁷⁸⁸ The infrastructure payment must not be something which should be the subject of a section 106 planning obligation or section 278 highway agreement.

18.3.5 Further conditions for payments in kind –

(i) **Transferor** – there cannot be an acquisition from anyone other than a person who both

(a) would be liable to pay CIL in respect of a chargeable development on commencement of that chargeable development;¹⁷⁸⁹ and

(b) has assumed liability to pay the CIL liability.¹⁷⁹⁰ As with the land payment provisions this must be an assumption prior to commencement. Although liability can be assumed subsequent to commencement by a transfer of liability under reg. 32 that will not suffice because the agreement to provide the infrastructure must be entered into before commencement.¹⁷⁹¹

Any agreement which purports to bind a charging authority to accept a land payment other than in accordance with the Regulations will be void.¹⁷⁹²

(ii) the **Transferee** – the infrastructure must be provided to the charging authority or a person nominated by the charging authority (with that person’s agreement).¹⁷⁹³ If the provision is to be made to a person other than the charging authority then the charging can only enter the agreement to accept the infrastructure payment if satisfied that the recipient of the infrastructure will use it to support the development of the charging authority’s area.¹⁷⁹⁴

(iii) **Agreement** - there must be an agreement to provide the infrastructure which must be entered into before the chargeable development is commenced.¹⁷⁹⁵ The agreement must:

(a) be in writing;¹⁷⁹⁶

¹⁷⁸⁷ The definition of infrastructure list contained in reg. 2(1) was with effect on and after 1⁰ September 2019 substituted by reg. 9(1)(b) of 2019 (No. 2) Regulations.
¹⁷⁸⁸ Reg. 73A(7)(b)(ii)
¹⁷⁸⁹ Reg. 73A(2) – this is not just a person who has assumed liability for CIL prior to commencement but can include an owner of a material interest in the relevant land to whom a CIL liability has been apportioned under reg. 33
¹⁷⁹⁰ Reg. 73A(7)(d)
¹⁷⁹¹ Reg. 73A(7)(e)
¹⁷⁹² Reg. 74(7)
¹⁷⁹³ Reg. 73A(7)(c)
¹⁷⁹⁴ Reg. 73A(10)
¹⁷⁹⁵ Reg. 73A(7)(e)
¹⁷⁹⁶ Reg. 73A(8)(a)
(b) state the value of the infrastructure\textsuperscript{1797} which must be determined by an independent person\textsuperscript{1798};

(c) state the date by which the infrastructure is to be provided and oblige the person providing the infrastructure to pay the CIL cash amount (which is the CIL that is satisfied by the infrastructure payment\textsuperscript{1799}) and interest in money if the infrastructure is not provided by that date or any agreed extension of that date;\textsuperscript{1800}

(d) ensure that by the time the CIL cash amount would be payable if it was being paid in money an amount equal to the CIL cash amount must either (I) have been used to provide the infrastructure\textsuperscript{1801} or (II) be subject to an arrangement so that:\textsuperscript{1802}

(i) it can only be used by P for the purposes of providing the infrastructure;

(ii) P cannot use that amount to secure additional funding or in any other way that would benefit P;

(iii) any interest or other benefit received in relation to that amount belongs to the authority;

(iv) any funds subject to the arrangement remaining after the provision of the infrastructure belongs to the charging authority; and

(v) if the CIL cash amount becomes payable in money then the funds subject to the arrangement will be used for that purpose.

18.3.6 Local conditions – in addition to the national requirements some authorities have imposed local eligibility criteria. For example, Shropshire CC has issued a Payment in Kind-Infrastructure Policy Statement which took effect from 13\textsuperscript{th} June 2016. It is discretionary so that it does not oblige the authority to accept an offer. The authority has prepared its own “Application for Payment in Kind” form. Amongst the conditions the policy requires that “the land/or infrastructure being offered must not:

(f) i be necessary to meet Planning Policy standards- including open space standards identified in Policy MD2 and Appendix 2 of the Developer Contributions Supplementary Planning Document (SPD);

ii be necessary to make the development acceptable in planning terms;

iii represent an intrinsic element of the design of the scheme;

iv be an item which has been promoted as part of the scheme in addition to any CIL contribution to the local community, unless negotiated with the Council in order to meet a community wide infrastructure need;

\textsuperscript{1797} Reg. 73A(8)(b)
\textsuperscript{1798} Reg. 73A(11) For these purposes an independent person means a person who (a) is appointed by a person other than the charging authority with the agreement of (i) the charging authority, and (ii) the person liable to pay CIL in respect of the chargeable development, and (b) has appropriate qualifications and experience (reg. 73A(12)(b)).
\textsuperscript{1799} Reg. 73A(12)(a)
\textsuperscript{1800} Reg. 73A(8)(c)
\textsuperscript{1801} Reg. 73A(9)(a)
\textsuperscript{1802} Reg. 73A(9)(b)
v represent one of the reasons the community supported the scheme during the planning allocation/application process, unless proposed instead of CIL or negotiated with the Council in order to meet an agreed community wide infrastructure need.”

Further it is required that

“g) The land and/or infrastructure must be fit for the relevant purpose and its provision must represent a time or cost efficiency to Shropshire Council and its partners or otherwise be more practical than such parties delivering the infrastructure themselves.

h) Any infrastructure payment in-kind proposals must be discussed with the local Town or Parish Council prior to any formal agreement with Shropshire Council. The applicant must provide confirmation from the relevant Town or Parish Council that the Neighbourhood Fund payment, due from the CIL liable development, has been fulfilled through the in-kind contribution. Alternatively, the applicant will need to meet the Neighbourhood Fund requirement through a financial payment.”

18.3.7 Value of infrastructure payment – despite the concerns of the British Property Federation the value of such infrastructure is limited to the cost of providing it which includes the design cost but does not include legal or administrative costs. This has to be determined by an independent person. Such a person must be appointed with the agreement of the authority and any person liable to pay CIL and have appropriate qualifications and experience. It was proposed by the DCLG in the 2013 consultation that there be a cap restricting payments in kind to costs below the EU procurement thresholds. That proposal was dropped but if the threshold will be exceeded by such an infrastructure payment then the procurement rules will need to be complied with which may make it an unattractive prospect.

18.4 Discharge of infrastructure payment - in the event that the collecting authority has determined a deemed commencement notice then the CIL liability has to be paid by money in full and no agreed land payment will be acceptable. An infrastructure payment is deemed to have been received on the day on which the funds to be used to provide the infrastructure have either been used to provide it or are subject to an arrangement in accordance with reg. 73A(9)(b).

18.5 Payment – a payment of CIL by money must be paid to the collecting authority. It is treated as received on the day on which the authority receives cleared funds. Upon receipt the collecting authority must send an acknowledgement of receipt to the payer.

If the collecting authority and the charging authority are different then the collecting authority must pay an amount equal to the CIL receipt to the charging authority less:

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1803 Reg. 73A(11)
1804 Reg. 74(6)
1805 Reg. 74(3A) and see section 18.3.5(iii) above as regards an arrangement under reg. 73A(9)(b)
1806 Reg. 72(2)
1807 Reg. 72(3)
1808 Reg. 72(4)
(a) the amount that the collecting authority may deduct in accordance with reg. 61(4) in relation to administrative expenses incurred in collecting the CIL for the charging authority; and
(b) any overpayment (including interest) which the collecting authority has repaid pursuant to reg. 75.\textsuperscript{1809}

This payment to the charging authority must be made by the end of the financial quarter in which the CIL receipts have been received\textsuperscript{1810} save when the collecting authority first starts collecting CIL on behalf of the charging authority the first payment must be made by the end of the first full financial quarter following the day on which the first CIL receipt is received.\textsuperscript{1811} For these purposes the financial quarters are the periods of three months beginning 1\textsuperscript{st} March, 1\textsuperscript{st} June, 1\textsuperscript{st} September and 1\textsuperscript{st} December.\textsuperscript{1812}

18.6 Overpayment – where the amount of CIL paid by a person in respect of a development is greater than is due from that person then the collecting authority must repay the overpayment as soon as practicable.\textsuperscript{1813} This may be because too much CIL has been paid in respect of the chargeable development or the amount paid by the particular person is more than the proportion of the CIL liability for which that person is liable.

No overpayment is due if it is as the result of a land payment or infrastructure payment.\textsuperscript{1814} Similarly none need be made if the authority is satisfied that the amount of the repayments is less than the reasonable administrative costs to be incurred in making the overpayment.\textsuperscript{1815}

Interest is also payable on the overpayment at the higher rate of either 0.5\% per annum or Bank of England base rate less one percentage point.\textsuperscript{1816} No interest is payable if the overpayment is due to a section 73 permission being granted and the CIL liability was calculated correctly.\textsuperscript{1817}

18.7 Default in payment – in the event that a person liable to pay CIL defaults the collecting authority may seek to recover the outstanding CIL liability from other persons. In particular if the default is by a person who assumed the liability then the collecting authority may transfer the liability to the owners of the site.\textsuperscript{1818} If the default involves a failure to pay an instalment in full then it will be the full outstanding CIL that is being claimed from any new person who has become liable for the CIL including an unpaid infrastructure payment.\textsuperscript{1819}

18.8 Late payment – interest is payable on any sum in respect of which liability arises under the 2010 Regulations which obviously includes unpaid CIL from the day after

\begin{footnotesize}
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1809 Reg. 76(2)
1810 Reg. 76(3)
1811 Reg. 76(4)
1812 Reg. 76(5)
1813 Reg. 75(1)
1814 Reg. 75(2)(b)
1815 Reg. 75(2)(a)
1816 Reg. 75(3)
1817 Reg. 75(4)
1818 Reg. 76 and see section 16.8 above
1819 Reg. 74(2) provides that for the purposes of reg. 36 an amount which is payable includes an infrastructure payment which is payable.
\end{footnotesize}
the due date\textsuperscript{1820} until payment in full at the rate of 2.5\% above Bank of England base rate\textsuperscript{1821} save where social housing relief applicable under Condition 5 (discounted rent letting by private landlord\textsuperscript{1822}) has been withdrawn in which circumstances the interest is calculated from the date of the commencement of the chargeable development.\textsuperscript{1823} In the event that there is a failure to pay under reg. 70 a full instalment of CIL by the due date then late payment interest shall be payable on the whole of the unpaid balance of the CIL in respect of the chargeable development and not just the unpaid part of the instalment.\textsuperscript{1824} Late payment interest will be payable on surcharges as well but not on late payment interest.\textsuperscript{1825}

It is mandatory for such interest to accrue and be paid and may result in more than one demand notice being issued in order to deal with the interest which accrues. This interest is charged not only on instalments of CIL pursuant to the published instalments policy but instalments agreed separately.\textsuperscript{1826} The length of the lateness of payment is immaterial.\textsuperscript{1827} Delay by the authority in enforcing the CIL liability will not affect the amount of interest accruing.\textsuperscript{1828}

The recovery methods for CIL will apply to interest due as if it were part of the CIL due from that person.\textsuperscript{1829} Such interest when paid will be treated as CIL for the purposes of the provisions in Part 7 of the 2010 Regulations concerning the application of CIL.\textsuperscript{1830}

In addition the collecting authority may impose surcharges for late payment under reg. 86.\textsuperscript{1831}

\textsuperscript{1820} It will not matter that such a date is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882 (reg. 87(4)).
\textsuperscript{1821} Reg 87(1) and (2)
\textsuperscript{1822} See section 11.3.1.5
\textsuperscript{1823} Reg. 53(4A)
\textsuperscript{1824} Reg. 87(5)
\textsuperscript{1825} Reg. 87(3)
\textsuperscript{1826} APP/T5720/L/17/1200089 decision date: 7th September 2017
\textsuperscript{1827} Para. 1
\textsuperscript{1828} APP/N5660/L/17/1200122 decision date: 11th January 2018
\textsuperscript{1829} Reg. 88(1)
\textsuperscript{1830} Reg. 88(2)
\textsuperscript{1831} See section 19.3.6
M Enforcement

19.1 General – the CIL regime confers a considerable array of weapons by which to enforce payment of any CIL liability and compliance with the obligations imposed. The most draconian from the point of view of the development is the stop notice which requires the development to be immediately stopped with obvious dire consequences. Before considering that method of enforcement account has to be taken of the means by which the CIL bill may increase. This may occur due to the imposition of surcharges or the accrual of interest.

19.2 Information - An important preliminary for a collecting authority with regard to enforcement is to obtain sufficient information. The power of entry conferred by reg. 109 is one means of gathering information.

In the case of a possible development under a general consent the authority has the power to require the owner of a material interest in land to provide further information, documents or materials as it considers relevant to ascertain whether a notice of chargeable development must be submitted under reg. 64(2). Separately a collecting authority may request a person who has submitted a notice of chargeable development to provide it with such further information, documents or materials which the collecting authority considers relevant to assist it in calculating the chargeable amount.

In the context of social housing relief there is a wide power to require the provision of information, documents or material.

A collecting authority is also authorised to use any information obtained under any other enactment other than information obtained by a committee of the authority in its capacity as a police authority or in its capacity as an employer.

19.3 Surcharges – with the coming into force of the 2019 (No. 2) Regulations there are now two classes of surcharge. There are those which the charging authority has a discretion as to whether or not to impose. These are the surcharges originally provided for in the 2010 Regulations. Then there is a second class of surcharges introduced by the 2019 (No. 2) Regulations in the event that a commencement notice is not given before commencement of the development when a CIL relief or exemption has been granted.

It is not the invariable practice of charging authorities to impose a discretionary surcharge although it will always be a serious risk. Almost inevitably at present when imposed they come as a surprise to the recipient. There is still very much a feeling that everything can be resolved by a telephone call to the authority. The CIL regime is defined to remove such an approach. There is a right of appeal against surcharges.

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1832 See section 19.5.8 below
1833 Reg. 108A
1834 Reg. 64(8)
1835 Reg. 54 and see section 11.3.10
1836 Reg. 79
1837 APP/W0340/L/17/120018 decision date: 21st November 2017 challenges as to whether the exercise of the discretion is reasonable or proportionate are not matters to be considered in a statutory appeal under reg. 117 or 118 and should be addressed through the authority’s established complaints procedure.
1838 See section 20.5 below
but it is not a general right but only for limited grounds. Grievances caused by a developer or owner being told by an employee of the local planning authority that they are free to proceed with the development without any mention of the need to serve a commencement notice will not be a good ground for an appeal.\footnote{See for example the appeal against Havant BC discussed at 16.8 above}

For the purposes of recovery an outstanding surcharge is treated as if it were part of the CIL due from the person.\footnote{Reg. 88(1)} When received by a collecting authority it will be treated as it were CIL for the purposes of Part 7 of the 2010 Regulations concerning the application of CIL other than reg. 59A (payment of CIL to local councils) and reg. 59E (use of CIL in an area to which reg. 59A does not apply).\footnote{Reg. 88(3)}

Surcharges may be levied in the following circumstances:-

19.3.1 No assumption of liability – if no person assumes liability for the CIL before the commencement of development then a surcharge of £50 can be imposed on every person liable for the CIL.\footnote{Reg. 80} This seems more of an irritant and it cannot be administratively cost effective to charge. As an incentive to ensure that someone has assumed liability it is not particularly forceful but the circumstances may often link it to the next surcharge because an apportionment of CIL liability may be one of the consequences of there being no assumption of liability.

19.3.2 Apportionment of liability – if required to apportion CIL between different owners of material interests in the development site a collecting authority may impose a surcharge of £500 on each material interest payable by the owner.\footnote{Reg. 81(1) and (2)} An apportionment may be needed if there has been no assumption of liability prior to commencement of the development. This will not apply if there is a need to apportion a surcharge.\footnote{Reg. 81(3)}

19.3.3 Failure to submit notice of chargeable development – if a chargeable development is commenced under a general consent rather than a planning permission then a notice of chargeable development must be given before the commencement of the development.\footnote{Reg. 64 and see section 8.3.3} If the owner fails to do so then the collecting authority may impose a surcharge of 20% of the CIL or £2,500 ( whichever is the lower).\footnote{Reg. 82} This is payable by the person liable to pay the CIL unless there is more than one material interest in the relevant land.\footnote{Reg. 82(3)} If there is more than one material interest requiring an apportionment then the surcharge will need to be apportioned on the same basis as the CIL liability and the owner of each material interest will be responsible for the portion of the surcharge apportioned to the material interest.\footnote{Reg. 82(2)}
19.3.4 Failure to give notice of commencement –

19.3.4.1 Discretionary surcharge – in relation to any liability notice or revised notice issued under reg. 65 prior to 1st September 2019 in the event of a failure to give a commencement notice prior to the commencement of development a charging authority could at its discretion impose a surcharge equal to 20% of the CIL or £2,500 (whichever is the lower). The imposition of a surcharge for such a failure is not necessarily the greatest financial consequence flowing from the failure. It has in respect of such liability notices and revised notices issued prior to 1st September 2019 caused the automatic loss of all CIL reliefs and exemptions save for the minor development exemption and the residential extension exemption. This has been particularly felt in the context of the self-build housing exemption.

It has been argued on appeal that there should be a sliding scale which takes account of the expense incurred by the LPA as a result of the failure. This was rejected as there is no provision in reg. 83 for such a sliding scale. There was an informal statement by the appellant’s architect in an e-mail to the Council’s planning officer that demolition was to start the following week but the appellant did not realise and was not warned by the planning officer that demolition would constitute the commencement of development. There was a measure of sympathy for the appellant but the full surcharge was upheld. The same was the case in an appeal against a surcharge imposed by Havant BC.

This surcharge is payable by the person liable to pay CIL. If that person has assumed that liability then the collecting authority must also give written notice to each owner of the relevant land that a surcharge has been imposed. If there is more than one material interest in the relevant land and the CIL liability has to be apportioned then this surcharge will be as well on the same basis as with a surcharge under reg. 82.

19.3.4.2 Mandatory surcharge – the 2019 (No. 2) Regulations have introduced a new class of surcharge which is mandatory and is not a matter of the charging authority’s discretion. This applies to liability notices and revised liability notices issued under reg. 65 on or after 1st September 2019. It is the price for severing the link between the failure to give a commencement notice and the loss of a CIL relief or exemption. It applies to a development in relation to which there has been a grant of an exemption for residential annexes, an exemption for self-build housing, charitable relief or social housing relief. When such a development is commenced before a commencement notice is given the charging authority must impose a surcharge the amount of which is equal to 20 per cent of then notional chargeable amount or £2,500 whichever is the

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1849 Reg. 83 and reg. 83(1A) inserted by reg. 6(8)(b) of the 2019 (No. 2) Regulations
1850 See section 11.5.6.1 above
1851 Southampton City Council ref: APP/D1780/L/14/1200010 decision date 17th April 2014 at para. 6
1852 Appeal ref: APP/X1735/L/14/1200017 decision date 9th January 2015 and see section 16.8 above as regards attempts to mitigate such a failure.
1853 Reg. 83(2).
1854 Reg. 83(2).
1855 Reg. 83(3) and see section 19.3.3 immediately above
1856 Reg. 83(1A) introduced by reg. 6(8) of the 2019 (No. 2) Regulations
1857 Reg. 1(3) of 2019 (No. 2) Regulations
1858 Reg. 83(4A)
lower. The notional chargeable amount is the amount of CIL that would have been payable calculated in accordance with para. 1 of Schedule (or previously reg. 40) as if no relief had been granted. Although the wording would suggest that this is the full amount of CIL arising from the whole of the development it should be the difference between the actual CIL with the benefit of the particular relief or exemption which has been granted and not now lost and the amount of CIL payable if that relief or exemption had not been granted.

19.3.5 Failure to notify occurrence of disqualifying event – this surcharge may be imposed if notice of a disqualifying event in relation to a CIL relief or exemption is not given within 14 days of the event beginning with the day of the occurrence. A disqualifying event is one which occurs within the clawback period applying to the particular CIL relief or exemption. The charging authority may but is not bound to impose a surcharge which in amount is equal to 20% of the chargeable amount or £2,500 (whichever is the lower). The surcharge is payable on the day that it is imposed unless the disqualifying event occurs before the commencement of the development when it is payable on the commencement.

The surcharge is payable by the following persons:

(i) if the disqualifying event causes a grant of social housing relief to be lost the person liable is the person benefiting from that relief in respect of the dwelling which has ceased to be a qualifying dwelling or the development which has ceased to be a qualifying communal development;

(ii) if the disqualifying event relates to the loss of an exemption for residential annexes then it is payable by the person benefiting from that exemption in respect of the dwelling which has ceased to qualify for the exemption;

(iii) if the disqualifying event relates to the loss of an exemption for self-build housing then it is payable by the person benefiting from that exemption in respect of the dwelling or communal development which has ceased to qualify for the exemption;

(iv) if the disqualifying event relates to the loss of charitable relief then an owner of a material interest in the relevant land must pay an appropriate portion which is the same as the proportion that the value of the material interest bears to the total value of all the material interests in the relevant land in respect of which the charitable relief was granted. A material interest is valued in accordance with reg. 34(4) and (5).
(v) if the disqualifying event relates to the loss of relief for exceptional circumstances
the person liable for the surcharge shall be the person liable for the CIL save where
the CIL liability is apportioned between material interests in the relevant land.\textsuperscript{1870} When
so apportioned the surcharge must be apportioned on the same basis as the CIL
liability\textsuperscript{1872} and the owner of such a material interest must pay the portion of the
surcharge apportioned to the material interest.\textsuperscript{1873}

The relevant authority for the purposes of this surcharge will be the collecting authority
save in relation to a disqualifying event which relates to the relief for exceptional
circumstances when it is the charging authority.\textsuperscript{1874}

19.3.6 Late payment – when there is a failure to pay the CIL in full within a period of
30 days beginning with the due date for payment of any CIL the collecting authority
may impose a surcharge equal to 5\% of the amount of the CIL liability due or £200
whichever is the greater.\textsuperscript{1875} If any part of such CIL liability remains outstanding on the
expiry of the period of six months beginning with the original due date for payment
then a further surcharge may be imposed equal in amount to 5\% of the amount unpaid
or £200 whichever is the greater.\textsuperscript{1876} A third surcharge may be imposed if any part of the
CIL liability remains outstanding on the expiry of a period of twelve months
beginning with the original due date for payment equal in amount to 5\% of the amount unpaid
or £200 whichever is the greater.\textsuperscript{1877} It is immaterial how long or short the
lateness is as regards the imposition of a surcharge.\textsuperscript{1878} In determining the amount of the
surcharge any amounts of instalments paid in full will be disregarded.\textsuperscript{1879} An initial
incorrect calculation of CIL by the collecting authority will not reduce or defer the late
payment surcharges.\textsuperscript{1880} Nor will the issue of a revised demand notice to take account
of a late payment surcharge.\textsuperscript{1881}

This provision will apply not just to CIL instalments due pursuant to the authority’s
published instalments policy but also to instalments privately agreed with the
authority.\textsuperscript{1882}

In cases in which there has been a failure to appreciate that CIL is due then the
imposition of these surcharges can be a painful price to pay. In the event that there has
been a failure on the part of the collecting notice to give a liability notice that may
justify the authority exercising its discretion not to impose surcharges for late payment.

\textsuperscript{1870} Reg. 84(9) and (11)
\textsuperscript{1871} Reg. 84(9) and (10)
\textsuperscript{1872} Reg. 84(10)(a)
\textsuperscript{1873} Reg. 84(10)(b)
\textsuperscript{1874} Reg. 84(12)
\textsuperscript{1875} Reg. 85(1)
\textsuperscript{1876} Reg. 85(2)
\textsuperscript{1877} Reg. 85(3)
\textsuperscript{1878} APP/T5720/L/17/1200089 decision date: 7\textsuperscript{th} September 2017 para. 1
\textsuperscript{1879} APP/T5720/L/17/1200089 decision date: 7\textsuperscript{th} September 2017 at para. 3
\textsuperscript{1880} APP/F5540/L/17/1200155 decision date: 18\textsuperscript{th} July 2018
\textsuperscript{1881} APP/U1105/L/18/1200175 decision date: 22\textsuperscript{nd} August 2018
\textsuperscript{1882} APP/T5720/L/17/1200089 decision date: 7\textsuperscript{th} September 2017
In addition to these surcharges for late payment it is mandatory to pay late payment interest under reg. 87.1883

19.3.7 Failure to comply with an information notice – if a proper response is not given within 14 days beginning with the day on which the notice is served then the collecting authority may impose a surcharge equal to 20% of the relevant amount or £1000 (whichever is the lower).1884 The relevant amount is the amount of CIL that the recipient of the information notice is liable to pay in respect of the chargeable development.1885

19.4 Stop-notice – this is the means of enforcement most to be feared. It puts an immediate stop to the development.

19.4.1 Preliminary steps –

19.4.1.1 Expediency - not only must there be an outstanding liability which has become payable in respect of a chargeable development but the collecting authority must consider it expedient to stop the development until the amount has been paid.1886 This is not expressly limited to outstanding amounts of CIL but could include surcharges or late payment interest although in practice it is unlikely that the power should be exercised in respect of such types of sums due.

19.4.1.2 Warning notice - Having reached this conclusion the authority must first serve a written warning notice of its intention to impose a CIL stop notice.1887 The warning notice must be served on the person liable for the outstanding amount, any owner of a material interest in the site known to the authority, any occupier known to the authority and any other person whom the collecting authority considers will be materially affected by a CIL stop notice.1888 This warning notice must be in writing, state the date of the notice, set out the authority’s reason for issuing the warning notice, state the amount unpaid, state that the outstanding amount is immediately payable in full, the period after which a stop notice can be served if the outstanding amount is not paid in full1889, the effect of a stop notice and the possible consequences of a failure to comply with a stop notice.1890 As well as serving the warning notice it must be displayed at the development site.1891

19.4.2 Period for serving stop notice – there must be gap of at least three days between the issue of the warning notice and the stop notice but not more than 28 days.1892

19.4.3 Stop notice – this may be served by the collecting authority after a warning notice has been served and all or part of the outstanding amount remains unpaid.1893 It must be

1883 See section 18.8
1884 Reg. 86 (1) and (2)
1885 Reg. 86(3)
1886 Reg. 89(1)
1887 Reg. 89(2)
1888 Reg. 89(3)
1889 See section 19.4.2 immediately below
1890 Reg. 89(4)
1891 Reg. 89(5)
1892 Reg. 89(4)(e)
1893 Reg. 90(1) and (2)
served on the same classes of person as with the warning notice.\textsuperscript{1894} The notice must be in writing, state the date on which it is to take effect, state the unpaid amount, state that payment of this amount is due in full immediately, set out the authority’s reason for issuing it, specify the relevant activity which must cease\textsuperscript{1895} and the possible consequences of failing to comply.\textsuperscript{1896} As well as serving the notice it must be displayed at the development site.\textsuperscript{1897} There is a right of appeal against stop notices.\textsuperscript{1898}

19.4.4 Effect of stop notice – once served a stop notice will require the cessation of any relevant activity within reg. 90(5) specified in the stop notice. A “relevant activity” is any activity connected with the chargeable development specified in the stop notice and any activity carried out as part of that specified activity or associated with such specified activity. The cessation must take place with effect from the date specified in the notice. Excluded from this prohibition is any activity needed to be carried out in the interests of health and safety.\textsuperscript{1899} The force of the stop notice will run from the date specified until the notice is withdrawn.\textsuperscript{1900}

To enforce the cessation a collecting authority may apply to either the High Court or the County Court “if it considers it necessary or expedient” for an injunction to restrain by injunction any breach or apprehended breach.\textsuperscript{1901} On such an application the Court may grant such an injunction as it thinks fit for the purpose of restraining the breach.\textsuperscript{1902} Further any such breach may be a criminal offence.\textsuperscript{1903}

Details of the stop notice must be entered in the register of enforcement and stop notices kept pursuant to section 188 TCPA 1990.\textsuperscript{1904} The required information must be entered in the register as soon as practicable and in any event within 14 days beginning with the date on which the stop notice is issued.\textsuperscript{1905} The entries must be removed if the notice is withdrawn or quashed.\textsuperscript{1906} In the event that the register is not maintained by the collecting authority it must supply the required information to the authority which does and inform that authority if the stop notice is withdrawn or quashed.\textsuperscript{1907} Although entered in the stop notice register there will be no right to claim compensation under section 186 of the 1990 Act as the scope is limited to stop notices issued under the statutory power in section 183.

\textsuperscript{1894} Reg. 90(3) and see section 19.4.1.2
\textsuperscript{1895} See section 19.4.4 immediately below
\textsuperscript{1896} Reg. 90(4)
\textsuperscript{1897} Reg. 90(6)
\textsuperscript{1898} see para. 20.7 below
\textsuperscript{1899} Reg. 90(7)
\textsuperscript{1900} Reg. 90(8)
\textsuperscript{1901} Reg. 94(1) and (3)
\textsuperscript{1902} Reg. 94(2)
\textsuperscript{1903} see para. 19.4.5 immediately below
\textsuperscript{1904} Reg. 92(1). The details required are: the address of the bland to which the notice relates or a plan by reference to which the location can be ascertained; sufficient details to identify the relevant planning permission; the name of the collecting authority; the date of the issue of the notice; the date of the service of the notice; the date specified in the notice as the date it is to take effect; and a statement or summary of the activity prohibited by the notice.
\textsuperscript{1905} Reg. 92(4)
\textsuperscript{1906} Reg. 92(2)
\textsuperscript{1907} Reg. 92(3)
19.4.5 Criminal offence – In order that an offence can be committed the stop notice must have been served on the person charged with the offence or a copy has been displayed at the development site. Contravention of the stop notice will be an offence unless the person was not served with the notice and was unaware, and could not reasonably be expected to know, of its existence. Contravention includes causing or permitting a contravention of the notice. It can be charged by reference to a day or a longer period. More than one offence may be committed by reference to different days or periods of contravention. The original limit that on summary conviction the fine cannot exceed £20,000 has been removed so that on summary conviction or on conviction on indictment there is no limit. In determining the amount of the fine account is to be taken of the financial benefit accruing or appearing to accrue to the offender in consequence of the offence. In addition the possibility of an application under the PoCA 2002 must be borne in mind.

19.4.6 Withdrawal – a stop notice is withdrawn by a withdrawal notice. A withdrawal notice may be served at any time and must be if the CIL is paid in full. Such a notice must be served on the persons on whom the stop notice was served and also be displayed at the site in place of the stop notice. The withdrawal is without prejudice to the power of the collecting authority to issue a fresh stop notice. The stop notice does not cease to have effect once the CIL is paid but only once the withdrawal notice is served. It is not clear whether this means just service of the withdrawal notice on the person liable to pay the outstanding amount or requires service on all those persons required to be served.

19.4.7 Warning – failure to pay the CIL liability in full and promptly runs the risk of the collecting authority halting the development until payment is made in full. Failure to pay an instalment will mean that the full amount will be payable and can be enforced in this manner. Once halted work cannot start again until a withdrawal notice is served and it will not be enough to have paid the CIL in full.

19.5 Recovery of CIL – a number of methods of recovery are contained in Chapter 3 of Part 9. The Council may suspend enforcement for a period such as when there is an outstanding complaint against the Council but this does not preclude the Council from reviving the enforcement process at any appropriate time. A pre-condition of their use is the obtaining of a liability order first from the magistrates.

1908 Reg. 93(1)
1909 Reg. 93(1) and (5)
1910 Reg. 93(2)
1911 Reg. 93(3)
1912 Reg. 93(4)
1913 Reg. 93(6)(a) amended by para. 80 Sch. 4 of the 2015 Regulations
1914 Reg. 93(6)
1915 Reg. 93(7)
1916 See section 9.7.3 above
1917 Reg. 91(1)
1918 Reg. 91(2)
1919 Reg. 91(3)
1920 Reg. 91(1)
1921 Reg. 91(4)
1922 APP/W0340/L/17/1200146 decision date: 26th April 2018
19.5.1 **Liability order** – prior to seeking a liability order a collecting authority must serve a reminder notice on the person with an unpaid CIL liability setting out each of the amounts in respect of which an application is to be made. The reminder notice can be served at any time after the amount or amounts have fallen due. If any part remains unpaid after the period of seven days beginning with the day the reminder notice was served then the collecting authority can apply to the magistrates for a liability order which will be for the outstanding CIL and the costs reasonably incurred in obtaining the order.

The application is made by a complaint to the magistrates requesting the issue of a summons to the person liable to pay the amount to attend to show reason why the amount has not been paid. A justices’ clerk may act on the issue of the summons and other matters authorised by reg. 2 and the Schedule to the Justices’ Clerks Rules 2005. Such an application cannot be made more than six years after the amount fell due. Nor can a liability order application be made if debt recovery proceedings are on foot for the same amount. The power to proceed in the absence of the defendant conferred on magistrates by section 55(1) of the Magistrates Courts Act 1980 is retained but the power in section 55(2) to adjourn and issue a warrant of arrest for the defendant’s arrest has been deleted for this type of application. A summons, application for a warrant and the holding of an enquiry as to means on such an application must be heard by two justices subject to any enactment authorising a District Judge or other person to act alone. In any such application a statement contained in a document constituting or forming part of a record compiled by the applicant authority is admissible as evidence of any fact stated in it of which direct oral evidence would be admissible.

Once the magistrates are satisfied that the defendant is liable to pay the amount and not paid it then a liability order must be made. Such an order cannot be made before the expiry of 14 days beginning with the day on which the summons was served. The order must be made in respect of the aggregate of the amounts due and an amount equal to the costs reasonably incurred by the collecting authority in obtaining the liability order. A single liability order can be made in relation to more than one person. Those costs cannot be avoided by paying the amount outstanding after the making of an application but before an order is made. In such circumstances a liability order should be made for the costs.

1923 Reg. 96(1)
1924 Reg. 96(2)
1925 Reg. 97(1)
1926 Reg. 97(2)
1927 Reg. 102(3)
1928 Reg. 97(3)
1929 Reg. 106(2)
1930 Reg. 97(4)
1931 Reg. 102(1)
1932 Reg. 102(2)
1933 Statement includes any representation of fact whether made in words or otherwise – reg. 102(5)
1934 Reg. 102(4)
1935 Reg. 97(5)
1936 Reg. 97(9)
1937 Reg. 97(6)
1938 Reg. 97(8)
1939 Reg. 97(7)
Once the order is made it allows other recovery methods in Chapter 3 to be used and the powers to suspend or treated the amount as satisfied contained in Part 3 of the Magistrates Courts Act 1980 shall not apply to the amounts ordered to be paid by a liability order.\textsuperscript{1940}

19.5.2 \textbf{Distress} – the original reg. 98 governs the position prior to 1\textsuperscript{st} September 2019 and thereafter the position is governed by Schedule 12 of the Tribunals, Courts and Enforcement Act 2007.\textsuperscript{1941}

19.5.2.1 \textbf{Pre-1\textsuperscript{st} September 2019} - once a liability order has been made a collecting authority may levy distress against the debtor’s goods (other than clothing, bedding, furniture, household equipment or provisions necessary for the basic domestic needs of the debtor and the debtor’s family and any other goods protected by statute from distress\textsuperscript{1942}) and sell them.\textsuperscript{1943} As well as the amount ordered by the liability order charges connected with the distress will be recoverable as well.\textsuperscript{1944} Such distress can be made anywhere in England and Wales.\textsuperscript{1945}

The distress must be made only by a person by a bailiff authorised by a general certificate granted under section 7 of the Law of Distress Amendment Act 1888.\textsuperscript{1946} When levying distress under this regulation the bailiff must (a) produce written evidence of authority if requested by the debtor; (b) hand to the debtor or leave at the place at which distress has been levied a copy of reg. 98 and a memorandum setting out the appropriate amount (the amount ordered by the liability order and the permitted charges); (c) hand to the debtor a copy of any close or walking possession agreement entered into.\textsuperscript{1947}

Payment of the full amount of the liability order and the charges up to payment prior to any goods being seized will prevent their seizure.\textsuperscript{1948} If payment in full is made after seizure but before sale then the levy must not proceed and the goods must be made available for collection by the debtor.\textsuperscript{1949}

No defect or want of form in the liability order shall cause the distress to be unlawful or cause the bailiff to be treated as a trespasser. However, any person aggrieved by the levy or attempted levy of distress may appeal to the magistrates’ court.\textsuperscript{1950} The appeal is instituted by making a complaint to a justice of the peace and requesting a summons directed to the authority to appear and answer the complaint’s grievance.\textsuperscript{1951} Prior to 1\textsuperscript{st} September 2019 a justices’ clerk may act on the issue of the summons and other matters.

\textsuperscript{1940} Reg. 97(10)
\textsuperscript{1941} Substitute reg. 98 introduced by reg. 8(2) of the 2019 (No. 2) Regulations
\textsuperscript{1942} Reg. 98(2)
\textsuperscript{1943} Reg. 98(1)
\textsuperscript{1944} Reg. 98(3)(b). The amount of the charges shall be determined by Schedule 3 to the Non-Domestic rating (Collection and Enforcement) (Local List) Regulations 1989
\textsuperscript{1945} Reg. 98(8)
\textsuperscript{1946} Reg. 98(9)
\textsuperscript{1947} Reg. 98(7)
\textsuperscript{1948} Reg. 98(5)
\textsuperscript{1949} Reg. 98(6)
\textsuperscript{1950} Reg. 99(1)
\textsuperscript{1951} Reg. 99(2)
authorised by reg. 2 and the Schedule to the Justices’ Clerks Rules 2005. However, a summons, application for a warrant and the holding of an enquiry as to means on such an application must be heard by two justices subject to any enactment authorising a District Judge or other person to act alone. Prior to 1st September 2019 in any such application a statement contained in a document constituting or forming part of a record complied by the applicant authority is admissible as evidence of any fact stated in it of which direct oral evidence would be admissible. After 31st August 2019 such provision will not apply as the reference in it to reg. 99 is omitted following the substitution of the procedure in Schedule 12 for that formerly in reg. 99.

If satisfied that the levy was irregular then the court may order the authority to desist from levying in the irregular manner, order the return of the goods still in the authority’s possession and award compensation in respect of any goods sold. The amount of the compensation shall equal what would be awarded by way of special damages in trespass proceedings.

19.5.2.2 1st September 2019 and thereafter – the particular power to levy distress under the original reg. 98 has now been replaced by linking the liability order to the uniform regime governing taking control of goods by an enforcement agent which was introduced by Schedule 12 of the Tribunals, Courts and Enforcement Act 2007. The right to appeal to the magistrates’ court conferred by reg. 99 has been removed and the debtor’s remedies are contained in paragraph 66 of Schedule 12.

19.5.3 Committal to prison – if the debtor is an individual and distress (before 1st September 2019) or use of the Schedule 12 procedure (after 31st August 2019) has not produced sufficient sums to meet the amounts due and the collecting authority can prove that a charging order will not produce the required sum then the authority may apply to the magistrates’ court for a warrant committing the debtor to prison for a term not exceeding three months. An application for a warrant and the holding of an enquiry as to means on such an application must be heard by two justices subject to any enactment authorising a District Judge or other person to act alone.

It is for the magistrates to determine whether the failure to pay is due to “wilful or culpable neglect”. This requires an enquiry in the presence of the debtor’s presence as to the debtor’s conduct and means. A written statement signed by or on behalf of the debtor’s employer as to the wages paid to the debtor will be accepted as evidence in

1952 Reg. 102(3) but after 31st August 2019 reg 99 is omitted from reg. 102(3) due to reg. 8(6)(a) of the 2019 (No. 2) Regulations
1953 Reg. 102(1)
1954 Reg. 102(2)
1955 Statement includes any representation of fact whether made in words or otherwise – reg. 102(5)
1956 Reg. 102(4)
1957 Reg. 8(6)(b) of the 2019 (No. 2) Regulations
1958 Reg. 99(5) and (3)(a) and (b)
1959 Reg. 99(4)
1960 Reg. 8(2) of the 2019 (No. 2) Regulations
1961 Reg. 8(3) of the 2019 (No. 2) Regulations
1962 Reg. 100(1) as amended by reg. 8(4)(a) of the 2019 (No. 2) Regulations
1963 Reg. 100(8)
1964 Reg. 102(1)
1965 Reg. 102(2)
1966 Reg. 100(2)
such an enquiry. In any such application a statement contained in a document constituting or forming part of a record compiled by the applicant authority is admissible as evidence of any fact stated in it of which direct oral evidence would be admissible.

To enable an enquiry to be carried out a justice of the peace may issue a summons to the debtor to appear before a magistrates’ court and if the debtor fails to attend may issue a warrant for the debtor’s arrest or may issue a warrant for the debtor’s arrest without issuing a summons first.

If the court forms the view that it is then a warrant of commitment can be issued or a term of imprisonment fixed with postponement of the issue of the warrant subject to such conditions as the courts thinks just. Such a warrant can only be issued against one individual. The warranty must specify the amount due for which distress was levied or the Schedule 12 procedure was pursued (as appropriate) and sum equal in amount to the reasonable costs of such application to commit. If the full amount due is paid (including the reasonable costs of the committal application) at any stage then the authority must take no further step and the debtor released if committed to prison. A partial payment will reduce proportionately the term of imprisonment if the debtor is in prison or specified in the order postponing the issue of the warrant.

Alternatively, it is open to the court after making the enquiries to remit all or part of the amount due mentioned within reg. 98(3) prior to 1st September 2019 and thereafter within the meaning of Schedule 12. No order may be made on the application and the authority may make a renewed application on the ground that the circumstances of the debtor have changed in respect of so much of the amount as has not been remitted previously. In any such renewed application written documents within reg. 102(4) will be admissible in evidence as in the original application.

19.5.4 Charging orders – provided that one or more liability orders have been made against a debtor and at least £2,000 remains outstanding then a collecting authority may seek a charging order over a relevant interest to secure the amount due which will include an amount equal to costs reasonably incurred by the collecting authority in obtaining the charging order. A relevant interest for these purposes is any interest held by the debtor beneficially in any asset of a kind mentioned in section 2(2) of the Charging Orders Act 1979. The assets referred to in that section are - (a) land; (b) securities of any of the following kinds - (i) government stock, (ii) stock of any body (other than a building society) incorporated within England and Wales, (iii) stock of

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1967 Reg. 101(4)
1968 Statement includes any representation of fact whether made in words or otherwise – reg. 102(5)
1969 Reg. 102(4)
1970 Reg. 101(5)(a) and (b)
1971 Reg. 100(3)
1972 Reg. 101(1)
1973 Reg. 100(4) as amended by reg. 8(4)(b) of the 2019 (No. 2) Regulations and reg. 5(a)
1974 Reg. 100(6) and (7) as amended by reg. 8(4)(c) of the 2019 (No. 2) Regulations
1975 Reg. 100(10) and (9)
1976 Reg. 101(2) as amended by reg. 8(5) of the 2019 (No. 2) Regulations
1977 Reg. 101(3)
1978 Reg. 102(5) and see above in this section
1979 Reg. 103(1)
1980 Reg. 103(2) and (8)
any body incorporated outside England and Wales or of any state or territory outside the United Kingdom, being stock registered in a register kept at any place within England and Wales; (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within England and Wales; or (c) funds in court.

19.5.4.1 Notification – before applying for a charging order a collecting authority must serve written notification on the debtor of its intention to do so and any person who may be prejudiced by the making of a charging order setting out the authority’s reasons for seeking a charging order; the effect of such an order; the amount due; and the steps that the authority will take if payment is not made. If the asset to be charged is land then this notification needs also to be displayed on the land concerned.

19.5.4.2 Application – the application can be made if payment of the outstanding CIL is not made within 21 days. The application must be made to the appropriate court in accordance with section 1 Charging Act 1979. In deciding whether or not to make a charging order account must be taken of the personal circumstances of the debtor and whether a charging order will unduly prejudice any other person. If the Court decides to make an order it has the choice whether to make an absolute order or a suspended order. Whichever order is made it is important that it specifies the interest to be charged. The charging order will take effect as an equitable charge so that the interest charged can be sold but this will require an order for sale. It will be capable of being protected by a land charge or notice on the registered title. The debtor may at any time apply to vary or discharge the order and if discharged then the court may direct that any entry under the Land Charges Act 1972 or the Land Registration Act 2002.

19.5.5 Insolvency petition – it will be open to a collecting authority to issue a bankruptcy petition or winding petition based on a liability order as the amount due is a debt for those purposes.

19.5.6 Debt proceedings – instead of obtaining a liability order a collecting authority may seek to enforce payment by proceedings in the normal manner.

19.5.7 Local land charge - if the collecting authority wishes to enforce a local land charge imposed under the CIL regime then the owner and any person who may be prejudiced by enforcement must be notified of the intention giving the required particulars. The notice must be written; be displayed in the land; set out the authority’s reasons for seeking to enforce the charge; state the outstanding amount of

\[\text{Reg. 103(3)}\]
\[\text{Reg. 103(5)}\]
\[\text{Reg. 103(4)(a), (b) and (c)}\]
\[\text{Reg. 103(6)}\]
\[\text{Reg. 103(7)}\]
\[\text{Reg. 103(8)}\]
\[\text{Reg. 104(1)(a) and (b)}\]
\[\text{Reg. 104(2)(b)}\]
\[\text{Reg. 104(2)(a)}\]
\[\text{Reg. 104(3)}\]
\[\text{Reg. 104(4) and (5)}\]
\[\text{Reg. 105(1) (individuals) and 105(2) (companies)}\]
\[\text{Reg. 106(1)}\]
\[\text{Reg. 107(2)}\]
CIL due; and the steps the authority will take if payment is not made.\textsuperscript{1995} Enforcement proceedings must wait 21 days from such notification.\textsuperscript{1996} On the expiry of that period the authority may apply to a county court for consent to enforce the local land charge provided that the CIL liability is not less than £2,000.\textsuperscript{1997} In deciding whether to grant consent the must consider all the circumstances of the case and in particular any evidence before it as to whether any person would be likely to be unduly prejudice by enforcement of the charge.\textsuperscript{1998} The collecting authority entitled to a local land charge has all the powers of a mortgagee under a deed (including powers of sale and lease, of accepting surrenders of leases and of appointing a receiver).\textsuperscript{1999}

In the case of registered land the local land charge is an overriding interest\textsuperscript{2000} and will bind a disponee of the land even if not registered at the Local Land Charges register.\textsuperscript{2001} However, it is provided that before the local land charge can only be realised if the title to the charge is registered.\textsuperscript{2002} Realisation includes enforcement for these purposes.\textsuperscript{2003} This will require the completion of a Form AP1.

\textbf{19.5.8 Right of entry} – this right is to assist a collecting authority in determining whether a chargeable development has occurred and a CIL liability arisen. A collecting authority may authorise a person at any reasonable time to enter any relevant land\textsuperscript{2004} which includes land subject to a planning permission to carry out a development. The entry on to such land must be for one or more of the following purposes:

(a) to ascertain whether a chargeable development has been commenced;

(b) to determine whether any of the powers conferred on a collecting authority by this Part should be exercised in relation to a chargeable development or the relevant land;

(c) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to a chargeable development or the relevant land;

(d) to display any notice required to be displayed on land in accordance with these Regulations;

(e) where a person has submitted a notice of chargeable development\textsuperscript{2005}, for the purposes of gathering information required by the collecting authority in order for it to calculate the chargeable amount payable in respect of the chargeable development. In this case a request for information under reg. 64(8) must first have been made.\textsuperscript{2006}

\textsuperscript{1995} Reg. 107(3)
\textsuperscript{1996} Reg. 107(4)
\textsuperscript{1997} Reg. 107(6)
\textsuperscript{1998} Reg. 107(5)
\textsuperscript{1999} Reg. 107(7)
\textsuperscript{2000} Para. 6 Schedule 3 LRA 2002
\textsuperscript{2001} Section 10(1) Local Land Charges Act 1972 but may give rise to a claim for compensation.
\textsuperscript{2002} Section 55 LRA 2002
\textsuperscript{2003} See for example the Law Commission’s Land Registration for 21\textsuperscript{st} Century (No. 271) at para. 7.42 and paragraphs 8.29 and 8.30
\textsuperscript{2004} Reg. 109(1). The definition of “relevant land” in reg. 2 is “(a) where planning permission is granted for development by way of a general consent, the land identified in the plan submitted to the collecting authority in accordance with regulation 64(4)(a), (b) where outline planning permission is granted which permits development to be implemented in phases, the land to which the phase relates, (c) in all other cases, the land to which the planning permission relates”.
\textsuperscript{2005} Reg. 64 as to which see section 8.3.3 above
\textsuperscript{2006} See section 8.3.3 above
(f) where no notice of chargeable development has been submitted, for the purposes of gathering information required by the collecting authority in order for it to ascertain whether a notice of chargeable development must be submitted under regulation 64(2). In this case a request for information under reg. 108A must first have been made.

The exercise of the right is subject to a significant restriction. If the land comprises a private dwelling then a warrant from a justice of the peace will be required. In order to obtain such a warrant it is necessary to satisfy the justice that there is good reason to believe that the collecting authority will not be able to enforce CIL without the warrant. It is reported that planning authorities are acquiring drones with a view to checking on the carrying out of building works. This right only covers entry by a person. The need to obtain a warrant in relation to private dwellings for entry by a person shows the need to exercise care when intruding.

The warrant will only remain in force for a period of one month or until the purpose for which it is issued has been fulfilled whichever is the shorter. Any person entering land under such an authority must if requested produce evidence of the authority and state the purpose for the entry. Such authorised person may take such other persons as are necessary. It is an offence to wilfully obstruct a person exercising a power under reg. 109 which is punishable on summary conviction by a fine not exceeding level three on the standard scale.

19.6 Criminal offences – a collecting authority may prosecute any offences under the CIL regulations. This covers such offences as that relating to stop notices. There is also a general offence for knowingly or recklessly supplying information which is false or misleading in a material respect to a charging authority or collecting authority in response to a requirement under the 2010 Regulations. A person found guilty is liable to a fine on summary conviction or on conviction on indictment imprisonment for a term not exceeding two years or a fine or both.

19.7 The Crown - CIL is payable in respect of the development of Crown land. Reg. 124 authorises the raising of monies in respect of the Duchy of Lancaster and the Duchy of Cornwall. No act or omission done or suffered by or on behalf of the Crown constitutes an offence under the 2010 Regulations. The provisions in regulations 80

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2007 Inserted by reg. 10(2) of the 2011 Regulations
2008 Reg. 109(3A) and see sections 8.3.5 and 19.2
2009 Reg. 109(4)
2010 Reg. 109(5)
2011 Reg. 109(6)
2012 Reg. 109(7)(a)
2013 Reg. 109(7)(b)
2014 Reg. 109(8)
2015 Reg. 109(9)
2016 Reg. 111
2017 Reg. 110(1)
2018 Reg. 110(2)
2019 The Crown includes “the Crown” includes - (a) the Duchy of Lancaster, (b) the Duchy of Cornwall, (c) the Speaker of the House of Lords, (d) the Speaker of the House of Commons, (e) the Corporate Officer of the House of Lords, and (f) the Corporate Officer of the House of Commons (reg. 2(1)).
2020 Section 226 PA 2008
2021 Reg. 125(1)
to 86 concerning surcharges do not apply to person responsible for administering property belonging to Her Majesty in her private capacity. This includes a reference to His Majesty in right of His Duchy of Lancaster and to the Duke of Cornwall.

For the purposes of service on the Crown reg. 126 does not apply. Service of any notice or other document required under the 2010 Regulations to be served on or given or sent to the Crown must be served or given or sent to the appropriate Crown authority. The definition of “appropriate Crown authority” contained in section 227 of the Planning Act 2008 applies and provides:

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;

(b) in relation to any other land belonging to Her Majesty in right of the Crown, the government department or, as the case may be, office-holder in the Scottish Administration, having the management of the land or the relevant person;

(c) in relation to land belonging to Her Majesty in right of Her private estates, a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Secretary of State;

(d) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;

(e) in relation to land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy, appoints;

(f) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, the department;

(g) in the case of land belonging to an office-holder in the Scottish Administration or held in trust for Her Majesty for the purposes of such an office-holder, the office-holder;

(h) in relation to Westminster Hall and the Chapel of St Mary Undercroft, the Lord Great Chamberlain and the Speakers of the House of Lords and the House of Commons acting jointly;

(i) in relation to Her Majesty's Robing Room in the Palace of Westminster, the adjoining staircase and ante-room and the Royal Gallery, the Lord Great Chamberlain.

(j) in relation to those parts of the Palace of Westminster and its precincts occupied on 23 March 1965 by or on behalf of the House of Lords in which the Speaker of the House of Lords holds an interest and any land in which the Corporate Officer of the House of Lords holds an interest, the Corporate Officer of the House of Lords;

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2022 Reg. 125(2)
2024 Reg. 127(2)
2025 Reg. 127(1)
(k) in relation to those parts of the Palace of Westminster and its precincts occupied on 23 March 1965 by or on behalf of the House of Commons in which the Speaker of the House of Commons holds an interest and any land in which the Corporate Officer of the House of Commons holds an interest, the Corporate Officer of the House of Commons;

(l) in relation to land in which there is a Crown interest by virtue of an interest held jointly by the Corporate Officer of the House of Lords and the Corporate Officer of the House of Commons acting jointly.
N. Reviews and Appeals

20. Overview - there is a statutory system of reviews and appeals. These are intended to be a robust procedure providing quicker and less expensive resolutions than court proceedings. However, the appeal system is subject to a tight timetable which cannot be extended and to significant restrictions including in particular the requirement that the relevant chargeable development must not have commenced before the appeal decision has been notified to the appellant. This can impose heavy financial pressure on developers who need to proceed with the development who will be faced with the choice of pressing on with the development and accepting that any to the CIL liability is by judicial review or pursuing a statutory appeal and postponing the development with the inevitable adverse consequences for cash flow.

A further difficulty is that the scope of the disputes covered by the statutory appeal system is limited. It will not cover, for instance, refusals to grant exemptions or reliefs save in very limited circumstances. This will leave applicants for planning permission including self-builders facing the dilemma as to whether to incur the costs and risks of court proceedings in order to challenge a CIL decision by an authority.

20.1 Review of chargeable amount — the chargeable amount of CIL must be reviewed if an interested person makes a written request to the collecting authority not later than 28 days after the liability notice was issued. Unless the planning permission in relation to the development was granted after the commencement of the development no request for a review can be made after the commencement of the development. Further even if a request has been made before the development has started commencement of the development at any time before a decision is notified by the collecting authority will cause the review to lapse.

After 23rd February 2014 a request for a review can be made after the commencement of the development if the grant of planning permission in relation to a development is after its commencement. This restriction that the review must be completed and the decision notified before the development can be commenced can impose great pressure on the developer who will need to complete the development to realise the value. There may be an alternative of judicial review but that will a more expensive option and take longer. This serves to emphasise the need to address CIL issues early and to provide the collecting authority with full information as soon as is practicable.

There is a further restriction which needs to be carefully taken into account. A review cannot be requested if a claim for relief has been submitted and not withdrawn.

2026 Reg. 113
2027 See section 20.11.1
2028 Reg. 113(1) and (2)(a) and (b) The inability of the officer to access the CIL inbox does not justify a claim that time had expired for requesting a review - Development: Change of use from [ ] to residential (Use Class C3). Decision date: 17th June 2016 – para 11
2029 Reg. 113(9)(b)
2030 Reg. 113(10)
2031 Reg. 113(9A)
2032 Reg. 113(11)
Written representations can accompany the request.\textsuperscript{2033} There must be a review if a proper request is made.\textsuperscript{2034} It must be by a person senior to the person who made the original calculation and who had no involvement in the original decision.\textsuperscript{2035} The person carrying out the review is specifically directed to give consideration to the representations accompanying the request for a review.\textsuperscript{2036} Within 14 days of the request a reasoned decision must be given to the person requesting the review.\textsuperscript{2037} It may confirm the original decision or calculate a revised chargeable amount.\textsuperscript{2038} There is no penalty for an authority failing to give a review decision and it will not preclude the authority from putting in representations on an appeal in answer to the grounds of appeal.\textsuperscript{2039}

If the person requesting the review wants to challenge the decision then the first option is a statutory appeal under reg. 114.\textsuperscript{2040} It has to be remembered by the person requesting the review that the time in which to make an appeal runs regardless of the date of the review decision. The time limit is 60 days from the issue of the relevant liability notice and failure to notify a review decision is irrelevant. This is important because there is no power to extend the time limit and so the owner or developer must not be distracted whilst waiting for the review decision.

A decision made on a review cannot itself be reviewed.\textsuperscript{2041} If there has been an earlier review decision in order that the owner or developer has an opportunity to readdress on a review a CIL issue with fresh information the authority will have to issue a revised CIL liability notice. This does occur because the alternative could be that the owner or developer will issue judicial review proceedings which is expensive not just for the owner or developer but also for the collecting authority.

20.2 Appeal regarding chargeable amount\textsuperscript{2042} –

20.2.1 General - if an interested person\textsuperscript{2043} has requested a review of the chargeable amount and is aggrieved by the decision or does not receive a decision within the 14 day period then that person may appeal to the Valuation Office Agency (“VOA”) to appoint an appointed person (a valuation officer or district valuer)\textsuperscript{2044} on the ground that the chargeable amount has been calculated incorrectly.\textsuperscript{2045} Appeals under this regulation will be the most common.

Importantly a person only has standing to appeal if the person had previously requested a review. In one appeal the charging authority argued that the request for the review

\textsuperscript{2033} Reg. 113(3)
\textsuperscript{2034} Reg. 113(4)
\textsuperscript{2035} Reg. 113(5)
\textsuperscript{2036} Reg. 113(6)
\textsuperscript{2037} Reg. 113(7)
\textsuperscript{2038} Reg. 113(8)
\textsuperscript{2039} Proposal: Retention of [ ] roof extension to main roof of both properties ….Decision date: 18th June 2019 para. 16
\textsuperscript{2040} See section 20.2 immediately below
\textsuperscript{2041} Reg. 113(9)(a)
\textsuperscript{2042} Reg. 114
\textsuperscript{2043} See section 20.11.2
\textsuperscript{2044} Re. 112(1)(a)
\textsuperscript{2045} Reg. 114(1)
was out of time but this failed because it had sent by e-mail a review decision and the appoint person considered that it could not go back on this.\textsuperscript{2046} In another appeal it was argued that the request for a review was out of time but the charging authority had then issued a fresh liability notice which it claimed was not an official liability notice.\textsuperscript{2047} However, there was nothing to indicate that it was not a valid liability notice and so the appointed person treated it as a revised liability notice which caused the earlier one to cease to have effect. In consequence the appeal was valid.

Notwithstanding this pre-condition it is open to an appellant to raise new grounds in the appeal that were not aired on the review.\textsuperscript{2048} New evidence which had not been provided at the earlier review can be taken into account which is similar to the position with regard to assets of community value appeals.\textsuperscript{2049} However, new evidence included in the appellant’s comments on the respondent authority’s representations will be disregarded.\textsuperscript{2050}

Only one appeal can be made in respect of a given chargeable development.\textsuperscript{2051} If the appeal is successful then the appoint person must calculate a revised chargeable amount.\textsuperscript{2052}

\textbf{20.2.2 Scope of appeal} - The right to appeal does not allow other grounds outside the scope of reg. 114 to be considered. In an appeal concerning a development to construct a single storey garage extension to provide six additional bays\textsuperscript{2053} the authority argued that the appointed person had no jurisdiction to deal with issues other than disputes as to the method of calculation and the quantum thereof and not as to whether there should be a CIL liability at all.\textsuperscript{2054} It argued that it was not open to such a person to decide whether there was otherwise a liability to CIL. In that case the issue was whether or not the type of development involved fell in the residential category in the Charging Schedule or the category of “all other types” which was nil rated. The appointed person rejected this argument on the ground that in order to determine whether the CIL calculation under reg. 40 was correct it required a view to be taken as to whether the building should properly be included in the calculation and if it should whether it is nil rated or subject to a higher CIL rate.\textsuperscript{2055} What the appointed person is not allowed to do is decide whether an exemption or relief applies or to deal with surcharges. Nor can a refusal by an authority to repay CIL be the subject of an appeal.\textsuperscript{2056}

\begin{itemize}
\item Development: Retention of .. bedroom house. Decision dated 2\textsuperscript{nd} April 2015 – para. 34
\item Development: Demolition of existing block of …garages; erection of …bedroom detached…and provision of associated parking. Decision date 16\textsuperscript{th} May 2016 – para. 12
\item Development: Change of use from Use Class B1 (Office) to …residential accommodation..Decision date 15\textsuperscript{th} December 2013 – para. 21
\item Development: Proposed conversion to create 2 x [ ] dwellings, 2 storey rear infill extension, loft conversion, 1 No. car parking space, 4 cycle spaces and refuse area Decision date: 16\textsuperscript{th} May 2016 para. 1(g)
\item Development: Single storey garage extension to existing block to provide [ ] No. additional bays decision date 15\textsuperscript{th} December 2013
\item Para. 7
\item Reg. 114(5)
\item Reg. 114(6)
\item Development: Variation of Condition 4 (Approved Plans) of planning permission …Decision date 20\textsuperscript{th} March 2018 – para. 15
\end{itemize}

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Appeals under reg. 114 can raise the issue whether the development qualifies for the exclusion in respect of developments for minor developments of less than 100 square metres\textsuperscript{2057} or whether the permitted works are excluded from treatment as a development\textsuperscript{2058} or whether a development is within a particular class of use\textsuperscript{2059} or whether the Gross Internal Area has been measured correctly.\textsuperscript{2060} It has been repeatedly stated by appointed persons that “I am not generally responsible for deciding whether or not a particular exemption or relief applies to that chargeable amount.”\textsuperscript{2061}

20.2.3 Failed grounds of appeal - Separate from the attempts to obtain an appeal decision on the availability of a CIL relief or exemption there have been repeated attempts to raises issues which do not concern the calculation of the chargeable amount. It is as if the statutory appeal process has been provided as a safety valve for frustrated owners or developers to express their dissatisfaction with the rigidity of the CIL regime. Issues which have been argued but rejected include:

(i) alleged delay in granting planning permission until after the authority has introduced the CIL regime to its area even if the on the face of it the Council’s actions would appear to be perverse and unjust;\textsuperscript{2062}

(ii) late service of the CIL liability notice – in the appeal referred to in (i) above it was nearly twelve months after the grant of planning permission but the appointed person stated that he was unable to consider whether or not the requirements of reg. 65(1) had been met in the case.\textsuperscript{2063} The reason for this is that it is not material to the calculation of the chargeable amount.

(iii) there has to be a relationship between the use of the buildings and funding of publicly funded infrastructure – this was rejected because all that is required is that the building is comprised in a chargeable development in accordance with the authority’s charging schedule.\textsuperscript{2064}

(iv) the CIL charge will undermine the viability of the development – this is “not a matter which has any bearing on the calculation of the charge under regulation 40”.\textsuperscript{2065} If appropriate it is for the appellant to take up the issue with the authority if the relief for exceptional circumstances is available.\textsuperscript{2066}

\textsuperscript{2057} See section 10.3.1 above
\textsuperscript{2058} See sections 10.1 and 10.2 above
\textsuperscript{2059} See section 5.4.
\textsuperscript{2060} See section 15.2.1
\textsuperscript{2061} Para. 21 Development: Erection of 2 No. agricultural buildings decision date 26\textsuperscript{th} January 2015
\textsuperscript{2062} Para. 8(b) Development: Erection of [ ] single storey self storage units decision date 16\textsuperscript{th} December 2013 and para. 1-2 APP/H1840/L/17/1200148 decision date: 27\textsuperscript{th} March 2018
\textsuperscript{2063} Para. 10 Development: Erection of [ ] single storey self storage units decision date 16\textsuperscript{th} December 2013
\textsuperscript{2064} Para. 18 Development: Erection of 2 No. agricultural buildings decision date 26\textsuperscript{th} January 2015
\textsuperscript{2065} Para. 21 Development: Erection of 2 No. agricultural buildings decision date 26\textsuperscript{th} January 2015 and Proposed Development: Construction of 2 No. 3 bed dwelling house (including basement accommodation) with rear plot boundary alteration. Decision date: 4\textsuperscript{th} September 2018 – para. 10
\textsuperscript{2066} As to which see section 11.4 above
(v) failure by charging authority to respond to information in CIL Additional Information Form by telling the appellant that CIL will be chargeable.\textsuperscript{2067}

(vi) failure to inspect premises or carry out drone mounted camera inspection.\textsuperscript{2068}

(vii) failure to carry out a review.\textsuperscript{2069}

20.2.4 **Timing of reg. 114 appeal** - the appeal must be made within 60 days of the liability notice being issued\textsuperscript{2070} but not earlier than 14 days from the request for a review. If there is no request for a review then there can be no appeal.\textsuperscript{2071}

An appeal cannot be made if the development has commenced\textsuperscript{2072} unless the planning permission in relation to the development was granted after the commencement of the development.\textsuperscript{2073} This means that when a revised development scheme is authorised after the commencement of a development it is now possible to appeal whereas previously such an appeal was not possible due to the earlier commencement of the development.

This may pose problems if the relevant planning permission is a section 73 permission when the parent permission was granted after the introduction of CIL in the area. Under the pre-2019 (No. 2) Regulations if there is no change to CIL\textsuperscript{2074} by reason of the section 73 permission then the chargeable development is that authorised by the parent permission (whether or not a full permission or a section 73 permission) and if that has started then an appeal in relation to the section 73 permission will be valid.\textsuperscript{2075} If the section 73 permission changes the CIL\textsuperscript{2076} then if that development commences the appeal will be invalid or lapse if commencement is after the appeal.

It also means that the CIL arising from a retrospective planning permission may be the subject of an appeal even though the development will have commenced. This was accepted in an appeal even though the work was being carried out in relation to an earlier planning permission.\textsuperscript{2077} However, there was no discussion in that decision of the impact of reg. 7(5) which deems a development authorised under section 73A TCPA 1990 to commence on the date of the retrospective planning permission. It would seem doubtful in those circumstances that the grant is after the commencement of the particular development as the grant determines the commencement date. This point seems to have been raised in a later appeal although reg. 7(5) was not expressly mentioned but the charging authority had taken the date of the planning permission as

\textsuperscript{2067} Development: Conversion of a single family dwelling into \[ \] involving the erection of a \[ \] extension and \[ \] extension. Decision date 2\textsuperscript{nd} March 2017 para. 9

\textsuperscript{2068} Development: Redevelopment of site including demolition of \[ \] and construction of two \[ \]. Decision date: 4\textsuperscript{th} April 2017 - para.15

\textsuperscript{2069} Development: Redevelopment of site including demolition of \[ \] and construction of two \[ \]. Decision date: 4\textsuperscript{th} April 2017 - para.17

\textsuperscript{2070} Reg. 114(2)

\textsuperscript{2071} Reg. 114(1)

\textsuperscript{2072} Reg. 114(3)

\textsuperscript{2073} Reg. 114(3A) inserted by reg. 11(3) of the 2014 Regulations with effect from 24\textsuperscript{th} February 2014

\textsuperscript{2074} Reg. 7(8)

\textsuperscript{2075} Proposed development: Variation of condition No. 10 of planning permission. Decision date: 2\textsuperscript{nd} October 2018 – para. 14

\textsuperscript{2076} Reg. 7(7)

\textsuperscript{2077} Development: The construction of a roof and side extension to create an additional dwelling. Decision dated 9\textsuperscript{th} February 2017 para. 9
the date of the commencement of the development. The appointed person accepted the
date given by the agents which was earlier without further consideration.\textsuperscript{2078}

Even if the development has not commenced before the appeal if the development
commences before the decision on the appeal is notified the appeal will lapse unless the
planning permission in relation to that development was granted after the
commencement.\textsuperscript{2079}

\textbf{20.2.5 Risks arising from appeal} – the usual risk of a costs burden is very limited
because it requires a party to an appeal to have acted unreasonably and the appointed
persons exercise the power with a great deal of common sense and understanding. There
will, however, be risks. A decision by an appointed person may be the end of the
statutory appeal process but it may not achieve finality. Such a decision can be
challenged but the challenge has to be by way of judicial review. This will inevitably
be more expensive and protracted than the statutory appeal process. Most appeal
decisions are not challenged but that may be because most appeals fail. The greatest
risk of a challenge by judicial review is if the appeal has succeeded against the charging
authority so that significantly increases the risk for an appellant.

My experience is that appellant acting for themselves may be confused by the appeals
system. In particular some believe when putting in an appeal they are appealing against
the CIL liability when in fact they are only appealing against a surcharge.\textsuperscript{2080} This is
especially so with self-builders. Such confusion creates disappointment but may also
lead to further financial pain. If the appeal against the surcharge succeeds the charging
authority may feel bound to challenge the result because it will probably have greater
significance for the authority than the appellant. The only means of challenge open to
the authority is by way of judicial review which is far more expensive and protracted
than a statutory appeal. Such proceedings may be out of proportion to what is at stake
for the original appellant.

There is the separate risk that if a concession has been given by a charging authority
that may not be given effect to by the appointed person. In one appeal the charging
authority has accepted that demolition deduction was available albeit that the building
had been demolished prior to the date at which development was first permitted. The
appointed person did not give effect to the concession because an appeal can only be
decided in accordance with the 2010 regulations and the concession did not accord with
them.\textsuperscript{2081}

\begin{enumerate}
\item \textbf{20.3 Appeal against apportionment of liability} – any owner of a material interest in
land subject to a development may appeal to the VOA for the appointment of an
appointed person (a valuation officer or district valuer) if aggrieved by the
apportionment of CIL liability by the collecting authority.\textsuperscript{2082} The onus will lie on the
\end{enumerate}

\textsuperscript{2078} Development: Variation of Condition 4 (Approved Plans) of planning permission…Decision date:
20\textsuperscript{th} March 2018 – para. 8\textsuperscript{2079} Reg. 114(4)
\textsuperscript{2080} For example the appellants stated that the whole CIL liability was being appealed in
APP/W0340/L/17/1200141 decision date: 7\textsuperscript{th} February 2018
\textsuperscript{2081} Development: Retention of Detached Outbuilding to be used as ancillary guest accommodation.
Decision date: 2\textsuperscript{nd} October 2018 – para. 20
\textsuperscript{2082} Reg. 115
\textsuperscript{2083} Reg. 115(1)
appellant. The most likely issue in such an appeal will be the market value of the relevant interests and in particular that of the appellant. The decision will be based on the information provided by the parties which will include any valuations, comparables and details of consideration paid in transactions relating to the development site.

A request for a review can be made but it is not a pre-condition to the making of an appeal under reg. 115. There is a time limit of 28 days from the issue of the demand notice which does not really allow much time for a review and consideration of the review decision.\textsuperscript{2084} If the appeal is successful then all demand notices issued before the appeal will cease to have effect\textsuperscript{2085}, any surcharge imposed may be quashed\textsuperscript{2086} and the apportionment will be recalculated.\textsuperscript{2087} There is no requirement that the appeal must be before the commencement of the development as the apportionment may not be made and a liability notice issued until after commencement.

20.4 Appeal regarding charitable relief\textsuperscript{2088} – an interested person\textsuperscript{2089} aggrieved by a collecting authority’s decision to grant charitable relief may appeal to the VOA to appoint an appointed person (a valuation officer or district valuer) on the ground that the authority has incorrectly determined the value of the interest in land in respect of which the claim was allowed.\textsuperscript{2090} Such a valuation will only have been needed if there is an apportionment of the CIL liability between qualifying and non-qualifying interests in land. An appeal over the value of the qualifying interest is made under reg. 116 but any dispute over the calculation of the amount of the CIL has to be separately appealed under reg. 114. There is no appeal under reg. 116 if the claim for charitable relief is refused.\textsuperscript{2091}

Such an appeal must be made before the end of the period of 28 days beginning with the decision of the collecting authority on the claim for charitable relief\textsuperscript{2092} but must be before the development commences. The appeal will lapse if the development commences before the decision is notified.\textsuperscript{2093} It is not a pre-condition for such an appeal that a request has been made for a statutory review under reg. 113 but one can be made.

In the event of a successful appeal the appointed person may amend the amount of charitable relief granted to the appellant.\textsuperscript{2094}

20.5 Appeal against surcharge\textsuperscript{2095} – a person aggrieved by a decision to impose a surcharge may appeal to the Planning Inspectorate for the appointment of an appointed

\textsuperscript{2084} Reg. 115(2)
\textsuperscript{2085} Reg. 115(4)
\textsuperscript{2086} Reg. 115(5)
\textsuperscript{2087} Reg. 115(6)
\textsuperscript{2088} Reg. 116
\textsuperscript{2089} See section 20.11.3 below
\textsuperscript{2090} Reg. 116(1)
\textsuperscript{2091} Development: Erection of a detached house. Decision date 9th September 2016 – para. 7
\textsuperscript{2092} Reg. 116(2)
\textsuperscript{2093} Reg. 116(3)
\textsuperscript{2094} Reg. 116(4)
\textsuperscript{2095} Reg. 117
person (the Secretary of State or person appointed by that person\textsuperscript{2096}) on the ground that:\textsuperscript{2097}

(a) the alleged breach leading to the imposition of the surcharge did not occur;

(b) no liability notice had been served in respect of the chargeable development\textsuperscript{2098}; or

(c) the surcharge calculation is incorrect.\textsuperscript{2099}

There have been cases of confusion when the appellant does not have professional advice and makes an appeal under reg. 117 believing that the appeal is against the CIL charge itself. This is usually when the appellant has been granted the benefit of the self-build exemption but then lost it. This is worrying because even if the appeal is successful it will not address the main grievance of the appellant and there will be the risk that the authority considers that the appeal decision must be challenged which can only be achieved by a judicial review. This will involve the appellant in considerable expense in relation to an issue which is not the principal one.

A liability notice which has been registered as a local land charge will bind a purchaser and so will suffice even if the liability notice has been served on a previous owner.\textsuperscript{2100} However, if the owner is informed by the lawyer acting for a potential purchaser that a local land charge has been disclosed on a search that will not have the same effect.\textsuperscript{2101} In that case requests had then been made of the council for a copy of the Liability Notice but it had not been supplied until much later. In consequence the amount of the CIL was not known. In the event that there has been a change of ownership before commencement of the development and no local land charge has been registered it will be necessary to prove that the liability notice had been properly served on the original owner. In one appeal the original owner had died but it could not be proved that the liability notice had been posted to that original owner so that the surcharges and late payment interest imposed on the successor were quashed.\textsuperscript{2102}

Long delays in serving a liability notice have been used as a justification for not finding proved alleged breaches being failure to give a commencement notice or assumption of liability notice. One involved a delay of six years four months and both breaches were found not to have been proved.\textsuperscript{2103} The other appeal involved a delay of a year and the

\textsuperscript{2096} Reg. 112(1)(b)
\textsuperscript{2097} Reg. 117(1)
\textsuperscript{2098} It has been pointed out in appeal decision that the wording of reg. 117(b) is not personalised and does not require service of the liability notice on the appellant – see APP/G1250/L/16/1200088 decision date: 16\textsuperscript{th} June 2017 at para. 1. Further the issue is whether a liability notice has been served and not whether warnings have been given as to the need to give a commencement notice - APP/E0345/L/17/1200120 decision date: 18\textsuperscript{th} December 2017. Delay in serving a liability notice is not covered – APP/J4423/L/18/1200193 (in that case a disqualifying event had caused the service of a liability notice so there was no delay. Service of the original liability notice but not a revised liability notice was held to suffice – APP/L5810/L/18/1200223 decision date: 12\textsuperscript{th} March 2019
\textsuperscript{2099} This does not permit issues as to the chargeable amount to be raised - APP/X4725/L/16/1200071 decision date: 24\textsuperscript{th} May 2017 at para. 8
\textsuperscript{2100} APP/D1780/L/15/1200028 decision date: 5\textsuperscript{th} November 2015 - para. 3 APP/Q1255/L/16/1200036 decision date 8\textsuperscript{th} July 2016 and APP/P3610/L/16/1200055 decision date: 29\textsuperscript{th} December 2016
\textsuperscript{2101} APP/G5750/L/17/1200092 decision date 27\textsuperscript{th} September 2017 at para. 2-4
\textsuperscript{2102} APP/L5240/L/17/1200162 decision date: 22\textsuperscript{nd} June 2018
\textsuperscript{2103} APP/U5360/L/18/1200230 decision date; 18\textsuperscript{th} April 2019
quashing of only the surcharge relating to failure to give commencement notice but not that relating to failure to give assumption of liability notice.\textsuperscript{2104}

The time limit for making such an appeal is 28 days from the imposition of the surcharge\textsuperscript{2105} and whilst the appeal is on foot the surcharge is not payable.\textsuperscript{2106} As a first step an aggrieved person is encouraged to contact the collecting authority to seek to resolve the matter without the need for a formal appeal but whilst doing so care has to be taken not to miss the deadline for an appeal. A request for a statutory review under reg. 113 is not a pre-condition of making an appeal under reg. 117.

In the event of a successful appeal the appointed person may quash or recalculate the surcharge which is the subject of the appeal.\textsuperscript{2107} The appointed person has a discretion. Failure to serve a liability notice is likely to result in the quashing of the surcharge because the appellant would not be aware of the need to assume liability or to submit a commencement notice before starting work on the approved development.\textsuperscript{2108} Even if aware of the need to give a commencement notice the precise amount of CIL payable and this alone can be a reason for quashing the surcharge.\textsuperscript{2109}

Often the appellant will wish to raise other issues arising from the course of dealings between the Council and the appellant. This may elicit the sympathy of the appointed person but will not cause the appeal to succeed. In an appeal against the imposition of a surcharge by Havant BC for failure to serve a commencement notice the appellants relied on evidence that they had been told that when paying the CIL nothing more was required. The appointed person was sympathetic and considered that there were mitigating factors but upheld the surcharge because there had been a breach.\textsuperscript{2110}

An appeal against the amount of the surcharge imposed by Southampton City Council for failing to serve a commencement notice on the ground that there should be a sliding scale failed as there was no basis for such a scale in reg. 83.\textsuperscript{2111} Nor can the amount of the surcharge be reduced due to effect it will have on the financial viability of the development.\textsuperscript{2112}

20.6 Appeal regarding deemed commencement\textsuperscript{2113} – when a demand notice is served stating a deemed commencement date an appeal may be made to the Planning Inspectorate for the appointment of an appointed person (the Secretary of State or person appointed by the Secretary of State) on the ground that the date is incorrect.\textsuperscript{2114} It must be made within 28 days of the issue of the demand notice.\textsuperscript{2115} If successful all earlier demand notices in respect of the relevant development will cease to be

\begin{footnotesize}
\begin{enumerate}
\item[2104] APP/L5810/L/18/1200197 decision date: 6\textsuperscript{th} December 2018
\item[2105] Reg. 117(3)
\item[2106] Reg. 117(2)
\item[2107] Reg. 117(4)
\item[2108] APP/F5540/L/15/1200024 decision date 20\textsuperscript{th} August 2015 para.4 and APP/E0345/L/17/1200120 decision date: 18\textsuperscript{th} December 2017
\item[2109] APP/G5750/L/17/1200092 decision date 27\textsuperscript{th} September 2017 at para. 5
\item[2110] APP/X1735/L/14/1200017 decision date: 9\textsuperscript{th} January 2015
\item[2111] Southampton City Council ref: APP/D1780/L/14/1200010 decision date 17\textsuperscript{th} April 2014 at para. 6
\item[2112] APP/Q4245/L/15/1200032 decision date 15\textsuperscript{th} January 2015 - para. 2
\item[2113] Reg. 118
\item[2114] Reg. 118(1)
\item[2115] Reg. 118(2)
\end{enumerate}
\end{footnotesize}
effective, a revised deemed commencement date will be determined and any surcharge imposed may be squashed.

 Normally the issue will be whether the date is correct and there is no dispute as to the development which is being commenced. However, the issue may not be over the date that the works commenced but whether the authority has the correct development. If there are two or more planning permission which have not lapsed and relate to the same site it is for the owner to decide which will be implemented. If works start and no notice is given by the owner stating which permission is being implemented the authority has to guess which development has commenced and if it picks the wrong development then the CIL proceedings including surcharges cannot be transferred across to the other development. Any surcharges will be quashed and the appointed person will be unable to determine a revised commencement date. However, once the owner has decided to implement a permission that cannot then be denied and an alternative substituted. Any change in development will not be retrospective subject to the special rules in the CIL regime regarding section 73 permissions.

 Often the authority will select as the deemed commencement date the date of the inspection which disclosed the carrying out of works. Probably that will not be the first day of works but to select an earlier will be pure guesswork on the part of the authority. Usually this will be accepted on appeal and it is not normally the practice of appointed person to determine a commencement date earlier than the date specified in the demand notice as that could increase the financial burden borne by the appellant.

 Such an appeal was made against a demand notice issued by Preston City Council when the Council gave the date stated in a commencement notice served by the owner who then sought to withdraw that notice. The Council inspected the site and the photographs taken resulted in the appeal failing. The point as to whether there was actually jurisdiction under reg. 118 because a commencement notice had been served was not considered. If the planning permission is retrospective then the date of commencement is the date of the grant and any other date is wrong even though the works will have actually started earlier. This is a point about which charging authorities need to be aware because there is a tendency in the absence of a commencement notice to select as the deemed commencement date the date of the inspection on which the authority discovered that works had started. This can be too soon if the permission is a retrospective permission and any demand notice served with the earlier date will be invalid. In one appeal in such circumstances the appellant paid the CIL and surcharge in full before the appeal was decided. Notwithstanding the appellant ceasing to take part in the appeal the demand notice had to be held to cease to

2116 Reg. 118(4)
2117 Reg. 118(5)
2118 Reg. 118(6)
2119 APP/E0345/L/17/1200130 decision date: 21st December 2017
2120 APP/Q3115/L/17/1200104 decision date: 21st December 2017
2121 See discussion by Mr. K McEntee in APP/P5870/L/16/1200066 & 68 decision date: 30th May 2017 at para. 4
2122 APP/N2345/L/14/1200007 decision date: 5th June 2014
2123 APP/G3110/L/16/1200051 decision date: 1st November 2016
be effective\textsuperscript{2124} and as a consequence a revised demand notice needed to be served even when the CIL and any surcharge have been paid in full.\textsuperscript{2125}

When on appeal under reg. 118 a revised commencement date is required it does not follow that a surcharge relating to the failure to give a commencement notice will be quashed.\textsuperscript{2126}

20.7 \textbf{Appeal from stop notice}\textsuperscript{2127} – an aggrieved person may appeal to the Planning Inspectorate for the appointment of a person appointed by the Secretary of State against a stop notice on one or both of the grounds that no warning notice was served or the chargeable development had not commenced.\textsuperscript{2128} The appeal must be made before the end of the period of 60 days beginning with the day on which the stop notice takes effect.\textsuperscript{2129} The stop notice will continue in force pending the outcome of the appeal so it is not a means of suspending the stop notice.\textsuperscript{2130}

On an appeal the appointed person may correct any defect, error or misdescription in the stop notice or vary its terms provided in each case that this will not cause injustice to the appellant or any of the interested persons.\textsuperscript{2131} Further in the event of a successful appeal the appointed person may quash the stop notice.\textsuperscript{2132}

20.8 \textbf{Appeal against levy of distress or attempted levy} – an appeal is to the magistrates court and an authority may be ordered to pay compensation.

20.9 \textbf{Appeal regarding residential annexe exemption}\textsuperscript{2133} – an appeal can be made on the ground that the collecting authority has wrongly decided that the annex is not wholly within the curtilage of the main house and no other ground.\textsuperscript{2134} For example, there is no jurisdiction to determine on an appeal whether the dwelling is occupied as a sole or main residence or whether the annex is one new dwelling. The appeal is to the VOA for the appointment of an appointed person (a district valuer or valuation officer) and made by the interested person who is defined as the person who was granted the exemption.\textsuperscript{2135} Presumably this means the person who would be entitled to the exemption if it had been granted. The appeal must be made within 28 days of the authority’s decision\textsuperscript{2136} and before development commences. If the development commences before the appeal decision is notified to the appellant is notified the appeal will lapse.\textsuperscript{2137}

\textsuperscript{2124} Reg. 118(4)
\textsuperscript{2125} APP/W0340/L/16/1200052 decision date: 12\textsuperscript{th} January 2017 at para. 4
\textsuperscript{2126} APP/W0340/L/17/1200154 decision date: 23\textsuperscript{rd} May 2018
\textsuperscript{2127} Reg. 119 and see section 19.4 as regards stop notices
\textsuperscript{2128} Reg. 119(a) and (b)
\textsuperscript{2129} Reg. 119(3)
\textsuperscript{2130} Reg. 119(2)
\textsuperscript{2131} Reg. 119(4)(a) and (b)
\textsuperscript{2132} Reg. 119(5)
\textsuperscript{2133} Reg. 116A
\textsuperscript{2134} Reg. 116A(1) and see section 11.6.2 as regards residential annexes exemption and 11.6.8 regarding appeals
\textsuperscript{2135} Reg. 112(2)(c) inserted by reg. 11(1)(b) of the 2014 Regulations
\textsuperscript{2136} Reg. 116A(2)
\textsuperscript{2137} Reg. 116A(3)
In the event that the appeal is successful the appointed person may amend the amount of the exemption for residential annexes.\textsuperscript{2138}

\textbf{20.10 Appeal regarding self-build exemption}\textsuperscript{2139} - an appeal can be made on the ground that the collecting authority has incorrectly determined the value of the exemption allowed.\textsuperscript{2140} This will cover not just the qualifying dwelling but also any self-build communal area. In the official guidance it is stated that such an appeal is likely to be rare. However, there has been one appeal which concerned a development comprising two houses. One was built on the site of an existing house to be demolished during the course of the development. The other new house had had self-build housing exemption granted to it. The issue was how the demolition deduction was to be applied. The appellant argued for setting the area of the existing house to be demolished against the area of the new house to be constructed on that site. The charging authority argued for an apportionment. Both parties argued for the reg. 40 calculation to be carried out in respect of each new house separately. The appointed person disagreed and applied the reg. 40 calculation once to the two houses together as the development comprised both houses. The demolition deduction was then applied to the GIA of the whole chargeable development and then the self-build housing exemption was applied.\textsuperscript{2141}

It is not possible to appeal against a refusal of a claim for exemption for self-build housing.\textsuperscript{2142} It is not for the appointed person to decide whether the development qualifies as self-build housing.

The appeal is to the VOA for the appointment of an appointed person (a district valuer or valuation officer) and made by the interested person who is defined as the person who was granted the exemption.\textsuperscript{2143} The appeal must be made within 28 days of the authority’s decision\textsuperscript{2144} and before development commences. If the development commences before the appeal decision is notified to the appellant is notified the appeal will lapse.\textsuperscript{2145}

In the event that the appeal is successful the appointed person may amend the amount of the exemption for residential annexes.\textsuperscript{2146}

\textbf{20.11 Interested person} – an interested person may appeal or put in written representations or the interests of that person may need to be taken into account. The definition of interested person varies dependent upon the particular review or appeal. These definitions are set out in reg. 112. Who can appeal will be determined by the particular regulation under which the appeal is made. In all appeals the definitions will apply to determine on whom an acknowledgement of receipt is to be served and who

\begin{footnotes}
\textsuperscript{2138} Reg. 116A(4)
\textsuperscript{2139} Reg. 116B and see section 11.5 as regard self-build housing exemption
\textsuperscript{2140} Reg. 116B(1) and also see section 11.5.9
\textsuperscript{2141} Development: 1 No. 2 storey [ ] dwellinghouse with rooms in the roof and 1 No. [ ] with basement [ ] dwellinghouse (following demolition of existing dwelling at [ ] ). Decision date: 26\textsuperscript{th} March 2019 - para. 14
\textsuperscript{2142} Development: Conversion and extension of disused barn [actually a [ ]] to form a single dwelling. Decision date 18\textsuperscript{th} June 2019 para. 25
\textsuperscript{2143} Reg. 112(2)(d) inserted by reg. 11(1)(b) of the 2014 Regulations
\textsuperscript{2144} Reg. 116B(2)
\textsuperscript{2145} Reg. 116B(3)
\textsuperscript{2146} Reg. 116B(4)
\end{footnotes}
may make written representations. The charging and collecting authority will be included as well as the persons jointly liable for the CIL with the appellant. Also included amongst them is the Mayor of London when a London borough is involved. It has been stated that the policy of the Mayor will be to support the collecting authority when Mayoral CIL is involved.

The interested persons by type of appeal are:-

20.11.1 Reg. 113 (reviews)\textsuperscript{2147} - the person who has assumed liability to pay CIL; a person served with notice of chargeable development in accordance with reg. 64A(3); the person who has served notice of chargeable development if general consent applicable; any person applying for further approval if phased planning condition subject to pre-commencement condition; the applicant for planning permission; and any owner of an interest in the relevant land who has been served with a notice under reg. 64A(3). The person only has to fall within one so, for example, if liability is not assumed a person can still make a request for a review and appeal if appropriate provided that the person falls within one of the other classes.\textsuperscript{2148}

20.11.2 Reg. 114 appeal (amount of CIL)\textsuperscript{2149} – the charging authority (which includes the Mayor of London); the collecting authority if not the charging authority; the person who has assumed liability to pay CIL; a person served with notice of chargeable development in accordance with reg. 64A(3); the person who has served notice of chargeable development if general consent applicable; any person applying for further approval if phased planning condition subject to pre-commencement condition; and the applicant for planning permission; and any owner of an interest in the relevant land who has been served with a notice under reg. 64A(3).

20.11.3 Reg. 115 appeal (apportionment of liability)\textsuperscript{2150} – the person who has assumed liability for the payment of CIL; a person with a material interest in the land; a person served with notice of chargeable development in accordance with reg. 64A(3); the person who has served notice of chargeable development if general consent applicable; any person applying for further approval if phased planning condition subject to pre-commencement condition; the applicant for planning permission; and any owner of an interest in the relevant land who has been served with a notice under reg. 64A(3).

20.11.4 Reg. 116 appeal (charitable relief)\textsuperscript{2151} – the collecting authority; the charging authority if not the collecting authority (which includes the Mayor of London); the person who claimed charitable relief; and the person who has assumed liability to pay CIL in respect of chargeable development to which charitable relief applies.

20.11.5 Reg. 116A (exemption for residential annex)\textsuperscript{2152} – the person who granted the exemption; the charging authority; and the collecting authority if different to the charging authority.

\textsuperscript{2147} Reg. 112(2)(a)
\textsuperscript{2148} Development: Change of use from [    ] to residential (Use Class C3). Decision date: 17th June 2016 para.13
\textsuperscript{2149} Reg. 1122)(a) and (3)(a)
\textsuperscript{2150} Reg. 112(3)(b)
\textsuperscript{2151} Reg. 112(2)(b) and (3)(a)
\textsuperscript{2152} Reg. 112(2)(c) and (3)(a)
20.11.6 Reg. 116B (self-build exemption)\textsuperscript{2153} — the person who granted the exemption; the charging authority; the collecting authority if different to the charging authority; and any person jointly liable to pay the CIL with the appellant.

20.11.7 Reg. 117 appeal (surcharge)\textsuperscript{2154} — the collecting authority; the charging authority if not the collecting authority (which includes the Mayor of London); any person who is liable for the unpaid amount; and any person known to the collecting authority as an owner of a material interest in the land.

20.11.8 Reg. 118 appeal (deemed commencement)\textsuperscript{2155} — a person on whom a demand notice was served in relation to the chargeable development; the charging authority (including the Mayor of London); and the collecting authority if different from the charging authority.

20.11.9 Reg. 119 (stop notice)\textsuperscript{2156} — the charging authority (including the Mayor of London); the collecting authority if different from the charging authority; the person liable to pay the unpaid amount; any person known to the collecting authority as an owner or occupier of the relevant land; and any person who the collecting authority considers may be materially affected by the stop notice.

20.12 Form of appeal — an appeal must be in writing and in the form, or be substantially the same as the form, provided by the Secretary of State.\textsuperscript{2157} It must include the particulars specified or referred to in the form.\textsuperscript{2158}

A copy can be downloaded from the website of the Valuation Office Agency or the Planning Inspectorate (as appropriate). The VOA current form of appeal in relation to England, and it seems Wales, can be found at:


A link to the Planning Inspectorate current form of appeal in relation to England can be found at


The VOA have helpful guides to the CIL appeal process and how to the completion of the form on its website which is to be found at —

\textsuperscript{2153} Reg. 112(2)(d) and (3)(aa)
\textsuperscript{2154} Reg. 112(3)(c)
\textsuperscript{2155} Reg. 112(3)(d)
\textsuperscript{2156} Reg. 112(3)(e)
\textsuperscript{2157} Reg. 120(1)(a)
\textsuperscript{2158} Reg. 120(1)(b)

and


There is a similar helpful guide to be found with regard to appeals to the Planning Inspectorate at the Government website


There is a summary of CIL appeals which is to be found by a link on the Planning Portal website:


There have been appeals in which it has been suggested by the Planning Inspectorate that a different ground of appeal be added as the submissions are more appropriate for such a ground of appeal. For example, in one appeal the suggestion was that a ground 117(a) appeal be added which was accepted by the appellant.2159

20.13 Appeal process - the appointed person must as soon as practicable after receipt of the appeal acknowledge receipt.2160 The appeal form will contain the appellant’s written representations.2161 It is open to an appellant to introduce new evidence on the appeal which was not provided to the charging authority when carrying out the review.2162 However, any evidence must be introduced at that stage and cannot be provided in response to the authority’s representations. The onus lies on the appellant so that the appeal will fail if no evidence is put in by the appellant.2163

In the MCHLG’s Advice on planning appeals and the awards of costs (3rd March 2014)2164 it is stated that in planning proceedings “All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met.”2165

In addition the appointed person will as soon as practicable after the receipt of the appeal serve the acknowledgment.2166 Together with a copy of the acknowledgment

2159 APP/K3605/L/16/1200063 decision date 19th January 2017 at para. 1
2160 Reg. 120(3)(a) and the acknowledgment must include (a) the reference number allocated to the appeal and (b) the address to which communications to the appointed person about the appeal are to be sent.
2161 Reg. 120(4)
2162 Para. 24 in Demolition of the [ ], change of use of offices and ancillary buildings…dated 2nd January 2019
2163 APP/K3605/L/16/1200063 decision date 19th January 2017 at para. 3
2164 To be found at https://www.gov.uk/guidance/appeals#the-award-of-costs--general
2165 Paragraph: 028 Reference ID: 16-028-20140306
2166 Reg. 120(3)(b) and interested party is determined by reg. 112 as to which see section 20.11 above.
there will also be sent a copy of the completed appeal form on each interested party and notice that written representations in relation to the appeal may be sent to the appointed person before the end of the representations period.\textsuperscript{2167} An authority is entitled to put in representations even if it has not given a review decision.\textsuperscript{2168}

The definition of the representations period was changed by the 2011 Regulations with the intention of providing greater certainty and allowing the period to be extended. It is now 14 days beginning with the date that the acknowledgment of receipt is sent under reg. 120(3).\textsuperscript{2169} This is a tight time limit for any interested party who is not the appellant but it is now possible for the appointed person to extend it. It is directed that such written representations must be received by the appointed person within that period so unless extended by the appointed person must be abided by.\textsuperscript{2170} Any representations received after the expiry of the representations period will be returned and not taken into account.\textsuperscript{2171}

Copies of any representations received by the appointed person must as soon as practicable after receipt be sent to the appellant and each of the other interested persons.\textsuperscript{2172} The time limit for comments on the representations originally required that they be sent within 14 days of the end of the representations period\textsuperscript{2173} but as regards any appeals made on or after 24\textsuperscript{th} February 2014 this has been changed with effect from 24\textsuperscript{th} February 2014 so that the comments have to be received by the appointed person within 14 days of the expiry of the representations period.\textsuperscript{2174} This is so that there is greater certainty. The appointed person will know when the comments are received but not when they were sent. Additionally the period may be extended by the appointed person. When received copies of the comments must be sent to the other parties to the appeal.\textsuperscript{2175} All the representations and comments by parties and interested parties must be taken into account by the appointed person.\textsuperscript{2176} Occasionally the appointed person will inspect the development site. This has happened once in the reported appeal decisions. If this is to happen then the parties should be invited to attend a joint inspection if they wish.

One problem with appeals against CIL decisions is that usually they relate to proposed developments concerning a building that has yet to be constructed or used. The appointed person will have to do the best that is possible with the evidence provided. For instance the amount of CIL payable may depend on the use to which the building is to be put. In an appeal concerning a development substituting a block of five holiday units into a single nine bedroom holiday unit the issue was whether the new use was within Use Class C3. In a planning context this would be determined by reference to

\begin{footnotes}
\item[2167] Reg. 120(3(b)(i) and (ii).
\item[2168] Proposal: Retention of [ ] roof extension to main roof of both properties ….Decision date: 18\textsuperscript{th} June 2019 para. 16
\item[2169] Reg. 112(1). This time limit has been applied when a charging authority’s representations were received after the expiry of the period. Development: Erection of a detached house. Decision date 9\textsuperscript{th} September 2016 – para. 1.
\item[2170] Reg. 120(5)
\item[2171] APP/L5240/L/19/1200249 decision date: 5\textsuperscript{th} June 2019 at para. 1
\item[2172] Reg. 120(6)
\item[2173] Defined in reg. 112(1) as discussed immediately above
\item[2174] Reg. 120(7) substituted by reg. 11(5) of the 2014 Regulations
\item[2175] Reg. 120(7)
\item[2176] Reg. 120(8)
\end{footnotes}
the use to which the particular building has actually been put and the circumstances surrounding that user. This is not possible with a CIL appeal. Instead of evidence as to the characteristics of the use of the holiday accommodation reliance had to be placed on the planning permission and statements as to how it is intended that the building will be used. This included evidence as to e-mails enquiring about availability of the accommodation.

20.14 Withdrawal of appeal – the appellant may withdraw the appeal at any time by giving written notice to the appointed person.

20.15 Decision – the appointed person must give a reasoned decision which must be notified to the appellant and the interested parties. The VOA guide states that the role of the appointed person is similar to that of a first-tier tribunal member and that it is a quasi-judicial one. The decision must be based exclusively on the evidence provided.

There is no appeal from the decision of an appointed person so any challenge would have to be by way of judicial review. For example, the decision by the appointed person in appeals under reg. 117 and reg. 118 concerning Mr. Jones was challenged by Shropshire Council by judicial review proceedings in R (oao Shropshire Council) v State of State for Communities and Local Government and Mr. Jones. It is not just the appointed person’s decision which can be challenged by judicial review. The decision by the VOA to accept as valid an appeal which Hillingdon Council contended was invalid as out of time was challenged by judicial review proceedings in Hillingdon LBC v Secretary of State for Housing, Communities and Local Government and McCarthy & Stone Lifestyles Limited.

20.16 Costs – the appointed person has the power to decide which parties’ costs are to be borne and by whom. Advice is given on the award of costs in the MCHLG’s Advice on planning appeals and the awards of costs (3rd March 2014). This can be found at: https://www.gov.uk/guidance/appeals#the-award-of-costs-general

As discussed in section 20.14 above it is stated in that Advice that “all parties are expected to behave reasonably to support an efficient and timely process”.

Normally each party to an appeal bears that party’s own costs. Success will not by itself result in an award of costs in favour of the successful party. Costs will only be awarded against a party if they act unreasonably.

To succeed in obtaining a costs award

(i) a party has to make a timely application for an award of costs;

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2177 Reg. 120(20
2178 Reg. 120(9
2179 Para. 7.1
2180 [2019] EWHC 16 (Admin)
2181 [2018] EWHC 845 (Admin)
2182 Reg. 121
2183 As regards an authority the test is not whether any reasonable authority would have acted in that manner but whether the authority has acted reasonably taking into account not just the evidence put in by the authority but the whole picture – Kennedy J. in Manchester City Council v Secretary of State for the Environment and Mercury Communications Limited [1988] JPL 774
(ii) the party against whom the award is sought has acted unreasonably;

(iii) the unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process

(iv) whether the whole because there should not have been an appeal or in part because of the manner in which the party has behaved.

Examples of unreasonable conduct given in the MHCLG Guide to Claim planning appeal costs are “fail to co-operate with you or others; miss deadlines; gave information that was wrong or declared after the deadline”.

A claim for costs can be made with the main appeal. Alternatively, a separate claim for costs can be made. Such an award can be made by the appointed person even if no formal claim has been made.


A claim for costs was made by an authority in an appeal which failed. The appointed person stated that it had to be shown that the appellant had acted unreasonably. In that case the authority argued that by introducing grounds on the appeal which had not been raised in the review the appellant had acted unreasonably. The appointed person considered that the preferable course would have been for the grounds regarding lawful use to have been raised earlier but as there would still have been an appeal no award of costs should be made.

Even when the appellant has put in no evidence on three grounds of appeal an award of costs has not been made in favour of the Council because the amount would be de minimis in respect of the reg. 117(1)(a) ground and because in respect of the reg. 117(1)(b) and (c) grounds no costs had been wasted or unnecessarily incurred. However, specifying a ground of appeal without putting in any evidence is risky and may result in an award of costs in relation to that ground. A claim for costs against an appellant who had believed the common misconception that demolition did not commence a development was rejected as it was the exercise of a right to appeal which was not frivolous or unreasonable. The right to appeal is important particularly when the appellant wins in part and in such circumstances an award is unlikely.

Similarly a claim for costs against an authority failed. It was put on the basis that the authority had the necessary information but had failed to use it properly. The authority considered that it should have been provided with floorplans at an earlier stage as

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2184 To be found at https://www.gov.uk/claim-planning-appeal-costs
2185 Development: Change of use from Use Class B1 (Office) to residential accommodation. Decision date: 15 December 2013 – para. 21 and 22
2186 APP/K0235/L/16/1200082 decision date: 19 July 2017 Application against appellant
2187 APP/U5360/L/18/1200222 decision date: 28 March 2019 Application for costs at para. 3
2188 APP/K0235/L/17/1200101 decision date: 8 August 2017 Application for costs
2189 APP/T5720/L/17/1200089 decision date: 7 September 2017 Application for costs
requested and the appointed person agreed.\textsuperscript{2190} Another claim for costs against a council on the ground that the appellant would not have appealed if it had received a decision on a request to pay the CIL liability by instalments failed as that was a matter of discretion for the council.\textsuperscript{2191}

Even though there has been no real argument on the point deciding the appeal as the Council conceded it had made a mistake when selecting the deemed commencement date if there have been other arguments developed which have required consideration that will usually prevent an award of costs against the unsuccessful appellant.\textsuperscript{2192} If the concession in that appeal had been made earlier it would not have prevented the appellant making an appeal to pursue the argument that the development was not lawful so no costs would have been avoided.

If a costs award is made it is not open to the appointed person to determine the amount of the costs. If the parties cannot agree then that is a matter for a Costs Officer of the Supreme Court Costs Office.

20.17 Judicial review –

20.17.1 Availability of judicial review - the availability of a challenge by a review or appeal is very tightly controlled. There is no statutory provision which states that a challenge cannot be mounted by way of judicial review. For so long as it is possible to request a review or appeal then it is arguable that it will not be possible to seek a judicial review because there is an alternative means of challenge. However, such a route is subject to stiff time limits and will soon be lost if not exercised. Despite the ability to appeal judicial review will be an important means of challenging decisions made under the CIL regime.

Judicial review will be a possible course of action by which to challenge decisions:

(i) made during the course of carrying out the procedure for the establishment of the CIL regime in an area as in the Fox Strategic case;\textsuperscript{2193}

(ii) which are incapable of being appealed under the statutory procedure. This covers, for example, refusals to grant a claim for an exemption or a claim for repayment of CIL.

(iii) decisions in relation to which the statutory right to appeal has been lost. For example if the right has been lost because the development has commenced or the time limit for appealing has expired. In R (oao Hourhope Limited) v Shropshire CC\textsuperscript{2194} the authority had stated that it would consider the information in support of the claim even though the development had been commenced so no objection was taken to the use of judicial review proceedings. Such circumstances may occur because both the authority and the developer wish the development to commence as soon as possible.

\textsuperscript{2190} Development: The erection of a pair of semi-detached dwellings and the demolition of the existing dwelling. Decision date: 19\textsuperscript{th} June 2018 – para. 24-26

\textsuperscript{2191} APP/K0235/L/16/1200082 decision date: 19\textsuperscript{th} July 2017 Application against Council

\textsuperscript{2192} APP/Z2830/L/17/1200110 Application for costs decision date: 1\textsuperscript{st} November 2017

\textsuperscript{2193} Section 5.4.3.3

\textsuperscript{2194} supra – see section 15.2.5 above
(iv) which are unlawful or void. An alternative in such circumstances is to rely on this argument as a defence to any claim to enforce a CIL liability. An example of proceedings in which a declaration was sought in the Administrative Court that a CIL liability notice and demand notice was unlawful is R (oao Orbital Shopping Park Swindon Limited) v Swindon Council and Next plc. In that case the liability notice and the demand notice were issued subsequent to the implementation of the two planning permissions so that neither a statutory review nor appeal was possible. The Council’s approach of merging the two planning permissions into one for the purposes of charging CIL was rejected as unlawful and a declaration made accordingly.

(v) by appointed persons under the CIL appeals system. This may be the appeal decision itself as in R (oao Shropshire Council) v Secretary of State for Communities and Local Government and Jones or a decision regarding a step in the appeal process as in Hillingdon LBC v Secretary of State for Housing, Communities and Local Government and McCarthy & Stone Lifestyles Limited.

20.17.2 Wednesbury principle – in the event that a CIL decision is challenged by way of judicial review the Court will not be able to decide the matter as if it were the hearing of an appeal. It will be necessary to show that the particular CIL decision made by the authority is one which no reasonable authority could have made. In R (oao Hourhope Limited) v Shropshire CC supra HHJ Cooke stated that it “is accepted that the …….council's decision is susceptible to review only on normal judicial review principles, and in particular whether the council either took into account irrelevant matters or ignored relevant ones, or reached a conclusion unreasonable in the Wednesbury sense. The case was argued before me only on the question whether the council erred in law in concluding that it was not satisfied that the building was "in lawful use"…….” This means that the task facing the claimant may be harder than with an ordinary statutory appeal.

20.17.3 Legitimate expectation – an alternative argument was put forward in the Hourhope case based on legitimate expectation. This arose from a CIL guide which Shropshire Council had issued on the web. A passage in the guide relating to storage was relied on by the developer as requiring the Council to accept that the circumstances of the case justified a demolition deduction being made. In cases in which legitimate expectation is relied on in a CIL appeal to an appointed person will not be able to deal with the issue and judicial proceedings will be needed.

This point is emphasised by an appeal against Southampton City Council in which it was argued that in a number of other similar cases instead of the Council imposing a surcharge for failure to serve a commencement notice the developers were sent reminders by the LPA. The appointed person sympathised at what appeared to be “a level of inconsistency in the council’s approach to dealing with individual cases. However, the procedures adopted by a planning authority for dealing with such cases are generally a matter for the authority within the context of local government accountability and not something for me to consider in the determination of this

2195 [2016] EWHC 448 (Admin)
2196 [2019] EWHC 16 (Admin)
2197 [2018] EWHC 845 (Admin)
2198 Para. 24
2199 Appeal ref: APP/D1780/L/14/1200010
appeal. It is a point which can possibly be advanced in judicial review proceedings in support of a claim that the authority has acted unfairly but is not a valid ground for a CIL statutory appeal.

As illustrated by the decision in R (oao Hourhope Limited) v Shropshire CC supra it will be difficult to convince a court that a CIL decision by a LPA should be reversed due to a legitimate expectation created by the LPA. In that case the claim failed for three separate reasons. First, there must be a clear and unambiguous statement which convinces the court to act. In that case the passage relied on in the Council’s CIL guide could “not be sensibly understood as meaning that the premises would be treated as in use as long as there were chattels present on them”. To apply the passage in the guide to the particular circumstances of the case was to stretch their meaning and such a strained construction defeated the claim. Secondly, legitimate expectation cannot be used to require an authority to act unlawfully. In that case the availability of the demolition deduction was a matter of law and Shropshire Council has no power to modify that law. Thirdly, the Court will take into account whether the expectation has been relied on. In that case there was no evidence of any reliance and so even if there had been an unambiguous statement it would not have been unfair for Shropshire Council to change its interpretation of the CIL regulations. Separately as a general comment it will be harder to succeed with a claim based on legitimate expectation if it is alleged to arise from statement made to a wide class as opposed to an individual or small class of persons.

In this respect an appointed person rejected an argument that failure by a charging authority to respond to a claim that CIL was not chargeable made in a CIL Additional Information Form was a ground of appeal. The appointed person considered that the absence of a response did not bind the authority as the Additional Information Form was purely part of an administrative process.

Para. 5

Para. 33

Development: Conversion of a single family dwelling into [   ] involving the erection of a [   ] extension and [   ] extension. Decision date 2nd March 2017 para. 9
21. **Mayoral CIL and Crossrail contribution** – The first Mayoral Community Infrastructure Levy was introduced in 2012 (“MCIL1”). The reason for this was to contribute to the funding of the Crossrail project for London. Four sources of funding were relied on which included the Mayoral CIL and section 106 contributions. Each was intended to raise £300 million. In addition the Crossrail Business Rate Supplement was estimated to raise £4.1 billion and the remainder of the core funding provided by the Mayor was to be funded by TfL. The charge fell in areas considered to benefit from Crossrail and was an additional charge to any CIL imposed by the charging authority for the area. It arose even if the local planning authority had not introduced CIL into its area. In those areas it meant that greater care needed to be exercised to ensure that any potential charge to MCIL1 was picked up particularly if CIL has not been introduced to the area. This need for care continues with MCIL 2.

A new charging schedule by the Mayor of London was introduced in February 2019 taking effect on 1st April 2019 (“MCIL2”). It applies to

(i) grants of planning permission on or after 1st April 2019;

(ii) to phases of development in a phased planning permission granted before 1st April 2019 which do not first permit development prior to that date; and

(iii) to outline planning permissions granted before 1st April 2019 which do not first permit development prior to that date.

This superseded MCIL1 and the Crossrail Funding SPG. The funding raised by MCIL 2 will be used to fund both the Elizabeth Line (Crossrail 1) and Crossrail 2. It comprises a general CIL charge across London and specific charges for office, retail and hotel development in Central London and the Isle of Dogs. Unlike with MCIL1 the specific section 106 Crossrail charge no longer applies.

21.1 **Infrastructure funding** – the MCIL1 and MCIL2 is to fund roads or other transport facilities, including, in particular, for the purpose of, or in connection with, scheduled works as defined within Schedule 1 to Crossrail Act 2008. Funding extends not just to providing infrastructure but also improving, replacing, operating and maintaining infrastructure. It has been extended to repaying any borrowings from the GLA or TfL.

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2203 The MCIL1 charging schedule can be found at [http://content.tfl.gov.uk/mcil1-charging-schedule-april-2012.pdf](http://content.tfl.gov.uk/mcil1-charging-schedule-april-2012.pdf)

2204 The relationship between MCIL1 and section 106 planning obligations was dealt with in the Crossrail Funding Use of Planning Obligations and the Mayoral Community Infrastructure Levy Supplementary Planning Guidance updated March 2016 (“Crossrail Funding SPG”)

2205 This can be found at [https://www.london.gov.uk/sites/default/files/mcil2_charging_schedule_final.pdf](https://www.london.gov.uk/sites/default/files/mcil2_charging_schedule_final.pdf)

2206 A phase of development in accord with a phased planning permission is a separate chargeable development (reg. 9(4). Reg. 40(4) determines the rate applicable to a chargeable development by reference to the relevant charging schedule which is the one in force when the relevant planning permission first permits development (reg. 40(11)). When a phase of development is first permitted is determined by reg. 9(3A).

2207 When an outline planning permission other than a phased planning permission first permits development is determined by reg. 9(4).

2208 Reg. 59(2)
for the purposes of, or in connection, with the provisions of scheduled works within Schedule 1 to the Crossrail Act 2008 and to pay any interest on such borrowing.2209

Education and health have been specifically excluded. The reason for a two tier CIL system in London is so that there is provision for both local and strategic cross London infrastructure. No portion of these CIL receipts will be paid for the purposes of neighbourhood funding.

21.2 Charges –

21.2.1 MCIL1 - the MCIL1 charge rates came into force on 1st April 2012. For this purpose London was divided into three zones and a single general rate was applied in each zone. The boroughs comprised in the zones are set out in the Third Appendix. The rates fixed were £50 for zone 1; £35 for zone 2; and £20 for zone 3. They applied to all developments save that there was no Mayoral CIL payable for developments for medical or health uses or which are wholly or mainly for provision of education as a school or college. This Mayoral CIL was in addition to the CIL charged by the relevant borough council so that any chargeable development in London might be charged to both or possibly only one dependent on whether the borough council had established its own CIL regime. In areas in which no local CIL had been established it was important to remember that the Mayoral CIL would still be chargeable and might not show up on a local land charge search. Care needed to be taken particularly when purchasing between grant of planning permission and commencement of development.

21.2.2 MCIL2 – as with MCIL there is a general CIL rate which is charged in three zones which broadly but not wholly reflect the zoning with MCIL1. The highest rate is £80 charged in the London Boroughs of Camden, City of London, City of Westminster, Hammersmith and Fulham, Islington, Kensington and Chelsea, Richmond-upon-Thames, Wandsworth. The next rate of £60 is charged in the boroughs of Barnet, Brent, Bromley, Ealing, Greenwich, Hackney, Haringey, Harrow, Hillingdon, Hounslow, Kingston upon Thames, Lambeth, Lewisham, Merton, Redbridge, Southwark, Tower Hamlets, Waltham Forest, London Legacy Development Corporation (LLDC), Old Oak and Park Royal Development Corporation (OPDC). The last rate of £25 is charged in the boroughs of Barking and Dagenham, Bexley, Croydon, Greenwich, Havering, Newham, and Sutton. Greenwich has been moved to the lowest rate whilst Enfield and Waltham forest has been moved to the middle band from the lowest with regard to MCIL1.

As with MCIL1 there is a nil CIL rate for MCIL2 with regard to development used wholly or mainly for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner and development used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institution of higher education.

In addition to the general CIL rate and unlike MCIL1 there are specific CIL charges in the more limited area of Central London and the Isle of Dogs. These are

2209 Reg. 60(7A) inserted by reg. 3(b) of the Community Infrastructure Levy (Amendment) (England) Regulations 2019 with effect from 23rd May 2019.
(i) Office use charged at rate of £185;
(ii) Retail use charged at £165; and
(iii) Hotel use charged at £140.

Maps showing the charging areas are to be found at
https://data.london.gov.uk/dataset/mcil-2-charging-area-boundaries
In addition a mapping tool is to be added under the heading MCIL Mapping Tool at

21.3 Exemptions and relief – the mandatory reliefs and exemptions from CIL (social housing, general charitable relief, minor development exemption, residential extension exemption, residential annexes exemption and self-build housing exemption) apply to MCIL1 and MCIL2 but not the possible discretionary reliefs such as charitable relief in reg. 44 and relief for exceptional circumstances in reg. 57. It was and continues to be felt that the latter would result in administrative complexity. As regards the discretionary relief for exceptional circumstances in reg. 57 the judgment has been made that it is preferable to address the viability of any development by reason of contributions for Crossrail by making adjustments with the section 106 contribution. With regard to the MCIL1 charge when it equalled or exceeded the section 106 contribution then only the CIL was payable and the latter was not payable but if the section 106 contribution exceeded the CIL charge then the CIL was payable and the excess was payable as a “top-up” as a section 106 contribution.

21.4 Collection – the collecting authorities for the Mayoral CIL will be the relevant London boroughs or a MDC if established in the relevant area. The monies collected will be paid to Transport for London.

21.5 Payment – the liability to pay the Mayoral CIL will be calculated and paid in accordance with the regulations applicable to the general CIL charge. The monies raised must be applied for the purpose for which they have been raised unless otherwise agreed.

21.6 Instalments – the Mayor of London has an instalment policy which has applied to MCIL1 and will continue to apply to MCIL2 but will be kept under review. The Mayor’s instalments policy only applies in certain cases and not all. If CIL is not chargeable by the borough council within a borough or MDC then the Mayor’s instalment policy applies. Similarly if the London borough council or MDC has not issued an instalment policy on or before the commencement date stated in the

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2210 Office is defined as any office use including offices that fall within Class B1 Business of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order. Uses that are analogous to offices which are sui generis, such as embassies, will be treated as offices.

2211 Retail is defined as all uses that fall within Classes A1, A2, A3, A4 and A5 of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order, and related sui generis uses including retail warehouse clubs, car showrooms, launderette.

2212 Hotel means any hotel use including apart-hotels uses that fall within Class C1 Hotel of the Town and Country Planning (Use Classes) Order 1987 as amended.

2213 See section 21.8 below

2214 Reg. 70(4)
commencement notice then the Mayor’s instalment policy applies. Most London borough councils have adopted a CIL charging schedule but Ealing, Havering, Bromley and the Old Oak and Park Royal Development Corporation have yet to do so although all have started the examination process and Havering is very close to publishing a charging schedule. The Mayor’s instalment policy will apply in those areas to MCIL2 unless and until a local CIL charging schedule is adopted. There is a Borough CIL progress tracker on the TfL webpage for MCIL2.

In a borough which has its own instalment policy on or before the commencement date stated in the commencement notice then that will also apply to the Mayoral CIL and not the Mayor’s instalment policy. This applies in Brent, Croydon, Redbridge and Wandsworth. In the case of Barnet and the City of London the instalment policy was originally the same as the Mayor of London’s instalment policy as is stated in the charging schedule of the City of London and Barnet’s instalment policy. However, neither has changed the terms of the instalments policy and so still applies an instalment policy which is the same as the Mayor’s original instalment policy. In consequence in those areas it is that original instalments policy which continues to apply notwithstanding the changes in 2018 to the Mayor’s instalment policy.

21.6.1 before 1st January 2018 - with effect from 1st April 2013 until 31st December 2017 MCIL1 could be paid by instalments if the CIL liability was £500,001 or more. It would be payable by two instalments. The first instalment would be the greater of £500,000 or one half of the CIL liability which would be payable within 60 days of commencement of development. The remainder would be payable within 240 days of commencement of development. Any CIL liability of £500,000 or less had to be paid not more than 60 days after commencement of development.

21.6.2 on or after 1st January 2018 – with effect from 1st January 2018 a CIL liability of £100,000 or less must be paid in full within 60 days of the commencement of the development. If the CIL liability is in excess of £100,000 then it is payable in two instalments. The first instalment is the greater of £100,000 or one half of the total amount payable and is to be paid within 60 days of the commencement of the development. The second instalment is the balance which is payable within 240 days of the commencement of development.

21.7 Review – since MCIL1 was introduced there have been two reviews in December 2014 and February 2017 in accordance with the stated policy of reviewing every two years. It is expected that the same review policy will be adopted with regard to MCIL2.

21.8 Mayoral development areas – the Mayor of London has the power to designate any part of Greater London as a Mayoral development area. If the Mayor does so then the Secretary of States must establish a Mayoral Development Corporation (“MDC”) for the area, which corporation will have the object of regenerating the area. The Mayor may designate the MDC as the local planning authority for all or a

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2215 Reg. 70(5A)
2216 Reg. 70(3)
2217 Section 197 of the Localism Act 2011
2218 Section 198 of the 2011 Act
2219 Section 201 of the 2011 Act
Amongst the powers of a MDC is the power to provide or facilitate the provision of infrastructure. In April 2012 the first MDC was set up, the London Legacy Development Corporation, to take over the Queen Elizabeth Olympic Park and some surrounding area (but not Stratford Town Centre). The London Legacy DC has introduced CIL for its area with effect from 6th April 2015 (see First Appendix). The second MDC is the Old Oak and Park Royal Development Corporation which was established with effect from 1st April 2015. It is to regenerate an area in Acton and Ealing in west London. It does not currently charge CIL although the Mayoral CIL will be charged. The CIL examination process had been started by this MDC but in 2016 was paused. It is reviewing whether to start it up again.

Such MDCs may act as both the charging authority and the collecting authority for its area and will have authority to grant discretionary reliefs and exemptions. Each MDC will be able to collect for itself the CIL related to developments in its area as well as collecting the Mayoral CIL.

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2220 Section 202 of the 2011 Act
2221 Section 205 of the 2011 Act
2222 Established by The Old Oak and Park Royal Development Corporation (Establishment) Order 2015 (No. 53)
2223 See section 5.2 above
2224 Reg. 7 of the 2013 Regulations adding MDC to regulations 55(4), 57(2) and 58.
P. Searches and Enquiries

22. Searches – in areas in which the CIL regime has been operated it will be necessary to exercise greater care with regard to development sites and developments subsequent to the establishment of the local CIL rates.

22.1 Warning - the decision of Montrose Creek Property Limited and Manningtree (“MM”) v Brisbane City Council in the Queensland Planning & Environment Court although an Australian decision not based on our CIL regime serves as a warning about the need to make full searches prior to a transaction concerning a development site. MM purchased a completed development with an approved use which had started unaware that there remained outstanding infrastructure contributions amounting to $400,000. The vendor was pursued for these arrears but went into voluntary liquidation. In consequence the City Council went after MM and was successful. A number of defences were rejected. MM had carried out a standard search which did not disclose this information as opposed to a full search which would have done so. It was a requirement in the permission that payment be made before commencement of use but notwithstanding this condition it was held that the failure to comply was not a once and for all breach but a continuing obligation.

22.2 Searches – there will be no comprehensive public register kept by the charging authority or collecting authority dealing with the application of the CIL regime to any site. In particular there will be no public details as to the progress of the CIL debt recovery process in respect of a site and the amount outstanding. In consequence the task of ascertaining the position in relation to any particular site will be a combination of enquiries and searches. However, it should be possible to discover much of the CIL position with persistent investigation. As regards searches the following may provide information concerning the CIL position:-

22.2.1 Local authority – the standard local authority search has been expanded to enquire whether a Charging Schedule has been published for the area. It will not say if one is imminent. A better statement of the authority’s position with regard to the introduction of CIL is likely to be found on its website. Con 29 forms now raise the following enquiries:

(i) Is there a CIL charging schedule?
(ii) If yes, do any of the following subsist in relation to the property, or has a local authority decided to issue, serve, make or commence any of the following:
   (a) A liability notice?
   (b) A notice of chargeable development?
   (c) A demand notice?
   (d) A default liability notice?
   (e) An assumption of liability notice?
   (f) A commencement notice
   (g) Has any demand notice been suspended?
   (h) Has the Local Authority received full or part payment of any CIL liability?
   (i) Has the Local Authority received any appeal against any of the above?
   (j) Has a decision been taken to apply for a liability order?
(k) Has a liability order been granted?
(l) Have any other enforcement measures been taken?

Not all authorities provide a comprehensive answer to these enquiries and if there is a potential CIL issue then it may be necessary to approach the CIL team of the local authority to discover whether they will provide the detailed information required. The enquiries do not specifically ask how much CIL is outstanding and do not state whether a clawback period will apply to the land.

22.2.2 Planning authority – it will be possible to ascertain certain information from the planning authority. It will probably be not just any pending planning applications, plans and planning decisions which will be available to be inspected including the Additional Information form (whether at the offices or online). In addition it is likely that the authority will retain with these documents the CIL notices such as the liability notice, the assumption of liability notice and the commencement notice. What will not be retained with these will be demands and the current state of the CIL account as these will be regarded as part of the debt recovery process and not the planning process. However, this should provide useful information and should at least provide sufficient information to indicate that there may be a potential CIL issue.

22.2.3 Charging orders – if a collecting authority has sought to enforce any outstanding CIL by means of charging orders then these may be protected by an entry on the registered title or by registration of a land charge. Such charging orders will come to light by the usual searches.

22.2.4 Local land charges – a CIL liability may be registered as a local land charge by the collecting authority and the likelihood is that all authorities will register a local land charge. An official search using LLC1 should be carried out. It is likely that such registration will occur when the planning permission is granted rather than later when the necessary approvals have been given and a liability notice has been issued. If this is not the practice then there will be a time gap between the grant of planning permission and the registration of a local land charge. In consequence such a search needs to be combined with an investigation of the existing planning permissions and applications. Such searches will probably provide a partial answer to the question whether there is either still CIL due in relation to the property or a potential CIL liability. The presence of a local land charge relating to CIL will mean that there is still some at least outstanding or likely to arise as otherwise the charge would have been removed. The local land charge will remain on the register if there is a chance of a clawback of CIL being triggered. A further problem could be that the authority will be slow to remove the local land charge thus hampering any intended sale. With some authorities there have been delays of five weeks or more in obtaining receipts for a payment of a CIL liability. This may cause loss if the receipt is needed to prove that the CIL liability has been discharged.

It has to be borne in mind that failure to register a local land charge does not prevent it being enforceable against a purchaser\(^{2225}\) so the results of a search against the local land

\(^{2225}\) Section 10 of the Local Land Charges Act 1975
charges register will not be conclusive. The other searches and enquiries will also need to be carried out.

22.2.5 Register of enforcement and stop notices – details of any stop notice to enforce a CIL liability should be entered on a register kept under section 188 of the 1990 Act.

Such searches will assist in ascertaining whether a CIL liability has arisen and if it has what steps have been taken against the site or an interest in the site. It will not answer the question as to the current state of the particular CIL account and whether there is a risk that a CIL liability may become enforceable against a person acquiring an interest in the site in the event of default by the person who has assumed liability. This will require further enquiries to be made.

22.3 Enquiries – on the assumption that planning permission has been granted then copies of all the CIL documentation should be obtained to the extent not available from the planning authority. In addition the up to date position with regard to the payment of the CIL liability needs to be known. This will enable a person acquiring an interest in the developed site to assess the extent of the CIL liability that could subsequently fall on that person and the risk of it doing so.
Q. Impact on contracts

23.1 Contractual provisions – there is not just a need to understand how the CIL regime operates and where the burden of the liability will or may fall. In addition there is a need to consider what contractual provisions covering CIL need to be included in development and conveyancing documentation. This is an aspect which will need to be kept under regular review and such contractual provisions will be refined and added to as a better understanding is acquired. This section considers the type of provisions which need to be included and which types of documentation will be affected.

23.2 Pre-CIL documentation – CIL will not just impact the formulation of contractual documentation after the introduction of CIL. It will also have an impact on existing contracts entered into prior to the introduction of CIL and possibly before CIL was even considered a possibility. Landowners may find themselves facing a double whammy in that they will have to deal with an unexpected liability which liability may also have reduced the price to be received for the land under an existing arrangement such as an option or a conditional sale agreement. It will be necessary to carefully consider the terms of the arrangement. In some cases it may be possible to achieve a grant of planning permission before CIL is introduced to avoid an adverse impact.

23.3 Types of transaction

23.3.1 Planning promotion agreements – these are arrangements whereby the owner of land retains ownership whilst planning permission is applied for by the “planning promoter” in return for a payment often related to the increase in the value of the land as a result of obtaining planning permission. Areas which will need to be covered in such arrangements are:

(i) Assumption of liability – it is important to establish who will assume liability for any CIL and who is responsible for giving the assumption of liability notice. In this respect much will depend on whether the planning promoter is to be involved in the carrying out of the development once the planning permission has been obtained. If the promoter’s involvement ceases once the planning permission is obtained then there is no reason for the promoter to assume such a liability and it is a matter for the landowner or any developer taking over once the planning permission has been obtained.

(ii) Indemnity – an indemnity may be required by the party who is not taking responsibility to cover against default in discharging the CIL liability.

(iii) Payment – if the size of the promoter’s payment is determined by the value of the land once the planning permission is obtained then the owner will need to ensure that this value takes into account the CIL liability payable when the development commences. To provide that the CIL liability is deducted in full from the value of the land may result in double accounting as the value of the land may already take that into account.

(iv) Planning application – the landowner may wish to have a greater say in the planning application and in particular the type of use of the land for which authorisation may be sought. It depends on whether the resulting CIL liability is a concern to the owner. With the differential rates it may be that the owner will wish to focus on those which result
in a smaller CIL liability. This will apply not just to the terms of the original application but also to any subsequent variations during the application.

23.3.2 Overage arrangements –

(i) Overage triggers - when the land has been sold but the vendor has retained an interest by way of an overage arrangement there will be little reason to add further controls over the planning application just to account for the CIL liability. There will be the usual important issue for the vendor to consider as to whether the arrangement should provide for multiple triggers or just a single trigger but subject to one caveat the answer to that issue will not be decided by the impact of the CIL regime. The caveat is if it is possible that a planning application will be put forward which attracts a zero or lower CIL rate with a view to subsequently seeking a change of use in such a way that it does not attract a CIL liability. In those circumstances it would be important to provide for multiple triggers rather than seek to rely on a single trigger if the maximum benefit is to be derived from the overage. In addition whether there is to be a single trigger or multiple triggers an obligation to use best endeavours for the achievement of maximum value will be an important obligation to impose in the arrangement.

(ii) Overage payment – the purchaser will want to ensure that account is taken of any CIL liability. This may be achieved by taking it into account when negotiating the overage payments to be made. Alternatively, a provision may be sought deducting the CIL liability from the value of the land with the benefit of the planning permission but this in turn will give rise to the need to consider whether this will cause any double accounting of the liability. The position may be more complex when there is a phased development with staggered overage. This will need to take account of the possibility that the CIL rates may vary. On the other hand if the overage payment is determined not by reference to the value of the land but to the net proceeds of the realisation of the development then a specific deduction for the CIL payable can be included without regard to double accounting.

(iii) Existing overage arrangements – the impact of a CIL charge may be felt by the purchaser or any successor which was not expected when the overage arrangement was entered into but there is nothing in the CIL regime which will vary that overage arrangement. In consequence it will be necessary to review the overage documentation to ascertain whether the CIL charge will be a deduction when computing the overage payment and if not whether it will affect the value of the land in the event that the overage payment is determined by reference to that value.

23.3.3 Disposal of land –

(i) With no planning permission – when the whole of the land is being disposed of by the owner before planning permission has been granted then there should be no need to consider future CIL charges unless there is an overage arrangement. However, if the disposal relates to part only of the land then consideration should be given to the CIL risks if the disposal contains a grant of a right of entry on the retained land to carry out works such as the construction of an access road. The risk for the vendor is that the purchaser could apply for planning permission relating to land which includes not just

2226 See para. 23.3.2 above
the part disposed of but the retained part. It is possible to suspend the operation of the CIL regime. However, in the event that any planning permission granted includes the retained land then a development of the retained land could commence when the purchaser or a successor exercises the right of entry to construct, say, an access way to a residential development on the part of the land disposed of. This risk needs to be guarded against. One possibility would be to make the exercise conditional on the provision of funds to secure payment of any CIL liability triggered. The same will be the case if such rights are reserved over the part of the land disposed of save that in such circumstances it will be the purchaser who will need to consider the CIL risks.

(ii) With planning permission but before commencement of development – a number of specific matters relating to CIL will need to be considered.

(a) Assumption of liability – it will need to be ascertained whether an assumption of liability notice has been given. If it has not then it will be necessary to establish who is to give it. The purchaser would seem to be the obvious candidate. If such a notice has been given then provided there is time before the commencement of the development there needs to be a withdrawal of that assumption of liability notice and the giving of a new one if the purchaser is to take on liability. In such circumstances an obligation against withdrawal may be required. On the other hand if the vendor is going to continue to be liable under an assumption of liability notice previously given then this needs to be secured by a contractual obligation otherwise the vendor will be able to withdraw the notice after completion of the purchase. This would leave the purchaser liable to pay the CIL and to give an assumption of liability notice and commencement notice as occurred in an appeal.

(b) Indemnity – the vendor will probably require an indemnity against any CIL default.

(c) Easements – the grant or reservation of rights will need to be carefully considered if there is a disposal of part only for the reasons given in (i) above.

(iii) With planning permission and after commencement of development –

(a) Assumption of liability – it is to be expected that an assumption of liability notice will have been given and once the development has commenced this notice cannot be withdrawn. There must be a transfer of liability notice given if the purchaser is to take on responsibility for the CIL. If the responsibility is to remain with the vendor then the purchaser will need to be protected against any future default. This will be particularly important with the purchase of a house on a residential estate from the developer.

(b) Indemnity – even with the giving of a transfer of liability notice the vendor will probably require an indemnity. If the responsibility to pay all future instalments of CIL remains with the vendor then the purchaser should require an indemnity.

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2227 See section 15.7 above
2228 APP/L3815/L/17/1200149 decision date: 13th June 2018
2229 See section 15.2.3 above
2230 see in section 15.8.4 above the discussion of the operation of the apportionment provisions in the event of a default
23.3.4 **Options** – an option to buy conditional upon the grant of planning permission needs to include provisions which ensure that the purchaser is wholly liable for any CIL resulting from the grant and wholly responsible for compliance with the local CIL regime. The person granting the option will want to back this up with an indemnity to cover any default in compliance with that regime. On the other hand the purchaser will want to ensure that the price paid for the land takes the CIL into account. If the land is to be acquired in stages possibly because the permission allows for phased development then it will necessary to ensure that the provisions taking into account the CIL liability allow for any increase in CIL due to changes in the local CIL rate during the course of the phased developments.

23.3.5 **Leases** – it is a statement of the obvious that the terms of a lease have to govern a relationship throughout the term of years granted and so will be applied to occurrences that were not at the time of the grant expected or at best only in very general terms. It is, therefore, necessary to think ahead as to what may occur during the course of the term. This is important because both the landlord and the tenant may find themselves liable for CIL but have had no involvement with the planning permission or development that has resulted in the CIL charge. In the absence of an assumption of liability notice a CIL liability is apportioned between all those having a material interest in the relevant land. This will include the landlord’s reversionary interest and leasehold interests which were for seven or more years when granted. As already mentioned this could operate harshly when the development is carried out by a 1954 Act tenant with a term for less than seven years with the consequence that the freeholder will be liable in the absence of a contrary agreement under the regulations.

(i) **User clause** – a change of use can give rise to a CIL charge if additional internal floor area results or the development involves a new dwelling and the premises have not been in lawful use for six months or more in the last three years (previously twelve months). This is likely to encourage tougher restrictions on the making of such a change or the imposition of an indemnity to protect the landlord against such liability arising on the change.

(ii) **Planning applications** – a similar response of greater restrictions or an indemnity is likely with regard to the tenant’s ability to make planning applications. A further provision that should be considered is to impose an obligation on the tenant that the tenant will give an assumption of liability notice in respect of any development authorised by a planning permission obtained by or on behalf of the tenant. An even wider responsibility would be to apply this to all planning permissions obtained during the term.

(iii) **Easements** – care will need to be given as to whether any easements reserved in favour of the landlord could if exercised cause the tenant to be liable to a CIL charge. For example, if the landlord obtains planning permission for adjoining land and the demised premises and exercises a reserved right to construct, say, an access road or any services. Easements granted in favour of the tenant are less likely to have this effect but it needs to be borne in mind.
(iv) Alterations/new buildings – an increase in the internal area demised may give rise to a CIL charge and will need to be provided for so that the landlord does not have to bear all or an apportioned part.

(v) Indemnity – it would be prudent to include an indemnity in favour of the landlord to cover all CIL charges attributable to the tenant’s actions including alterations and the construction of new buildings. It may be that there should be an apportionment if the development has the effect of improving the value of the landlord’s reversionary interest.

23.3.6 Development agreement – there are a variety of arrangements by which a development can be carried out ranging from the grant of an immediate lease to a construction contract.

(i) Construction contract - A straightforward construction contract will not require much consideration as regards CIL. The landowner should be the person to deal with the application of the local CIL regime to the site. More consideration will be required if the transaction seeks to be the commissioning of a house for a person who will occupy it as that person’s sole or main residence. Such a transaction will qualify for the self-build exemption. It will be necessary to structure it so that it comes within the requirements applicable to the exemption. Provisions will need to be added to ensure that the necessary compliance procedures are carried out and to cover the risk that the exemption is either not granted or subsequently withdrawn.

(ii) Licence – licences in favour of developers are still recommended from time to time with a hoped for sdlt advantage. This can be combined with a consideration linked to the proceeds of the sale of the development. In such circumstances the question as to who should be responsible for the CIL may be a little harder to decide. It is obviously an issue which will need to be considered carefully as responsibility for giving the assumption of liability notice has to be allocated. Similarly it will be necessary to provide how the CIL payment is to be taken into account when calculating the consideration to be paid to the developer.

(iii) Building lease/ Agreement to grant lease on completion of development – from the point of view of allocating responsibility in relation to the CIL regime it seems to me that it does not really matter whether the lease is granted immediately or after the occurrence of the completion date for the development. The substance of the relationship for this purpose is similar. There is a much stronger argument in either set of circumstances for the developer/lessee to give the assumption of liability notice.

23.4 Charity/Social housing relief – if the development involves charity exemption or social housing relief then there may need to be special contractual arrangements put in place.\footnote{see relevant parts of section 11 above}
R. Professional negligence and CIL

24.1 Problem - The introduction of CIL by some but not all local planning authorities has been a very testing time for those seeking planning permission or relying on the Permitted Development Rights regime. Unfortunately a significant number have failed the test and substantial CIL liabilities have been incurred to the shock of owners, developers and their advisers. The shock of the imposition of the CIL liability is heightened by the dawning comprehension that nothing can then be done to reduce or avoid the liability.

It is taking a long time for the realisation to sink in that the approach underlying the CIL regime is entirely different from that relating to the planning regime. With planning applications informal discussions with the authority’s officers play an important role which has been judicially acknowledged by the Courts. In contrast the CIL regime is intended to be certain and non-negotiable. The time to consider its impact on a development is before a development commences because if changes are needed after commencement the CIL bill can be high as is the case with failures to comply with the regime or the conditions attached to the planning permission. It is not possible by way of discussion with the authority’s officers to negotiate a reduction in the CIL bill. The best that can be hoped for is a deferred payment timetable.

The number and nature of statutory appeals against CIL liability and CIL surcharges illustrate very strongly how there has been a failure to understand the CIL regime or even in a number of cases to appreciate that the development is subject to the CIL regime. In particular it is not enough that a development qualifies as comprising self-build housing but the statutory compliance procedure must still be properly gone through if the benefit of a self-build exemption is to be gained. Being or acting for a self-builder does not remove the need to comply with the CIL statutory requirements.

The appeal decisions hammer home that without exception the onus lies on the owner/developer and those acting for them to be aware that CIL applies in the area and the precise manner in which the CIL regime operates. It is not for the authority to advise on CIL; chase up documentation; or to suggest alternative approaches which will save CIL. The duty of the local planning authority is to administer the CIL regime and to collect CIL liabilities as and when they arise. No power is conferred on such authorities to waive CIL liabilities or to relax compliance with statutory pre-conditions to the grant of exemptions.

24.2 Agents - one issue that is slowly emerging from the application of the CIL regime is what the position is if the owner/developer receives a significant CIL liability because the agent acting for the owner/developer was unaware that the proposed development was subject to CIL or did not fully understand the CIL regime. This is an aspect which has not really been addressed but which needs to be.

In order for an agent acting for a developer/owner to be able to deal with the CIL implications of a proposed development it is necessary to have a knowledge of the CIL regime. The operation of the CIL regime is different to the planning regime. There is certainty as regards many of the CIL outcomes and the forms to be used. This is in contrast to the position with planning applications. There is room in planning matters
for greater differences in approach and planners come in many different forms with or without qualifications.

In Middle Level Commissioners v Atkins Mr. Justice Akenhead stated that

“As was accepted in argument, there is currently no recognised profession of planners as such, although it is clear that many planners are qualified professionals and very experienced in planning matters. For instance, many architects and surveyors have expertise and experience in planning, as do some engineers. However, there are experienced planners employed by local authorities and other firms, some (and perhaps many) of whom may not hold other professional qualifications but are extremely experienced in planning. This therefore is a case in which one must recognise that there is a range of qualifications and/or experience against which the Court must seek to judge whether the Atkins planners fell below the standard to be expected of reasonably careful planners.”

Further it was recognised in Elvanite Full Circle Limited v Amec Earth & Environmental (UK) Limited that there is no right or wrong way to make a planning application. In that case Mr. Justice Coulson stated that:

“As Akenhead J. noted in Middle Level Commissioners v Atkins there is a range of qualifications and/or experience against which the court must seek to judge whether "planners fell below the standard to be expected of reasonably careful planners." There is currently no recognised profession of planners as such. There is no right or wrong way to make a planning application. Moreover, a planning consultant cannot guarantee success; generally, he will only be liable for damage caused by advice which no planner who was reasonably well-informed and competent would have given: see Saif Ali v Sydney Mitchell & Co. [1989] AC 198 at 218D.”

These differences between the two regimes mean that different approaches are required from agents acting for an owner/developer in respect of each. In order to be able to discharge any duties accepted when dealing with the CIL implications of a proposed development the agent must have an understanding of the CIL regime. It is an area of law which has to be known in order to be able to act even though normally the agent whether planning consultant, architect or surveyor would not need an understanding of the law (BL Holdings Limited v Robert J Wood & Partners).

24.3 Professional negligence - many agents acting on planning applications have no or limited knowledge of the CIL regime and thus are unable to anticipate a CIL liability. Does that mean that the agent will be liable if an unexpected CIL liability is incurred? Insurers have already accepted liability for agents in such circumstances so the potential for liability for professional negligence has been accepted. In determining whether an agent is liable for professional negligence two questions in particular will need to be asked. The first is whether the agent has accepted responsibility for CIL advice and the second is whether the CIL liability could have been avoided.

24.3.1 Acceptance of responsibility - the first question will be answered by considering the remit of the instructions to the agent when retained. Has the agent expressly accepted responsibility for ensuring compliance with the CIL regime and advising on

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2232 [2012] EWHC 2284 (TCC)
2233 [2013] EWHC 1191 (TCC)
2234 At para. 177
2235 (1978) 10 BLR 48

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CIL liability? If the agent has then the agent is exposed to a professional negligence claim in the event of a failure to comply or an unexpected CIL liability albeit that such exposure will not automatically result in a successful claim. For example, insurers have accepted responsibility for the failure to serve a commencement notice leading to the loss of the residential extension exemption.

Even if CIL has not been expressly discussed there can still be a professional negligence issue if the agent has stated that everything connected with the planning application will be dealt with by the agent. Will that impliedly cover compliance with the CIL regime? Although two separate regimes they are closely connected and an Additional Information Form should accompany the planning application which in turn should alert the agent to the need to comply with the CIL requirements. Is completion of this form on behalf of the owner acceptance by the agent of responsibility for completing the CIL compliance? With unexpected CIL bills now at times exceeding £110,000 this is a point which could be litigated.

Completing the form with inaccurate information such as giving incorrect measurements could give rise to responsibility whether or not the agent has accepted the wider responsibility to comply with the requirements of the CIL regime.

24.3.2 Causation - as regards the second question the position is simple if the loss of the self-build exemption prior to 1st September 2019 is due to a failure to serve a commencement notice prior to the commencement of the development or at any time starting the development before receipt of the notification of the authority’s decision to grant the exemption. If there had been proper compliance then the self-build exemption would apply and it has been lost solely due to the non-compliance. If the agent is responsible for the non-compliance then there should be a good claim for professional negligence.

What is a more difficult area is if the original plan changes. This may be due to a change of mind by the owner or because in the carrying out of the actual development a previously unknown problem has been discovered which requires a change in the plans. This will almost inevitably lead to a second planning permission. This grant may be after the original development has started thereby giving rise to unexpected and adverse CIL consequences for two reasons.

The first is that prior to 1st September 2019 the second planning permission could not benefit from the self-build exemption because the development had already started. On or after 1st September 2019 it will be necessary to ensure that the relief in reg. 58ZA applies, if possible in the particular circumstances, which will require that the second planning permission is a section 73 permission and not a standalone full permission.

The second is that often an existing building will have been demolished before the grant of the second planning permission thereby losing the entitlement to deduct the internal area of the demolished building when calculating the CIL liability. Both will result in an unexpected and high CIL liability.

In the event that the necessary exemption is not claimed before the commencement of the development or if claimed is lost and then during the course of the development the plans are changed there will from the CIL point of view be a double whammy.

If a self-builder wants to changes the plan of the development after it has started that should immediately start alarm bells ringing. At that stage there is a need for a careful
consideration of the CIL consequences and for a warning. Going ahead and achieving a new second planning permission which is implemented can then result in a large CIL bill unexpected by the owner leading to a possible professional negligence claim.

By building in a manner which does not comply with the conditions attached to the original planning permission the self-builder may be forced to obtain a second planning permission which is retrospective in effect in order to avoid enforcement issues. This will carry with it the adverse CIL consequences outlined above. If there were alternative routes open to the owner that did not require a full second planning permission covering the whole of the development then questions may be raised as to whether there has been professional negligence. One option that needs to be considered is whether it is possible to carry out further building works so that the building complies with the conditions attached to the original planning permission. If that is a viable option then to ignore it may expose the agent to a professional negligence claim. However, in such circumstances it may be that there was no choice but to seek a retrospective planning permission so the CIL liability could not be avoided and the reason for it is the failure to build to plan.

24.4 Agents’ future conduct - agents acting on planning applications need at the start to make clear whether or not they are accepting responsibility for the application of the CIL regime to the development and any necessary CIL advice. Unless it is straightforward and the agent has knowledge of the CIL regime the best course would be to exclude CIL matters from the scope of the instructions. If responsibility is not excluded then the agent needs to take great care to avoid the traps which exist.

24.5 Solicitors – the possible impact of CIL on property transactions has been considered in section 23 above. It is important that solicitors are aware that the subject matter of such a transaction may be subject to a CIL charge and in London subject to two CIL charges. Failure to pick this up could result in a claim. The transaction may be one which would not be expected to involve a CIL charge. For example, a developer fails to pay the CIL arising from a residential development but still sells off the houses individually. A purchaser of one such house wants to sell on whilst CIL is still outstanding. The CIL charge will apply to that house and to the other houses. The solicitor who acted on the purchase for the original purchaser will be at risk of a claim. If the sale on goes ahead and completes the solicitor for the new purchaser will be at risk.

Failing to spot the existence of a CIL charge is not the only risk. There may be a need to include provisions in the documentation to cater for CIL and failure to do so can constitute professional negligence. For example, after obtaining the grant of a planning permission to redevelop a site including a vacant building the owner wants to sell on to a developer. In the negotiations it is claimed by the owner that the vacant building qualifies as an “in-use building” for the purpose of calculating CIL. If correct this will be an important element in the financing and will affect the price to be paid. However,

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2236 As illustrated by the appeal in Development: Erection of replacement dwelling (amendment to scheme...retention of part works already undertaken). Decision date: 13th November 2015 which concerned the replacement of the original house by a new house but the works were not carried out in compliance with the planning permission so a new full planning permission was granted which was in part retrospective as regards the retained parts. As a result the self-build exemption was lost; there was no demolition deduction because the original house was demolished before the grant of the second planning permission; and CIL was chargeable on the full GIA of the new house with no netting off in respect of the original replacement house.
this statement by itself will not ensure that the purchaser derives the CIL benefit accruing if the building is an “in-use building”. Unless it is a simple task to prove the probability is that the purchaser will need the co-operation of the vendor and contractual obligations should be imposed even if documentary evidence is provided prior to exchange. If the purchaser acquires the site with the intention of carrying out the development authorised but without such evidence showing the existing building is an “in-use building” or the benefit of such contractual obligations then the purchaser’s solicitor is exposed to the risk of a claim.
S. Section 106 agreements and highway agreements

25.1 Funding – the Government’s strongly preferred route for the future funding of infrastructure by local authorities has been and remains by using the CIL regime rather than section 106 agreements. It is still seeking means by which to encourage local planning authorities to introduce CIL into its area. This was the justification for the pooling restrictions being applied nationally so as provide an incentive for local authorities to introduce CIL. This has not meant that section 106 planning obligations have at any time been wholly replaced but rather that their operation was scaled back under the 2010 Regulations\textsuperscript{2237} until the coming into force of the 2019 (No. 2) Regulations. With effect from 1\textsuperscript{st} September 2019 the previous restrictions contained in reg. 123 have been removed.\textsuperscript{2238} These restrictions related to infrastructure appearing on the reg. 123 Infrastructure list (discussed in section 25.5 below); the pooling restriction (discussed in section 25.6 below); and the highways agreement restriction (discussed in section 25.7 below). The sections have been retained for reference for matters governed by the old reg. 123 and are in italics to separate them from sections which are still current.

Section 106 planning obligations retained their legitimate role whereby such obligations may mitigate the site specific impact of the proposed development enabling the authority to be confident those specific consequences of a proposed development can be overcome. This role continues and is given greater emphasis by the removal of the restrictions imposed by reg. 123 which will revive interest in tariff contributions.

The overall objective on the introduction of CIL in 2010 was that once CIL is introduced in an area section 106 planning obligations should be limited to matters which are directly related to the development site and do not appear on the reg. 123 list of infrastructure and to such “pooled” contributions as may still be permitted under the stringent operation of the “pooling restriction”. This approach has now gone.

25.2 Planning conditions – the focus in the CIL regulations is on planning obligations. The objective is to govern the sources of funding for infrastructure available to local authorities. In consequence there is little in the CIL regime which directly concerns planning conditions because notwithstanding the wide statutory power in section 70(1) TCPA 1990 to impose such conditions as the authority thinks fit that power has not been used to require developers to bear what Lord Hoffman in Tesco Stores v Secretary of State for the Environment\textsuperscript{2239} called “external costs”. Such a use of planning conditions was held to be Wednesbury unreasonable\textsuperscript{2240} with the consequences for the development of planning law and practice explained by Lord Hoffman in the Tesco case\textsuperscript{2241}. The only control of planning conditions introduced by the CIL regime concerned conditions relating to highway agreement (as to which see section 25.8 below) which no longer applies.

\textsuperscript{2237} Paras 59 and 60 DCLG Community Infrastructure Levy An Overview May 2011
\textsuperscript{2238} Reg. 11 of the 2019 (No. 2) Regulations
\textsuperscript{2239} [1995] UKHL 22 at para. 32 Lord Hoffman described the external costs of the consequences arising from a development “involving loss or expenditure by other persons or the community at large.”
\textsuperscript{2240} Hall & Co. v Shoreham UDC [1964] 1 WLR 240 which resulted in the issue of guidance by the Ministry of Housing and Local Government reflecting the decision (Circular 5/68 subsequently replaced by para. 63 Circular 1/85).
\textsuperscript{2241} Tesco Stores v SSE supra paras 32 to 37.
In Forest of Dean DC v R (oao Wright) Hickinbottom LJ emphasised that a condition was not subject to the statutory requirement in reg. 122 that the condition should be necessary to make the development acceptable. It has to be a material consideration which satisfies the Newbury test. This was summarised by Hickinbottom LJ:

“The fact that a matter may be regarded as desirable (for example, as being of benefit to the local community or wider public) does not in itself make that matter a material consideration for planning purposes. For a consideration to be material, it must have a planning purpose (i.e. it must relate to the character or the use of land, and not be solely for some other purpose no matter how well-intentioned and desirable that purpose may be); and it must fairly and reasonably relate to the permitted development (i.e. there must be a real – as opposed to a fanciful, remote, trivial or de minimis – connection with the development). These criteria of materiality, oft-cited since, are derived from the speech of Viscount Dilhorne in Newbury at page 599H, and known as “the Newbury criteria”. They were very recently confirmed by the Supreme Court in Aberdeen (at [29] per Lord Hodge JSC, giving the judgment of the court).”

In that case a condition had been attached to a planning permission for a single community-scale wind turbine. The condition was that the wind turbine would be erected and run by a community benefit society and an annual donation paid to a local community fund calculated by reference. Dove J. had held that this condition was not a material consideration and so it had been unlawful for the Council to take it into account. The quashing of the grant was upheld by the Court of Appeal.

25.3 Relationship between planning obligations and CIL regime –

25.3.1 Relationship between pre-CIL section 106 planning obligations and CIL – there will be cases in which financial contributions are due from developers by reason of section 106 planning obligations entered into before the introduction of CIL in the area which have been calculated on the basis that further contributions will be received from the developers of future developments. When reg. 123 was in force the prospect of reg. 123 taking effect was used to challenge such pre-CIL section 106 contributions on the basis that as future contributions would fall away it was a flawed approach. This was rejected by Patterson J. in the Smyth case because the CIL regime included a means of collecting those contributions as CIL and so the prospect of the introduction of this restriction did not impact on the pre-CIL section 106 planning obligations.

25.3.2 Post- CIL section 106 planning obligations - no credit is given against the CIL charge for the financial burden of any planning obligation imposed as a condition of the planning permission nor is any credit for the CIL charge given to be set against the cost of any planning obligation save in the case of the Mayoral CIL. This is the case even if the planning obligations were executed prior to the introduction of CIL in the area and there is then a section 73 planning application after CIL has been introduced. Notwithstanding that no account of each is taken in the operation of the other it is not the intention that the CIL regime will wholly replace the section 106 planning obligations in those areas in which the CIL regime is adopted. There has been a

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2242 [2017] EWCA Civ 2102
2243 Para. 28(iii)
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2245 See section 21.3 above
continuing role for such planning obligations which after 1st September 2019 will be greatly increased and it is intended that the two regimes should complement each other. With developments subject to the CIL regime the section 106 system as regards infrastructure will be limited to management of the development and site specific works and was not intended to relate to the general infrastructure needs of the particular area. The system will also continue to play an important role with regard to affordable housing which currently is outside the CIL regime and to developments which are not subject to the CIL regime. In areas where CIL has not been introduced the section 106 planning obligations system will play an important role even though the pooling restrictions will have applied from 6th April 2015 until 1st September 2019.2246

25.3.3 Hybrid approach – Torbay DC have adopted a mixed approach when introducing CIL with effect from 1st June 2017. As regards residential development it differentiates by reference to the number of units as do other authorities. However, it goes further and charges no CIL on larger residential developments in the future growth areas and outside the built up area and certain specified areas but instead is going to continue to rely on contributions from section 106 planning obligations. This will have to be subject to compliance with the tests in reg. 122 and until 1st September 2019 the restriction relating to the reg. 123 list. In Torbay’s consultation document it stated that it had taken into account development costs including the requirement on large residential sites to provide affordable housing. It recognises that particularly in an economic downturn this has a “significantly detrimental effect on the viability of larger residential development”.

As a result, the Draft Charging Schedule proposed a “hybrid” approach where CIL was to be levied only on smaller residential developments, whilst section 106 obligations would be sought for larger residential proposals to secure affordable housing and other contributions necessary to make the development acceptable in planning terms.” Following the examination this has been modified and the Charging Schedule introduced retains that approach in the areas outlined above for developments of fifteen or more dwellings. In contrast with smaller residential developments it is stated CIL will be rated at £30 or £70 per square metre and section 106 planning obligations will be limited to “direct site acceptability matters which include “access, direct highway works, flooding and biodiversity”.

However, in the built up areas (those with lower development viability and elsewhere) the larger developments of fifteen or more are rated at £30 or £70 whilst developments of three or less are zero-rated.

When the larger developments are zero-rated for CIL reliance will be placed on section 106 contributions to cover (i) “direct site acceptability matters (biodiversity, flood prevention, access etc”); (ii) affordable housing; and (iii) “sustainable development contributions necessary to make the development acceptable in planning terms” (“(education, lifelong learning, sustainable transport, green infrastructure, recreation, employment (etc))”. Such contributions must comply with the tests in reg. 122 and had up until 1st September 2019 to comply with the pooling restriction.

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2246 see section 25.6 below
The CIL regime does not allow for binding statements to be made in the charging schedule as regards section 106 planning obligations. In principle, therefore, on a future planning application for a small residential development to make the proposed development acceptable in planning terms a contribution under a planning obligation may be needed. What is to happen in those circumstances? Further decisions with regard to such planning applications have to be made on the basis of individual planning applications and the circumstances at the time. This hybrid approach by Torbay is a considered one and it will be interesting to see how it operates in practice particularly after the lifting of the pooling restriction.

25.4 Double dipping - a significant concern for developers in areas in which CIL has been introduced is that CIL will be payable in respect of a proposed development and the authority will also seek to extract section 106 planning obligations. Reg. 123 sought to address this by preventing section 106 planning obligations being sought in respect of infrastructure appearing on the authority’s reg. 123 list and by applying the pooling restriction. These were real attempts to address a genuine concern. However, they were clumsy and gave rise to very considerable uncertainty as to their operation. They acted as a barrier to developments being carried out and were frustrating for both local authorities and developers. In consequence they have been removed from 1st September 2019.

From that date there is now no limit preventing an authority from seeking section 106 contributions provided that the three statutory tests in reg. 122 are satisfied. Tariff contributions and contributions to a pool to fund an item of infrastructure will once again be possible without any need on the part of the authority to concern itself with the application of the reg. 123 restrictions. This should mean that proposed developments that have been blocked by these restrictions can now be reconsidered and may be able to proceed. This will be welcomed by both developers and local authorities. What will be a real concern for developers is that it gives authorities two bites at the same cherry. The position is stated very clearly by the MHCLG that the “Regulations will allow authorities to use funds from both the Levy and planning obligations to pay for the same piece of infrastructure, regardless of how many planning obligations have already contributed towards it.”

What the government considers to be a more appropriate and better mechanism to incentivise authorities not to double dip is the introduction of the annual infrastructure funding statement which is intended to increase accountability and transparency for communities and developers as to how CIL and section 106 contributions are applied. This does not prohibit double dipping and it will be interesting to see whether the increased transparency is a real practical deterrence or a fig leaf for the removal of the reg. 123 restrictions.

25.5 General test for planning obligations – reg. 122 gives statutory effect to what had been previously set out in ODPM Circular 5/2005 Planning Obligations but does so

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2247 See section 25.6 below  
2248 See section 25.7 below  
2249 See section 25.7.7 below  
2250 Para. 68 Government response to reforming developers’ contributions June 2019  
2251 See section 5.9.2(A) above  
2252 Para. 21 and 68 Government response to reforming developers’ contributions June 2019
only when the development is capable of being charged to CIL regardless of whether the CIL regime has been adopted by the particular area.\textsuperscript{2253} It continues after 1st September 2019 as the 2019 (No. 2) Regulations do not amend reg. 122 other than by adding an express power to charge a fee for monitoring the delivery of planning obligations. The tests in reg. 122 will not apply if the development is not within the CIL regime such as the grant of planning permission for a wind farm, quarries or a golf course without buildings. In such circumstances it will be covered by the guidance in Circular 5/05. This regulation took effect immediately on 6th April 2010 and applies regardless of whether CIL has been introduced in the relevant area. It is aimed at excluding benefits being provided by the developer to secure planning permission which do not relate to the particular development. It seeks to tighten the tests that must be satisfied before a planning permission can properly be granted. One unintended effect seems to be to have increased the number of legal challenges. There has been an issue whether these new statutory tests impose a tougher hurdle to be overcome and in particular it is not clear what “necessary” in reg. 122(2)(a) means in this context. In part also it is due to the wording used in reg. 122. The requirements set out in reg. 122(2) do not apply to all planning obligations but to a planning obligation which constitutes “a reason for granting planning permission for the development”.\textsuperscript{2254} There is scope for argument as to when a planning obligation is a reason for the grant of planning permission.

25.5.1 Planning obligations – such obligations were first introduced by section 34 TCPA 1932 and are now authorised by section 106 TCPA 1990. Any person interested in land in the local planning authority’s area may enter an obligation

(a) restricting the development or use of the land in any specified way;

(b) requiring specified operations or activities to be carried out in, on, under or over the land;

(c) requiring the land to be used in any specified way; or

(d) requiring a sum or sums to be paid to the authority on a specified date or dates or periodically.

Such an obligation may arise by agreement between the local planning authority and usually the developer. The type of obligations that can arise are wide in scope.\textsuperscript{2255} This will be the normal method adopted prior to the grant of planning permission with the agreement conditional on the grant of planning permission. However, an agreement is not essential and a unilateral undertaking by the developer may have the same effect. Often these are offered on an appeal to overcome a planning objection which has

\textsuperscript{2253} It is provided by reg. 122(1) that it applies to a relevant determination which is defined in reg. 121(3) as a determination under section 70, 73, 76A or 77 of the TCPA 1990 or under section 79 of an appeal.\textsuperscript{2254} See section 25.5.4(ii) below.\textsuperscript{2255} For example, in South Oxfordshire DC v Secretary of State for the Environment (1994) 68 P & CR 551 an obligation to dispose of a site to be developed as a golf course and apply the income from the disposal in improving listed buildings on an estate was held to be valid and enforceable. For these purposes in sub-section(1)(b) “operations” has its long established meaning in planning legislation and “activities” connotes a wide range of behaviour in relation to the use of and occupation of land (Sir Graham Eyre QC at page 558).
resulted in a refusal of planning permission. One of the advantages of a planning obligation is that such obligations are enforceable against not just the original covenantor but also successors in title by reason of sub-section (3). This covers positive obligations the burden of which will not run with the land under the general law. It also covers all restrictive covenants whereas under the general law the benefit of a restrictive covenant is only enforceable against a successor to the covenantor if the person enforcing it owns nearby land which benefits from the restrictive covenant. There are no hurdles that have to be overcome to justify the creation of such an obligation. In particular the planning obligation does not have to relate to any particular development. Such duties and limitations as are material will arise not from the planning obligation itself but from the context of the planning application which gives rise to it.

The agreement does need to be made between the local planning authority and a person with an interest in land in the area. If there are parties that do not qualify then a statutory power other than section 106 of the 1990 Act will need to be exercised. The agreement may be with the person who is going to purchase the proposed development site rather than the current owner. Authorities other than the local planning authority may be a party. In those circumstances the agreement may be pursuant to a statutory power such as section 111 Local Government Act 1972 or both such a power and section 106.

25.5.2 Position prior to reg. 122 – as explained by Lord Hoffman in the Tesco Stores case planning obligations were the chosen route by which planning authorities and developers could overcome the block on planning conditions being used to place on the developer all or part of the burden of the external costs resulting from the implementation of a planning permission. By means of such obligations it became possible to meet the impact of the development on the local infrastructure by requiring a developer to make financial contributions to the infrastructure costs or discharge other obligations for the purpose of meeting the external costs of the development. Obligations to transfer land are outside the scope of section 106 but can be achieved by means of Grampian provisions requiring a transfer before land can be used for a particular purpose. This permits land to be transferred to be used for infrastructure such as roads. This is possible because such planning obligations are not subject to the same limitations as a planning condition.

When considering whether to grant planning permission the local planning authority is required to take account of the provisions of the development plan (so far as material to the application) and any material consideration. This duty is now contained in section 70(2) TCPA 1990. This plan-led system has resulted in four basic principles to be

2257 Wimpey Homes Holding v Secretary of State for the Environment [1993] 2 PLR 54
2258 R v Plymouth City Council ex parte Plymouth and South Devon Co-operative Society Limited (1993) 67 P & CR 78 approved in the Tesco Stores case supra see Lord Hoffman at para. 47.
2259 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires any determination on a planning application to be made in accordance with the development plan “unless material consideration indicate otherwise”.

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found in the House of Lords decision in Edinburgh City Council v Secretary of State for Scotland. These are described by Lindblom J. as uncontroversial and are:

(i) both the relevant provisions of the development plan and other material considerations must be taken into account by the decision-maker;

(ii) the development plan has priority in the determination of planning applications;

(iii) this priority is not a mechanical preference as there is an element of flexibility allowing the possibility of a decision contrary to the provisions of the plan;

(iv) the assessment of the facts and the weighing of the material considerations is a matter for the decision-maker. These are matters for the decision-maker and not the court.

For these purposes a material consideration is a consideration which is relevant to the proposed development and it is for the Court to decide what is relevant. Hickinbottom J. described any other material consideration as “any other consideration which serves a planning purpose.” If regard is had to the development plan then the decision must be in accord with the development plan “unless material considerations indicate otherwise.” There is rebuttable presumption that any refusal or grant of planning permission must accord with the development plan.

A proposed or actual planning obligation relating to the proposed development will be a material consideration for the purposes of the planning application. A planning obligation unrelated to the proposed development will not be a material consideration and so a refusal of planning permission based on a developer being unwilling to provide such a planning obligation would be unlawful. Similarly a planning obligation offered “which has nothing to do with the proposed development apart from the fact that it is offered by the developer, will plainly not be a material consideration and could be regarded only as an attempt to buy planning permission.” When the planning obligation has more than a de minimis connection with the proposed development regard should be had to it when exercising the discretion on the planning application. The extent to which it is taken into account is “entirely within the discretion of the decision maker” and “it is entirely for the decision maker to attribute to the relevant considerations such weight as he thinks fit and the courts will not interfere unless he acted unreasonably in the Wednesbury sense”.

Lord Hoffman made the point forcibly in the Tesco Stores case that if there is to be a test of necessity applied by the courts then how is the court to determine it. How can it decide that without the planning obligation the development would have been

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2261 Lord Keith in the Tesco Stores case supra.
2262 Para. 5(iv) in R (oao Mid Counties) v Forest of Dean DC [2014] EWHC 3059 (Admin)
2263 Section 38(6) Planning and Compulsory Purchase Act 2004
2264 Lord Hoffman at para. 41 in the Tesco Stores case supra.
2265 Lord Keith at para. 24 in Tesco Stores case supra.
2266 Lord Keith at para 24 and Lord Hoffman at paras 56 and 57 in the Tesco Stores case supra.
2267 Lord Keith at para 15.
unacceptable? It is not able to investigate the planning merits. A point that has been reaffirmed since the CIL Regulations took effect by Bean J. in the Welcome Break case.

Such was the enthusiasm for this funding route that concerns arose that planning authorities were using it as a means of extracting a share of the planning gain arising from the grant of the planning permission and developers were through the benefits provided in the planning agreement “purchasing” the planning permission to the detriment of other developers. This resulted in circulars from the Department of the Environment (Planning Gain 22/38 and Planning Obligations 16/9) seeking to restrain such use of planning obligations by restricting planning obligations to those which both related to the proposed development and where there is a necessary relationship between the two thereby enabling the grant of planning permission to be made. The policy statement was making clear that if planning permission could be granted without such a planning obligation or with a less onerous obligation then to refuse planning permission because such an obligation is not given by the developer would be wrong. However, such a test of necessity was held not to be applicable in judicial review proceedings relating to a decision of a local planning authority and that it is open to a local planning authority to accept a planning obligation even if it did not apply the necessity test. Provided that there is a connection between the planning obligation and the proposed development it is open to the local planning authority to attempt “to obtain the maximum legitimate public benefit” as in both the Plymouth case and the Tesco Stores case.

25.5.3 NPPF and PPG - in the February 2019 National Planning Policy Framework ("NPPF") it is provided that local planning authorities should consider whether otherwise unacceptable development can be made acceptable through the use of planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. It is stated that “Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.” As regards planning obligations the NPPF provides that these must only be sought if they meet all of the three policy tests set out in para. 56 which are those set out as statutory tests in reg. 122(2).

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2268 Para. 53 Tesco Stores case supra
2269 See section 25.5.4(i) below
2270 The Court of Appeal decision in R v Plymouth City Council supra approved by the House of Lords in the Tesco Stores case (see Lord Hoffman at paras 47 and 58 and Lord Keith at para. 23)
2271 Lord Hoffman at para. 63 Tesco Stores case supra
2272 Para. 54 repeated by para. 003 MHCLG Guidance on Planning Obligations
2273 Para. 55
2274 Repeated by para. 002 MHCLG Guidance on Planning Obligations
2275 In the earlier NPPF it had provided that planning obligations should only be sought where they are: (i) are relevant to planning; (ii) are necessary to make the proposed development acceptable in planning terms. For these purposes necessary means the planning obligation is required “to bring a development in line with the objectives of sustainable development as articulated through the relevant local, regional or national planning policies” B8 NPPF; (iii) directly relate to the proposed development; (iv) are fairly and reasonably related in scale and in kind to the proposed development; (v) reasonable in all other respects. B5 NPPF
This is now supplemented by the Planning Practice Guide (“PPG”) which emphasises that a planning obligation should only be taken into account if it satisfies reg. 122 and should not be sought if clearly not necessary to make a development acceptable in planning terms. It is confirmed that authorities can seek planning obligations to pooled funding ‘pots’ intended to provide common types of infrastructure for the wider area. However, it goes on to refer to the pooling restriction of five planning obligations but as from 1st September 2019 this has been removed. It emphasises that tariff style charges and pooled obligations must satisfy the three policy tests in the NPPF and the three statutory tests in reg. 122(2). This is also emphasised as regards planning obligations providing for contributions to local authorities for education.

Such central government policies are material considerations as are relevant local policies.

25.5.4 Reg. 122 – the enactment of this regulation means that it is now the duty of a local planning authority considering a planning application to comply with the requirements previously found in Circular 5/05. The government stated that by making these tests statutory it was providing a stronger basis from which to challenge a breach. It was seeking “to enforce the purpose of planning obligations in seeking only essential contributions to allow the granting of planning permission rather than more general contributions which are better suited to the use of the levy.” Regulation 122 provides that a planning obligation or a proposed planning obligation can only be a reason for the grant of planning permission on or after 6th April 2010 if the planning obligation satisfies the following three criteria:-

(a) it is necessary to make the development acceptable in planning terms;

(b) it is directly related to the development;

(c) it is fairly and reasonably related in scale and kind to the development.

These tests only apply to planning obligations and not to highway agreements under section 278 Highways Act 1980. As was made clear by Lang J. DBE whether these tests are satisfied is a planning judgment to be made by the planning committee or planning inspector and the Court cannot interfere with such a decision. In that case...
this concerned the question whether a new school was necessary to make a development acceptable. The Planning Inspector had held that a new school was not necessary because a financial contribution to create extra spaces in the existing school was enough. The finding triggered reg. 122(2) and so prevented the offer of a new school.

(i) Novel? – two separate approaches to the requirements of reg. 122 have developed in the Courts. One is to treat it as merely setting out in a statutory provision what had been the law until then. The other is that it has imposed more stringent tests than under the previous law.

HHJ Purle QC stated in Persimmon Homes North Midlands v Secretary of State for Communities and Local Government\(^2\)\(^2\)\(^8\)\(^5\) that these “provisions reflect what previously had been (and still are) departmental policy and are plainly calculated to stop developers from offering wide-ranging inducements which may amount to the buying of planning permission.”\(^2\)\(^2\)\(^8\)\(^6\) This point was reiterated by Turner J. in Telford and Wrekin BC v Secretary of State for Communities and Local Government\(^2\)\(^2\)\(^8\)\(^7\) who stated that the “policy behind Regulation 122 is to inhibit developers from “buying” planning permission with the promise of wide ranging largesse.”

Bean J. in R (oao Welcome Break Group and Others v Stroud DC\(^2\)\(^2\)\(^8\)\(^8\) considered that there is nothing novel in reg. 122 save that it is contained in a statutory instrument being derived from the wording of Departmental Circular 05/05 which in turn came from previous circulars such as 16/91.\(^2\)\(^2\)\(^8\)\(^9\) He went on to say that the judgment of Lord Hoffman in the Tesco Stores case supra remained good law under the CIL Regulations as did the ratio of that case.\(^2\)\(^2\)\(^9\)\(^0\) The judgment of Bean J. then continued in terms which reflect the judgment of Lord Keith in the Tesco Stores case in that he stated that

(a) an offered planning obligation which has nothing to do with the development save that it is offered by the developer will not be a material consideration and “can only be regarded as an attempt to buy planning permission”;

(b) if there is more than a de minimis connection between the proposed development and the planning obligations then it is for the decision maker to determine the extent to which the planning obligations affect the decision.

In Smyth v Secretary of State for Communities and Local Government\(^2\)\(^2\)\(^9\)\(^1\) it was submitted that reg. 122 had now overruled the House of Lords decision in Tesco Stores but Paterson J rejected this submission and stated that: “It is clear that the new statutory test in CIL reg. 122 mirrors that which previously existed in policy guidance. The novelty is that those tests are now in statutory form. What difference does that make? In my judgement, the role for the Inspector is to apply the law and to judge whether the obligation before him meets the statutory tests. That is a matter for his planning judgement. The role of the court is to review that judgment on conventional public law

\(^{2285}\) [2011] EWHC 3931 (Admin)
\(^{2286}\) Para. 8
\(^{2287}\) [2013] EWHC 1638 (Admin) at para.88
\(^{2288}\) [2012] EWHC 140 (Admin)
\(^{2289}\) Para. 48
\(^{2290}\) Para 50 as to which see section 25.5.2 above
\(^{2291}\) [2013] EWHC 3844 (Admin)
principles and no more. It is not to step into the Inspector's shoes and start exercising its own planning judgement on the matters before the Inspector. That would be an impermissible exercise of its powers.”

Paterson J. then further stated in R (oao Tesco Stores Limited) v Forest of Dean DC as regards the reg 122 tests that not only must a local planning authority apply the law set out in the CIL Regulations to its decision making process but as regards planning obligations offered by a developer the approach of the decision-maker to the assessment of the statutory tests must be with “appropriate vigour” depending on the circumstances of the case.

A slightly different approach was adopted in Oxfordshire CC v Secretary of State for Communities and Local Government by Lang J. DBE when she pointed out that the heading to reg. 122 is “Limitation on the use of planning obligations” signalling that its purpose is to restrict the use of planning obligations to prevent inappropriate or improper use of then by developers or local authorities. Although similar constraints are included in planning policy and guidance there is a distinction “in that reg. 122 must be adhered to” as it is a statutory requirement and not a policy which can be departed from for good reason nor is it guidance which has to be considered but not necessarily followed.

In the Welcome Break case Bean J. considered that it was for the committee to decide whether the planning obligations were necessary to make the development acceptable but for the court to decide whether the planning obligations directly related to the proposed development. He held that obligations to obtain a proportion of stock and produce locally for the proposed motorway service area and to have a local employment and training policy did directly relate to the proposed development.

In the Persimmon Homes case when referring to the Tesco Stores case the learned judge stated that “that was a case which demonstrated the mischief with which regulation 122 might be said to be intended to deal.” The Persimmon Homes case concerned a refusal of planning permission for a residential development of 200 homes on the ground that it was a piecemeal development which was unacceptable as an area action plan was being consulted on to which future developments would need to conform. Although the developer offered some planning obligations it was considered that these only addressed the immediate impact of the proposed development site rather than the overall impact of the development upon the sustainable urban extension as a whole. This was too narrow an approach by the judge. In deciding whether the necessary requirement of reg. 122(2)(a) was satisfied the judge stated that this meant that it had to be determined what is necessary to make the development acceptable in planning terms which in turn requires consideration of the development plan which in this case brought in the core strategy and emerging area action plan. No contribution was

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2292 Para. 192 agreed by the Court of Appeal in [2015] EWCA Civ 174 in judgment of Sales LJ at para. 117.

2293 [2014] EWHC 3348 (Admin) at para. 111

2294 This was approved by Sullivan LJ on appeal – [2015] EWCA Civ 800 at para. 12

2295 [2012] EWHC 186 (Admin)

2296 Para. 29

2297 Para. 21

2298 Para. 18
being offered to mitigate the costs of the infrastructure requirements of the wider area and the judge considered that some contribution to those requirements was necessary to make the development acceptable in planning terms. The Inspector’s decision was upheld on the basis that the refusal was justified because there was no realistic assessment of apportionment of the overall infrastructure costs referable to the area action plan.

Gilbart J. in R (oao Working Titles Films Limited) v Westminster City Council rejected the approach that that reg. 122 was merely codification because “it includes matters which were drawn from previous tests of policy, which had been expressly rejected by the Courts as tests in law of materiality.” The explanation for this was set out more full earlier in his judgment when he stated

“The test of necessity in Regulation 122(2) (a) was originally not a test in law of the materiality of a planning obligation. Indeed that was the reason why the challenge failed in R v Plymouth City Council ex p Plymouth and S Devon Co-op Society Ltd [1993] 67 P and CR 78. It was a test of policy, and not a test in law – see Hoffman LJ in Plymouth at page 90, and Lord Keith in Tesco Stores v Environment Secretary [1995] 1 WLR 759 at 769 D-770 A, Lord Hoffman at p 777 B-C, 780 A-781C. The tests in (b) and (c) in Regulation 122 also go wider than the law did before its enactment. The test of materiality in law was hitherto that to be material, the provisions in a 106 obligation (a) had to have a planning purpose, (b) be related to the permitted development and (c) not be Wednesbury unreasonable (see Russell LJ in Plymouth at p 82 and Hoffman LJ at p 87). It follows that there are now tests in law which to some degree were not tests of law before their enactment. While I agree with him that the effect of Regulation 122 was drawn from previous Circulars, I respectfully disagree with Bean J in Welcome Break Group and Others v Stroud DC and Gloucestershire Gateway Ltd [2012] EWHC 140 at paragraphs 49 and 50 where he treats the ratio of the Tesco case on the issue of necessity as still holding good. It is clear that the question of what is "necessary" is now a test in law, which it was not beforehand.”

Although the tests apply as a matter of law it is still for the decision makers to decide matters of weight and of planning judgment. For example it was for the decision-maker to decide whether the provision of a community hall was a gain which compensated for the under provision of affordable housing. In the Good Energy Generation case a unilateral undertaking under section 106 1990 Act provided for a reduced electricity tariff and a community investment scheme both open to local residents. Each was decided by the planning inspector on appeal to be matters to which weight could not be attached. Lang J. considered that was necessary to make the development acceptable in planning terms under reg. 112(2)(a).
(ii) **Reason for grant of planning permission** – to trigger the operation of reg. 122 and the application of the statutory tests it now appears that the planning obligation must be a reason for granting planning permission for the development. At the time of the Tesco Stores case there was no obligation on the committee to give reasons for a decision to grant planning permission. Full reasons for a refusal had to be given from 3rd June 1995 and from 6th December 2003 it has been required that a summary of the reasons for the grant of a planning permission be given.

Lewison LJ stated in R (oao Savage) v Mansfield DC that reg. 122 “will only be engaged if that particular planning obligation was a reason for granting planning permission. If proposed development is acceptable in planning terms the securing of additional planning benefits by means of planning obligations is not unlawful: Derwent Holdings Limited v Trafford BC.” This reflects para. 62 of the DCLG’s Community Infrastructure Levy An Overview May 2011 in which it is stated that it is unlawful to take into account planning obligations which do not satisfy the statutory tests in reg. 122 when determining a planning application.

In the Savage case the provision in the planning agreement alleged to be unlawful was originally a provision that if the planning permission was revoked or modified then the developer would not claim compensation from the Council. This was varied to an obligation to repay any compensation received so as to bring it within section 106. It was challenged on the ground that it did not overcome a legitimate planning obligation and was not necessary to do so and thus fell foul of reg. 122. Lewison LJ considered that as the provision could not be invoked if the development was completed it meant that the committee must have thought that the built development would be acceptable in planning terms without regard to the provision. He reasoned that any environmental impact must be caused by the actual development rather than the grant of planning permission and the provision could not operate once the development had been completed so it had not been used to overcome a planning objection. No mention of the provision was made in either the stated reasons for the grant of planning permission or the summary in the officers’ report but from the reasoning in his judgment and the need for such reasoning it appears that Lewison LJ did not consider the absence of any reference to the provision in either summary to be conclusive on this point. In consequence the planning obligation was valid.

The effect of this decision appears to be to create a class of valid planning obligation which is outside the scope of reg. 122. The type of provision considered in the Savage case does not on the facts fall into the type of offer described as an unconnected offer buying the planning permission. In the Derwent Holdings case the permissible planning obligations were to secure the planning benefits anticipated by the developments and there was regarded to be a direct connection between the planning...
obligations and the proposed development. This connection between the developments and the planning obligations is crucial. The reference to “additional planning benefits” in the dicta of Lewison LJ quoted above is to planning benefits within the context of the relevant planning application or applications. Any suggestion that such dicta indicate there is no need for such a connection would be incorrect. The Savage decision is not opening the way for valid planning obligations unconnected with the proposed development.

Planning obligations may still be valid even if not satisfying the tests in reg. 122 provided that they are for planning purposes and are not taken into account by the decision-maker. Once the decision is made what is stated on behalf of the committee or the Inspector if on appeal should determine what is taken into account when reaching a decision on a planning application. Reference may be made to the officers’ report to the committee. If the committee refers to the report in the summary of reasons then it will be. If there is no reference then it may be even if perhaps it should not be. What will not happen is that the Court will not substitute its own judgment as to the weight that should be attached to matters.

It has been suggested that there is a difference between a planning obligation which is a reason for the grant of planning permission and one which overcomes a reason for a refusal of grant. Only the former it is suggested should be within the operation of reg. 122. This seems to be a semantic difference which lacks substance. It has not been supported by any of the judgments so far regarding reg. 122. There may be a greater risk that planning obligations offered to overcome a reason for a refusal are not necessary to make a proposed development acceptable in planning terms but are for a planning purpose and so valid. That does not mean that all planning obligations to overcome a refusal are outside the operation of reg. 122.

One point that was not expressly considered in the judgments in the Savage case is that the phrase “constitute a reason for planning permission” appears not only in reg. 122 but also twice in reg. 123 as regards the limitations prior to 1st September 2019 by reference to the authority’s reg. 123 list of infrastructure and the limitation on the pooling of infrastructure contributions. If the phrase in reg. 122 has the effect of applying to only some planning obligations then that should also be the case in both instances in reg. 123. At the very least the Savage decision has created uncertainty and given rise to the possibility that certain valid planning obligations will not be caught by either limitation in reg. 123. If so then one would expect that possibility will be regarded by the government as a loophole.

(iii) Cross-subsidy and enabling developments - in Derwent Holdings Limited v Trafford BC a challenge had been made to a planning permission granted for a large superstore (“the Tesco site”) and the redevelopment of the nearby Old Trafford Cricket Club following a single joint planning application. The two were linked by a pedestrian walkway. The Tesco site was to be purchased by Tesco from the Council and the purchase price of £21 million was to be applied in the redevelopment of the cricket ground. A planning agreement was proposed in which one of the provisions would prevent the opening of the Tesco superstore until a contract for the works to the cricket

2309 See section 25.5 below
2310 See section 25.6 below
2311 [2011] EWCA Civ 832
stadium had been entered into. This was not an enabling development but treated as one under which there was a cross-subsidy. Both elements of the application were considered separately and each was regarded as being planning acceptable and the cross-subsidy was not required to justify any objectionable element in the application. The challenge was by another developer which had been refused planning permission for a superstore and the refurbishment of several existing units on a site several hundred metres from the Tesco site.

One of the grounds for the challenge was that reg. 122 was not complied with but that was rejected both by Judge Waksman QC2312 and the Court of Appeal.2313 The obligations were regarded as a means of securing planning benefits for the area which would result from the development of the Old Trafford Stadium. Carnwath LJ (as he then was) stated that there “is nothing objectionable in principle in a council and a developer entering into an agreement to secure objectives which are regarded as desirable for the area, whether or not they are necessary to strengthen the planning case for a particular development.”2314 Similarly Judge Waksman QC had made the point that obligations seeking to bring about the planning benefits linked to the site would not make those obligations illegitimate.2315 The agreement did not provide the funding as that was achieved through the sale of the Tesco site by the Council. In contrast the committee were advised that an offer of equivalent funding by the challenging developer was not material due to the lack of a sufficient relationship between that developer’s site and the stadium.2316

The issue of a subsidy payable pursuant to a planning obligation arising from one development site for the benefit of another site arose again in R (oao Thakeham Village Action Limited) v Horsham DC.2317 It concerned two sites in Thakeham used by a mushroom growing enterprise. Two planning applications were made - for a residential development on one and for new buildings for mushroom growing on the other site. One ground of challenge by the local action group was that reg. 122 had not been complied with because the planning obligations included an obligation in relation to the residential development site to pay a subsidy and other obligations to support the mushroom growing site and this was to be viewed as an attempt to buy a planning permission and the two applications were not connected. Lindblom J. considered that the requirements of reg. 122 and para. 204 NPPF (as it then was) had been satisfied. A financial contribution whose purpose is to enable another development to proceed can be a material consideration if there is a sufficient connection between the proposal and that other development.2318 Such a financial contribution may be a decisive factor in a planning decision. It may outweigh factors telling against the grant of planning permission such as conflict with relevant policy in the development plan.

Lindblom J. stated that the principle applied in the Derwent Holdings case did not require that the two sites were been dealt with by a single planning application rather

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2312 [2011] EWHC 491 (Admin)
2313 [2011] EWCA Civ 832
2314 Para. 15
2315 Para. 82
2316 Para. 19 judgment of Carnwath LJ
2317 [2014] EWHC 67 (Admin)
2318 Paras 165 and 201 applying R v Westminster City Council ex parte Monahan [1989] JPL 107
than two.\textsuperscript{2319} Nor were the principles of enabling development limited to ventures seeking to protect a heritage asset or a public amenity such as a sports ground as in the Derwent Holdings case.\textsuperscript{2320} Rather the judge considered that the scope for an enabling development is wide ranging provided that there is a real connection between the benefits and the development.\textsuperscript{2321} In this case the connection was real and in the judge’s view strong because it was a matter of geography and history as well as the two proposals being “mutually dependent”\textsuperscript{2322} as a matter of economic reality.

Both the Persimmon and Derwent Holdings cases were also referred to in R (oao Hampton Bishop Parish Council) v Herefordshire Council\textsuperscript{2323} which concerned a planning obligation that the new ground would only be occupied once there had been a transfer of the rugby club’s existing grounds for a nominal sum to the Council. The new grounds was three kilometres from the centre of town for which planning permission was needed. The transfer retained the old grounds as a public amenity. The decision to grant the required planning permission was challenged by the parish council for the area in which the new grounds were located. Again one ground for the challenge was that the obligation was in breach of reg. 122(2) and an attempt to purchase the planning permission for the new grounds. This was rejected because the obligation was held to be directly related to the proposed development and the future use of the old ground was a material consideration in respect of the proposed development. Hickinbottom J. agreed with HHJ Purle QC when he emphasised that what is necessary for the purposes of regulation 122 is defined in terms of what is required “to make the development acceptable in planning terms”; and, therefore, a simple “but for test” is inadequate. What is acceptable in planning terms is dependent upon a complex web of policies and other material considerations and a series of planning judgments.”\textsuperscript{2324} If this obligation had not been extracted it could not be stated with certainty what alternative would have been negotiated. However, the judge considered that it “can be said that, in this finely balanced matter, with the s.106 obligations as agreed, the proposal was acceptable in planning terms; and without them, as it stood it would not have been.” In consequence the requirements of reg. 122 were satisfied. In this case the particular planning obligations to which objection was taken were held to be needed to secure the planning permission for the new rugby grounds rather than as in the Derwent Holdings case to secure planning benefits.

(iv) Financial contributions - notwithstanding that the Persimmon Homes decision supported the proposition that pooled costs could in appropriate cases satisfy the requirements of regulation 122 it does not follow that they are bound to do so. In the Telford and Wrekin BC case a planning obligation to pay a highway contribution was held not to be necessary because the calculation of the sum was based on an almost certainly false premise. This meant that the particular planning obligation could not be a reason for granting planning permission but in that case the remaining merits of the application were sufficient for the Inspector to grant planning. This was upheld on the appeal. There was a blue pencil clause in the planning agreement providing that any

\textsuperscript{2319} Para. 212  
\textsuperscript{2320} Para. 213  
\textsuperscript{2321} Lord Collins in R (oao Sainsburys Supermarkets Limited) v Wolverhampton City Council [2010] UKSC 20  
\textsuperscript{2322} Para. 207  
\textsuperscript{2323} [2013] EWHC 3947 (Admin)  
\textsuperscript{2324} Para. 37
obligation found by the Inspector not to comply with regulation 122 shall be cancelled but that cancellation will not affect the validity or enforceability of the planning agreement. In consequence the Council lost the highway contribution but failed to defeat the planning permission whilst the developer retained the permission and did not have to pay the highway contribution. This illustrates the risk to an authority in having such a clause in a planning agreement. Turner J. stated that even if there had been a preamble to the planning agreement stating that the obligations in the agreement were compliant with regulation 122 (as in the Derwent case) that would not have changed the result because that was an issue for the Inspector.

Another example of a planning obligation continuing to be enforceable even though found by an Inspector not to be necessary in planning terms is R (oao Millgate Development Limited v Wokingham BC. Planning permission had been refused for a residential development of 14 dwellings and one ground for the refusal was that the proposed development would have an unacceptable adverse impact upon the amenities of the area. It was indicated on appeal that this could be overcome by a unilateral undertaking which was duly offered containing obligations to make contributions to schools, highways and leisure and library facilities on or before the commencement of development. The Inspector concluded that contributions to the provision of infrastructure were not necessary within reg. 122(2)(a) because there was no evidence to show that they were and the Inspector afforded the unilateral undertakings little weight. Planning permission was granted on the appeal and the development completed but no contributions were paid by the developer. Lord Hoffman in the Tesco Stores case had stated that normally planning obligations are conditional upon the grant of planning permission but once that condition is satisfied the planning obligations are thereafter enforceable and cannot be challenged by the developer or a successor “on the ground that it lacked a sufficient nexus with the proposed development.” In this case the developer argued that although the planning obligations were lawful when given it was unlawful for the Council to attempt to enforce the obligations. Pill LJ stated that “Planning permission without giving weight to the undertaking does not mean that the undertaking was not given for a legitimate planning purpose.” There was no finding by the Inspector that the undertaking was not given for planning purposes and so it could be a “valid contribution for planning purposes” in accordance with the Tesco Stores case. In consequence it was still open to the Council to enforce the undertaking by a private law action in contract albeit that defences may be put forward by the developer in that action.

The developer could probably have obtained planning permission without offering the planning obligations and so avoided a significant financial liability. The Court of Appeal judgment serves to illustrate that planning obligations can be valid and enforced even if not “necessary” to make the proposed development acceptable in planning terms provided that (i) no account of the obligation is taken by the decision-maker when

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2325 Paragraph 15 of the planning agreement set out in para. 85 of the judgment.
2326 Para. 104
2327 [2011] EWCA Civ 1062
2328 A party to a unilateral undertaking must have an interest in the land - Lang. J. DBE in Amstel Group Corporation v Secretary of State for Communities and Local Government [2018] EWHC 633 (Admin) at para.71
2329 Supra at para. 49
2330 Para. 22(f)
2331 Para. 31
deciding to grant planning permission; and (ii) it was given for a valid planning purpose in relation to the proposed development.

(v) Development – it was argued in relation to a composite development that when considering whether a planning obligation to make a financial contribution satisfied the tests in reg. 122(2) “development” in that provision referred not to the whole composite development subject to the planning permission but only to the development which will fund the contribution. This was rejected by Mitting J. who stated: 2332 “Mr Cameron QC for Dover District Council submits that "development" in regulation 122(2) has the same meaning as in regulation 122(1). It is the development in respect of which a "relevant determination", the grant of planning permission under section 70, is made. Planning permission in this case was granted for a composite development of the Farthingloe and Western Heights sites, and access land in between. The lawfulness of the planning obligation to fund the heritage contribution must therefore be judged by reference to the development for which planning permission was granted; in other words the whole development, not just or mainly the Farthingloe site.” In that case the Farthingloe site was for a residential development and the Western heights to be developed as a heritage attraction. It was held that it was for the decision maker to decide whether the scheme was a composite development.

(vi) Out of town developments - planning obligations seeking to mitigate harm to a town centre resulting from an out of town supermarket development were held on the facts of the case to be a breach of reg. 122(2)(a) but not (b) in R (oao Mid Counties Co-operative) v Forest of Dean DC 2333 The obligations were held to be directly related to the development in that they were capable of encouraging some customers to shop in the main shopping centre in Cinderford Town Centre. However, there was no analysis or information to show how, and the extent to which, the obligations would mitigate the harm. In consequence it could not be shown that the obligations were necessary to make the development acceptable in planning terms. Surprisingly this failure was held not to have been corrected notwithstanding a second officers’ report when a second planning permission was challenged on the same ground of failure to comply with reg. 122(2)(a) (R (oao Mid Counties Co-operative) v Forest of Dean DC 2334). There was no explanation as to how the planning obligations would or might encourage more visits to the town centre and so no material to satisfy the Council that the contributions would mitigate the harm caused by the out of town development that it had been stated earlier on behalf of the Secretary of State would be substantial.

Paterson J. stated in R (oao Tesco Stores Limited) v Forest of Dean DC 2335 that the two Mid Counties decisions were authority for the proposition that a local planning authority when presented with a section 106 obligation needs enough information to be able to appraise the contributions on offer and in particular the extent to which the contributions will reduce the identified harm. That case also involved a package of planning obligations aimed at reducing the harm which would be caused by the proposed out of town supermarket development. It was distinguished from the two Mid

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2333 [2013] EWHC 1908 (Admin)
2334 [2014] EWHC 3059 (Admin)
Counties cases on the basis that there was no prior decision on behalf of the Secretary of State detailing the likely harm and that there was sufficient information upon which to base a decision. It was open to the committee to decide that important benefits such as job provision were sufficient when taking into account the planning obligations so as to enable the statutory tests to be satisfied when deciding that the advantages outweighed the harm to the town centre.

On appeal in that case Sullivan LJ stated as regards planning obligations seeking to mitigate the consequences of a development that: 2336

“The package of measures in the s 106 agreement is fairly and reasonably related in kind to the development because it seeks to mitigate what is acknowledged to be a significant adverse impact of one of the major elements of that development. This is not a case of a local planning authority seeking funding through the imposition of a s 106 agreement for some extraneous planning benefit that is unrelated to any adverse impact of the development for which permission is sought. In terms of scale, measures that merely mitigate, but do not obviate, a significant adverse impact that would be caused by a proposed development are likely to be fairly and reasonably related in scale to that development. Each case will be fact sensitive. There might well be cases where the cost of such mitigation measures would be so excessive that the obligation would be out of scale with the proposed development even though they would not obviate its adverse effects, but there is nothing to suggest that the overall cost of these particular mitigation measures (£380,000) is out of scale with this substantial employment/retail proposal. It is the large scale of the retail element of this out of centre proposal which results in the significant adverse impact on the town centre.”

Similarly in R (oao Trashorfield Limited) v Bristol City Council 2337 planning obligations including a contribution to town centre improvement were held to have complied with the tests in reg. 122 on the basis that the adverse impact of the proposed supermarket had been considered as had the mitigation proposals so distinguishing it from the first Mid Counties decision. 2338

(vii) Administration and monitoring fees – in Oxford CC v Secretary of State for Communities and Local Government 2339 Lang J. DBE held that a planning obligation providing for the payment of a fee in relation to the Council’s administration and monitoring costs did not comply with reg. 122(2)(a) as it was not necessary. It had been the standard practice of the Council to include such a requirement. Contrary to other decisions on reg. 122 the judge considered that the “necessary” requirement in reg. 122(2)(a) imposes a high threshold. 2340 She stated that it is not enough that the relevant planning obligation was desirable. Unlike with CIL which allows CIL to be applied in the defrayment of administrative costs 2341 there was until 1st September 2019 no similar provision as regards section 106 obligations. The judge considered that the Inspector was entitled to assume that such costs had been included in the Council’s budget as it was part of the Council’s functions to administer, monitor and enforce section 106

2336 [2015] EWCA Civ 800 at para. 11
2337 [2014] EWHC 757 (Admin)
2338 Para. 67
2339 [2015] EWHC 186 (Admin)
2340 Para. 52
2341 Reg. 61
obligations and so such an obligation was not necessary to make the development acceptable in planning terms. As there was a blue pencil clause this did not taint the planning permission. Could such an obligation be supported by the decision in the Savage case? Is it a planning obligation which is not a reason for the grant of planning permission but which secures a planning advantage in accord with the decision in Derwent Holdings?

A specific power has now been added which permits a planning obligation to require a sum to be paid to a local planning authority in respect of the cost of monitoring the delivery of planning obligations in the authority’s area. This applies with effect from 1st September 2019. Reg. 122(2) is subject to reg. 122(2A) so that the statutory requirements in reg. 122(2) no longer apply to a planning obligation which requires a sum to be paid to a local planning authority in respect of the costs of monitoring (including reporting under these Regulations) in relation to the delivery of planning obligations in the authority’s area. It has been confirmed by the MHCLG that such a fee may be applied not just by a charging authority but also by a contribution receiving authority which will include a County Council and that the further guidance will clarify this point. This will be important in the context of education and highways.

This is subject to two qualifications which are:

(a) the sum to be paid fairly and reasonably relates in scale and kind to the development; and

(b) the sum to be paid to the authority does not exceed the authority’s estimate of its cost of monitoring the development over the lifetime of that development.

This still begs the question whether such a planning obligation will still be caught by the general law even though reg. 122 does not apply. The amendment does not expressly validate such an obligation. It would also not appear to apply to the costs of monitoring delivery outside the authority’s area which may be possible particularly if it has combined with other authorities to provide a joint infrastructure project. It is recognised that a monitoring fee may need to be shared between a local planning authority and a county council if the compliance with the planning obligation will need to be monitored by a county council.

(viii) Alternative powers- reg. 122 only applies to planning obligations arising pursuant to section 106 of the 1990 Act. An obligation pursuant to a different statutory provision will not be caught by reg. 122 and cannot infringe it. In R (Khodari) v Kensington and Chelsea RLBC a landlord when seeking planning permission to convert a building from five flats to eight had entered an obligation that the occupiers of the three additional flats would not apply for a resident’s parking permit. Lewison LJ held that such an obligation was not a section 106 planning obligation as it related to the highway which the landlord had no proprietary interest in. It was enforceable by reason of section

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2342 See (ii) above
2343 Reg. 122(2A) inserted by reg. 10 of the 2019 (No. 2) Regulations. It has been stated that further guidance will be provided regarding this provision – para.66 of the MHCLG’s Government response to reforming developer’s contributions June 2019.
2344 Para.74 of the MHCLG’s Government response to reforming developer’s contributions June 2019.
2345 [2018] 1 WLR 584

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16 of the Greater London Council (Greater Powers) Act 1974. The obligation to pay a monitoring fee was enforceable by reason of section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011. As the parking permit obligation was not a section 106 planning obligation it was not in consequence subject to reg. 122.2346

In consequence just as planning obligations were used to circumvent the limitations placed on planning conditions so other statutory powers may in the future be used to circumvent the limitations imposed by reg. 122. If so the advantage of being able to enforce positive obligations against successors in title may, but will not necessarily, be lost. This is an important point which would need to be carefully considered. On a planning application or appeal the decision maker would need to know whether the burden of any obligation ran with the land as this could affect whether it is a material consideration2347. It is to be expected that such obligations will still be subject to the fundamental principle that planning permissions should not be purchased by obligations unconnected with the proposed development.

There are a number of statutory provisions which could be considered as alternatives but it will be necessary in each case to determine whether such powers are subject to a limitation which prevents their exercise contrary to reg. 122. Section 111 of the Local Government Act 1972 confers the power on a local authority “to do anything” provided that it is ancillary to a function of the authority and subject to the provisions of this Act and any other enactment passed before or after this Act2348. The heading to the section refers to “subsidiary powers”. The attraction of this statutory provision, if applicable, is that the exercise does not have to be for a planning purpose. By reason of section 33 Local Government (Miscellaneous Provisions) Act 1982 covenants to carry out work or do any other thing on or in relation to the covenantor’s land may be enforceable against a successor. If applicable section 16 of the Greater London Council (General Powers) Act 1974 and section 609 of the Housing Act 1985 both allow covenants with local authorities to be enforced against successors although in that respect the second provision will only apply to restrictive and not positive covenants.

Interesting points could arise as a result of the exploration of such routes. For example, every local authority in Wales has the power to do anything which it considers likely to promote or improve the economic or social or environmental well-being of the authority’s area.2349 This does not permit an authority to do anything “which they are unable to do by virtue of any prohibition, restriction or limitation on their powers which is contained in any enactment (whenever passed or made)”2350. Will the limitation in reg. 122 be such a limitation?2351 Similarly, section 1 of the Localism Act 2011 confers on a local authority “power to do anything that individuals generally may do.” However, this general power is subject to two limitations which may be material in this

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2346 Para. 37
2347 In Westminster City Council v Secretary of State for Communities and Local Government [2013] EWHC 690 a personal undertaking not to apply for a parking permit which had been wrongly classified as a section 106 planning obligation and which did not run with the land was wrongly taken into account by an Inspector (see para. 23) with the result that the decision was set aside.
2348 In R (oao Houghton and Wyton PC) v Huntingdonshire DC [2013] EWHC 1476 (Admin) it was held that neither s11 of the 1972 Act or section 2 of the LGA 2000 authorised planning guidance which did not comply with section 17 of the Planning and Compulsory Purchase Act 2004.
2349 Section 2 Local Government Act 2000
2350 Section 3(1).
2351 see R (oao Houghton and Wyton PC) v Huntingdonshire DC [2013] EWHC 1476 (Admin)
context. First, restrictions on a pre-commencement power will apply to an exercise of this general power so far as the powers overlap. Second, this general power does not enable a local authority to do anything which it was unable to do by reason of a pre-commencement limitation. Whether there is an ability to enforce against successors will particularly need to be addressed with regard to any exercise of such provisions.

(ix) Purchase of planning permission – one suggested outcome of the imposition of the statutory test for planning obligations was that it would be harder for the grant of planning permission to be encouraged by the applicant agreeing to generous planning obligations not specific to the development site. This is open to doubt if the applicant offers the incentives. This is exemplified by the appeal decision in Barratt Southern Counties’ Bishopdown Farm scheme. In that case Barratt’s achieved planning permission in Salisbury for 500 homes by a 51 hectare country park. In the section 106 agreement the housebuilder agreed to contribute to the layout and maintenance of the park and to transfer it to the Council. The Inspector rejected this as not satisfying the test on the grounds that the country park’s relationship with the development was limited and the provision was not fairly or reasonably related to the development. The Secretary of State rejected this objection as misguided as the provision regarding the country park was merely part of the application. Provided such provision is offered by the applicant the test is not triggered. It is not clear whether this has to involve land owned by the applicant. It would appear to circumvent the strictness of the test in reg. 122 and to open another route by which the applicant can offer community benefits with a view to gaining acceptance for the particular development. Allowing a CIL liability to be discharged in whole or part by the provision of off-site infrastructure may be another route by which this type of outcome could be achieved.

25.6 Infrastructure list – this no longer applies with effect from 1st September 2019 but has been retained for reference in respect of the period prior to that date. The new reporting provisions in Part 10A require the inclusion of an infrastructure list as part of the annual infrastructure funding statement but such a list will not have the same significance as applied prior to 1st September 2019 due to reg. 123. The section is in italics to indicate that it relates to the period prior to 1st September 2019.

25.6.1 Regulation 123 list – prior to 1st September 2019 a planning obligation could not provide for the funding or provision of relevant infrastructure other than scheduled works within Schedule 1 of Crossrail Act 2008 and infrastructure which is covered only by CIL receipts dealt with by reg. 59E (which concerns CIL receipts unspent by a local council applied in the local area by a charging authority pursuant to reg. 59E(10)) and reg. 59F (which concerns CIL receipts applied in a local area by a charging authority because there is no local council).

The objective of the restriction was to restrict the scope for double charging and to seek to avoid the situation where the developer pays for infrastructure through the CIL charge but also has to provide or contribute to the infrastructure under a section 106
planning obligation. Relevant infrastructure comprises infrastructure projects or types of infrastructure contained in a list on a charging authority’s website.\textsuperscript{2358} The reg. 123 list of infrastructure set out that infrastructure which was to be funded exclusively from CIL receipts. If there was no list then subject to one exception the authority could not take into account a section 106 obligation in relation to any infrastructure when granting planning permission as in those circumstances all infrastructure will be funded by CIL. The exception was highway infrastructure. If there was no reg. 123 list of infrastructure then there would be no restriction with regard to highway agreements.

This restriction was in addition to the pooling restriction.\textsuperscript{2359} A planning obligation providing for a contribution to infrastructure costs which did not infringe the pooling restrictions could still fall if an infringement of this restriction. A planning objection which could be overcome by a planning obligation which could not be required because it falls foul of reg. 123 cannot be disregarded. It remained a planning objection even though it could not be overcome in the usual manner.\textsuperscript{2360} In such circumstances a Grampian condition might have been a possible solution.

25.6.2 Obligations outside limitation – as discussed in section 25.5.4(ii) and (iii) above in the context of reg. 122 the Savage and Derwent Holdings decisions open up the possibility that there can be a valid planning obligation which is not a reason for granting planning permission. If this is correct then in so far as such an obligation related to the provision or funding of a type of infrastructure or infrastructure project it would not be caught by this prohibition. This probably does not accord with the government’s intention when introducing this restriction.

The other class of obligation which was outside the scope of this restriction was if imposed by exercising a statutory power other than section 106 of the 1990 Act (discussed in the context of reg. 122 in section 25.5.4(viii) above).

25.6.3 Composition of the reg. 123 list of infrastructure – prior to 1\textsuperscript{st} September 2019 this restriction applied to a planning determination after the date when the relevant charging authority’s first charging schedule took effect. Once the charging authority brought into operation the CIL regime in its area then if it published a reg. 123 list planning obligations could not be used to fund any type of infrastructure or infrastructure project contained in that list even if this could have been justified as site specific works. If the authority had no such list then no infrastructure could be provided or funded through a section 106 obligation. There was one exception as it would continue to be possible to raise a contribution to the Crossrail project using section 106 agreements.\textsuperscript{2361}

This restriction applied to planning obligations “to the extent that the obligation provides for the funding or provision of relevant infrastructure”.\textsuperscript{2362} Both the provision and funding of infrastructure were caught. Planning purposes are wider than just matters concerning infrastructure and to the extent that a planning obligation was not

\begin{flushright}
\textsuperscript{2358} Reg. 123(4) and see section 5.5 above
\textsuperscript{2359} See section 25.7 below
\textsuperscript{2360} R (oao Oates) v Wealden DC [2018] EWCA Civ 1304
\textsuperscript{2361} See section 25.11 below
\textsuperscript{2362} Reg. 123(2)
\end{flushright}
concerned with infrastructure it would not be affected by this limitation. Some obligations may be on the borderline and have given rise to argument.

The definition of relevant infrastructure lacks precision. As regards types of infrastructure was this limited to generic types of infrastructure and if it was how are they to be determined for this purpose? was it possible to break down generic types of infrastructure into smaller classes of sub-group? For instance, was it possible to limit the reg. 123 list to say secondary education thereby excluding primary education or will the reference to secondary education mean that all education was treated as being covered by the reg. 123 list of infrastructure? Each local planning authority was to be free to decide which types of infrastructure to exclusively fund from CIL receipts. It would seem illogical to limit that freedom to generic types and not allow the freedom to select parts only. Further it would seem to be an unfair trap to encourage authorities to take care in drafting the reg. 123 list and arranging budgets for infrastructure funding for the authorities to then fall foul of such an application of reg. 123(2) particularly as such an approach has not been spelt out. The draft reg. 123 list of infrastructure had to be taken into account during the examination stage and it would throw that process into chaos if references to a restricted class of infrastructure caused the whole type of infrastructure without limit to be treated as included in the list.

Another risk for authorities with regard to the operation of the limitation in reg. 123(2) that had been highlighted was that infrastructure projects could blur into types of infrastructure. To avoid this it was necessary to use wording which made clear that an entry concerns a project rather than a type of infrastructure.

It may be preferable to deal with some infrastructure projects by section 106 planning obligations in which case it would be sensible for the relevant charging authority to have had a reg. 123 list but to omit the project from the list. This would permit the authority to impose a planning obligation with regard to the project. For example, a large residential development might throw up a need for a new school or an increase in the capacity of a local school. The CIL charge payable by the residential developer would not fund the whole of this school project. In consequence it was better for the authority to exclude the project from its reg. 123 list and to fund the carrying out of this project through planning obligations imposed on the residential developer. The list could include education infrastructure but expressly exclude the particular local school. A better method would be for the reg. 123 list to only contain infrastructure projects such as a named local school but not include types of infrastructure. However, by itself this would not have ensured that a section 106 planning obligation could be imposed in relation to the local school as it would still be necessary to comply with the “pooling restrictions”.

25.6.4 Variation of reg. 123 list of infrastructure - the government expressed concern that authorities might change the reg. 123 list to allow section 106 obligations to be imposed. However, the suggestion in the 2013 consultation that it would introduce controls came to nothing and no provision was included in the 2014 Regulations. From 1st September 2019 this is no longer a concern.

2363 See section 25.7 below
25.7 **Pooling** – This restriction has also been removed and does not have effect from 1st September 2019. This section has been retained so reference can be made to it with regard to the period prior to that date but part is in italics to indicate that it is not currently in force.

An important use of section 106 planning obligations has been to obtain financial contributions from a developer to contribute to the wider infrastructure implications of the proposed development. This is on the basis that the costs of wider off-site infrastructure needs should be shared amongst the development sites whose developments will impact on those infrastructure issues. This is the type of infrastructure problem that CIL is designed to meet and CIL is the government’s preferred vehicle for the collection of pooled contributions. In consequence it introduced a specific limitation with the objective of drastically reducing the ability of authorities to collect financial contributions by means of section 106 planning obligations. The CIL regime did not impose an absolute across the board prohibition of such contributions which would have had the advantage of certainty. Instead a restriction which has been much more cumbersome and uncertain in operation has been opted for.

As yet there has been no direct authority on the operation of this restriction but it was considered in general terms by Patterson J. when she stated that:

“However, what reg 123 does is to effect an implementation of a new regime for securing pooled contributions. Second, it does not impose an absolute guillotine upon pooled contributions. Rather, they can be provided through a CIL charging schedule which will have to have been established through public examination. Councils seeking to raise money towards community infrastructure through obligations will have to be more transparent about their basis for doing so and to provide evidence for their approach. There is nothing to stop Councils adapting to the new regime and incorporating within that pooled methods of charging. They will simply not be able to employ that approach to more than five pooled contributions in planning obligations other than those that are under the CIL charging Schedule which will ensure that the approach to the future use of pooled contributions is set out at the examination and will be evidence based.”

This restriction in reg. 123(4) had been intended to be a very heavy incentive to encourage authorities to bring into force the CIL regime and explained the accelerating number of authorities carrying forward the process leading to publication of a charging schedule ahead of the restriction coming into force in April 2015. Despite this there were a number of authorities which did not manage to beat that deadline or did not even attempt to do so. These may have faced infrastructure funding problems up until September 2019. This may in turn have resulted in an increased number of refusals of applications for residential developments if it was not possible to use pooled contributions to mitigate the impact of the proposed development on off-site

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2564 Reg. 11 of the 2019 (No. 2) Regulations
2565 R v South Northamptonshire DC ex parte Crest Homes plc (1994) 93 LGR 205.
2566 Para. 67 DCLG’s Community Infrastructure Levy An Overview May 2011
2567 Para 196 Smyth v Secretary of State for Communities and Local Government [2013] EWHC 3844 (Admin) approved by Court of Appeal [2015] EWCA Civ 174
infrastructure needs. This in turn will have led to a fall in new housing. To overcome this problem authorities which had not introduced CIL might have sought to focus on funding new specific infrastructure projects with pooled contributions. This would have favoured larger developments which could make larger contributions to the pool so squeezing in under the restrictions imposed by the “pooling restriction”.

25.7.1 Restriction – the application of this restriction to a planning obligation prior to 1st September 2019 had to be considered in relation to a planning determination on or after 6th April 2015 (originally 6th April 2014 but extended by reg. 12(d)(iv) 2014 Regulations) or if earlier the date when the relevant charging authority’s first charging schedule took effect. A planning obligation could not provide for the funding or provision of an infrastructure project or type of infrastructure by pooled contributions if five or more separate planning obligations relating to planning permissions granted for development within the charging authority’s area had been entered into on or after 6th April 2010 and already provided for the provision or funding of such infrastructure project or type of infrastructure.

Although it is not clearly spelt out the limitation operated separately as regards types of infrastructure and infrastructure projects. This was an issue on which requests for guidance had been made but none had been given. It meant that if five planning obligations providing for a type of infrastructure had been entered into since 6th April 2010 in a planning area then no more could be imposed as the limit had been reached. However, it was still possible to impose planning obligations in relation to a specific infrastructure projects within that type of infrastructure provided that the separate limit in relation to the specific project had not been breached and the project did not appear on the authority’s reg. 123 list.

To take a simple example if since 6th April 2010 an authority had imposed five planning obligations to contribute to the provision of education in the area then no more of such planning obligations could be imposed. This did not preclude the authority from seeking contributions to a specific project relating to education even though none could be sought with regard to the general type of education infrastructure. In consequence it would still be possible to require a contribution to the construction or enlargement of a local school unless that appeared on the reg. 123 list. Contributions to such a project would be subject to a standalone limitation. Attempts by authorities to circumvent this by dividing up this single project into a number of projects, such as classrooms, would be likely to cause problems in the future for the authority.

This meant that even if a charging authority had not introduced the CIL regime in its area it would not after 5th April 2015 have an unlimited ability to impose planning obligations to fund its off-site infrastructure needs using pooled contributions. From that date there would be a limit of a maximum of five planning obligations to fund any project of infrastructure or type of infrastructure by a section 106 contribution. If the authority introduced the CIL regime earlier then this pooling restriction will have applied from that earlier date.

25.7.2 Planning obligations not caught – the pooling limit did not apply to matters which cannot be funded by CIL such as affordable housing\textsuperscript{2368} or non-infrastructure

\textsuperscript{2368} See section 25.10 below
items such as training. It also did not apply to highway agreements. Any planning obligation relating to Crossrail was also excluded.

As with the tests in reg. 122 the operation of this restriction is triggered by a planning obligation which is taken into account on the grant of planning permission. The Savage and Derwent Holdings decisions indicate that not all planning obligations will have triggered the operation of this restriction. Such a planning obligation would be one which was connected with the proposed development but not taken into account by the committee or Inspector if on appeal. If the pooled contribution was needed to mitigate the anticipated harmful effect of the proposed development on the local infrastructure it is hard to see how the committee could not have taken it into account. The same would be the case in respect of a unilateral undertaking given on an appeal against refusal. Although it has been suggested that the treatment of unilateral undertakings might be different from that relating to bilateral planning obligations there seems to be no justification for this. The crucial question is whether account was taken of the planning obligation to make a financial contribution (whether bilateral or unilateral) when determining whether a planning permission should be granted.

25.7.3 Planning obligations caught – prior to 1st September 2019 all planning obligations made after 6th April 2010 relating to planning permissions granted for development within the relevant planning area were to be taken into account. There is no express requirement that these planning obligations should have been taken into account when determining the planning application or appeal. This is in contrast to the planning obligation which triggered the operation of the restriction.

Included will have been planning obligations attached to a section 73 planning permission varying a planning condition. Account was to be taken of planning obligations even if the planning permission to which they related has not been implemented. The revised June 2014 Planning Practice Guidance emphasised that with staged payments under a section 106 obligation the payments will collectively have counted as one planning obligation. It also applied across the whole of the authority’s area regardless of any zoning and zero rates of CIL. The query had been raised whether zones with a zero rate would avoid the pooling restriction but that was not the case because the whole of the area will have been subject to the restriction regardless of the CIL rate.

A query was raised as to whether planning obligations relating to time expired planning permission would be taken into account. To be taken into account the planning permission to which the planning obligation is related did not need to be a planning permission which had been implemented. However, the point has been made that once the time limit has expired the planning obligation no longer “provide for” the funding or provision for an infrastructure project or type of infrastructure. Such an argument is encouraged by the use of the words “to the extent that” in reg. 123(3). However, it was the date of entry into such obligations which was important rather than their continuation which in turn required the obligations to make such provision at the date of entry rather than at a later date.

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2360 amendment to reg. 123(3) introduced by reg. 12(c)(i) of the 2014 Regulations
2370 discussed in section 25.5.4(i) and (ii) above
2371 Para. 95
It was suggested that a route by which the operation of this restriction could be avoided was for the developer to offer the contribution by way of unilateral undertaking rather than the authority requiring it as a planning obligation. Implementation of this suggestion was high risk. It might be that more unilateral planning obligations would be outside the pooling restriction than bilateral planning obligations but this was not because they were unilateral but because they were more likely to be given on an appeal against refusal and may, therefore, be more likely to not be taken into account as a reason for granting planning permission.

25.7.3.1 Generic description - as was pointed out in para 2.6.3.2 of the February 2014 CIL Guidance the pooling restriction hit hardest authorities that referred to infrastructure by a generic description such as education rather than by specific projects. The permitted limit of five planning obligations would soon be used up and thereafter no more could be imposed once CIL had been introduced to the area or if earlier the 6th April 2015 had been reached. Then the authority would have no choice but to rely on specific projects.

25.7.3.2 Duplication of planning obligations - it was not clear whether all planning obligations in a section 106 agreement relating to the same infrastructure project or type of infrastructure would be counted when determining whether there were already five in existence or would be counted as one. The point has been made in legal blogs that more than one planning obligations in a section 106 agreement could relate to the same infrastructure project. For example, an obligation to make a contribution can be bolstered by an obligation that the site may not be occupied unless and until the contribution is made. Should these have been counted as two relevant planning obligations towards the limit of five? The same point arises if there was more than one such planning obligation proposed in the draft section 106 agreement. If not counted as one then not all these planning obligations would be valid if the limit is exceeded. The limitation had been deliberately set by reference not to planning agreements but “separate planning obligations”. Weight was added to this point by official guidance which stated that an “agreement entered into for the purposes of section 106 may contain more than one planning obligation to which regulation 123 relates.” However, in the Mayor of London’s guide it referred to “the pooling of contributions from “five or more separate developments” in a local authority’s area which appeared to have added an unfounded gloss to the wording of reg. 123.

25.7.4 Verifying limit - The issue as to how it was ascertained whether the limit had been reached was not addressed by the CIL regime. There is no separate register of such planning obligations. Part 2 of the register of planning applications will contain information relating to planning obligations proposed and entered in respect of individual applications. This left open to question how a developer would be able to gather the necessary information to challenge a planning obligation on the ground that this restriction had been infringed? Similarly how would local authorities monitor compliance? Authorities would need to carry out an audit of planning obligations since 6th April 2010 in order to ensure that this restriction was complied with. It had the potential to store up problems for the future. Challenges could come sometime after the completion of a development. Trawling back through past grants of planning...

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2372 para. 91 April 2013 DCLG Guidance repeated in para. 2.6.2.2 of the February 2014 CIL Guidance
2373 Para. 1.12
2374 Section 69 of the 1990 Act and article 36(3) DMPO 2010

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permission was an inefficient method with no certainty that a complete picture would be achieved.

54.7.5 Infringement of restriction – planning permission which was granted in breach of reg. 123(4) could be challenged by way of judicial review proceedings at the instigation of interested parties. Such interested parties would include developers owning alternative development sites in the area or those with an existing business which would face competition from the proposed development.

25.7.6 Pooling in practice – This restriction has been a difficult provision to apply and there have been so many questions raised by its operation that it has created uncertainty. For example, if there had been five planning obligations since 6th April 2010 did that mean that no more planning obligations would be possible because the limit of five had been hit? Did it mean that the authority had to break down the type of infrastructure into classes of ever smaller scope? What is a type of infrastructure for these purposes? Could local authorities focus on continually creating new infrastructure projects? If an authority did would these be freed from taking into account earlier planning obligations which did not directly relate to the particular project but did relate to the type of infrastructure it concerned? It was said that this would not be the case but no formal official guidance to this effect had been given. There seemed to be numerous questions as to how this restriction should operate with no real guidance in the regulations. Some of the suggestions on web sites for breaking up projects into ever smaller elements struck me as dangerous. If the authorities got this aspect wrong and imposed unlawful planning obligations then when it came to light there would be a risk that there will be a considerable number of claims going back many years.

25.7.7 Removal of the pooling restriction – the government accepted that the effect of the pooling restriction “can have distortionary effects, generate uncertainty and delay, and lead to otherwise acceptable planning applications being refused planning permission.” By removing the restriction it considers that by permitting the pooling of contributions it is removing a barrier to development and removing uncertainty, complexity and delay. In the consultation started in December 2018 an example of funding after the removal of the pooling restriction was given. It was stated that section “106 planning obligations can only be used if they are necessary to make a development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. These requirements, which are set out as statutory tests in the Community Infrastructure Levy Regulations 2010, will remain. By removing regulation 123 restrictions, the Levy, which is collected from a much wider number of developments including those not subject to section 106, could be used in addition to section 106 contributions necessitated by a specific development. For example, an authority could use section 106 contributions from nearby developments to fund a local school, the need for which was created by those developments, and additionally provide Levy funding towards the school (as development elsewhere in their borough could use some of the new school places it provides). The Levy could expedite the delivery of the school by addressing any remaining funding gap without risking the viability of the nearby developments that

2375 Para. 15 Of the MHCLG’s Government response to reforming developers’ contributions June 2019
2376 Foreword and para. 21 Government response to reforming developers’ contributions June 2019
have already contributed through section 106 obligations."\textsuperscript{2377} The concern is that it will now be possible for double dipping to occur.\textsuperscript{2378}

One oddity is that the restrictions in reg. 123 have been lifted only in England but not in Wales. Currently three authorities in Wales have introduced CIL and so there could be some angry developers in those three areas who will feel they are not being treated fairly.

25.8 Highway agreements – this restriction has also been omitted with effect from 1\textsuperscript{st} September 2019\textsuperscript{2379} and this section has been retained in italics for reference in relation to the period before that date.

In order to obtain a planning permission a developer might have needed to enter an agreement under section 278 of the Highways Act 1980 with the highway authority. This would require the developer to finance or provide highway works. As a result of concern that this could have led to developers paying CIL to fund such infrastructure work and then having to fund or provide the same infrastructure work through a highway agreement the restriction in reg. 123(2)\textsuperscript{2380} previously applying only to planning obligations was extended to cover highway agreements as well.\textsuperscript{2381} However, the separate pooling restriction\textsuperscript{2382} remained applicable only to planning obligations and was not extended to highway agreements. Similarly the statutory test in reg. 122\textsuperscript{2383} only applied and still only applies to planning obligations and not to highway agreements.

25.8.1 Restriction\textsuperscript{2384} - subject to agreements within reg. 123(2B)\textsuperscript{2385} it would no longer be possible to impose a condition on the grant of planning permission that a highway agreement should be required for funding or providing “relevant infrastructure”. The definition of relevant infrastructure was not identical to that in the context of planning obligations. It covered infrastructure projects or types of infrastructure which were included in the reg. 123 list of infrastructure published by the charging authority.\textsuperscript{2386}

This reg. 123 list of infrastructure was intended to be funded exclusively by the charging authority by CIL receipts and could not also be the subject of a highway agreement. Whereas with planning obligations generally if the charging authority had no reg. 123 list of infrastructure then all infrastructure would be covered by the restriction in contrast with highway agreements the restriction would not bite. However, the reality was that all charging authorities would have such a reg. 123 list but the list might not include reference to any highway project or type of highway infrastructure. When the charging authority and the highway authority were not the same authority there would be a need for the two authorities to liaise to avoid the inadvertent inclusion of an item covering highway schemes thus preventing the use of highway agreements.

\begin{itemize}
\item \textsuperscript{2377} Para. 17 Reforming developers contributions issued by MHCLG December 2018
\item \textsuperscript{2378} See section 25.4 above
\item \textsuperscript{2379} Para. 11 of the 2019 (No. 2) Regulations
\item \textsuperscript{2380} reg. 123 list – see section 25.6 above
\item \textsuperscript{2381} Reg. 13(2A)
\item \textsuperscript{2382} See section 25.6 above
\item \textsuperscript{2383} See section 25.5.4
\item \textsuperscript{2384} Reg. 123A
\item \textsuperscript{2385} See section 25.8.2
\item \textsuperscript{2386} as to which list see section 5.5 above
\end{itemize}
This restriction applied to an obligation requiring entry into a highway agreement and also a condition which prevented or restricted the carrying out of a development until a highway agreement was entered into.

25.8.2 Excluded highway agreements - the restriction on highway agreements imposed by reg. 123(2A) did not apply to highway agreements with the Highway Agency acting for the Secretary of State for Transport, the Welsh Ministers or Transport for London. These concerned projects relating to trunk roads which would not be funded through CIL receipts.

25.8.3 When restriction takes effect - this restriction on highway agreements took effect on the earlier of 6th April 2015 or the date the charging authority published a reg. 123 list of infrastructure after 24th April 2014 (being two months after the 2014 Regulations came into force). It meant that with charging authorities with a reg. 123 list of infrastructure published before the 2014 Regulations came into force the restriction did not apply until 6th April 2015. The same was true for those authorities introducing CIL after the 2014 Regulations came into force but before 25th April 2014. With those authorities which brought in CIL after 24th April 2014 but before 6th April 2015 it was the date the reg. 123 list of infrastructure is introduced.

25.9 Discharge or modification of planning obligations - section 106A provides a procedure by which a developer can seek to discharge or modify a planning obligation. The authority and the developer may agree a change or if not the developer can make an application under this section but it must be made within five years of the entry into the planning obligation. It allows an authority to determine that (a) that the planning obligation shall continue to have effect without modification; (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications. In the event that the authority does not give notice of a determination or determines that the planning obligation should continue unmodified then there is a procedure for an appeal to be made to the Secretary of State. There is also a procedure contained in Schedule 9A of TCPA 1990 for resolving disputes about planning obligations.

25.10 Affordable housing contribution – the CIL regime does not cover affordable housing which remains to be dealt with by section 106 planning obligations.

25.10.1 Restrictions – the National Planning Practice Guidance was changed by Ministerial Statement on 28th November 2014 and further revised on 27th February 2015 and then 26th March 2015 to exclude certain developments from the imposition of planning obligations in relation to affordable housing. This is now set out in section 5.

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2387 reg. 14(5) and (6) of the 2014 Regulations
2388 Section 106A(4) TCPA 1990
2389 Section 106A(6) TCPA 1990
2390 Section 106B TCPA 1990
2391 Inserted by section 158(1) Housing and Planning Act 2016
2392 Planning Guidance Para. 204-012. The validity of this change was challenged successfully at first instance and then reversed in the Court of Appeal – West Berkshire DC and Reading BC v DCLG [2016] EWCA Civ 441.

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of the February 2019 version of the NPPF. Small residential developments of ten units are excluded\textsuperscript{2393} or the site has an area of 0.5 hectares or more.\textsuperscript{2394} For non-residential development it means additional floorspace of 1,000 square metres or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015.\textsuperscript{2395} If the development is in a designated rural area\textsuperscript{2396} then planning policies may set a lower threshold of five or fewer units.\textsuperscript{2397} In such areas the affordable housing provision above such thresholds may comprise contributions.\textsuperscript{2398}

With a major development there is an expectation that at least 10\% of the homes will be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudices the ability to meet the identified affordable housing needs of specific groups.\textsuperscript{2399} There are exemptions to this 10\% requirement in the NPPF where the site or proposed development: a) provides solely for Build to Rent homes; b) provides specialist accommodation for a group of people with specific needs (such as purpose-built accommodation for the elderly or students); c) is proposed to be developed by people who wish to build or commission their own homes; or d) is exclusively for affordable housing, an entry-level exception site or a rural exception site.\textsuperscript{2400}

Further a development comprising only a residential annex or an extension of an existing house cannot give rise to an affordable housing or tariff style contribution. Similarly such contributions cannot be sought from developments concerning Starter Homes. With regard to all developments subject to this restriction it will still be possible to impose planning obligations in relation to site specific infrastructure needs.

25.10.2 Vacant Building Credit – in order to encourage the development of brownfield sites with empty and redundant buildings a new credit was introduced.\textsuperscript{2401} It is now covered in the MHCLG Guidance on Planning Obligations revised version 15\textsuperscript{th} March 2019.\textsuperscript{2402} When a residential development of a brownfield with a vacant building is proposed a credit is given against the affordable housing contribution.\textsuperscript{2403} The gross floorspace of the existing building whether returned to use or demolished in the course of the development will be deducted when calculating the contribution so that only the increase in floorspace is taken into account for this contribution.\textsuperscript{2404} The credit will not be available if the use of the building has been abandoned.\textsuperscript{2405} In deciding whether this credit is available or the extent of the availability the authority may consider it is appropriate to take into account whether the building has been vacated for the purposes

\begin{footnotes}
\textsuperscript{2393}Para. 63 NPPF February 2019 version \\
\textsuperscript{2394}Para. 023 MHCLG Guidance on Planning Obligations revised version 15\textsuperscript{th} March 2019 \\
\textsuperscript{2395}Para. 023 MHCLG Guidance on Planning Obligations revised version 15\textsuperscript{th} March 2019 \\
\textsuperscript{2396}Section 157(1) Housing Act 1985 \\
\textsuperscript{2397}Para. 63 NPPF February 2019 version \\
\textsuperscript{2398}Para. 023 MHCLG Guidance on Planning Obligations revised version 15\textsuperscript{th} March 2019 \\
\textsuperscript{2399}Para. 64 NPPF February 2019 version \\
\textsuperscript{2400}Para. 64 NPPF February 2019 version \\
\textsuperscript{2401}para. 24 021-023 National Planning Practice Guidance \\
\textsuperscript{2402}Para. 026 to 028 and para. 63 NPPF February 2019 version \\
\textsuperscript{2403}Para. 026 MHCLG Guidance on Planning Obligations revised version 15\textsuperscript{th} March 2019 \\
\textsuperscript{2404}Para. 027 MHCLG Guidance on Planning Obligations revised version 15\textsuperscript{th} March 2019 \\
\textsuperscript{2405}Para. 028 MHCLG Guidance on Planning Obligations revised version 15\textsuperscript{th} March 2019
\end{footnotes}
of redevelopment or if there has been planning permission for a residential use previously or currently applicable.\textsuperscript{2406}

25.11 Crossrail contribution – as well as the Mayoral CIL 1 charge it was possible for a section 106 Crossrail contribution to be required provided that the proposed development will add to the congestion that is to be eased by Crossrail. Financing this project was excluded from the restriction in reg. 123 on funding infrastructure projects when in force.\textsuperscript{2407} This meant that the Crossrail contributions would run until the required sum was raised. However, the areas in which it operated were not identical to those in which the Mayoral CIL charge operated. Now Crossrail has been funded and MCIL 2 introduced which supersedes MCIL 1 and the Crossrail section 106 contribution. This section has been retained for purposes of reference but is in italics to indicate that it is no longer in force.

25.11.1 Areas – the areas were limited to those in which it was believed that the completed Crossrail project will ease congestion. A section 106 Crossrail contribution could only be sought in Central London; within approximately a kilometre radius of Paddington and Liverpool Street stations; the Isle of Dogs within approximately a kilometre radius of the new Canary Wharf station; and within approximately a kilometre radius of all other Crossrail stations outside the Central London zone. Maps of the contribution areas are contained in the Second Appendix and are reproduced (with the permission of the Mayor of London) from the Supplementary Planning Guidance issued in April 2013 on behalf of the Mayor.

25.11.2 Test – the intention was that a section 106 contribution to the funding of the Crossrail project would be imposed if it was considered that it was likely that the development would increase or create congestion in London. The requirements of the test contained in reg. 122\textsuperscript{2408} had to be satisfied but a detailed investigation was carried out to establish which uses contribute to the congestion and to what degree and in what areas. This resulted in the Mayor of London deciding to operate through the section 106 system a charging regime similar to the CIL regime. The relevant local authorities did not need to carry out an examination of the circumstances of individual development. Instead a contribution would be required dependent on the intended use of the completed development and the area in which it was located. The Mayor would impose the section 106 Crossrail contribution if deciding the planning application. If the planning application was being decided by the relevant London Borough then it would be expected to impose such obligation and if it failed to do so the Mayor might seek to have the planning decision called in by the Secretary of State.

25.11.3 Rates - as with CIL it was based on the increase in gross internal area resulting from the development but the rules were not identical and there could be cases in which the contribution was determined by reference to internal space which was not exclusively new additional area. In particular the addition of mezzanine floors requiring planning permission for an area greater than 500 square metres would be taken into account for this obligation whereas for CIL it would not be. There were three different charging zones and within these zones there were different rates applicable to retail, office and hotel uses. The differences were based on the evidence established by

\begin{itemize}
\item Para 028 MHCLG Guidance on Planning Obligations revised version 15\textsuperscript{th} March 2019
\item Reg. 123(4)
\item see para. 25.5 above
\end{itemize}
the investigation that was carried out into how different types of development in different areas contributed to congestion in London. What was proposed by way of charges is set out in the table taken from the Mayor of London’s supplementary planning guidance. These were subject to the initial reductions.2409

| Indicative Level of Charge per sq. m, by land use and location as at July 2010 |
|-------------------------------------------------|-----------------|-----------------|
| **Central London**                               | **Isle of Dogs** | **Rest of London** |
| Including approximate 1 km indicative radii outwards around Paddington and Liverpool Street Stations | Including approximate 1 km indicative radius outwards around the proposed Canary Wharf station at West India Quay inclusive of and south of the Poplar DLR lands | Including approximate 1 km indicative radius outwards around the proposed Canary Wharf station at West India Quay north of the Poplar DLR lands as well as such radii around all other stations outside the Central Contributions Areas apart from Woolwich Arsenal. |
| Office                                           | £140            | £190            | £31 |
| Retail                                           | £90             | £121            | £16 |
| Hotels                                           | £61             | £84             | -   |

The following notes are contained in the table by way of explanation:-

**“Indicative contribution levels**
Where indicative contribution areas overlap the starting point for negotiations would be the higher of any rates that could be applicable

**Notes to Table 2**
Office is defined as any office use including offices that fall within Class B1 Business of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order. Uses that are analogous to offices which are sui generis, such as embassies, will be treated as offices.

Retail is defined as all uses that fall within Classes A1, A2, A3, A4 and A5 of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order, and related sui generis uses including retail warehouse clubs, car showrooms, launderettes

Hotel means any hotel use including apart-hotels uses that fall within Class C1 Hotel of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order.

2409 as to which see para. 25.11.4.5 below
In all cases, contributions should be calculated in respect of developments exceeding 500 sq. m. with a net increase in floor area of the relevant use.

For mixed use developments, contributions will be sought on any increase in floor space for any of the three uses (subject to 500 sq. m. threshold)".

25.11.4 Regime – the manner of calculating the section 106 Crossrail contribution was similar to that with CIL in that it was based on gross internal floor area but there were a number of differences. Amongst the material difference were the following:–

25.11.4.1 rates – the differential rates were different as shown by the table immediately above;

25.11.4.2 area – the Crossrail contribution operated in a more limited area than CIL as is apparent from the above table;

25.11.4.3 de minimis threshold – developments with a chargeable area of 500 sq. m. or less would not trigger a Crossrail contribution;

25.11.4.4 economic viability – if the payment of the Crossrail contribution would affect the economic viability of a development then the Mayor’s guidance encouraged financial appraisals to be submitted to justify modification of the contribution. With CIL it depended and still depends on whether the charging authority has elected for the exceptional circumstances relief to apply.

25.11.4.5 initial reduction – for developments lawfully commenced before 31st March 2013 there was a reduction of 20%. With phased developments this applied only in respect of such phases as were commenced before that date. For the period of twelve months ending on 31st March 2014 there was a reduction of 10% in relation to developments commencing before that date. In the case of planning permissions granted during a period of reduction but not started within that period the reduction would not apply. After 31st March 2014 the full rate applied.

25.11.4.6 measurement of internal area – the rules were similar to those applicable to CIL but not identical. For example, new mezzanine floors which added more than 500 sq. m. of area would trigger the Crossrail contribution but not a CIL charge. Existing floor space would only be deductible for the purposes of the Crossrail contribution if it had been used for the use classes covered by the policy. The material date was not when the development was first permitted (as with CIL) but when the grant of planning permission was made.

25.11.4.7 Indexation – instead of using the All in Tender Price index for the Crossrail contribution the Consumer Price Index was used and was based on the index figure as at April 2011. It was calculated as at the date that the section 106 payment fell due and not the date when the planning permission was granted.

\[2410\] para. 5.29 Mayor of London’s Guide
\[2411\] see para. 14.2 above
\[2412\] see para. 5.11 Mayor of London’s Supplementary Planning Guide and para. 25.11.5 below
25.11.5 **Mixed user** — when there was a site with mixed use which was to be redeveloped then the internal areas used for each of the existing class of use would be set against the new internal areas for classes of use. In appendix 4 of the Mayor of London’s earlier guide (not as yet repeated in the April 2013 guide although reference is made to Appendix 4) the following example was given for a development in the Central London contribution area:—

<table>
<thead>
<tr>
<th>Use</th>
<th>Existing Area sq. m.</th>
<th>Theoretical charge</th>
<th>Proposed Development area sq. m</th>
<th>Crossrail charge</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>10,000</td>
<td>No charge</td>
<td>15,000</td>
<td>No charge</td>
<td>Nil</td>
</tr>
<tr>
<td>Retail</td>
<td>15,000</td>
<td>15,000 x £88 = £1.32 m</td>
<td>5,000</td>
<td>5,000 x £88 = £0.44 m</td>
<td>-£0.88 m</td>
</tr>
<tr>
<td>Office</td>
<td>15,000</td>
<td>15000 x £137 = £2.035 m</td>
<td>10,000</td>
<td>10,000 x £137 = £0.685 m</td>
<td>-£0.65 m</td>
</tr>
<tr>
<td>Hotel</td>
<td>0</td>
<td>0</td>
<td>35,000</td>
<td>35,000 x £60 = £2.1 m</td>
<td>£2.1 m</td>
</tr>
</tbody>
</table>

|  |  |  |  |  | £0.35 m |

25.11.6 **Charity exemption** — the general charity exemption from CIL applied also to the Crossrail contribution subject to the same qualifications but did not extend to the discretionary charitable exemption in relation to property held by a charity for investment purposes.

25.11.7 **Payment** — the Crossrail contribution was payable at the time the development commences. However, by agreement it could be deferred if the viability of the development would be adversely affected by immediate payment or the size or nature of the development was such as to require deferred payment. The payment could by agreement be phased or linked to completion of the development.

25.11.8 **Section 73 permissions** - the position with Crossrail contributions arising from section 73 applications was in line with the CIL position following the amendments in the 2012 regulations.\textsuperscript{2413} This meant that a further amount would only be payable if the section 73 permission resulted in an increase in the gross internal area and if there was a reduction then a repayment would be due only if more than £10,000 was repayable and there was sufficient evidence to justify the repayment.\textsuperscript{2414}

25.11.9 **Temporary developments** — if the planning permission was for a limited period then consideration was given as to whether this contribution was reasonable. Account was to be taken of the duration and likely impact of the development on the rail network. If for two or more years then it was likely that such a contribution would be sought.

\textsuperscript{2413} see section. 8.4 above
\textsuperscript{2414} para. 5.11 of the Mayor of London’s Guide
25.11.10 Reporting – TfL was obliged to provide regular reports regarding the monies Crossrail contributions received and their application. The London Plan Annual Monitoring Report would also refer to the receipts.
First Appendix

Part 1 - Authorities with charging schedules

The authorities are first listed in Part A in the order in which CIL has been established and then in Part B they are listed alphabetically. There is no central register and so reliance has to be placed on web searches and alerts to try to keep up to date. Some may have escaped this net so it is best to check the website of the particular authority if not on this list. Some may be in the process of reviewing the existing CIL Charging Schedule so that they may be subject to change. Details of authorities which have instigated a review are set out in Part 2. There are still authorities in the process of introducing CIL having reached different stages of the process at different paces. The rate at which authorities establish charging schedule will undoubtedly slow and the removal of the restrictions in reg. 123 may encourage authorities not to do so and even in some case to encourage the authority to cease charging CIL.

A. In order in which established CIL regime

(1) Newark and Sherwood DC –

(a) Original - the charging schedule took effect on 1st December 2011 and divides the area into six zones for the purposes of residential development with varying rates - two £0, two £45, one £55, one £65 and the last £75. Other types of development are divided both by area as there are seven zones and class of development of which there are nine (hotel; residential institution; industrial; offices; retail; community/institutional; leisure; agricultural; and sui generis). Most are at £0 but retail is £100 in six zones and £125 at Newark Growth Point.

(b) 2018 Revised – Residential developments are rated at £0 in relation to apartments in all zones; £0 in Housing Low Zone 1; £45 in Housing Medium Zone 2; £70 in Housing High Zone 3; £100 in Housing Very High Zone 4. These zones are shown on a map headed Community Infrastructure Levy Zones –Residential. All retail developments (A1-A5) are rated at £100 district wide. All other non-residential developments are zero-rated.

(2) Redbridge - this authority has a single CIL rate applicable to all types of development wherever located in the area. It has been set at £70 per square metre with effect from 1st January 2012.

(3) Shropshire - with effect from 1st January 2012 new residential development in Shrewsbury, the market towns and key centres is set at £40 whilst it is £80 for new residential development elsewhere. Any other development is at a nil rate.

(4) Portsmouth – took effect on 1st April 2012 with a basic CIL rate of £105 for any development not specifically mentioned. A CIL rate of £53 applies to in-centre retail of any size, out of centre retail for less than 280 square metres, hotels and residential institutions. A £0 rate applies to office and industrial developments and community uses.
(5) **London Mayoral**

(a) **Original (MCIL 1)** - with effect from 1\(^{st}\) April 2012. Applies to all developments other than developments for medical or health uses or which are wholly or mainly for provision of education as a school or college. The rates are £50 for zone 1; £35 for zone 2; and £20 for zone 3 (for these zones see Part A of the Third Appendix).

(b) **2019 Revision (MCIL 2)** – with effect from 1\(^{st}\) April 2019. Applies to all developments save that nil CIL rate with regard to development used wholly or mainly for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner and development used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institution of higher education. The rates are £80 in zone 1; £60 in zone 2; and £25 in zone 3. A few authorities have changed zones. For these zones see Part B of the Third Schedule. In addition in Central London and the Isle of Dogs (which two areas can be found on the MCIL Mapping Tool on the Mayor of London’s website) there are specific charges which are:

(i) Office developments are charged at rate of £185; Office is defined as any office use including offices that fall within Class B1 Business of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order. Uses that are analogous to offices which are sui generis, such as embassies, will be treated as offices.

(ii) Retail developments are charged at £165 which is defined as all uses that fall within Classes A1, A2, A3, A4 and A5 of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order, and related sui generis uses including retail warehouse clubs, car showrooms, launderette.

(iii) Hotel developments are charged at £140 which Hotel means any hotel use including apart-hotels uses that fall within Class C1 Hotel of the Town and Country Planning (Use Classes) Order 1987 as amended.

(6) **Huntingdonshire** – the charging schedule came into force on 1\(^{st}\) May 2012. The rates apply across the whole of the area but vary according to the type of development. Retail development with an area of 500 sq. m or less is chargeable at £40 and if greater than 500 sq. m at £100. This differential in size with retail developments is being considered in a number of other areas and has met with opposition from some of the major retailers. The charging authority must justify such a differential with supporting evidence. After the 2014 Regulations the grounds for objection have been removed. Hotel developments are chargeable at £60. Institutional residential developments are charged at £40 whilst for health developments the rate is £65. There is a nil rate for business (B1), general industrial storage and distribution (B2 and B3); community uses (D1 and D2) save for Health uses and agriculture. Any other development is chargeable at £85.

(7) **Wandsworth** – these took effect on 1\(^{st}\) November 2012 and the CIL Rates are determined by four different areas within the borough. The Mayor of London charge will also apply. Dependent on the area

(a) the residential rates are 575; £265; £250; and £0.

(b) office or retail rates are £265; £250; and £0.

(c) all other developments £0.
(8) **Wycombe** – with effect from 1st November 2012 the area is divided into two charging zones. The rate for residential developments (including sheltered accommodation) is £150 in one zone and £125 in the other. In both zones there is a rate of £200 for convenience based supermarkets (defined as shopping destinations in their own right where weekly food shopping needs can be met and which also include non-food floor space as part of the overall mix of the unit) and retail warehousing (defined as large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers) with net retail selling space of over 280 square metres. All other retail and uses akin to retail are chargeable at £125. Any other developments are at £0.

(9) **Bristol** – these took effect on 1st January 2013. The rates for developments are: residential chargeable at £70 (Inner zone) and £50 (Outer zone); hotels at £70; retail at £120; student accommodation at £100; commercial (classes B1, B2 and B8) £0; other development £50.

(10) **Poole** –

(a) **Original** - with effect from 2nd January 2013 a simple charging schedule has been introduced. There are three zones with residential developments chargeable at rates of £150, £100 and £75. Any other development is chargeable at £0.

(b) **2019 Revision** – with effect from 21st February 2019. Residential developments (C3) excluding retirement housing are rated at £230 in Zone A (Lilliput / Branksome Park, Sandbanks, Canford Cliffs); £60 in Zone B(i) (Poole town centre - excluding Twin Sails Regeneration Area); £0 Zone B(ii) (Poole town centre – Twin Sails Regeneration Area; £115 in Zone C (Central Poole and North Poole). These zones are shown on the map headed Residential Charging Zones at the end of the Schedule. Developments comprising residential retirement housing (C3) and assisted living housing (C2) in Zone A are rated at £115. Retail developments (A1) are rated at £0 in Zone D(i) (Poole town centre, district centres, local centres and neighbourhood parades) and £200 in Zone D(ii) (all parts of the borough outside of Poole town centre, district centres, local centres and neighbourhood parades). These zones are shown on the map headed Commercial Charging Zones at the end of the Schedule. All other developments are zero-rated.

(11) **East Cambridgeshire** – with effect from 1st February 2013. Residential development set for three zones at £40/£70 and £90. Retail is £120 and all other developments at £0.

(12) **Croydon** – with effect from 1st April 2013 the rates for residential developments are £0 within the Croydon Metropolitan Centre but £120 outside it; £120 for business developments within the Metropolitan Centre but £0 outside that area; £0 for institutions in the whole area; and £120 for any other developments in the whole area. The latter may unexpectedly catch some developments.

(13) **Elmbridge** – with effect from 1st April 2013 the rates are residential dwellings (class C3) £125; all retail developments (class A1-A5) £50; and all other developments £0.
(14) **Barnet** – with effect from 1st May 2013. The rates are £135 Residential (C1 - C4, Sui Generis HMOs) excluding ancillary car parking; £135 Retail (A1 - A5) excluding ancillary car parking; and £0 all other use classes.

(15) **Fareham** – with effect from 1st May 2013. The rates are £105 for residential developments (C3(a) and (c)/C4; £60 Care homes (C3(b)/C2); £35 hotels within C1; £0 for comparison retail in zones of town centres shown on maps (there is a long definition of comparison retail including clothing, household appliances, carpets, furniture, toys, sports equipment and cameras); £120 for all other types of retail; £0 for all other developments.

(16) **Plymouth** – with effect on 1st June 2013 most rates are set at £0 so as to encourage development. Residential is £30; purpose built student accommodation is £60 save it is £0 if located within a particular zone within the city; and £100 for superstores and supermarkets with gross internal floor space of 1000 square metres or more including any extensions. Oddly both superstores and supermarkets appear to have the same definition which is that used for supermarkets by Wycombe, namely “shopping destinations in their own right where weekly food shopping needs can be met and which also include non-food floor space as part of the overall mix of the unit.” If this is correct then many retail superstores will not be caught as they will not meet the weekly food needs of their customers. It is noteworthy that Wycombe has a different definition which is applicable to superstores.

(17) **Brent** – with effect from 1st July 2013. The rates are; residential, residential institutions, student accommodation, hostels and HMOs £200; hotels £100; retail £40; warehouse clubs £14; assembly and leisure excluding swimming pools £5; remainder including light industrial £0.

(18) **Broadlands** – with effect from 1st July 2013. There are two charging zones for residential developments (C3/C4 excluding affordable housing but including domestic garages excluding shared–use and decked) with rates of £75 and £50. Large convenience goods based stores (at least 50% of net floor space area given over to convenience goods) with floor space of 2000 square metres or more. Such store developments are rated at £135. All other retail and assembly and leisure rated at £35 includes sui generis akin to them such as petrol stations, retail warehouses, nightclubs and amusement centres. Public service development such as fire and police stations (C2; C2A; and D1) are rated at £0. All other developments are rated at £0.

(19) **Norwich** – with effect from 15th July 2013 the rates are residential development (Classes C3 and C4 excluding affordable housing) including domestic garages but excluding shred-user and decked garages £75; flats in blocks of 6 or more £65; large convenience goods based stores (more than 50% of net floor area is intended for sale of convenience goods) of 2000 sqm or more £135; all other retail uses (A1-A5) and assembly and leisure development plus sui generis uses such as retail warehouse clubs, petrol stations, nightclubs, amusement centres and casinos £25; Class C2, C2A and D1 and sui generis fire and rescue stations, ambulance stations and police stations £0; all other uses covered by CIL regulations (including share-user/ decked garages) £5.
(20) Havant – with effect from 1st August 2013. The rates are: residential £100 in a defined area and £80 elsewhere; retail out of town centre over 280 sqm £80, under 280 sqm £40, town centre £0; and all other developments £0.

(21) Waveney – with effect from 1st August 2013. There are four residential charging zones and the rates are £150; £60; £45; and £0. For holiday lets the rate is £40. For Supermarkets, superstores and retail warehouses the rate is £130. All other developments are £0.

(22) Southampton – with effect from 1st September 2013. The rates are £43 for retail developments (A1-A5) and £70 for residential (C3, C4 and houses in multiple occupation) but not C2 (residential institution).

(23) Chorley – with effect from 1st September 2013. The rates are dwelling houses £65; apartments £0; convenience retail (excluding neighbourhood convenience stores) £160; retail warehouse, retail parks and neighbourhood convenience stores £40; community uses £0; all other uses £0. The use definitions are contained in an appendix to the Charging Schedule.

(24) South Ribble – with effect from 1st September 2013 the rates are dwelling houses (excluding apartments) £65; apartments £0; convenience retail (excluding neighbourhood convenience stores) £160; retail warehouse, retail parks and neighbourhood convenience stores £40; community uses £0 and all other uses £0. The various uses are defined in Appendix two to the Charging Schedule.

(25) Bassetlaw – with effect from 1st September 2013. There are four residential charging zones and the rates are £55; £20; £5; £0. There are three commercial charging zones as regards industrial developments the rates are £15, £0 and £0 whilst for retail developments they are £100; £25; £0.

(26) Preston – with effect from 30th September 2013 the rates are dwelling houses (excluding apartments) £65 save for those in the Inner Preston Zone when the rate is £35; apartments £0; convenience retail (excluding neighbourhood convenience stores) £160; retail warehouse, retail parks and neighbourhood convenience stores £40; community uses £0 and all other uses £0. The various uses are defined in Appendix two to the Charging Schedule.

(27) Harrow – with effect from 1st October 2013 the rates are residential use within Class C3 £110; Hotel use within Class C1, residential institutions except hospitals (Class C2), student accommodation, hostels and HMO’s (sui generis) £55; Classes A1-A5 (retail, financial and professional services, restaurants and café, drinking establishments, hot food take-aways) £100; all other uses nil).

(28) Oxford – with effect from 21st October 2013 uses in Classes A1-A5 (shops, financial and professional services, restaurants and cafes, drinking establishments, and hot food establishments) have a rate of £100; uses in Classes B1 (business), B2 (general industrial), B8 (storage or distribution), C1 (hotels) and C2 and C2A (residential institutions and secure residential institutions) are rated at £20; uses in Classes C3 (dwellings houses including self-contained sheltered accommodation and self-contained graduate accommodation) and C4 (houses in multiple occupation) and student
accommodation are rated at £100; uses in Classes D1 (non-residential institutions) and D2 (assembly and leisure) are rated at £20; all other development uses are rated at £20.

(29) **Exeter** – with effect from 1st December 2013 the rates are £80 residential (excluding Class C2); student housing whose occupation is limited by planning permission or planning obligation £40; retail (A1-A5) outside city centre £125; and all other developments nil rate.

(30) **Newham**- with effect from 1st January 2014. There are two zones for residential developments with rates of £80 and £40. For the whole area the remaining rates are £30 for retail; £120 for hotels; £130 for student accommodation; and remainder £0.

(31) **Merton** – with effect from 1st April 2014 there are two zones for the residential rates which are £220 and £115. There is a single rate of £100 for retail warehouses and superstores (defined in the schedule).

(32) **Bedford** – with effect from 1st April 2014 there are five zones for residential development with rates of £40; £55; £100; £120; and £125. For these purposes dwelling units are stated to include not just C3 units but also C2 units together with C3 units where the units directly benefit from communal facilities comprising 10% or more of the total gross floor space as part of the overall mix of the unit. Care homes, extra care and other residential institutions have a nil rate. Convenience based supermarkets and superstores and retail warehouses (net retailing space over 280 sqm. are rated at £120. Office, industrial, warehousing and other uses have a nil rate.

(33) **Dartford** – with effect from 1st April 2014 there are two zones for residential development. In Zone A all residential development is rated at £200. In Zone B residential development of less than 15 homes providing solely market housing is rated at £200 whilst residential development of 15 homes or more providing a housing mix which includes a proportion of affordable housing is rated £100. This seems to provide scope for planning residential development to reduce the CIL liability. It also seems to leave a gap with some residential developments not within either category. There are two different zones relating to retail development. In zone D all retail development above 500 sqm. is rated at £125 whilst all other retail use is nil rated. In Zone C supermarkets and superstores above 500 sqm are rated at £65 and all other is nil rated. Office, industrial, hotel and leisure developments are rated at £25. Any other developments are nil rated.

(34) **Somerset West and Taunton formerly Taunton Deane** – with effect from 1st April 2014. There are four zones for residential development (£125, £70 and two at nil rate). For these purposes there is excluded from residential Class C2 use but there is included student housing and similar types of institutional accommodation. Retail development (Classes A1-A5) outside Taunton and Wellington town centres are rated at £140. All other developments are nil rated.

(35) **Sutton** - with effect from 1st April 2014. Residential is rated at £100 psm and retail which is wholly or mainly convenience at £120 psm. There is a nil rate for retail which is wholly or mainly comparison; office; hotels; industrial; community uses (schools and hospitals) and all other developments not separately defined. Appendix 2 to the charging schedule sets out what constitutes convenience goods and comparison goods.
(36) **Winchester** – with effect from 7\textsuperscript{th} April 2014 the area is divided into three zones. In Zone 1 there is a £0 rate. In Zone 2 the rate for residential and retail development is £120. In Zone 3 the residential rate is £80 whilst the retail rate is £120. The rate for all other developments is £0.

(37) **Waltham Forest** – with effect from 15\textsuperscript{th} April 2014. There are two zones for residential development with rates at £70 and £65. The remainder of the rates apply across the area. Those rates are publicly funded care homes £0; convenience superstores and retail warehouses - £150; hot takeaways and restaurants - £80; betting shops - £90; and hotels - £20.

(38) **South Norfolk** – with effect from 1\textsuperscript{st} May 2014 there are two zones for residential development (C3 and C4 excluding affordable housing) including domestic garages but excluding shared-user and decked garages £75 and £50. A rate of £135 applies to large convenience goods based stores (more than 50\% of net floor area is intended for sale of convenience goods) of 2000 sqm or more; all other retail uses (A1-A5) and assembly and leisure development plus sui generis uses such as retail warehouse clubs, petrol stations, nightclubs, amusement centres and casinos £25; Class C2, C2A and D1 and sui generis fire and rescue stations, ambulance stations and police stations £0; all other uses covered by CIL regulations (including share-user/decked garages) £5.

(39) **Chelmsford** – with effect from 1\textsuperscript{st} June 2014 the rates are residential £125; convenience retail (A1 food) £150; comparison retail (A1 non-food; A2-5; and sui generis uses akin non-food) £87; and the rest nil.

(40) **Merthyr Tydfil** – with effect from 2\textsuperscript{nd} June 2014. There are three zones for residential development (C3). One is rated at £25 and the other two at nil. Retail (A1) is rated at £100 and retail (A3 –restaurant and cafes) at £25.

(41) **Purbeck** – with effect from 5\textsuperscript{th} June 2014 the rates are £75 for A1 retail; £20 for A2-5; for C2 (care homes) and C3 (sheltered homes) there are three zones with rates of £100, £30 and nil; for C3 (not sheltered homes) and C4 there are four zones with rates of £180, £100, £30 and £10; for all other developments nil.

(42) **City of London** – with effect from 1\textsuperscript{st} July 2014. Residential development is charged at a rate of £150 in the “Riverside” zone and £95 elsewhere. Office development is to be charged at £75. Developments for medical, educational and emergency service are at a rate of £0. All other developments have a £75 rate.

(43) **Caerphilly** – with effect from 1\textsuperscript{st} July 2014. There are three zones for residential development and the rates are £0, £25 and £40. As regards commercial developments there are no zones. The rates are – retail (A1) £100; restaurant, café and drinking establishments (A3) £25; office (B1), industrial (B2-B8), care and nursing home development, non-residential institutions (D1), hotel development (D2) and cinema (D2) all nil.

(44) **Epsom and Ewell** – with effect from 1\textsuperscript{st} July 2014. There are no zones. The rates are – residential dwellings (C3) £125; convenience retail (A1) £150; student accommodation (C2) £30; care homes (C2) £20; all other uses nil.
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(45) Trafford – with effect from 7th July 2014. The terminology and approach are a little different from other charging schedules. There are three zones for private market houses – helpfully called cold, moderate and hot. The rates are £20, £40 and £80. For apartments (which include sheltered housing and retirement apartments) the rates in those zones are £0; £0; and £65. The remainder of the rates are retail warehouses (defined in the Appendix to the Charging Schedule) £75; supermarkets outside town centres (similarly defined) £225; supermarkets in defined town centres £0; public and institutional facilities for education, health, community and emergency services and public transport £0; offices, industry and warehousing £0; leisure £10, hotels £0; all other developments £0.

(46) Hillingdon – with effect from 1st August 2014. Large format retail development (A1) comprising greater than 1,000 sq. m, outside of designated town centres is rated at £215 but if within such centres rated at £0. Designated town centres are shown on the maps in Appendix A to the Schedule. Office development (B1) is rated at £35. Hotel development (C1) is rated at £40. Residential development comprising dwelling Houses (C3) is rated at £95. Industrial development (B8) is rated at £5. All other uses are rated at £0.

(47) Sevenoaks – with effect from 4th August 2014 the rates are residential (Class C3) £125 and £75 dependent on the zone and a single rate for supermarkets and superstores primarily selling convenience goods of £125; retail warehousing £125; and other forms of development £0. The uses have their own definitions in the schedule.

(48) Islington – with effect from 1st September 2014. There are two zones for four types of development. These are (i) residential dwellings (C3 and C4); residential institutions (C2 and C2A) not including public health facilities and public care facilities - £300 and £250; (ii) retail (A1, A2, A3, A4, and A5) - £175 and £125; (iii) hotels (C1) and apart-hotel - £350 and £250; office (B1a) - £80 and nil. Borough wide student accommodation is rated at £400 and £80 for conference centres, nightclubs, private members clubs, amusement centres and assembly and leisure (D2) not including public leisure facilities. There is a long list of uses which are nil rated.

(49) West Lancashire – with effect from 1st September 2014. There are two zones. In zone B the rate is nil for all developments. In zone A the rates are – residential dwelling house (C3a,b,c) £85; apartments (defined as dwellings with shared access and communal areas on more than one floor) (including retirement apartments) nil; agricultural workers dwellings (dwelling in which the occupancy is limited usually by condition to those employed in agriculture) nil; comparison retail Any building selling mainly comparison goods such as clothing, footwear, household and recreational goods) nil; convenience retail (any building selling mainly everyday essential items, including food, drink, newspapers/magazines and confectionery. In the case of a mixture of convenience and comparison goods the rate will be based on the main use) £160; food and drink (A3/A4/A5) £90; all other uses nil.

(50) Lambeth – with effect from 1st October 2014. There are three zones for residential, hotel and office developments. Residential rates are £225; £150; and £50. Hotel rates are £100 in one zone and nil in the other two. Office rates are £125 in one zone and nil in the other. For the whole borough rates are – industrial nil; large retail development
(51) Teignbridge – with effect from 13th October 2014. Retail is rated at £150 outside identified town centres and nil within them. There are five rates for residential development dependent on the location of the development site (£70, £85, £125, £150 and £200). But there is no CIL rate on affordable housing. All other development or uses are rated at nil.

(52) Haringey – with effect from 1st November 2014. There are three zones for residential and student accommodation and for each use the rate is the same in each zone starting at £15 then £165 and lastly £265. For supermarkets the rate is £95 whilst retail warehousing is £25. Standard definitions are used for these terms and there is no express area limitation. Office, industrial, warehousing and small scale retail (Use Class A1-A5) are nil rate as are health, school, higher education and all other uses.

(53) Richmond – with effect from 1st November 2014. There are two zones for residential development with rates of £250 and £190. The rate for office development outside Richmond Town Centre is £25. Borough wide the rate for retail (wholly or mainly convenience) is £150. The schedule provides that convenience retail is a shop or store where the planning permission allows selling wholly or mainly everyday items, including food, drinks, newspapers/magazines and confectionary. The same rate of £150 applies for wholly or mainly comparison retail in Richmond Town Centre. Comparison rates is stated by the schedule to be a shop or store selling wholly or mainly goods which are not every day essential items such as clothing, footwear, household or recreational goods. Hotels and Care homes in the area known as the lower band are rated at £25. All other uses not expressly covered are nil rated.

(54) Hertsmere – with effect from 1st December 2014. For residential development there are three zones with rates of £120, £180 and nil. As regards commercial development there are no zones. The rates are – hotel (C1) £120; specialist accommodation for the elderly and/or disabled including sheltered and retirement housing and nursing homes, residential homes and extra care accommodation £120; retail (A1) £80; and office (B1) and industrial (B2) nil.

(55) Surrey Heath with effect from 1st December 2014. There are zones but different ones for residential (C3) developments and retail development other than supermarkets/superstores and retail warehousing. One of the zones for residential development is rated at nil. With each of the other two zones the rate varies dependent on whether the residential development does or does not provide its own open space in the form of Suitable Accessible Natural Greenspace as avoidance for European Sites. The rates in one zone are £189 without such provision and £55 with. In the other zone the rates are £220 and £95. Borough wide the rates for retail warehousing and supermarkets/superstores (defined in the schedule) are £200. Other retail (A1-A5) are rated at nil in one zone and £100 in the other zone. All other developments are rated at nil.

(56) Tandridge – with effect from 1st December 2014. All residential development excluding sheltered/retirement housing and extra care accommodation (defined as grouped units, usually flats, specially designed or designated for older people
encompassing communal non-saleable facilities over 25% gross floorspace) is rated at £120. Convenience retail including convenience based supermarkets and superstores (which are defined in the schedule as shopping destinations in their own right where weekly shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit) is rated as £100. Comparison retail, offices and all other uses are nil rated.

(57) Rhondda Cynon Taf – with effect from 31st December 2014. There are three zones for residential development rated at nil, £40 and £85. Retail (A1) is rated at £100 and all other development types are nil rated.

(58) West Berkshire – with effect from 1st April 2015. There are two zones for the residential (C3 and C4) rate (£125 and £75) whilst the retail (A1-A5) rate is £125 in both. The rate for business, hotel and residential institutions is £0 across the area.

(59) Camden – with effect from 1st April 2015. The area is divided into three zones. Residential development below 10 houses or 1000 sqm are charged at £500 in each zone. Residential development above that limit and private residential homes with a degree of self-containment is charged at varying rates of £150, £250 and £500 dependent on the zone. Retail (including bar/restaurant/entertainment and other town centre uses) is chargeable at £25 in each zone. Office is £45 or £25 dependent on the zone. Student housing is chargeable at £175 or £400. Hotel development (including tourist hostels) is chargeable at £40 or £30. Industry, warehousing, research and development are nil whilst other commercial uses are £25. Health, community meeting spaces, police, fire, water, waste management and related infrastructure, care homes with no self-containment subsidized by the public sector are chargeable at nil rate.

(60) Sandwell – with effect from 1st April 2015. The rates are – retail units (this covers A1-A5 excluding superstores/supermarkets and retail warehouses) at West Bromwich Strategic Centre £50; borough wide supermarkets/superstores and retail warehouses (defined in the schedule) over 280 sqm £60; residential developments for 14 or less units £30; residential developments for 15 or more units £15; all other uses nil. Residential developments exclude residential institutions (C2).

(61) Sedgemoor – with effect from 1st April 2015. The rates are – residential development in urban areas £40; residential developments in all other areas £80; supermarkets and retail warehouses (defined in the schedule) £100; hotel developments £10; all other developments nil.

(62) Tower Hamlets – with effect from 1st April 2015. For residential developments there are three zones rated at £200, £65 and £35. In addition there are identified large allocated sites which are nil rated for all developments including residential, hotel, retail, student housing (whether let at market rent or not) and office developments. Office development in the zone described as the City Fringe is rated at £90 but elsewhere is rated at nil. Convenience supermarkets/superstores and retail warehousing (defined in the schedule) is rated at £120 borough wide except for the large allocated sites. Other retail is rated at £79 in two zones and nil elsewhere. Hotel development is rated at £180 borough wide apart from large allocated sites. Student housing let at market rent is rated at £425 borough wide apart from large allocated sites. Student housing let at below market rents is rated at nil. To qualify as student housing let at
below market rent it must be (i) university led development with the university having at least one teaching facility in the area; (ii) the developer must have entered a nomination agreement or equivalent; (iii) the housing must be to meet an identified need secured by a section 106 planning obligation; (iv) the below market rent must be in place for a minimum of seven years; (v) the rent discount must as a minimum equate to the amount of CIL not paid by reason of it being student housing let at a market rent; and (vi) there must be a valuation supporting the discount by an independent valuer at the cost of the applicant. Unless the student housing qualifies as let at below market rent it will be rated as student housing let at market rent. All other uses are rated at nil.

(63) Eastbourne – with effect from 1st April 2015. The rates are simple. Dwellings (C3) other than residential apartments are rated at £50. Retail (A1-A5) is rated at £80. All other uses are zero rated.

(64) Dacorum – with effect from 1st April 2015. There are four zones for residential development rated at £250, £150, £100 and nil. Three of zones are nil rated for retirement homes and the other is rated at £125. The schedule provides that retirement housing is housing which is purpose built or converted for sale to elderly people with a package of estate management services and which consists of grouped, self-contained accommodation with communal facilities amounting to less than 10% of the gross floor area. Such premises are stated to often have emergency alarm services and/or wardens but would not be subject to significant levels of residential care (C2) as would be expected in care homes or extra care premises. Convenience based supermarkets and superstores and retail warehousing (net retail space of over 280 sqm) rated borough wide at £150. Other uses are nil rated.

(65) Lewisham – with effect from 1st April 2015 but that has yet to be confirmed. There are two zones for CIL rating purposes. With residential (C3) development the rates are £100 and £75. For Use Class B developments (commercial office and industrial (including storage and distribution) the rates are nil. For all other use classes the rates are £80. This last set of rates is very wide as it is a catch all that has not been dealt with expressly. I wonder whether this will throw up unintended CIL liabilities.

(66) Woking – with effect from 1st April 2015. With regard to residential development there are two zones rated at £125 and £75. For these purposes residential means either use as a dwelling house (whether or not a main residence) by (a) a single person or by persons to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as single household where no care is provided to residents (other than use within Class C4) or use of a dwelling house by three to six residents as a house in multiple occupation. All types of retail are rated at £75. All other commercial and non-residential use is nil rated.

(67) Reading – with effect from 1st April 2015. Borough wide there is a rate of £120 for residential, hotels, sheltered housing, and private rented accommodation (including student accommodation). Care homes providing nursing care and fully catered are nil rated. A1 retail is nil rated in Central Reading (defined in the Reading Central Action Plan (2009)). Elsewhere if 2000 sqm or over (including foodstores) the rate is £150 and if under 2000 sqm is nil rated. Offices in the Central core (walk time catchment of Reading Rail Station) are rated at £30. All other chargeable developments are nil rated.
Watford – with effect from 1st April 2015. All developments in Major Developed Areas (as shown on the map attached to the Schedule) are nil rated. Residential developments are rated at £120. Hotels and specialist accommodation for the elderly and/or disabled including sheltered and retirement housing and nursing homes, residential care homes and extra care homes (excluding registered not for profit care homes) within Class C2 and C3 are rated at £120. Retail (A1-A5) in the Primary shopping Area is rated at £55 and elsewhere £120. There is a nil rate for offices, industrial and other uses.

Hackney – with effect from 1st April 2015. There are four zones for residential development rated at £190, £55, £25 and nil. Office development is rated at £50 in the City Fringe and nil elsewhere in the borough. Large format retail is rated at £150 and is defined in the schedule as convenience based supermarkets and superstores and retail warehousing. Superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit. Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car borne customers. Other retail development is rated at £65 in the City Fringe and nil elsewhere in the borough. Hotel development is rated at £80 in the City Fringe and £55 elsewhere in the borough. Student housing is rated at £373 borough wide. All other developments including the development of operational buildings for emergency services is nil rated.

Spelthorne – with effect from 1st April 2015. There are three zones for residential development (C3). If for a scheme with fewer than 15 units to which Policy HO3 Affordable Housing does not apply the rates are £100, £140 and £160. If the scheme is 15 or more units to which policy HO3 Affordable Housing scheme applies the rates are nil, £40 and £60. Purpose built student housing is rated at £120. Out of centre larger convenience based supermarkets and superstores and retail warehousing (net retail selling space of more than 280 sqm) is rated at £120. Hotels, care homes, offices, commercial and all other uses are nil rated.

Southwark – with effect from 1st April 2015. There are three zones for a number of uses. Office is rated at £70 in zone 1 and nil rated in zones 2 and 3. Hotel is rated at £250 in zone 1 and £125 in zones 2 and 3. Residential is rated at £400, £200 and £50. Student housing which is directly rented is £100 in all zones and student housing by nomination (let below average weekly rent of £168 per week and this is secured by a section 106 planning obligation) is nil rated. All retail (A1-A5 and sui generis which includes petrol stations, shops selling or displaying cars and retail warehouse clubs) are rated at £125 in all zones. Nil rating applies to town centre car parking (available to all visitors), industrial, warehousing, public libraries, health, education and all other uses.

Three Rivers – with effect from 1st April 2015. Residential development (Use Class C3) is rated at £180 psm in Area A; 3120 psm in Area B and nil in Area C. Retail development (Use Class A1) in Areas A and B are rated at £60 psm and nil in Area C. Hotels (Use Class C1) are rated at nil boroughwide as is Residential Housing (Use Class C3. For these purposes it is stated that Retirement Housing is housing which is purpose built or converted for sale to elderly people with a package of estate management services and which consists of grouped, self-contained accommodation with communal
facilities. These premises often have emergency alarm systems and/or wardens. These properties would not however be subject to significant levels of residential care as would be expected in care homes or extra care premises (C2). It is further provided that for the avoidance of doubt this excludes registered not for profit care homes. Other non-residential development is nil rated boroughwide.

(73) **Barking and Dagenham** – with effect from 3rd April 2015. Residential development is rated at £70 psm in Barking Town Centre, Leftley and Faircross; £25 psm in Barking Riverside; and £10 psm in the rest of the borough. These areas are defined in the schedule but there is no definition of residential. Boroughwide supermarkets and superstores of any size are rated at £175. For these purposes supermarkets are self-service stores selling mainly food, with a trading floorspace less than 2,500 square metres, often with car parking whilst superstores are self-service stores selling mainly food, or food and non-food goods, usually with more than 2,500 square metres trading floorspace, with supporting car parking. Also boroughwide office uses (B1a) are nil rated; Business (research and development (B1b); light industrial (B1c); general industrial (B2); and storage and distribution (B8) is rated at £5 psm; municipal leisure is nil rated; health (development used wholly or mainly for the provision of any publicly funded medical or health services except the use of premises attached to the residence of the consultant or practitioner); education (development used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institution of higher education) is nil rated; all other non-residential uses are rated at £10 psm.

(74) **New Forest DC** – with effect from 6th April 2015 the CIL rates are dwelling houses (C3) £80; £0 retail (A1), industry and offices (B1, B2 and B3), hotels (C1), residential institutions (C2) and any other uses.

(75) **Bracknell Forest** – with effect from 6th April 2015. For residential (Use Class C3) development there are six strategic sites five of which are chargeable at the rate of £159 and one at £220. In addition there are four zones. One, Central Bracknell, is nil and with the other three there are two different rates for each dependent on whether the net increase in houses is 14 or less or over 14. The minimum rate is £25 and they go up to a maximum of £300. Separate from residential development is specialist residential accommodation for older people including sheltered housing, retirement housing, Extra Care Housing and residential care accommodation. There are four zones which induce the strategic sites and the rate starts at nil and goes up to £100. Convenience based supermarkets and superstores and retail warehousing (which terms are explained in the charging schedule) which have a net retailing space over 280 sqm gross internal floorspace (taken from the definition of a large store in the Sunday Trading Act 1994) are chargeable at a nil rate in Central Bracknell and £100 elsewhere. The rate is levied on the full gross internal floorspace and not just excess over 280 sq. m. All other types of development are chargeable at nil.

(76) **Leeds** – with effect from 6th April 2015. Residential developments covers five zones at rates of £90, £23, £45, £5 and £5. Supermarkets (using the standard definition) over 500 sqm are rated at £110 in the City Centre and £175 outside. Comparison retail over 1000 sqm is rated at £35 in the City Centre and £55 outside. Offices in the City Centre are rated at £35. Zero rating applies to development by a publicly funded or not
for profit organisation including sports and leisure centres, medical or health services, community facilities and education. All other uses not mentioned are rated at £5.

(77) **London Legacy Development Corporation** – with effect from 6th April 2015. The rates are – all residential development £60; convenience supermarkets and superstores and retail warehouses (over 1000 sqm) £100; hotels £100; student accommodation £100; comparison and all other retail (A1-A5) in Stratford Retail Area £100 and nil outside; education and healthcare nil; all other uses nil. In addition there will be the Mayoral CIL of £20 if the development site is within Newham and Waltham Forest and £35 if within Tower Hamlets or Hackney. There is no Mayoral CIL on education or healthcare.

(78) **Wokingham** – with effect from 6th April 2015. There are four rates applicable for residential development (excluding sheltered housing, extra care housing and residential institutions) which are £300, £320, £340 and £365. These relate to four strategic development locations ("sdl") and the rest of the borough. As regards sheltered housing the rate is £365 in the four sdl and £150 in the rest of the borough. For these purposes sheltered housing is self-contained accommodation for older people, people with disabilities and/or other vulnerable groups which include some shared/communal facilities and where a degree of support is offered. As regards residential institutions and extra care housing the rate is £100 in the four sdl and £60 in the rest of the borough. For these purposes “extra care housing” means “purpose built accommodation in which varying amounts of care and support can be offered and where some services and facilities are shared (including a minimum of 30% of GIA provided as communal facilities). For retail use the rate is nil for existing town/small town and district centres identified on attached maps and a named sdl and for the rest of the borough it is £50. All other development types are nil borough wide.

(79) **Kensington and Chelsea** – with effect from 6th April 2015. There are seven zones. Zone G described as Earl’s Court is nil rated for all uses as is a strategic site. For residential use (C3 and short terms lets) the rates are £750, £590, £430, £270, £190 and £110. For extra care housing the rates are £510, £230, £300, £160 and two zones are nil rated. Hotels in six zones are rated at £160 and student accommodation at £125. Industrial/warehousing, offices, retail uses, D1 and D2 uses and all other uses are nil rated.

(80) **Bath and North East Somerset** – with effect from 6th April 2015. There are three different areas for residential development (C3 including specialised, extra care and retirement accommodation unless these types of accommodation provide non-saleable floorspace in excess of 30% of Gross Internal Area) which are rated at £100, £50 and nil. Hotel development (C1) is rated at £100 in Bath and nil elsewhere. In-centre and high street retail development (as defined in the Core Strategy) is rated at £150 in Bath but nil elsewhere. Supermarkets (large format convenience-led stores)/superstores and retail warehouses (over 280 sqm) are rated at £150 district wide save for the Bath Western Riverside area which is nil rated. Offices (B1) and industrial and warehousing are nil rated district wide. Student accommodation development involving schemes with market rents are rated at £200 unless in the Bath Western Riverside area. Student accommodation provided under a scheme with submarket rents set in a section 106 planning agreement will be nil rated. To be submarket rent it must be no more than 89% of the local market rent (including any service charge). Although not expressly stated
if the student accommodation is not provided under a scheme with submarket rent then it will be a scheme with market rents.

(81) **Swindon** - with effect from 6\textsuperscript{th} April 2015 there are two residential zones rated at zero for Swindon’s New Communities and £55 for the rest of the borough. For this purpose residential is any use within Class C3 including ancillary development such as garages. As regards retail use the Town Centre and New Communities are zero rated and the rest of the borough is rated at £100. For these purposes retail is any use within A1-A5 including sui generis uses that are shops and premises selling and or displaying motor vehicles, retail warehouse clubs, launderettes, taxi or vehicle hire businesses, amusement centres, petrol filling stations. All other uses are zero rated.

(82) **Greenwich** - with effect from 6\textsuperscript{th} April 2015. There are two zones which are the same for all rateable uses. Supermarkets, superstores and retail warehousing which are 280 sqm and over are rated at £100 in both. Supermarkets and superstores are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food space as part of the overall mix and retail warehousing. Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers. Ancillary car parks (including undercroft parking) for supermarkets, superstores and retail warehousing which are 280 sqm and over are nil rated in both. Hotels are rated at £100 in both. Student housing is rated at £65 in both. Residential (excluding extra care housing which is defined in the CIL Viability Assessment) is rated at £70 in Zone 1 and £40 in Zone 2. All other developments are zero rated and includes all retail uses less than 280 sqm and retail uses 280 sqm or more not within the definitions of supermarket, superstore or retail warehouse; all B and D uses; all sui generis uses.

(83) **Hambleton** – with effect from 7\textsuperscript{th} April 2015. The rates are district wide. For private market housing (excluding apartments) the rate is £55. Retail warehouses is rated at £40. For these purposes it is stated that retail warehouses are usually large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods. They can be stand-alone units but are also often developed as part of retail parks. In either case, they are usually located outside of existing town centres and cater mainly for car-borne customers. As such, they usually have large adjacent, dedicated surface parking. Supermarkets are rated at £90. It is stated in the schedule that supermarkets are large convenience-led stores where the majority of custom is from people doing their main weekly foodshop. As such, they provide a very wide range of convenience goods, often along with some element of comparison goods. In addition to this, the key characteristics of the way a supermarket is used include (a) they are used for the sale of goods will generally be above 500sq. m; (b) the majority of customers will use a trolley to gather a large number of products; (c) the majority of customers will access the store by car, using the large adjacent car parks provided; and (d) servicing is undertaken via a dedicated service area, rather than from the street. Public/institutional facilities covering education, health, community and emergency services are nil rated. Similarly agricultural related development is nil rated. This will not include agricultural workers dwellings which will be within residential. All other chargeable developments as identified in Regulations and Guidance are nil rated.
(84) Peterborough – with effect from 24th April 2015. With residential development on all sites with 500 dwellings or more there is a nil rate (required by the examiner). There are then three zones for other types of residential development. If the development produces less than 15 market houses the rates are £140, £120 and £100. With developments of 15 or more market houses the rates are £70, £45 and £15. With developments comprising apartments on sites of less than 15 units the rates are £70, £45 and £15. City wide supermarkets (500 sqm or more) are rated at £150; retail warehouses (500 sqm or more) at £70 and neighbourhood convenience stores (less than 500 sqm) at £15. All other developments are nil rated. More definitions will be added in response to the examiner but will not be known until the final charging schedule is published.

(85) Bexley – with effect from 30th April 2015. There are two zones for residential, hotel and student housing development (excluding C2 and C3 developments) which are rated at £60 and £40. Supermarkets, superstores and retail warehouse developments over 280 sqm are rated at £100. The examiner required the word convenience to be removed from this category. Medical, health and emergency services which are publicly funded are nil rated. The nil rating also applies to developments used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institution of higher education. All other uses including C2 and C3 are rated at £10. Therefore, class A uses under 280 sqm, care homes, sheltered homes, extra care, assisted care and similar accommodation are rated at this lower rate.

(86) Wiltshire – with effect from 18th May 2015. Residential development (Planning Use Classes C2, C2A, C3 and C4) by reference to two zones defined in Appendix A to the Schedule. In Zone 1 is charged at £85 save as regards strategically important sites (as set out in the Wiltshire Core Strategy) where it is charged at £40. In Zone 2 the rate is £55 but £30 in strategically important sites. Student accommodation (Planning Uses Classes C2, C2A, C3, C4 and sui generis akin to student accommodation) is charged at £70 as are hotel developments (Planning Use Class C1). There is a nil rate for Service Family Accommodation for members of the Armed Forces which is housing exclusively constructed by the MOD or its appointed contractors for use by members of the Armed Forces and their families as secured by a section 106 agreement between OD and Wiltshire Council. A rate of £175 is charged on retail warehouse development (which are large stores specialising in the sale of a broad range of household goods (including but not limited to carpets, furniture and electrical goods) DIY items and other ranges of goods, catering for mainly car-borne customers) and superstore/supermarket developments (which are shopping destinations in their own right where weekly food shopping needs are met and which can include non-food floorspace as part of the overall mix of the unit). Other types of retail development (Planning Use Classes A1 to A5 and sui generis uses akin to non-food retail) are charged at either £70 or nil dependent on which defined area they come within (set out in Appendix C to the Schedule). All other uses (Planning Use Classes B1, B2 and B8, D1, 2 and other sui generis uses (including military single living accommodation ancillary to a military establishment).

(87) South Lakeland – with effect from 1st June 2015. In the two regeneration areas of Kendal and Ulverston Canal Head all development is charged at a nil rate. In the remainder of the area residential (Planning Use Class C3 a, b and c) is charged at £50 save that the Croftlands Strategic Housing site is to be charged at £20; agricultural workers dwellings (which is a dwelling regarding which the occupancy is limited
(usually by condition) to those employed in agriculture) are charged at a nil rate; supermarkets and retail warehouses (with standard definitions) are charged at £150; hotels are nil rated; sheltered/retirement housing (within Planning Use Class C3 for older people and people requiring support with a reasonable degree of independence and no or limited care needs) is charged at £50; extra care housing (residential accommodation and care to people in need of care within Planning Use Class C2) is nil rated; and all other uses are also nil rated.

(88) Cannock Chase – with effect from 1st June 2015. Developments providing specialist retirement housing are rated at £0. All other market housing developments are rated at £40. A rate of £60 applies to developments comprising foodstores with floorspace less than 280 sqm and to out of centre retail park developments. All other types of retail developments are rated at £0. All other uses are zero-rated.

(89) Suffolk Coastal – with effect from 13th July 2015. For the purposes of residential developments the area has been designated between low value, mid value and high value as shown on the appended map. Residential developments (Planning Use Classes C3 and C4 excluding sheltered/retirement accommodation schemes which are defined as grouped (units, usually flats, specially designed for older people encompassing communal non-saleable facilities) are charged at £50 in low value areas; £90 in mid value areas; and £150 in high values areas. Any residential development of the strategic site at Adstral Park is nil rated. Wholly or mainly convenience retail is charged at £100 and wholly or mainly comparison retail is nil rated. All other uses are nil rated.

(90) Sheffield – with effect from 15th July 2015. Residential developments (C3 and C4 except retirement, extra care, sheltered housing and assisted living) charged at £0 in zones 1 and 2; £30 in zone 3; £50 in zone 4; and £80 in zone 5. All Retail (A1) is rated at £30 in City Centre Prime Retail Area and £60 in Meadowhall Prime Retail Area. Outside the two Prime Retail Areas any Major Retail Schemes comprising retail outlets of 3,000 sqm of gross internal floor or more including Superstores (shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit) and Retail Warehouses (large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), clothes, DIY items and other ranges of goods, catering mainly for carborne customers) are rated at £60. There is excluded from any residential development car parking provided for the use of the development. Hotels (C1) are rated at 340 and Student Accommodation at £30.

(91) Hounslow – with effect from 24th July 2015. Residential development (which includes all forms of residential use with the exception of student housing) is rated at £200 in Zone 1; £110 in Zone 2; and £70 in Zone 3 (which zones are shown on the attached map). Car parking for residential development will be charged at the same as residential development in the zone. Student housing is to be charged at the relevant rate for ‘All other uses’. Retail where the additional gross retailing space is over 280 sqm (Gross retailing space is the gross internal floor area including all ancillary floorspace but excluding covered parking that is ancillary to retail development and which is to be charged at the relevant rate for ‘All other uses’) is charged at the rate of £155. Healthcare, education and emergency service facilities re zero-rated. All other uses are charged at a rate of £20.
(92) **Southend-on-Sea** – with effect from 27th July 2015. Residential developments (C3 and C4) are rated at £20 in Zone 1; at £30 in Zone 2; at £60 in Zone 3. These zones are shown on the map in Figure 1: Residential Charging Zones. Extra care and retirement housing developments is rated at £20. This is housing within Class C3 which is purpose built or converted for sale to elderly people with a package of estate management and care services as necessary and which consists of grouped, self-contained accommodation with communal facilities. These premises often have emergency alarm systems and/or wardens. These properties would not provide the same level of care as residential care homes (Class C2) where residents do not live in self-contained accommodation. Supermarkets and superstores and retail warehousing developments with net retailing space of over 280 square metres are rated at £70. For these purposes (a) Supermarkets/superstores are shopping destinations in their own rights where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit: and (b) Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers. Development by a predominantly publicly funded or ‘not for profit’ organisation including medical and health services, social care, education, emergency services, waste facilities, community facilities, sport and leisure facilities only are rated at £0. A ‘not for profit organisation’ is an organisation that does not earn profits for its owners but conducts business for the benefit of the general public; all the money earned by or donated to the organisation is used in pursuing the organisation’s objectives. All other uses not cited above are rated at £10.

(93) **South Gloucester** – with effect from 1st August 2015. Residential developments are rated at £55 in the Communities of North & East Fringe of Bristol, Yate/Sodbury and Severn Beach save the rate is £100 for small sites in those areas that fall below the affordable housing threshold; £80 in the rest of South Gloucestershire (excepted the two areas specified immediately after as CPNN and EoHSNN) save the rate is £130 for small sites in that area that fall below the affordable housing threshold); £0 in Cribbs Patchway New Neighbourhood1 (CPNN) & East of Harry Stoke New Neighbourhood (EoHSNN) which also applies to all other types of development within these areas. The ‘Affordable housing threshold means 10 units or below in urban areas and 5 units or below in rural areas in accordance with Policy CS18 of the Core Strategy, applied taking account of the NPPG revision (ID: 236-012-20141128) dated 28/11/14’. The zones and areas are shown in the two Residential CIL Charging maps in the Schedule. Developments relating to Residential Care Homes (class C2) & Extra Care facilities (Class C2/C3) and sheltered retirement (class C3) are rated at £0. Developments relating to Agricultural Tied Houses are zero-rated. Office developments (class B1a) are rated at £30 in the Prime Locations area and £0 in the Non-Prime Locations area. Developments relating to R&D, Light Industrial, General Industrial, storage & distribution (classes B1b, B1c, B2 & B8) are zero-rated in both the Prime Locations area and the Non-Prime Locations area. Retail developments (classes A1-A5) (including retail warehouse clubs) are rated at £160 in the Prime Locations area and £120 in the Non-Prime Locations area. Hotel developments (class C1) are rated at £90 in the Prime Locations area and £0 in the Non-Prime Locations area. Student Accommodation developments are rated at £60 in the Prime Locations area and £0 in
Developments relating to the sale or display for sale of motor vehicles are rated at £90 in both the Prime Locations area and the Non-Prime Locations area. The prime Locations area is shown on the map in the Schedule headed CIL – Prime Locations non-residential uses. Developments relating to any of those uses in CPNN and EoHSNN are zero-rated. All other uses are rated at £10 save in CPNN and EoHSNN and save that infrastructure projects such as schools, libraries, clinics etc (Residential & Non Residential Institutions (classes C2, C2a, D1) including development by the emergency services for operational purposes) funded and owned by the public sector will be £Nil CIL.

(94) Hammersmith and Fulham – with effect from 1\textsuperscript{st} September 2015. Residential development including houses in multiple occupation (Planning Use Classes C3 and C4) are charged at nil, £100, £200 or £400 dependent on the zone (which is shown by an attached map). Office development is nil rated save for zone Central A where the rate is £80. The rate of £80 applies in most but not all zones to developments involving student accommodation; retail (Planning Use Classes A including retail clubs); health and fitness leisure centres; hostels; night clubs; launderettes; taxi businesses; amusement centres and casinos. All other uses are nil rated. The Old Oak and Park Royal development area has been taken out of the Council’s area and is not subject to the Council’s Charging Schedule.

(95) Daventry – with effect from 1\textsuperscript{st} September 2015 residential developments are charged at the rate of £50 in the Urban Zone including sites of urban extension; £65 with sites above affordable housing threshold (currently five or more units) in Residential Rural Zone; and £200 with sites below affordable housing threshold (currently less than five units) in Residential Rural Zone. All retail developments save for those in central zone are charged at £100. All other uses are zero-rated. Two plans are included in the charging schedule – Residential charging zones and Central Zone.

(96) Dudley – with effect from 1\textsuperscript{st} October 2015. All residential development is charged at the rate of £0 in Zone 1; £20 in Zone 2; £50 in Zone 3; £75 in Zone 4; and £100 in Zone 5. The Zones are not fixed but vary according to the type of development as shown on maps 1-4 attached to the Schedule. Map 1 relates to developments comprising C3 open market housing with less than 25% affordable housing. Map 2 to such developments but with 25% or more affordable housing. Map 3 relates developments comprising C3 retirement housing with less than 25% affordable housing and map 4 such developments but with 25% or more affordable housing. Comparison A1 retail over 100 sqm is rated at £0 in Merry Hill and Waterfront and £82 elsewhere. Convenience A1 retail over 100 sqm is rated at £82 all over the borough. A3-A5 retail (public house, restaurant and hot food) over 100 sqm is rated at £67.50 all over the borough. All other types of development are zero rated.

(97) Worthing – with effect from 1\textsuperscript{st} October 2015. Residential developments (C3) are rated at £100 in Zone 1 and zero-rated in Zone 2 (which zones are shown on the map in Appendix 1). Retail development (A1-A5) excluding ancillary car parking is rated at £150 in both zones.

(98) Gedling – with effect from 16\textsuperscript{th} October 2015. Residential development is rated at £70, in zone 3; £45 in zone 2; and £0 in zone 1. Retail (A1-A5) is rated at £60 borough wide. All other uses are rated at £0.
(99) Kingston upon Thames – with effect from 1st November 2015 residential developments are charged at £3210 in Zone 1; £130 in Zone 2; £85 in Zone 3; and £50 in Zone 4. Care Homes and Retirement housing developments are charged at £50 in Zones 1 and 2 and £20 in Zones 3 and 4. Extra care housing development is charged at £20. Student Housing development is charged at £220. Retail Convenience based supermarkets and superstores and retail warehousing (net retail space >280sqm) are charged at £200. Superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit. Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers. All other retail (A1-A5) developments are charged at £200 in Kingston Town Centre Primary Shopping Area, including Extension to Primary Shopping Area and £20 in the rest of the borough. Public Services and community facilities are zero-rated. Public Service and Community Facilities are defined as public service includes development by the emergency services for operational purposes; development used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institution of higher education; and development used wholly or mainly for the provision of any medical or health services, community halls, community arts centres, theatres, museums and libraries where development is for the purposes of delivering a public service or community facility. All other uses are charged at £20. In Appendix A is a map of Kingston’s Residential Charging Zones. Appendix B is a map of Kingston’s Primary Shopping Area.

(100) Lewes – with effect from 1st December 2015. Residential development is rated at £90 in the Low Zone (south of South Downs National Park) and £150 in the High Zone (north of SDNP). Residential Institution is rated at £0. Retail is rated at £100. All other types of development (including industrial, office, hotel) are zero rated.

(101) Selby – with effect from 1st January 2016. Residential developments for private market houses excluding apartments are rated at £10 in Low value areas; at £35 in Moderate value areas; and at £50 in High value areas. These areas are shown on the annexed map for CIL Residential Charging Zones. Supermarket development is rated at £110. For these purposes supermarkets are large convenience-led stores where the majority of custom is from people doing their main weekly food shop. As such, they provide a very wide range of convenience goods, often along with some element of comparison goods. In addition to this, the key characteristics of the way a supermarket is used include: (i) the area used for the sale of goods will generally be above 500 sq. m; (ii) the majority of customers will use a trolley to gather a large number of products; (iii) the majority of customers will access the store by car, using the large adjacent car parks provided; (iv) servicing is generally undertaken via a dedicated service area, rather than from the street. Retail warehouse developments are rated at £60. For these purposes retail warehouses are usually large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods. They can be stand-alone units, but are also often developed as part of retail parks. In either case, they are usually located outside of existing town centres and cater mainly for car-borne customers. As such, they usually have large adjacent, dedicated surface parking. Public/Institutional Facilities as follows: education, health, community and emergency services are rated at £0. All other chargeable development (incl. apartments are rated at £0.
(102) **Birmingham** – with effect from 4th January 2016. Retail convenience (which can also include non-food floorspace as part of the overall mix of the unit) greater than 2,700 sqm rated at £260 if area less then rated at £0. Residential (which will not include C2) in the three High value zones is rated at £69 and elsewhere £0. Student accommodation in all areas except Green Belt Development are rated at £69 and if in Green Belt development is rated at £0. Hotel in the City centre is rated at £27 and elsewhere £0. All other types of development (including retail (including retail units selling goods not bough on a frequent basis), industrial/employment, offices, leisure, education, health and C2) is rated at £0.

(103) **Gosport** – with effect from 1st February 2016. In Gosport Waterfront site (shown on plan attached to schedule) all residential developments are rated at £40; retail warehouses and supermarkets are rated at £60; and other non-residential uses are nil rated. Outside the Gosport Waterfront site retail warehouses (defined as a large store, typically on one level, that specialises in the sale of bulky goods such as carpets, furniture, electrical goods or DIY items) and supermarkets (a simple definition of a Supermarket for this purpose is a food based, self-service, retail unit greater than 280 square metres and governed by the Sunday Trading Act 1994) are rated at £60. Residential developments (covering any development within C3 other than public sector Sheltered Housing, public sector Extra Care facilities or other public sector specialist housing providing care to meet the needs of older people or adults with disabilities) with less than 10 dwellings are charged at £60 in zone 1; £100 in zones 2 and 3. If such residential development has 10 or more dwellings then the rates are £0 zone 1; £80 zone 2; and £100 zone 3. All other non-residential development are nil rated.

(104) **Chichester** - with effect from 1st February 2016 residential developments are charged at the rate of £120 South of the National Park and £200 North of the National Park. Wholly or mainly convenience retail developments are charged at £125 and wholly or mainly comparison retail development is charged at £20. Purpose built student housing is charged at £30. All other developments are zero-rated.

(105) **Bournemouth** – with effect from 1st March 2016. Residential development outside the Town Centre Area Action Plan area charged at rate of £70 and nil in the Town Centre AAP area. Both include (i) retirement housing which are also known as sheltered housing and are defined as groups of dwellings, often flats and bungalows, that provide independent, self-contained homes. There is likely to be some element of communal facilities, such as a lounge or warden; and (ii) extra care housing also known as assisted living. This is housing with care where people live independently in their own flats but have access to 24 hour care and support. Varying amounts of care and support can be offered, normally as part of a care package with additional fees to pay for the services and facilities. These schemes will usually have their own staff and may provide one or more meals a day. Student accommodation is rated at £40. Comparison Retail (a shop or store selling mainly goods which are not everyday essential items. Such items include clothing, footwear, household and recreational goods) outside the Town Centre AAP area is rated at £250 and £0 in the Town Centre APP area. Large Scale Convenience Retail/Supermarkets (usually over 280 sq m net retail floorspace, which exceeds the Sunday Trading Act threshold. Selling mainly everyday essential items including food, drinks, newspapers/magazines and confectionery. Provide for weekly food shopping) are rated at £250 inside and outside the Town Centre AAP area. Small
scale Convenience Retail is rated at £134 both inside and outside the Town Centre APP area. Small scale Convenience Retail is defined as between 100 sq m and 280 sq m net retail floorspace, which is less than the Sunday Trading Act threshold. Selling mainly everyday essential items including food, drinks, newspapers / magazines and confectionery. Provide for “top-up” food shopping. Stores which sell a mixture of convenience and comparison goods should be categorised according to their main use, which is taken to mean more than 50% comparison or convenience retail. Where no particular form of retail use is conditioned, the Local Planning Authority will assume that the ‘intended use for the CIL charging purposes will be mainly convenience retail and thus the convenience retail rate will be applied, as an open ended permission would allow this. All other types of development (including offices, light industrial/warehousing, hotels, mixed leisure, public service and community facilities) are rated at £0.

(106) Rutland – with effect from 1st March 2016. Residential development (which means new dwellings/flats. It does not include any other developments within Class C1, C2 or C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) such as residential care homes, Extra Care housing and other residential institutions) is rated at £100. Developments involving Sheltered Housing and Extra Care Housing are rated at nil. Developments involving distribution (B8) are rated at £10. Developments of Food Retail Supermarkets are rated at £150. The Schedule defines Food Retail (Supermarkets) as “shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit. Details of this approach were set out by Geoff Salter in his report following his examination of the Wycombe DC CIL Charging Schedule (September 2012).” Developments of Retail Warehouses are rated at £75. Retail warehouses are defined as “large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods) DIY items and other ranges of goods catering for mainly car-borne customers”.

(107) Ryedale – with effect from 1st March 2016. Residential developments comprising Private market houses (excl. apartments) are rated at £45 in low value areas and £85 in all other areas. The areas are shown on the map in the Schedule. Supermarket developments are rated at £120 and Retail Warehouse developments at £60. For these purposes (a) Supermarkets are large convenience-led stores where the majority of custom is from people doing their main weekly food shop. As such, they provide a very wide range of convenience goods, often along with some element of comparison goods. In addition to this, the key characteristics of the way a supermarket is used include: (i) the area used for the sale of goods will generally be above 500 sq. m.; (ii) the majority of customers will use a trolley to gather a large number of products; (iii) the majority of customers will access the store by car, using the large adjacent car parks provided; and (iv) servicing is undertaken via a dedicated service area, rather than from the street; (b) Retail Warehouses – are usually large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods. They can be stand-alone units, but are also often developed as part of retail parks. In either case, they are usually located outside of existing town centres and cater mainly for car-borne customers. As such, they usually have large adjacent, dedicated surface parking. Public/Institutional facilities as follows: education, health, community and emergency services are rated at £0 as are all other chargeable development (incl. apartments).
(108) **Reigate & Banstead** – with effect from 1st April 2016. Residential development (C3) rated at nil in Charge Zone 1; at £140 in Charge Zone 2; at £80 in Charge Zone: at £180 in Charge Zone 4; and at £200 in Charge Zone 5 £200. These zones are shown on the Charging Zones for residential development: Overview map annexed to the Schedule. Retail development which is wholly or predominantly (a development is considered to be predominantly for the sale of convenience goods where more than 50% of the net sales area is given over to the sale of such goods) for the sale of convenience goods (defined as everyday essential items including but not limited to food, alcoholic and non-alcoholic beverages, confectionery, tobacco, newspapers and periodicals and non durable household goods) including superstores and supermarkets, throughout the borough are rated at £120. Superstores/supermarkets are defined as self-service stores which provide either weekly or top-up shopping needs and which sell mainly convenience good but can also include a proportion non-food, comparison floorspace as part of the mix. All other development throughout the borough are rated at Nil.

(109) **Enfield** – with effect from 1st April 2016. Residential rates (including all C3 Residential Use Class) are charged at nil (Meridian Water Masterplan area); £40 (Eastern Corridor); £60 Enfield Town and south of A406 and A110); £120 (remainder). The areas are marked on an attached plan. Retail (A1), financial and professional services including betting shops (A2), restaurants and cafes (A3), drinking establishments (A4) and hot food takeaways (A5) are charged at £60. All other uses including offices, industrial, hotels, leisure facilities, community and other uses are charged at £0.

(110) **Wealden** – with effect from 1st April 2016 and excluding the area covered by the South Downs National Park Authority. Residential developments are charged at £200 in higher band and £150 in the lower band (which bands are shown on map attached to schedule). Retail which is wholly or mainly convenience retail is charged at £100 whilst wholly or mainly comparison retail is charged at £20. All other developments are nil rated.

(111) **Wakefield** – with effect from 1st April 2016. Residential (C3) developments are rated at £55 in High zone; £20 in Medium zone; and zero-rated in Low zone. Retail Warehouse (A1) (defined as large stores in edge-of-centre and out-of-centre locations specialising in the sale of household goods (such as carpets, furniture and electrical goods), clothes, DIY items and other ranges of goods, catering mainly for car-borne customers) developments are rated at £89. Large supermarkets greater in area than or equal to 2,000 sqm are rated at £103. All other developments including light industrial (B1), office (B1), general industrial (B2), storage and distribution (B8), retail other than the two specifically rated retail including restaurants and bars (A3 and A4) and takeaways (A5), hotel (C1), care home (C2), cinema and commercial leisure (D2).

(112) **Kings Lynn and West Norfolk** – with effect from 1st April 2016. Residential developments are rated at £60 in North East and East areas of the Borough (East of the Great Ouse and north of A1122/A134); at £40 in South and West of the Borough (West of the Great Ouse and south of A1122/A134, including Downham Market); at £0 in King’s Lynn unparished area. Sheltered / Retirement Housing (C3) is rated at £0 in all areas. Strategic sites which are 150 or more units at (i) Boal Quay, King’s Lynn (ii)
South of Parkway, King’s Lynn (iii) Bankside – West Lynn (iv) West Winch, strategic growth area (v) East of Lynn Rd, Downham Market (vi) Wisbech Fringe, Walsoken (all others should have the rate that applies to the area in which they lie). Supermarket developments including discount supermarkets are rated at £100 borough wide. Retail warehouse developments are rated at £100 borough wide. For these purposes (a) superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit; and (b) retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods) DIY items and other ranges of goods catering for mainly car-borne customers. All other retail developments and all other developments are zero-rated.

(113) South Northamptonshire – with effect from 1st April 2016. Residential developments are rated at £50 in Residential Urban Zone and SUEs; £100 in Residential Rural Zone (sites at or above affordable housing threshold); £200 in Residential Rural Zone (sites below affordable housing threshold). These Zones are shown on the Residential Charging Zones map. Retail development is rated at £100. All other uses are rated at £0.

(114) Northampton – with effect from 1st April 2016. Residential developments are rated at £50 both in SUEs and the remainder of the Borough. These areas are shown in the Residential Charging map in the Schedule. Retail development is rated at £100 in the Borough excluding the Central Zone as shown on the Central Zone (nil retail charging) map in the Schedule. All other uses are zero-rated.

(115) Chesterfield – with effect from 1st April 2016. Retail development (A1-A5) borough wide save for the Staveley Corridor is rated at £80 and in the Staveley Corridor at £0. All other non-residential (residential being C3) are rated at £0 borough wide including the Staveley Corridor. Residential development (C3) is rated at £0 in the Staveley Corridor; £20 in the Low zone; £50 in the Medium zone; and £80 in the High zone. The charging zones are shown in the two annexed maps for Commercial Developments and Residential Developments.

(116) South Oxfordshire – with effect from 1st April 2016 residential developments are charged at £150 in Zone 1 District; £85 in Zone 2 Didcot and Berinsfield; £0 in the strategic sites Didcot North-East, Ladygrove East and Wallingford Site B; and £0 in rural exception sites. Retirement housing including extra care incorporating independent living (C3) (which includes all types of housing designed for older people which provides for continued independent living which is self-contained such as, but not limited to, Extra Care Housing, Enhanced Sheltered Housing in independent living within a Care Village) and care home and residential institutions (C2) are zero-rated. As regards student accommodation: where some of the living accommodation is of communal nature e.g. shared living areas and/or kitchens. Student accommodation which is self-contained (e.g. studio flats) will be charged CIL at the relevant residential rate, for example, where such accommodation is provided to meet the University’s disability requirement. Where schemes are mixed and include both types of accommodation the nil CIL charge applies only to the floorspace of the units with communal accommodation including associated communal areas. Floorspace of self-contained units including associated communal areas will be charged CIL. Office development including research and development is charged at £0. Supermarkets,
superstores and retail warehouse developments are charged at £70. Retail warehouses: are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers. Superstores and supermarkets: are shopping destinations in their own right, selling mainly food or nonfood goods, which normally have a dedicated car park. Retail warehouses and supermarkets can be defined as retail stores that exceed 280 sqm and are classified as larger stores under the Sunday Trading Act 1994. Other retail development, hotels and other uses are all charged at £0. The Charging Zones are shown on an attached map and on a separate map the three strategic sites.

(117) Rother – with effect from 4th April 2016. Residential developments are rated at £200 in Zone 1 (Battle, Rural North and West); £135 in Zone 2 (Rye, Hastings Fringes and Rural East); £50 in Zone 3(a) (Bexhill – Urban); £170 in Zone 3(b) (Bexhill – Rural); £75 in Zone 3(c) (Bexhill–Strategic urban extensions). Sheltered/Retirement Homes developments (C3) in Zone 1 rated at £140 and in Zones 2 and 3 are treated as dwellings. Extra Care Housing developments rated throughout District at £25. The three Zones are shown on the Residential CIL Charging Zones Map and the subdivision of Zone 3 is shown on the Bexhill Inset Zones 3a, 3b and 3c. Convenience retail development which is in centre is rated at £100. Convenience retail development which is out of centre is rated at £120. Comparison retail development which is out of centre is rated at £250. The in centre and out of centre areas are shown on the Retail CIL Charging Zones maps. All other forms of development are rated at £0.

(118) East Hampshire – with effect from 8th April 2016. Residential developments other than class C2, C2A uses, Extra Care Housing and C3A sheltered housing (housing in self-contained houses and flats with communal facilities and an age restriction) are rated at £65 in Whitehill and Bordon (excluding Regeneration Project CIL Zone); £110 in Southern parishes of Clanfield, Horndean and Rowlands Castle; £150 in Alton CIL Zone Location; and £180 in Northern parishes (excluding Whitehill/Bordon and Alton). The charging areas are shown on the maps in the Schedule. Developments for Residential C3A sheltered housing in self-contained houses and flats with communal facilities and an age restriction are rated at £0 in the Whitehill and Bordon Regeneration Project CIL Zone and £40 in rest of the Charging Area. Hotel developments are rated in all areas (excluding the Whitehill & Bordon Regeneration Project Zone) at £70 and in the Whitehill & Bordon Regeneration Project Zone at £0. Retail developments (A1-A5) in all areas (excluding the Whitehill and Bordon Regeneration Project CIL Zone) are rated at £100 and in the Whitehill and Bordon Regeneration Project CIL Zone are rated at £0. Developments concerning Offices, Industrial and warehousing, Student accommodation, all class C2, C2A, C3B, C3C and extra care housing use, and any other development are zero-rat.( ) Babergh – with effect from 11th April 2016. Residential developments (C3) excluding specialist older persons housing are rated at £90 in the Low Zone if the development comprises one or two dwellings; £50 in the Low Zone if the development comprises three or more dwellings; £115 in the High Zone; and £0 in the Strategic Sites (which Zones and Strategic Sites are set out in the maps in paragraph 6 of the Schedule). Specialist older persons housing describes developments that comprise self-contained homes with design features and support services available to enable self-care and independent living. Sometimes also known as sheltered/retirement housing and extra care accommodation. These are zero-rated. Wholly or mainly
Convenience retail developments are rated at £100 in all areas. Where no particular form of retail use is conditioned, the LPA will assume that the ‘intended use’ for the CIL charging purposes may encompass “wholly or mainly” convenience retail as an open ended permission would allow this. All other uses are zero-rated.

(119) Mid Suffolk - with effect from 11th April 2016. Residential developments (C3) excluding specialist older persons housing are rated at £75 in the Low Zone if the development comprises between one to fourteen dwellings; £50 in the Low Zone if the development comprises fifteen or more dwellings; £115 in the High Zone; and £0 in the Strategic Sites (which Zones and Strategic Sites are set out in the maps in paragraph 6 of the Schedule). Specialist older persons housing describes developments that comprise self-contained homes with design features and support services available to enable self-care and independent living. Sometimes also known as sheltered/retirement housing and extra care accommodation. These are zero-rated. Wholly or mainly Convenience retail developments are rated at £100 in all areas. Where no particular form of retail use is conditioned, the LPA will assume that the ‘intended use’ for the CIL charging purposes may encompass “wholly or mainly” convenience retail as an open ended permission would allow this. All other uses are zero-rated.

(120) Solihull - with effect from 12th April 2016. Residential (C3) development is rated at £75 in the mature suburbs; £150 in the rural area; and zero-rated in Blythe Valley Park (these are shown by the maps in the Schedule). Residential institutions (C3) (excluding hospitals and training centres) are zero-rated in the Blythe Valley Park and elsewhere at £25. Supermarkets/convenience stores of greater than 550 sqm are rated £300 in the rural areas, mature suburbs including Solihull and Shirley Town Centres whilst zero-rated in North Solihull. Convenience stores with less than 550 sqm are rated at £150 in the rural areas, mature suburbs including Solihull and Shirley Town Centres whilst zero-rated in North Solihull. Other retail formats are rated £50 in the mature suburbs and rural areas; £25 in Solihull and Shirley Town Centres; and zero-rated in North Solihull. Car dealerships (sui generis) are rated £75 save for zero-rating in North Solihull. In all areas financial and professional services (A2) are rated £25; restaurants and cafes (A3), drinking establishments (A4) and hot food takeaways (A5) are rated £100; hotels are rated £25; and all other uses are zero-rated. In the event of a mix use development then unless otherwise specified (e.g. by condition which sets out the floorspace in each category) the higher CIL will be charged.

(121) Westminster – with effect from 1st May 2016. Residential developments (including all residential C use classes) are rated at £550 in the Prime Residential Area; £400 in the Residential Core Area; and £200 in the Fringe Residential Area (which areas are shown on the Residential Zones charging map in Appendix A to the Schedule). All commercial developments (including offices, hotels, nightclubs and casinos, and retail (all ‘A’ use classes and sui generis retail)) are rated at £200 in the Commercial Prime Area; £150 in the Commercial Core Area; and £50 in the Fringe Commercial Area (which areas are shown on the Commercial Zones Charging map in Appendix A). All other uses are zero-rated.

(122) Lichfield – with effect from 13th June 2016. Market houses within Strategic Development Allocations (SDAs) and the Broad Development Location (BDL) defined in the Local Plan Strategy 2008-2029 adopted 17 February 2015 (refer to Figure 1 and inset maps Figures 2 - 9) charged at £14. For the purposes of this schedule “Private
“Market Housing” is defined as Houses that are developed for sale or for private rent on the open market at full value. As such ‘affordable housing’ of any type is excluded from this definition but residential apartments are charged at £0. Apartments are defined as separate and self-contained dwellings within the same building. They generally have shared access from the street and communal areas from which individual dwellings are accessed. Apartment buildings have dwellings on more than one floor and are subdivided horizontally by floor. Market Houses in the lower value zone (see figure 1) are charged at £325 and in the higher value zone are charged at £55. A Supermarket is charged at £160 and defined as Supermarkets are large convenience-led stores where the majority of custom is from people doing their main weekly food shop. As such they provide a very wide range of convenience goods, often along with some element of comparison goods. In addition to this the key characteristics of the way a supermarket is used include: (i) The area used for the sale of goods will generally be above 500 sq. m; (ii) The majority of customers will use a trolley to gather a large number of products (iii) The majority of customers will access the store by car, using the large adjacent car parks provided; and (iv) Servicing is generally undertaken via a dedicated service area, rather than from the street. Retail Warehouses are charged at £70 and defined as usually large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods. They can be stand-alone units but are also often developed as part of retail parks. In either case, they are usually located outside of existing town centres and cater mainly for car-borne customers. As such, they usually have large adjacent, dedicated surface parking. Neighbourhood Convenience Retail is charged at £20 and is defined as neighbourhood convenience stores are used primarily by customers undertaking ‘top-up’ shopping. They sell a limited range of convenience goods and usually do not sell comparison goods. The key characteristics of their use include: (i) Trading areas of less than 500 sq. m; (ii) The majority of customers will buy only a small number of items that can be carried around the store by hand or in a small basket; (iii) The majority of customers will access the store on foot and as such there is usually little or no dedicated parking; and (iv) Servicing is often undertaken from the street, rather than dedicated service areas. All other developments including residential apartments are charged at £0.

(123) Test Valley – with effect from 1st July 2016. Residential developments are rated at £175 in zone 1; at £140 in zone 2; at £105 in zone 3; at £70 in zone 4; and at £0 in the Strategic sites. The zones are described in table 1 in the Schedule and on the maps in Appendix 1 showing the residential charging zones and the maps in Appendix 2 showing the six strategic sites. Extra care accommodation is rated at £0 in all zones and strategic sites. For these purposes a development of one and two bed apartments, for rent and/or for sale, grouped together with communal facilities, that through the provision of on site care and support services 24 hours a day and 7 days a week offers a viable alternative to a residential care home for many vulnerable older people and vulnerable adults with particular care needs, enabling them to remain a part of and active within the wider community. Developments concerning retail supermarkets and superstores and retail warehouses are rated at £180 in all zones and £0 in the strategic sites. For these purposes (a) retail superstores/supermarkets over 280 square metres are shopping destinations in their own right meeting weekly food shopping needs and often includes non-food floor space as part of the overall mix of the unit; and (b) retail warehouses are large stores over 280 square metres specialising in the sale of household goods (such as carpets, furniture and electrical items), DIY items and other range of goods catering mainly for car-borne customers. All other retail developments are rated
at £0 in all zones and strategic sites. All developments concerning Industrial, Office, Distribution, Hotel, Community use including non-residential institution, Retirement living housing and all other uses are zero-rated.

(124) West Dorset (part of Dorset Council) – with effect from 18th July 2016. Residential developments (C3) are rated at £100. For these purposes “dwellings” include houses and flats and dwellings used as second homes, but exclude affordable housing. Dwellings with restricted holiday use are also rated at £100. These include holiday lets i.e. residential houses which are restricted to holiday use. The definition excludes second homes, hotels, guesthouses and some B&Bs, and more temporary tourist accommodation such as caravans and tents. Essential rural workers’ dwellings are rated at £0. This is housing located outside defined development boundaries for full time workers in rural businesses which require essential 24 hour supervision. All other developments are zero-rated. All developments on the following Strategic Site Allocations are zero-rated namely: Littlemoor Urban Extension – LITT1  Chickerell Urban Extension – CHIC2 Land at Crossways – CRS1 Land at Vearse Farm – BRID 1. There is a map on the Dorset council website showing the areas.

(125) Weymouth Portland (part of Dorset Council) - with effect from 18th July 2016. Residential developments (C3) are rated at £80 in Portland and £93 in all other areas. For these purposes “dwellings” include houses and flats and dwellings used as second homes, but exclude affordable housing. Dwellings with restricted holiday use are rated at £80 in Portland and £93 in all other areas. These include holiday lets i.e. residential houses which are restricted to holiday use. The definition excludes second homes, hotels, guesthouses and some B&Bs, and more temporary tourist accommodation such as caravans and tents. Essential rural workers’ dwellings are rated at £0. This is housing located outside defined development boundaries for full time workers in rural businesses which require essential 24 hour supervision. All other developments are zero-rated. All developments on the following Strategic Site Allocations are zero-rated namely: Littlemoor Urban Extension – LITT1  Chickerell Urban Extension – CHIC2 Land at Crossways – CRS1 Land at Vearse Farm – BRID 1. There is a map on the Dorset council website showing the areas.

(126) Shepway – with effect from 1st August 2016. Residential developments (C3 and C4 including sheltered accommodation) are rated at £0 in Zone A; £50 in Zone B; £100 in Zone C; £125 in Zone D (zones A, B, C, and D on maps in Appendices 1 and 2); £0 in four Strategic and Key Development Sites (see appendix 4). All comparison and convenience retail developments and other development akin to retail rated at £0 in Folkestone Town Centre Area (shown in Appendix 3). All developments (A, B, C and D uses) rated at £0 in four Strategic & Key Development Sites In remainder of the district supermarkets, superstores and retail warehousing with net retail selling space over 280 sqm rated at £100. For these purposes (a) superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit and (b) Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers. Also in the remainder of the district other large scale development akin to retail (including sui generis uses akin to retail including petrol filling stations; selling and/or displaying motor vehicles; and retail warehouse
clubs) which has net retail selling space of over 280 sqm is rated at £100. In the remainder of the district other retail development and developments akin to retail with net selling space up to 280 sqm are rated at £0. All other developments not addressed by these tables (B, C1, C2 and D uses) are zero-rated district wide.

(127) Crawley – with effect from 17th August 2016. The Airport Zone is exempt from CIL (as shown on map in Appendix A). Residential developments are rated at £100. General retail developments (A1-A5) other than Food Supermarkets are rated at £50 save that ancillary commercial car parking structures are not subject to a CIL charge. Developments involving Food Supermarkets are rated at £100 if less than 3000 sqm and £150 if 3000 sqm plus. All other uses are zero-rated.

(128) East Devon – with effect from 1st September 2016. Residential developments are rated at £80 in Axminster, Cranbrook (“existing” town), Exmouth, Honiton, Ottery St Mary, Seaton and edge of Exeter allocation sites (defined by new Builtup Area Boundaries and proposed Strategic Allocations); at £68 in Cranbrook expansion areas; and at £125 in Sidmouth, Coast, and Rural (the rest of East Devon). Retail development is rated at £0 for Inside Town Centre Shopping Areas (as defined in the New Local Plan); at £0 for Cranbrook (as defined by the “existing town” plus expansion areas); and £150 for rest of East Devon. The areas are shown in Part B1 of the Schedule and the interactive map on the authority’s website. All other non-residential uses are rated at £0.

(129) Windsor & Maidenhead – with effect from 1st September 2016. Residential developments (including retirement (C3) and extra care homes (including C2, sheltered housing, retirement housing, extra care homes and residential care accommodation) are rated at £0 in Maidenhead town centre (AAP area); at £100 in Maidenhead urban area; and at £240 in the rest of the borough. Retail warehouse developments are rated at £100 across the borough. For these purposes retail warehouses are large stores specialising in the sale of comparison goods, DIY items and other ranges of goods catering mainly for car borne customers. Developments comprising all other retail uses, office use and all other uses are rated at £0 across the borough.

(130) Gateshead – with effect from 1st January 2017. Dwellings (whether houses or flats) including sheltered housing (Use class C3) charged at £60 in Residential Zone A; £30 in Residential Zone B; £0 in Residential Zone C. The three Commercial Zones do not have a CIL rate for Dwellings. The Zones are marked on attached plans. Hotels (C1) are £0 in Commercial Zones 1 and 3 and £40 in Commercial Zone 2. In the Residential Zones hotels are not CIL rated. Small retail (A1) units equal to or less than 280 sqm net floorspace are charged at £0 in Commercial Zones 1 and 3 and £30 in Commercial Zone 2 but not CIL rated in the Residential Zones. Supermarkets (A1) with greater than 280 sqm net floorspace are charged at £10 in the Commercial Zones and not CIL rated in the Residential Zones. A supermarket is defined as “convenience-led stores selling mainly everyday essential items, including food, drinks, newspapers/magazines and confectionary, and where it is intended to utilise less than 50% of the gross retail floor area for the sale of comparison goods and where, depending on scale, weekly food shopping needs are met. In addition, the area used for the sale of goods will generally be above that applied for the purposes of the Sunday Trading Act of 280sq. m.” Retail warehousing (A1) with greater than 280 sqm net floorspace is charged at £50 in Commercial Zones 2 and 3 and £0 in Commercial Zone 1 and all Residential Zones. All other developments which includes Offices, Use Class B (business, industry,
storage and distribution); Shared/ Student Accommodation (C3, C4, Sui Generis) and Extra Care accommodation (Use Class C2 are charged at £0.

(131) Christchurch – with effect from 3rd January 2017. Residential developments are rated at £70 if comprising more than ten units; £0 if comprise 40 or more dwellings where on-site SANG is required by the Local Planning Authority; £150 if comprises 10 units or less or less than 1000 sqm floorspace; £0 if on the following New Neighbourhood sites (allocated in the Core Strategy) which provide their own Suitable Natural Alternative Green Space (SANG) as mitigation for European sites: Roeshot Hill/Christchurch Urban Extension (CN1)-950 dwellings Land South of Burton Village (CN2) - 45 Dwellings. Developments for Extra Care Housing and housing for Vulnerable People (developments that comprise self-contained homes with design features and support services available to enable self-care and independent living) are rated at £0. The areas are shown on the maps at the end of para. 5 of the Schedule. Care home developments are rated at £40. Convenience retail development is rated at £100. For these purposes a convenience unit is a shop or store where the planning permission allows selling ‘wholly or mainly’ everyday essential items, including food, drinks, newspapers/magazines and confectionery. The term 'wholly or mainly' has a widely understood legal meaning (effectively more than 50%). Where no particular form of retail use is conditioned, the council will assume that the ‘intended use’ for CIL charging purposes may encompass “wholly or mainly” convenience retail, since this is what the permission would allow, and that CIL will be charged accordingly. Developments concerning Hotels, Offices, Light Industrial/Warehousing, Comparison Retail (a shop or store selling 'wholly or mainly' (see above) goods which are not everyday essential items. Such items include clothing, footwear, household and recreational goods), Public service and Community Facilities and all other uses not covered are zero-rated.

(132) East Dorset – with effect from 3rd January 2017. Residential developments are rated at £70 if comprising more than ten units; £0 if comprise 40 or more dwellings where on-site SANG is required by the Local Planning Authority; £150 if comprises 10 units or less or less than 1000 sqm floorspace; £0 if on the Residential on the following New Neighbourhood sites (allocated in the Core Strategy) which provide their own Suitable Alternative Natural Green Space (SANG) as mitigation for European sites Cuthbury Allotments and St. Margaret's Hill (WMC5)-220 dwellings Cranborne Road, North Wimborne (WMC7) - 600 dwellings South of Leigh Road (WMC8) - 350 dwellings Lockyers School and land North of Corfe Mullen (CM1) - 250 dwellings Holmwood House New Neighbourhood (FWP3) - 150 dwellings (resolution to grant planning permission) East of New Road, West Parley (FWP6) - 320 dwellings West of New Road, West Parley (FWP7) - 150 dwellings North Western Verwood New Neighbourhood (VTSW4) - 230 dwellings North Eastern Verwood New Neighbourhood (VTSW5) - 65 (resolution to grant planning permission) Stone Lane, Wimborne (WMC6) - 90 dwellings. Developments for Extra Care Housing and housing for Vulnerable People (developments that comprise self-contained homes with design features and support services available to enable self-care and independent living) are rated at £0. The areas are shown on the maps at the end of para. 5 of the Schedule. Care home developments are rated at £40. Convenience retail development is rated at £100. For these purposes a convenience unit is a shop or store where the planning permission allows selling 'wholly or mainly' everyday essential items, including food, drinks, newspapers/magazines and confectionery. The term 'wholly or mainly' has a widely
understood legal meaning (effectively more than 50%). Where no particular form of retail use is conditioned, the council will assume that the ‘intended use’ for CIL charging purposes may encompass “wholly or mainly” convenience retail, since this is what the permission would allow, and that CIL will be charged accordingly. Developments concerning Hotels, Offices, Light Industrial/Warehousing, Comparison Retail (a shop or store selling 'wholly or mainly' (see above) goods which are not everyday essential items. Such items include clothing, footwear, household and recreational goods), Public service and Community Facilities and all other uses not covered are zero-rated.

(133) Stroud – with effect from 1st April 2017. Residential developments (excluding older persons homes) are rated at £80 save in Strategic Sites identified in the Local Plan within the Stroud Valleys area which are rated at £0. The areas are shown by an interactive map on the authority’s website and Annex 2 to the Schedule. Supermarkets and Retail warehouses are rated at £75. For these purposes (a) supermarkets are shopping destinations in their own right where weekly food shopping needs are met and can include non-food floorspace as part of the overall mix of the unit; and (b) retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers.

(134) South Downs National Park – with effect from 1st April 2017. Residential developments are rated at £100 in Zone 1 (Petersfield, Lewes, Petworth, Midhurst) and £200 in Zone 2 (the remainder of the area). ‘Residential’ includes all development within Use Class C3 of the relevant Order. For these purposes ‘Residential’ also includes agricultural workers dwellings and holiday lets as these uses are considered to be normal homes for the purposes of calculating CIL and any restrictive occupancy conditions do not provide exemption from CIL liability. However, they may be exempt from CIL liability if they are self-built or converted from an existing building. The Zones are shown on a map at the end of the Schedule. Large format retail developments are rated at £120. For these purposes ‘Large format retail’ means convenience-based supermarkets and superstores and retail warehouses with a net retail selling space of over 280m2 providing shopping destinations in their own right where weekly food shopping needs are met and can include non-food floorspace as part of the overall mix. Also retail outlets specialising in household goods (such as carpets, furniture and electrical), DIY items and other ranges of goods, catering for mainly car-borne customers. All other developments are zero-rated.

(135) South Somerset – with effect from 3rd April 2017. Residential developments in the Yeovil Sustainable Urban Extensions (as shown in Appendix 1 to the Schedule) and the Chard Eastern Development Area (as shown in Appendix 2 to the Schedule) are rated at £0. All other residential developments district wide (as shown in Appendix 3) except those in the specified areas are rated at £40. Developments involving convenience-based Supermarkets and Superstores, and Retail Warehouse Parks (outside of defined Town Centres and Primary Shopping Areas and excluding the specified areas in Appendices 1 and 2 and those included in Appendices 4-15) are rated at £100. For these purposes (a) supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix. The majority of custom at supermarkets arrives by car, using the large adjacent car parks provided; (b) superstores are self-service
stores selling mainly food, or food and non-food goods, with supporting car parking; (c) retail warehouses are large stores specialising in the sale of comparison and household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering mainly for car-borne customers; (d) Town Centres are as defined through Policy EP11 of the South Somerset Local Plan (2006 – 2028); and (e) Primary Shopping Areas in Yeovil and Chard as defined through Policy EP11 in the South Somerset Local Plan (2006 – 2028). All other uses are zero-rated.

(136) Torbay – with effect from 1st June 2017. Residential developments with residential charging zones in maps 1-39 in para. 2.3 of the Schedule:

<table>
<thead>
<tr>
<th>Zone</th>
<th>Number of dwellings and charge (£ per sq m)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1-3 dwellings</td>
</tr>
<tr>
<td>1.</td>
<td>Built up areas with lower development viability</td>
</tr>
<tr>
<td>2.</td>
<td>Elsewhere in the built up area</td>
</tr>
<tr>
<td>3.</td>
<td>Future Growth Areas, plus outside the built up area, plus Watcombe Heights, Ilsham Valley, Torquay, and Bascombe Road, Churston.</td>
</tr>
</tbody>
</table>

Residential includes dwellings within Use Classes C3 and C4 and sui generis Houses in Multiple Occupation (HMOs). It includes sheltered housing, where extra care is not provided. Extra care housing and student halls of residence will be zero rated for CIL, so long as secured for such use through condition or legal agreement. For these purposes extra care housing will be taken to mean: Housing designed with the needs of frailer older people in mind and with varying levels of care and support available on site. People who live in extra care housing have their own self contained homes, their own front doors and a legal right to occupy the property. Extra care housing is also known as very sheltered housing, assisted living, or simply as 'housing with care'. It comes in many built forms, including blocks of flats, bungalow estates and retirement villages. It can provide an alternative to a care home. In addition to the communal facilities often found in sheltered housing (residents' lounge, guest suite, laundry), Extra Care includes additional flexible care packages that must be purchased as a condition of occupancy, and additional facilities such as restaurant or dining room, health & fitness. Sheltered or retirement dwellings which are not extra care units as per the above definition, will be considered to be residential units that are liable to CIL.

Commercial development and non-residential development with zones shown on Commercial Charging Zones map:

Figure 4: CIL Charging Schedule: Commercial and Non-Residential Development
<table>
<thead>
<tr>
<th>Type of Development</th>
<th>Development Charging Zone</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Town Centres, St. Marychurch and Preston District Centres</td>
<td>2) Everywhere else (including The Willows District Centre).</td>
</tr>
<tr>
<td>Class A1 retail less than 300 sq m.</td>
<td>Zero</td>
</tr>
<tr>
<td>Class A1 retail over 300 sq m. Applies to all A1 retail uses including bulky retail and sui generis retail uses</td>
<td>Zero</td>
</tr>
<tr>
<td>Food and drink (Class A3, A4, A5)</td>
<td>Zero</td>
</tr>
<tr>
<td>Class A2 Financial and Professional services.</td>
<td>Zero</td>
</tr>
<tr>
<td>Class B employment uses.</td>
<td>Zero</td>
</tr>
<tr>
<td>Class D1 Non-residential institutions (see Note 3).</td>
<td>Zero</td>
</tr>
<tr>
<td>Class D2 Assembly and leisure/non residential institutions</td>
<td>Zero</td>
</tr>
<tr>
<td>Class C1 Hotels and commercially rated holiday</td>
<td>Zero</td>
</tr>
</tbody>
</table>
accommodation. (See (a) below).

| Class C2 and C2A Residential Institutions (see (b) below) | Zero | Zero |

(a) Holiday accommodation (chalets, apartments etc) will be zero rated for CIL so long as they are subject to a condition and planning obligation restricting their occupation for tourism purposes, and are rated for business rates. If permission is subsequently sought for either a change of use or release of condition in order to permit permanent residential accommodation, the Council will seek contributions towards the additional infrastructure impact of permanent residential use.

(b) Care Homes are taken to be non-self contained accommodation for persons who, by reason or age or infirmity, are in need of care. Sheltered or retirement dwellings which are not extra care units as per the above definition, will be considered to be residential units that are liable to CIL.

(137) Wychavon – with effect from 5th June 2017. Residential development (includes buildings classed as 'dwellinghouses' within class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) but excludes Extra Care / Sheltered Accommodation (which consists of self-contained homes for older people, with access to on-site care and/or other on-site facilities)) is rated at £0 for main urban areas (Droitwich, Evesham and Pershore) and Strategic Sites listed in table 2 and otherwise is rated at £40. Student accommodation developments are rated at £100. Food retail supermarkets (which is a retail shop selling food and household items on a self-service basis with the products usually, but not necessarily, arranged in aisles. It may also, but not necessarily, include a range of comparison goods in the overall retail mix. Customers may use a supermarket for their main weekly shop.) is rated at £60. Retail warehousing (which includes all non-food retail units without restriction to size, specialising in the sale of household goods (for example: carpets, furniture, electrical goods), DIY items and other ranges of goods. Generally their construction shows a much greater visual similarity to warehousing than to that of standard shop units. Retail warehouses usually occupy a single floor, the majority of which is devoted to sales, with some ancillary storage and office use. They may be sited singly or grouped together, most frequently in fringe or out of town locations and cater mainly for car borne customers) are rated at £60. All other uses including shops, hotels, industrial, office, education, health and community uses (which includes buildings that are often provided by the public sector, not for profit and charitable sectors and include the following classes within the Town and Country Planning (Use Classes) Order 1987 (as amended): residential institutions (C2, C2a), non-residential institutions (D1) and assembly and leisure uses (D2)) are zero-rated.

(138) Bradford – with effect from 1st July 2017. Residential- developments (C3) are rated at £100 in Zone 1; £50 in Zone 2; £20 in Zone 3; £0 in Zone 4. This excludes specialist older persons’ housing (also known as Sheltered/Retirement/Extra Care) defined as residential units which are sold with an age restriction typically to the over 50s/55s with design features, communal facilities and support available to enable self-care and independent living. Retail warehousing developments in Central Bradford are
rated at £85. For these purposes these are usually large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods. They can be stand-alone units, but are also often developed as part of retail parks. In either case, they are usually located outside of existing town centres and cater mainly for car-borne customers. As such, they usually have large adjacent, dedicated surface parking. Large Supermarket developments which comprise more than 2000 sqm are rated at £50. All other uses not cited above are rated at £0. The residential and retail warehousing charging zones are shown on the CIL charging zone map. An interactive version of the map is also available on the Council’s website at: www.bradford.gov.uk/planningpolicy

(139) Rotherham – with effect from 3rd July 2017. Residential development is rated at £55 in Residential Zone 1; at £30 in Residential Zone 2; at £15 in Residential Zone 3 and Residential Zone 4 (which zones are shown on the maps attached to the Schedule). Retirement living is rated at £20 across the borough. It is defined as residential units which are sold with an age restriction typically over 50s/55s with design features and support services available to enable self-care and independent living. For the purposes of the CIL charge, this type of development has been excluded from the residential use category. Supermarket developments are rated at £60. Supermarkets are shops above 370 square metres gross internal floorspace where weekly and daily food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit. A development involving Retail Warehouses/Retail Parks are rated at £30. These are defined as “stores above 1,100 square metres gross internal floorspace (this includes any mezzanine floorspace) selling comparison goods such as bulky goods, furniture, other household and gardening products, clothing, footwear and recreational goods”. All other uses are zero-rated across the borough.

(140) Vale of White Horse – with effect from 1st September 2017. Residential development (including student accommodation and sheltered housing) is rated at £120 in Zone 1; £85 in Zone 2; and £0 in Zone 3 (which zones are shown in map I of para. 1.3). Residential development which is required to enable a rural exception site under Core Policy 25 is rated at £0. District wide extracare, nursing and care homes are rated at £0. These are defined as homes that provide accommodation and ongoing nursing and/or personal care. Personal care includes: assistance with dressing, feeding, washing and toileting, as well as advice, encouragement and emotional and psychological support. Supermarkets and retail warehousing are rated at £100. All other developments are rated at £0.

(141) Worcester – with effect from 4th September 2017. Student accommodation is charged at £100; Food Retail (Supermarkets) at £60; Retail warehouses at £60 and Residential, Shops, Hotels, Industrial and Office and all other uses (including education, health and community uses) at £0. Residential Includes buildings classed as 'dwellinghouses' within class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) but excludes Extra Care / Sheltered Accommodation which consists of self-contained homes for older people, with access to on-site care and/or other on-site facilities. Food Retail (Supermarkets) is defined as a supermarket is a retail shop selling food and household items on a self-service basis with the products usually, but not necessarily, arranged in aisles. It may also, but not necessarily, include a range of comparison goods in the overall retail mix. Customers may use a supermarket for their main weekly shop. Retail warehouses usually occupy a single floor, the majority of which is devoted to sales, with some ancillary storage and office use. They may be
sited singly or grouped together, most frequently in fringe or out of town locations and cater mainly for car borne customers Retail warehousing includes all non-food retail units without restriction to size, specialising in the sale of household goods (for example: carpets, furniture, electrical goods), DIY items and other ranges of goods. Generally their construction shows a much greater visual similarity to warehousing than to that of standard shop units. Education, health, community and other uses includes buildings that are often provided by the public sector, not for profit and charitable sectors and include the following classes within the Town and Country Planning (Use Classes) Order 1987 (as amended): residential institutions (C2, C2a), non-residential institutions (D1) and assembly and leisure uses (D2). Industrial Development is defined as B1, B2 and B8 uses as per the Town and Country Planning (Use Classes) Order 1987 (as amended).

(142) Malvern Hills - with effect from 4th September 2017. Residential other than in the Main Urban area and the strategic sites is charged at £40; Student accommodation is charged at £100; Food Retail (Supermarkets) at £60; Retail warehouses at £60 and Residential in other areas, Shops, Hotels, Industrial and Office and all other uses (including education, health and community uses) at £0. Residential Includes buildings classed as 'dwellings' within class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) but excludes Extra Care / Sheltered Accommodation which consists of self-contained homes for older people, with access to on-site care and/or other on-site facilities. Food Retail (Supermarkets) is defined as a supermarket is a retail shop selling food and household items on a self-service basis with the products usually, but not necessarily, arranged in aisles. It may also, but not necessarily, include a range of comparison goods in the overall retail mix. Customers may use a supermarket for their main weekly shop. Retail warehouses usually occupy a single floor, the majority of which is devoted to sales, with some ancillary storage and office use. They may be sited singly or grouped together, most frequently in fringe or out of town locations and cater mainly for car borne customers. Retail warehousing includes all non-food retail units without restriction to size, specialising in the sale of household goods (for example: carpets, furniture, electrical goods), DIY items and other ranges of goods. Generally their construction shows a much greater visual similarity to warehousing than to that of standard shop units. Education, health, community and other uses includes buildings that are often provided by the public sector, not for profit and charitable sectors and include the following classes within the Town and Country Planning (Use Classes) Order 1987 (as amended): residential institutions (C2, C2a), non-residential institutions (D1) and assembly and leisure uses (D2). Industrial Development is defined as B1, B2 and B8 uses as per the Town and Country Planning (Use Classes) Order 1987 (as amended).

(143) Horsham – with effect from 1st October 2017. Residential developments (includes dwelling houses (C3), retirement homes falling within C3, houses in multiple occupation (C4), and purpose-built student accommodation (C2), but excludes all other forms of ‘residential institution’ in C2 are rated at 135 save in the Strategic Sites (Zone 2 on the map attached) which is rated at £0. Large format’ Retail Development (A1 to A5) including supermarkets (are shopping destinations in their own right where weekly convenience shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit) and retail warehousing (large stores specialising in the sale of: household goods (such as carpets, furniture and electrical goods); DIY items; and other ranges of goods, catering mainly for car-borne customers) are rated at £100 save for the Strategic Sites in Zone 2 which are zero-rated for all A, B, C, and D
uses. All development not separately defined above, including, smaller retail
development (A1 to A5) (which will have a floor area for serving customers measuring
up to and including 280 sqm. (Sunday Trading Act 1994).), offices, warehouses, leisure,
education and health facilities (including B, C1, C2 excluding purpose built student
accommodation is zero-rated.

(144) Mole Valley – with effect from 1st October 2017. Residential developments (C3)
are charged at the rate of £175 in built up areas and £250 in rural areas and both areas
are shown on Map A. 'Retail - convenience' is defined as a shop or store where the
principal use is selling wholly or mainly everyday items including food, drink and non-
durable household goods and which can also include non-food, comparison goods as a
minority part of the sales mix. It is rated at £140. 'Retail-comparison outside town
centres' is defined as a shop or store outside the town centres defined on Map B where
the principal use is for retail purposes that does not fall within the definition of retail
convenience given above. It is rated at £140. All other development is zero-rated.

(145) Newcastle upon Tyne – with effect from 14th November 2017. Residential
developments (C3) (including dwellings and flats and sheltered housing) are rated at
£60 in Residential Zone A; £30 in Residential Zone B; £0 in Residential Zone C and
Newcastle Central Area Zone 1. These residential zones are shown a map linked ion
the Authority’s website. Student Accommodation development (purpose built student
accommodation which usually has an element of communal facilities) (C3, C4, Sui
Generis) is rated at £50 in Newcastle Central Area Zone 1 and Commercial Zone 2 and
at £0 in Commercial Zone 3. The Commercial zones are shown on a map linked from
the Authority’s website. Hotel developments (C1) are rated at £0 in Newcastle Central
Area Zone 1 and Commercial Zone 3 and £40 in Commercial Zone 2. Small retail
development (A1) comprising units equal to or less than 280 sqm net floorspace are
rated at £0 in Newcastle Central Area Zone 1 and Commercial Zone 3 and £30 in
Commercial Zone 2. Supermarket developments (A1) comprising more than 280 sqm
net floorspace are rated at £10 in Newcastle Central Area Zone 1, Commercial Zone 2
and Commercial Zone 3. For these purposes supermarkets are convenience-led stores
selling mainly everyday essential items, including food, drinks, newspapers/magazines
and confectionary, where it is intended to utilise less than 50% of the gross retail floor
area for the sale of comparison goods and where, depending on scale, weekly food
shopping needs are met. In addition, the area used for the sale of goods will generally
be above that applied for the purposes of the Sunday Trading Act of 280sq.m. Retail
Warehousing developments (A1) comprising more than 280 sqm net floorspace are
rated at £50 in Commercial Zone 2 and Commercial Zone 3 and at £0 in Newcastle
Central area Zone 1. For these purposes Retail warehouses are usually large stores
specialising in the sale of household goods (such as carpets, furniture and electrical
goods), DIY items and other ranges of goods. They can be stand-alone units, but are
also often developed as part of retail parks. In either case, they are usually located
outside of existing town centres and cater mainly for car-borne customers. As such,
they usually have large adjacent, dedicated surface parking. All other development
(including Office, Use Class B business, industry, storage and distribution, Extra Care
(C2)) are rated at £0

(146) Warwick – with effect from 18th December 2017. General residential
developments are rated at £195 in Zones B and D (much of Leamington, Whitnash and
high value rural); £140 in Zone C (Kenilworth); and £70 in Zone A (Warwick, East of Leamington and lower value rural). These Zones are shown on a Residential CIL Charging map linked to from the Authority’s website. Residential developments on identified Strategic Local Plan housing sites with over 300 dwellings - H03 East of Whitnash (500 dwellings) at £0 (Nil); H06 East of Kenilworth (Thickthorn) (760 dwellings) at £25; H40 East of Kenilworth (Crewe Lane, Southercent Farm and Woodside Training Centre) (640 dwellings) at £25; H42 Westwood Heath (425 dwellings) at £55; H43 Kings Hill (up to 4000 dwellings) at £55. Student housing development in the District is rated at £100. Retail development up to 2500 square metres floorspace is rated within Leamington Prime Retail Zone at £65 and outside at £0 (Nil). Retail Development comprising 2500 square metres floorspace or over in the District is rated at £105. All other developments including Hotels, Offices, Industrial and warehousing, and all other uses is rated at £0 (Nil).

(147) North Somerset – with effect from 18th January 2018. Residential development (C3/C4) are rated at zero in Zone A (Weston Town Centre); £20 Strategic Development Areas in Zone B (Outer Weston); £40 in Zone B which not Strategic Development Areas; £40 Strategic Development Areas in Zone C (rest of district); £80 in Zone C which not Strategic Development Areas. Purpose-built student accommodation/halls of residence are rated at £40. Large-scale retail (A1/A2/A3/A4/A5) which is more than 280 sqm net sales area is rated at £120 and if less than 280 sqm at £60. Zero-rating applies to extra care housing which is accommodation available to rent or buy for older people or others in need of care and which meets the following criteria: (i) residents are subject to an assessment of minimum care needs to establish eligibility to buy or lease a property; (ii) residents are required to purchase a ‘minimum care package’ as a condition of occupation, to include at least 2 hours of domiciliary care per week focused on the health and social care needs of those residents; and (iii) the development has a minimum non-saleable floorspace in excess of 30% of GIA. If the criteria are not met then the housing is charged as residential under C3. Commercial developments (B1, B2 and B8) and all other qualifying developments are zero-rated.

(148) North Kesteven – with effect from 22nd January 2018. Residential developments excluding apartments are rated at £25 in Zone 1 (the Lincoln Strategy Area); £15 in Zone 2 (the non-Lincoln Strategy Area); and £20 in Zone 3 (certain specified areas). Apartments are zero-rated in all zones. Developments involving convenience retail are rated at £40. All other uses (including comparison retail and retail warehousing) are zero-rated.

(149) West Lindsey – with effect from 22nd January 2018. Residential developments comprising houses are rated £25 in Zone 1; £15 in Zone 2; £20 in Zone 3; and £0 in Zone 4 (which zones are shown in the attached maps to the Schedule). Apartments are rated at £0 in all zones. Developments involving Convenience Retail (everyday items including food, drink and non-durable household goods) are rated at £40 across the district. All other uses (including comparison retail and retail warehousing) are zero-rated.

(150) Stratford – with effect from 1st February 2018. Residential Developments in Gaydon/Lighthorne Heath new settlement (GLH) and Long Marston Airfield (LMA) are rated at £0; in the Canal Quarter Regeneration Zone (11 units or more) at £85; Small
Sites (up to and including 10 units) at £75; and the Rest of District (11 units or more) at £150. Extra Care is charged at the prevailing rates as set out. Retirement Dwellings are rated at £0. Retail developments (A1-A5) are rated at £0 within all Identified Centres; at £10 within Gaydon/Lighthorne Heath and Long Marston Airfield; and at £120 out of Centre Retail. All other forms of non-residential liable floor space are rated at £0.

(151) Hull - with effect from 1st February 2018. Residential developments are rated at £0 in Zones 1 and 2 (low value) and Zone 3 (medium value) and at £60 in Zones 4 and 5 (higher value). The zones are shown on the Map in the Schedule headed CIL Residential charging zones. All flats and apartments are rated at £0 city wide. Student accommodation is not charged. Retail warehouse developments are rated at £25 city wide. Large supermarket developments comprising over 500 sqm are rated at £50 whilst small supermarkets of less than 500 sqm are rated at £5.

(152) Lincoln – with effect from 5th February 2018 residential developments in the Lincoln Strategy Area are charged at £25 in relation to dwellings other than apartments and £0 in relation to apartments. Residential development sites at Western Growth Corridor and North East Quadrant sustainable urban extension are charged at £20 in relation to dwellings other than apartments and £0 in relation to apartments. Convenience retail developments are charged at £40 whilst all other uses including comparison retail and retail warehousing are zero-rated. The charging zones are shown on the attached map together with separate inset maps for the Western Growth corridor and the North East Quadrant.

(153) Basingstoke & Deane – with effect from 25th June 2018. Residential developments are rated at £0 in Zone 1 (Hounsome Fields (Policy SS3.12) and Manydown (Policy SS3.10)) (shown on plan B in Appendix 1); at £80 in Zone 2 (Basingstoke Golf Course, East of Basingstoke, and Upper Cufaude Farm) (shown on map B in Appendix A); at £140 in Zone 3 (Basingstoke and Tadley) (shown on maps B and C in Appendix A); and £200 in Zone 4 (rest of the borough) (shown by maps A and B in Appendix A). Developments of care homes/extra care/sheltered housing are rated at £0. Developments of single dwellings are rated at £0 as are wholly flatted schemes which are developments with only flats. Flats are also excluded from mixed use development. All other forms of development (residential and non-residential) are rated at £0.

(154) Tamworth – with effect from 1st August 2018. Residential developments comprising one or two unit residential schemes are rated at £0; between 3 and 10 units are rated at £68; 11 or more units are rated at £35. Specialist Residential Retirement dwellings, extra care and care homes developments are rated at £0. For these purposes retirement dwellings – Also known as sheltered housing, these are usually groups of dwellings, often flats and bungalows, which provide independent, self-contained homes often with some element of communal facilities, such as a lounge or warden. Extra care – Also known as assisted living, this is housing with acre whereby people live independently in their own flats but have access to 24-hour care and support. These are usually defined as schemes designed for an elderly population that may require further assistance with certain aspects of day to day life. Care homes – Residential or nursing homes where 24-hour care is provided together with all meals. Residents usually occupy under a licence agreement. Out of Centre Retail Comparison and convenience
retail development located outside the Town Centre, Local Centres and Neighbourhood Centres as defined in the accompanying Charging Zones Maps are rated at £200. In Centre Retail Comparison and convenience retail development located inside the Town Centre, Local Centres and Neighbourhood Centres as defined in the accompanying Charging Zones Maps are rated at £0. All other developments are zero-rated.

(155) Maidstone – with effect from 1st October 2018. Residential development (C3) is chargeable at £93 within the Urban Boundary; £99 outside the Urban Boundary; and £77 at site H1 at Springfield Road. Retirement (which is within Use Class C3, for groups of dwellings that provide independent, self-contained homes, specifically for older people, usually with some element of communal facilities) and extra care developments (which are dwellings that provide independent, self-contained homes, specifically for older people, with access to 24 hour care and support) are rated at £45. Care homes and nursing homes (C2 and C2a) are not included. Retail development which is wholly or mainly convenience is rated at £150. Retail development which is wholly or mainly comparison and outside the Town Centre Boundary (set out in figures 2 and 2a in Appendix A) is rated at £75. Wholly or mainly means more than 50% of the floor space is used for that purpose. All other developments are zero-rated.

(156) Cornwall – with effect from 1st January 2019. Housing (C3 and C4) at rates from £400 to £0 in five zones if 5 or fewer dwellings or 6-10 dwellings not in Designated Rural Area (“DRA”) or Area of National Beauty (“AONB”). If 11 or more dwellings or 6-10 in DRA or AONB the rates are between £200 and £0 in five zones. Sheltered and extra Care Housing (C3) is £0 in all zones as are housing developments(C3 and C4) in Strategic sites (residential developments shown on Allocations Development Plan Document Strategic Maps as being allocated or with permission/under construction including residential element of mixed use developments). Out of town centre convenience retail (A1) greater than 280 sqm at rate of £100 in all zones. Supermarkets (convenience retail) are shops that are of a size, and offer a range of goods, that makes them shopping destinations in their own right, including a dedicated car park. Supermarkets sell a full range of convenience foods and usually also offer a choice of nonfood items and some services such as banking. Non-food retail (A1) out of town greater than 280 sqm is rated at £100 in all zones whilst out of town centre restaurants (A3/A5) up to 100 sqm is also rated at £100 in all zones. All other non-residential development in any zone is rated at £0.

(157) Tewkesbury – with effect from 1st January 2019. The rate applicable to residential developments (which appears to exclude residential institutions, care homes, extra care and retirement living housing for older people (C2) albeit this is not clearly spelt out) depends on the number of dwellings and location. The rate is £35 if the development is in one of six Strategic sites. If the development is for 10 or less dwellings the rate is £104; if between 11 and 449 dwellings the rate is £200; and if 450 or more dwellings the rate is £35. Further testing is required before rates applicable to any other uses can be introduced.

(158) Cheltenham – with effect from 1st January 2019. Residential developments are rated £148 if comprising 10 or less dwellings; £200 if comprising between 11 and 449 dwellings; £35 if comprising 450 or more dwellings; and £35 if in one of two named Strategic Sites. Developments relating to retirement homes for older persons are rated at £200 and extra care homes at £100.
(159) Gloucester – with effect from 1st January 2019. Residential developments comprising between 11 and 449 dwellings are rated at £45. Such developments with less or more dwellings or developments in the Strategic Site are zero-rated.

(160) North Tyneside – with effect from 14th January 2019. Residential developments are chargeable at £0 in Zero Rate Area U0; £19 in Built-Up Area Zone U1; £24 in Built-Up Area Zone U2; £47 in Remaining Area Zone R1; £68.60 in Remaining Area Zone R2. These areas and zones are shown on an attached residential map. Hotel developments (C1) are charged at £30 in Commercial Zone B and zero-rated in Commercial Zones A and C as shown on the Commercial Zones map. Developments of small retail units (A1) which are less than 280 sqm are rated at £20 in Commercial Zone B; £15 in Commercial Zone C; and zero-rated in Commercial Zone A. Office development (B1a and B1b) is rated at £5 in Commercial Zone B and zero-rated in Commercial Zones A and C. All other developments are zero-rated.

(161) Waverley – with effect from 1st March 2019. All uses at Dunsfold Aerodrome Strategic Site are nil rated. Residential developments with more than 10 units are rated at £395 in Zone A and £372 in Zone B (these zones and Zone C are shown on the map attached to the schedule). With residential developments comprising 10 or fewer dwellings the rates are £452 in Zone A and £435 in Zone B. Developments comprising old person housing (retirement and supported living) with affordable housing are rated at £118 in Zone A and £100 in Zone B whilst those without affordable housing are rated at £280 in Zone A and £268 in Zone B. Care homes are excluded from these rates. For these purposes it is provided in the Schedule that (i) Retirement housing - is often known as “Sheltered Housing” or “Retirement Living”. Retirement Housing usually provides some facilities that you would not find in completely independent accommodation. These can include secure main entrance, residents’ lounge, access to an emergency alarm service, a guest room. Extra facilities and services are paid for through a service charge on top of the purchase price or rent. To move into retirement housing you are assumed to be independent enough not to need care staff permanently on site.

(ii) Supported housing - is often known as “Extra Care Housing” or “Assisted Living”. Everyday care and support will be available. Facilities will include those available in retirement housing plus others (such as a restaurant, communal lounges, social space and leisure activities, staff on site 24 hours a day). Service charges are likely to be higher than in retirement housing but this reflects the more extensive range of facilities.

Developments comprising small convenience stores (having a majority (in excess of 50%) of its net selling area conditioned for the sale of convenience goods in a total gross store size of no larger and including 300 sqm gross) are rated at £75. Supermarkets (store has a majority (in excess of 50%) of its net selling area conditioned for the sale of convenience goods in a total gross store size of greater than 300 sqm gross) are rated at £65. Retail other than convenience is rated at £25 in Town Centres shown on maps 5-8 attached to the Schedule and at £95 out of town centres. All other uses including care homes are nil rated. It is stated in the Schedule that for the avoidance of doubt ‘Care homes’ are excluded from this older person housing charge and are separately considered as ‘All other uses’ and therefore a zero CIL rate will apply to development meeting the following definition - residential care homes or nursing homes where integral 24 hour personal care and/or nursing care are provided together
with all meals. A care home is a residential setting where a number of older people live, usually in single rooms and people occupy under a licence arrangement.

(162) **Cheshire East** – with effect from 1st March 2019. Residential developments (C3) other than apartments are rated at £0 in Zone 1; £22 in Zone 2; £57 in Zone 3; £71 in Zone 4; and £71 in Zone 5 (which zones are shown on the maps in Appendices A and D). Apartments (C3) and Hotels (C1) are zero-rated throughout the borough. Retail developments are rated at £66 in Retail Zone 1 (as shown on the map) but zero-rated elsewhere in the borough. All other uses (including offices (B1), general industrial (B2) and storage and distribution (B8)) are zero-rated.

(163) **Cheshire West and Chester** – with effect from 5th April 2019. Residential developments (C3 dwelling houses excluding stand-alone apartment blocks and excluding rural workers dwellings) in Chester and the rural area being Zone 1 rated at £70. Residential development (C3) in Ellesmere Port, Northwich, Winsford and Blacon urban areas being Zone 2 rated at £0. Retail development (A1 – convenience and comparison retail) in Cheshire Oaks area being Zone 3 rated at £210. Comparison Retail only development (A1 comparison retail only) in Sealand Road, Chester area being Zone 4 rated at £54. Retail development (A1 – convenience and comparison retail) in all other areas, including town and village centres being Zone 5 rated at £0. The Zones are shown on maps linked from the authority’s website. All other uses are rated at £0 borough wide.

(164) **Cotswold** – with effect from 1st June 2019. All residential developments including sheltered housing and extra-care housing save for those in the Chesterton Strategic Site are rated at £80 and those in that Strategic Site are zero-rated. Retail development is rated at £60. All other developments are zero-rated.

(165) **Havering** – with effect from 1st September 2019. Residential developments (including private care homes and retirement homes (excluding Extra Care)) are charged at the rate of £125 in Zone A (North) and £55 in Zone B (South). The map showing these two zones is contained in paragraph 3 of the charging schedule. Supermarkets, superstores and retail warehouses above 280 sq.m gross internal area are charged at the rate of £175. Supermarkets/Superstores are defined as shopping destinations in their own right, where weekly food needs are met, catering for a significant proportion of car-borne customers, and which can also include non-food floorspace as part of the overall mix of the unit. Retail Warehousing is defined as shopping destinations specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for a significant proportion of car-borne customers. All other retail (A1-A5) in Metropolitan, District and Local centres as shown on the retail zoning maps are charged at the rate of £50. These Centres are shown by the maps in Appendices A to C. Appendix D sets out the addresses included within these Centres. Hotel developments are rated at £20. Office and industrial developments and all other developments are zero-rated.

**B. Alphabetically**

**Babergh** – with effect from 11th April 2016. Residential developments (C3) excluding specialist older persons housing are rated at £90 in the Low Zone if the development comprises one or two dwellings; £50 in the Low Zone if the development comprises three or more dwellings; £115 in the High Zone; and £0 in the Strategic Sites (which Zones and Strategic Sites are set out in the maps in paragraph 6 of the Schedule).
Specialist older persons housing describes developments that comprise self-contained homes with design features and support services available to enable self-care and independent living. Sometimes also known as sheltered/retirement housing and extra care accommodation. These are zero-rated. Wholly or mainly Convenience retail developments are rated at £100 in all areas. Where no particular form of retail use is conditioned, the LPA will assume that the ‘intended use’ for the CIL charging purposes may encompass “wholly or mainly” convenience retail as an open ended permission would allow this. All other uses are zero-rated.

**Barnet** – with effect from 1st May 2013. The rates are £135 Residential (C1 - C4, Sui Generis HMOs) excluding ancillary car parking; £135 Retail (A1 - A5) excluding ancillary car parking; and £0 all other use classes.

**Bassetlaw** – with effect from 1st September 2013. There are four residential charging zones and the rates are £55; £20; £5; £0. There are three commercial charging zones as regards industrial developments the rates are £15, £0 and £0 whilst for retail developments they are £100; £25; and £0.

**Bath and North East Somerset** – with effect from 6th April 2015. There are three different areas for residential development (C3 including specialised, extra care and retirement accommodation unless these types of accommodation provide non-saleable floorspace in excess of 30% of Gross Internal Area) which are rated at £100, £50 and nil. Hotel development (C1) is rated at £100 in Bath and nil elsewhere. In-center and high street retail development (as defined in the Core Strategy) is rated at £150 in Bath but nil elsewhere. Supermarkets (large format convenience-led stores) /superstores and retail warehouses (over 280 sqm) are rated at £150 district wide save for the Bath Western Riverside area which is nil rated. Offices (B1) and industrial and warehousing are nil rated district wide. Student accommodation development involving schemes with market rents are rated at £200 unless in the Bath Western Riverside area. Student accommodation provided under a scheme with submarket rents set in a section 106 planning agreement will be nil rated. To be submarket rent it must be no more than 89% of the local market rent (including any service charge). Although not expressly stated if the student accommodation is not provided under a scheme with submarket rent then it will be a scheme with market rents.

**Barking and Dagenham** – with effect from 3rd April 2015. Residential development is rated at £70 psm in Barking Town Centre, Leftley and Faircross; £25 psm in Barking Riverside; and £10 psm in the rest of the borough. These areas are defined in the schedule but there is no definition of residential. Boroughwide supermarkets and superstores of any size are rated at £175. For these purposes supermarkets are self-service stores selling mainly food, with a trading floorspace less than 2,500 square metres, often with car parking whilst superstores are self-service stores selling mainly food, or food and non-food goods, usually with more than 2,500 square metres trading floorspace, with supporting car parking. Also boroughwide office uses (B1a) are nil rated; Business (research and development (B1b); light industrial (B1c); general industrial (B2); and storage and distribution (B8) is rated at £5 psm; municipal leisure is nil rated; health (development used wholly or mainly for the provision of any publicly funded medical or health services except the use of premises attached to the residence of the consultant or practitioner); education ( development used wholly or mainly for the provision of education as a school or college under the Education Acts or as an
institution of higher education) is nil rated; all other non-residential uses are rated at £10 psm.

**Basingstoke & Deane** – with effect from 25th June 2018. Residential developments are rated at £0 in Zone 1 (Hounsme Fields (Policy SS3.12) and Manydown (Policy SS3.10)) (shown on plan B in Appendix 1); at £80 in Zone 2 (Basingstoke Golf Course, East of Basingstoke, and Upper Cufaude Farm) (shown on map B in Appendix A); at £140 in Zone 3 (Basingstoke and Tadley) (shown on maps B and C in Appendix A); and £200 in Zone 4 (rest of the borough) (shown by maps A and B in Appendix A). Developments of care homes/extra care/sheltered housing are rated at £0. Developments of single dwellings are rated at £0 as are wholly flatted schemes which are developments with only flats. Flats are also excluded from mixed use development. All other forms of development (residential and non-residential) are rated at £0.

**Bedford** – with effect from 1st April 2014 there are five zones for residential development with rates of £40; £55; £100; £120; and £125. For these purposes dwelling units are stated to include not just C3 units but also C2 units together with C3 units where the units directly benefit from communal facilities comprising 10% or more of the total gross floor space as part of the overall mix of the unit. Care homes, extra care and other residential institutions have a nil rate. Convenience based supermarkets and superstores and retail warehouses (net retailing space over 280 sqm. are rated at £120. Office, industrial, warehousing and other uses have a nil rate.

**Bexley** – with effect from 30th April 2015. There are two zones for residential, hotel and student housing development (excluding C2 and C3 developments) which are rated at £60 and £40. Supermarket, superstores and retail warehouse developments over 280 sqm are rated at £100. The examiner required the word convenience to be removed from this category. Medical, health and emergency services which are publicly funded are nil rated. The nil rating also applies to developments used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institution of higher education. All other uses including C2 and C3 are rated at £10. Therefore, Class A uses under 280 sqm, care homes, sheltered homes, extra care, assisted care and similar accommodation are rated at this lower rate.

**Birmingham** – with effect from 4th January 2016. Retail convenience (which can also include non-food floorspace as part of the overall mix of the unit) greater than 2,700 sqm rated at £260 if area less then rated at £0. Residential (which will not include C2) in the three High value zones is rated at £69 and elsewhere £0. Student accommodation in all areas except Green Belt Development are rated at £69 and if in Green Belt development is rated at £0. Hotel in the City centre is rated at £27 and elsewhere £0. All other types of development (including retail (including retail units selling goods not bough on a frequent basis), industrial/employment, offices, leisure, education, health and C2) is rated at £0.

**Bournemouth** – with effect from 1st March 2016. Residential development outside the Town Centre Area Action Plan area charged at rate of £70 and nil in the Town Centre AAP area. Both include (i) retirement housing which are also known as sheltered housing and are defined as groups of dwellings, often flats and bungalows, that provide independent, self-contained homes. There is likely to be some element of communal
facilities, such as a lounge or warden; and (ii) extra care housing also known as assisted living. This is housing with care where people live independently in their own flats but have access to 24 hour care and support. Varying amounts of care and support can be offered, normally as part of a care package with additional fees to pay for the services and facilities. These schemes will usually have their own staff and may provide one or more meals a day. Student accommodation is rated at £40. Comparison Retail (a shop or store selling mainly goods which are not everyday essential items. Such items include clothing, footwear, household and recreational goods) outside the Town Centre AAP area is rated at £250 and £0 in the Town Centre APP area. Large Scale Convenience Retail/Supermarkets (usually over 280 sq m net retail floorspace, which exceeds the Sunday Trading Act threshold. Selling mainly everyday essential items including food, drinks, newspapers/magazines and confectionery. Provide for weekly food shopping) are rated at £250 inside and outside the Town Centre AAP area. Small scale Convenience Retail is rated at £134 both inside and outside the Town Centre APP area. Small scale Convenience Retail is defined as between 100 sq m and 280 sq m net retail floorspace, which is less than the Sunday Trading Act threshold. Selling mainly everyday essential items including food, drinks, newspapers / magazines and confectionery. Provide for “top-up” food shopping. Stores which sell a mixture of convenience and comparison goods should be categorised according to their main use, which is taken to mean more than 50% comparison or convenience retail. Where no particular form of retail use is conditioned, the Local Planning Authority will assume that the ‘intended use for the CIL charging purposes will be mainly convenience retail and thus the convenience retail rate will be applied, as an open ended permission would allow this. All other types of development (including offices, light industrial/warehousing, hotels, mixed leisure, public service and community facilities) are rated at £0.

Bradford – with effect from 1st July 2017. Residential- developments (C3) are rated at £100 in Zone 1; £50 in Zone 2; £20 in Zone 3; £0 in Zone 4. This excludes specialist older persons’ housing (also known as Sheltered/Retirement/Extra Care) defined as residential units which are sold with an age restriction typically to the over 50s/55s with design features, communal facilities and support available to enable self-care and independent living. Retail warehousing developments in Central Bradford are rated at £85. For these purposes these are usually large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods. They can be stand-alone units, but are also often developed as part of retail parks. In either case, they are usually located outside of existing town centres and cater mainly for car-borne customers. As such, they usually have large adjacent, dedicated surface parking. Large Supermarket developments which comprise more than 2000 sqm are rated at £50. All other uses not cited above are rated at £0. The residential and retail warehousing charging zones are shown on the CIL charging zone map. An interactive version of the map is also available on the Council's website at: www.bradford.gov.uk/planningpolicy.

Brent – with effect from 1st July 2013. The rates are; residential, residential institutions, student accommodation, hostels and HMOs £200; hotels £100; retail £40; warehouse clubs £14; assembly and leisure excluding swimming pools £5; remainder including light industrial £0.

Bristol – these took effect on 1st January 2013. The rates for developments are: residential chargeable at £70 (Inner zone) and £50 (Outer zone); hotels at £70; retail at
£120; student accommodation at £100; commercial (classes B1, B2 and B8) £0; other development £50.

**Bracknell Forest** – with effect from 6th April 2015. For residential (Use Class C3) development there are six strategic sites five of which are chargeable at the rate of £159 and one at £220. In addition there are four zones. One, Central Bracknell, is nil and with the other three there are two different rates for each dependent on whether the net increase in houses is 14 or less or over 14. The minimum rate is £25 and they go up to a maximum of £300. Separate from residential development is specialist residential accommodation for older people including sheltered housing, retirement housing, Extra Care Housing and residential care accommodation. There are four zones which induce the strategic sites and the rate starts at nil and goes up to £100. Convenience based supermarkets and superstores and retail warehousing (which terms are explained in the charging schedule) which have a net retailing space over 280 sqm gross internal floorspace (taken from the definition of a large store in the Sunday Trading Act 1994) are chargeable at a nil rate in Central Bracknell and £100 elsewhere. The rate is levied on the full gross internal floorspace and not just excess over 280 sq. m. All other types of development are chargeable at nil.

**Broadlands** – with effect from 1st July 2013. There are two charging zones for residential developments (C3/C4 excluding affordable housing but including domestic garages excluding shared-use and decked) with rates of £75 and £50. Large convenience goods based stores (at least 50% of net floor space area given over to convenience goods) with floor space of 2000 square metres or more. Such store developments are rated at £135. All other retail and assembly and leisure rated at £35 includes sui generis uses akin to them such as petrol stations, retail warehouses, nightclubs and amusement centres. Public service development such as fire and police stations (C2; C2A; and D1) are rated at £0. All other developments are rated at £0.

**Caerphilly** – with effect from 1st July 2014. There are three zones for residential development and the rates are £0, £25 and £40. As regards commercial developments there are no zones. The rates are – retail (A1) £100; restaurant, café and drinking establishments (A3) £25; office (B1), industrial (B2-B8), care and nursing home development, non-residential institutions (D1), hotel development (D2) and cinema (D2) all nil.

**Camden** – with effect from 1st April 2015. The area is divided in to three zones. Residential development below 10 houses or 1000 sqm are charged at £500 in each zone. Residential development above that limit and private residential homes with a degree of self-containment is charged at varying rates of £150, £250 and £500 dependent on the zone. Retail (including bar/restaurant/entertainment and other town centre uses) is chargeable at £25 in each zone. Office is £45 or £25 dependent on the zone. Student housing is chargeable at £175 or £400. Hotel development (including tourist hostels) is chargeable at £40 or £30. Industry, warehousing, research and development are nil whilst other commercial uses are £25. Health, community meeting spaces, police, fire, water, waste management and related infrastructure, care homes with no self-containment subsidized by the public sector are chargeable at nil rate.

**Cannock Chase** – with effect from 1st June 2015. Developments providing specialist retirement housing are rated at £0. All other market housing developments are rated at
£40. A rate of £60 applies to developments comprising foodstores with floorspace less than 280 sqm and to out of centre retail park developments. All other types of retail developments are rated at £0. All other uses are zero-rated.

Chelmsford – with effect from 1st June 2014 the rates are residential £125; convenience retail (A1 food) £150; comparison retail (A1 non-food; A2-5; and sui generis uses akin non-food) £87; and the rest nil.

Cheltenham – with effect from 1st January 2019. Residential developments are rated £148 if comprising 10 or less dwellings; £200 if comprising between 11 and 449 dwellings; £35 if comprising 450 or more dwellings; and £35 if in one of two named Strategic Sites. Developments relating to retirement homes for older persons are rated at £200 and extra care homes at £100.

Cheshire East – with effect from 1st March 2019. Residential developments (C3) other than apartments are rated at £0 in Zone 1; £22 in Zone 2; £57 in Zone 3; £71 in Zone 4; and £71 in Zone 5 (which zones are shown on the maps in Appendices A and D). Apartments (C3) and Hotels (C1) are zero-rated throughout the borough. Retail developments are rated at £66 in Retail Zone 1 (as shown on the map) but zero-rated elsewhere in the borough. All other uses (including offices (B1), general industrial (B2) and storage and distribution (B8)) are zero-rated.

Cheshire West and Chester – with effect from 5th April 2019. Residential developments (C3 dwelling houses excluding stand-alone apartment blocks and excluding rural workers dwellings) in Chester and the rural area being Zone 1 rated at £70. Residential development (C3) in Ellesmere Port, Northwich, Winsford and Blacon urban areas being Zone 2 rated at £0. Retail development (A1 – convenience and comparison retail) in Cheshire Oaks area being Zone 3 rated at £210. Comparison Retail only development (A1 comparison retail only) in Sealand Road, Chester area being Zone 4 rated at £54. Retail development (A1 – convenience and comparison retail) in all other areas, including town and village centres being Zone 5 rated at £0. The Zones are shown on maps linked from the authority’s website. All other uses are rated at £0 borough wide.

Chesterfield – with effect from 1st April 20Retail development (A1-A5) borough wide save for the Staveley Corridor is rated at £80 and in the Staveley Corridor at £0. All other non-residential (residential being C3) are rated at £0 borough wide including the Staveley Corridor. Residential development (C3) is rated at £0 in the Staveley Corridor; £20 in the Low zone; £50 in the Medium zone; and £80 in the High zone. The charging zones are shown in the two annexed maps for Commercial Developments and Residential Developments.

Chichester - with effect from 1st February 2016 residential developments are charged at the rate of £120 South of the National Park and £200 North of the National Park. Wholly or mainly convenience retail developments are charged at £125 and wholly or mainly comparison retail development is charged at £20. Purpose built student housing is charged at £30. All other developments are zero-rated.

Chorley – with effect from 1st September 2013. The rates are dwelling houses £65; apartments £0; convenience retail (excluding neighbourhood convenience stores) £160; retail warehouse, retail parks and neighbourhood convenience stores) £40; community
uses £0; all other uses £0. The use definitions are contained in an appendix to the Charging Schedule.

Christchurch – with effect from 3rd January 2017. Residential developments are rated at £70 if comprising more than ten units; £0 if comprise 40 or more dwellings where on-site SANG is required by the Local Planning Authority; £150 if comprises 10 units or less or less than 1000 sqm floorspace; £0 if on the following New Neighbourhood sites (allocated in the Core Strategy) which provide their own Suitable Natural Alternative Green Space (SANG) as mitigation for European sites: Roeshot Hill/Christchurch Urban Extension (CN1)-950 dwellings Land South of Burton Village (CN2) - 45 Dwellings. Developments for Extra Care Housing and housing for Vulnerable People (developments that comprise self-contained homes with design features and support services available to enable self-care and independent living) are rated at £0. The areas are shown on the maps at the end of para. 5 of the Schedule. Care home developments are rated at £40. Convenience retail development is rated at £100. For these purposes a convenience unit is a shop or store where the planning permission allows selling 'wholly or mainly' everyday essential items, including food, drinks, newspapers/magazines and confectionery. The term 'wholly or mainly' has a widely understood legal meaning (effectively more than 50%). Where no particular form of retail use is conditioned, the council will assume that the 'intended use' for CIL charging purposes may encompass “wholly or mainly” convenience retail, since this is what the permission would allow, and that CIL will be charged accordingly. Developments concerning Hotels, Offices, Light Industrial/Warehousing, Comparison Retail (a shop or store selling 'wholly or mainly' (see above) goods which are not everyday essential items. Such items include clothing, footwear, household and recreational goods), Public service and Community Facilities and all other uses not covered are zero-rated.

City of London – with effect from 1st July 2014. Residential development is charged at a rate of £150 in the “Riverside” zone and £95 elsewhere. Office development is to be charged at £75. Developments for medical, educational and emergency service are at a rate of £0. All other developments have a £75 rate.

Cornwall – with effect from 1st January 2019. Housing (C3 and C4) at rates from £400 to £0 in five zones if 5 or fewer dwellings or 6-10 dwellings not in Designated Rural Area (“DRA”) or Area of National Beauty (“AONB”). If 11 or more dwellings or 6-10 in DRA or AONB the rates are between £200 and £0 in five zones. Sheltered and extra Care Housing (C3) is £0 in all zones as are housing developments(C3 and C4) in Strategic sites (residential developments shown on Allocations Development Plan Document Strategic Maps as being allocated or with permission/under construction including residential element of mixed use developments). Out of town centre convenience retail (A1) greater than 280 sqm at rate of £100 in all zones. Supermarkets (convenience retail) are shops that are of a size, and offer a range of goods, that makes them shopping destinations in their own right, including a dedicated car park. Supermarkets sell a full range of convenience foods and usually also offer a choice of nonfood items and some services such as banking. Non-food retail (A1) out of town greater than 280 sqm is rated at £100 in all zones whilst out of town centre restaurants (A3/A5) up to 100 sqm is also rated at £100 in all zones. All other non-residential development in any zone is rated at £0.
Cotswold - with effect from 1st June 2019. All residential developments including sheltered housing and extra-care housing save for those in the Chesterton Strategic Site are rated at £80 and those in that Strategic Site are zero-rated. Retail development is rated at £60. All other developments are zero-rated.

Crawley – with effect from 17th August 2016. The Airport Zone is exempt from CIL (as shown on map in Appendix A). Residential developments are rated at £100. General retail developments (A1-A5) other than Food Supermarkets are rated at £50 save that ancillary commercial car parking structures are not subject to a CIL charge. Developments involving Food Supermarkets are rated at £100 if less than 3000 sqm and £150 if 3000 sqm plus. All other uses are zero-rated.

Croydon – with effect from 1st April 2013 the rates for residential developments are £0 within the Croydon Metropolitan Centre but £120 outside it; £120 for business developments within the Metropolitan Centre but £0 outside that area; £0 for institutions in the whole area; and £120 for any other developments in the whole area. The latter may unexpectedly catch some developments.

Dacorum – with effect from 1st April 2015. There are four zones for residential development rated at £250, £150, £100 and nil. Three of zones are nil rated for retirement homes and the other is rated at £125. The schedule provides that retirement housing is housing which is purpose built or converted for sale to elderly people with a package of estate management services and which consists of grouped, self-contained accommodation with communal facilities amounting to less than 10% of the gross floor area. Such premises are stated to often have emergency alarm services and/or wardens but would not be subject to significant levels of residential care (C2) as would be expected in care homes or extra care premises. Convenience based supermarkets and superstores and retail warehousing (net retail space of over 280 sqm) rated borough wide at £150. Other uses are nil rated.

Dartford – with effect from 1st April 2014 there are two zones for residential development. In Zone A all residential development is rated at £200. In Zone B residential development of less than 15 homes providing solely market housing is rated at £200 whilst residential development of 15 homes or more providing a housing mix which includes a proportion of affordable housing is rated £100. This seems to provide scope for planning residential development to reduce the CIL liability. It also seems to leave a gap with some residential developments not within either category. There are two different zones relating to retail development. In zone D all retail development above 500 sqm. is rated at £125 whilst all other retail use is nil rated. In Zone C supermarkets and superstores above 500 sqm are rated at £65 and all other is nil rated. Office, industrial, hotel and leisure developments are rated at £25. Any other developments are nil rated.

Daventry – with effect from 1st September 2015 residential developments are charged at the rate of £50 in the Urban Zone including sites of urban extension; £65 with sites above affordable housing threshold (currently five or more units) in Residential Rural Zone; and £200 with sites below affordable housing threshold (currently less than five units) in Residential Rural Zone. All retail developments save for those in central zone are charged at £100. All other uses are zero-rated. Two plans are included in the charging schedule – Residential charging zones and Central Zone.
**Dudley** – with effect from 1st October 2015. All residential development is charged at the rate of £0 in Zone 1; £20 in Zone 2; £50 in Zone 3; £75 in Zone 4; and £100 in Zone 5. The Zones are not fixed but vary according to the type of development as shown on maps 1-4 attached to the Schedule. Map 1 relates to developments comprising C3 open market housing with less than 25% affordable housing. Map 2 to such developments but with 25% or more affordable housing. Map 3 relates developments comprising C3 retirement housing with less than 25% affordable housing and map 4 such developments but with 25% or more affordable housing. Comparison A1 retail over 100 sqm is rated at £0 in Merry Hill and Waterfront and £82 elsewhere. Convenience A1 retail over 100 sqm is rated at £82 all over the borough. A3-A5 retail (public house, restaurant and hot food) over 100 sqm is rated at £67.50 all over the borough. All other types of development are zero rated.

**East Cambridgeshire** – with effect from 1st February 2013. Residential development set for three zones at £40/£70 and £90. Retail is £120 and all other developments at £0.

**East Devon** – with effect from 1st September 2016. Residential developments are rated at £80 in Axminster, Cranbrook (“existing” town), Exmouth, Honiton, Ottery St Mary, Seaton and edge of Exeter allocation sites (defined by new Builtup Area Boundaries and proposed Strategic Allocations); at £68 in Cranbrook expansion areas; and at £125 in Sidmouth, Coast, and Rural (the rest of East Devon). Retail development is rated at £0 for Inside Town Centre Shopping Areas (as defined in the New Local Plan); at £0 for Cranbrook (as defined by the “existing town” plus expansion areas); and £150 for rest of East Devon. The areas are shown in Part B1 of the Schedule and the interactive map on the authority’s website. All other non-residential uses are rated at £0.

**East Dorset** – with effect from 3rd January 2017. Residential developments are rated at £70 if comprising more than ten units; £0 if comprise 40 or more dwellings where on-site SANG is required by the Local Planning Authority; £150 if comprises 10 units or less or less than 1000 sqm floorspace; £0 if on the Residential on the following New Neighbourhood sites (allocated in the Core Strategy) which provide their own Suitable Alternative Natural Green Space (SANG) as mitigation for European sites Cuthbury Allotments and St. Margaret's Hill (WMC5)-220dwellings Cranborne Road, North Wimborne (WMC7) - 600 dwellings South of Leigh Road (WMC8) - 350 dwellings Lockyers School and land North of Corfe Mullen (CM1) - 250 dwellings Holmwood House New Neighbourhood (FWP3) - 150 dwellings (resolution to grant planning permission) East of New Road, West Parley (FWP6) - 320 dwellings West of New Road, West Parley (FWP7) - 150 dwellings North Western Verwood New Neighbourhood (VTSW4) - 230 dwellings North Eastern Verwood New Neighbourhood (VTSW5) - 65 (resolution to grant planning permission) Stone Lane, Wimborne (WMC6) - 90 dwellings. Developments for Extra Care Housing and housing for Vulnerable People (developments that comprise self-contained homes with design features and support services available to enable self-care and independent living) are rated at £0. The areas are shown on the maps at the end of para. 5 of the Schedule. Care home developments are rated at £40. Convenience retail development is rated at £100. For these purposes a convenience unit is a shop or store where the planning permission allows selling 'wholly or mainly' everyday essential items, including food, drinks, newspapers/magazines and confectionery. The term 'wholly or mainly' has a widely understood legal meaning (effectively more than 50%). Where no particular form of retail use is conditioned, the council will assume that the ‘intended use’ for CIL charging purposes may encompass “wholly or mainly” convenience retail, since this is
what the permission would allow, and that CIL will be charged accordingly.
Developments concerning Hotels, Offices, Light Industrial/Warehousing, Comparison
Retail (a shop or store selling 'wholly or mainly' (see above) goods which are not
everyday essential items. Such items include clothing, footwear, household and
recreational goods), Public service and Community Facilities and all other uses not
covered are zero-rated.

**East Hampshire** – with effect from 8th April 2016. Residential developments other than
class C2, C2A uses, Extra Care Housing and C3A sheltered housing (housing in self
contained houses and flats with communal facilities and an age restriction) are rated at
£65 in Whitehill and Bordon (excluding Regeneration Project CIL Zone); £110 in
Southern parishes of Clanfield, Horndean and Rowlands Castle; £150 in Alton CIL
Zone Location; and £180 in Northern parishes (excluding Whitehill/Bordon and Alton).
The charging areas are shown on the maps in the Schedule. Developments for
Residential C3A sheltered housing in self contained houses and flats with communal
facilities and an age restriction are rated at £0 in the Whitehill and Bordon Regeneration
Project CIL Zone and £40 in rest of the Charging Area. Hotel developments are rated
in all areas (excluding the Whitehill & Bordon Regeneration Project Zone) at £70 and
in the Whitehill & Bordon Regeneration Project Zone at £0. Retail developments (A1-
A5) in all areas (excluding the Whitehill and Bordon Regeneration Project CIL Zone)
are rated at £100 and in the Whitehill and Bordon Regeneration Project CIL Zone are
rated at £0. Developments concerning Offices, Industrial and warehousing, Student
accommodation, all class C2, C2A, C3B, C3C and extra care housing use, and any other
development are zero-rated.

**Eastbourne** – with effect from 1st April 2015. The rates are simple. Dwellings (C3) other
than residential apartments are rated at £50. Retail (A1-A5) is rated at £80. All other
uses are zero rated.

**Elmbridge** –with effect from 1st April 2013 the rates are residential dwellings (class C3)
£125; all retail developments (class A1-A5) £50; and all other developments £0.

**Enfield** – with effect from 1st April 2016. Residential rates (including all C3 Residential
Use Class) are charged at nil (Meridian Water Masterplan area); £40 (Eastern Corridor);
£60 Enfield Town and south of A406 and A110); £120 (remainder). The areas are
marked on an attached plan. Retail (A1), financial and professional services including
betting shops (A2), restaurants and cafes (A3), drinking establishments (A4) and hot
food takeaways (A5) are charged at £60. All other uses including offices, industrial,
hotels, leisure facilities, community and other uses are charged at £0.

**Epsom and Ewell** – with effect from 1st July 2014. There are no zones. The rates are –
residential dwellings (C3) £125; convenience retail (A1) £150; student accommodation
(C2) £30; care homes (C2) £20; all other uses nil.

**Exeter** – with effect from 1st December 2013 the rates are £80 residential (excluding
Class C2); student housing whose occupation is limited by planning permission or
planning obligation £40; retail (A1-A5) outside city centre £125; and all other
developments nil rate.
Fareham – with effect from 1st May 2013. The rates are £105 for residential developments (C3(a) and (c)/C4; £60 Care homes (C3(b)/C2); £35 hotels within C1; £0 for comparison retail in zones of town centres shown on maps (there is a long definition of comparison retail including clothing, household appliances, carpets, furniture, toys, sports equipment and cameras); £120 for all other types of retail; £0 for all other developments.

Gateshead – with effect from 1st January 2017. Dwellings (whether houses or flats) including sheltered housing (Use class C3) charged at £60 in Residential Zone A; £30 in Residential Zone B; £0 in Residential Zone C. The three Commercial Zones do not have a CIL rate for Dwellings. The Zones are marked on attached plans. Hotels (C1) are £0 in Commercial Zones 1 and 3 and £40 in Commercial Zone 2. In the Residential Zones hotels are not CIL rated. Small retail (A1) units equal to or less than 280 sqm net floorspace are charged at £0 in Commercial Zones 1 and 3 and £30 in Commercial Zone 2 but not CIL rated in the Residential Zones. Supermarkets (A1) with greater than 280 sqm net floorspace are charged at £10 in the Commercial Zones and not CIL rated in the Residential Zones. A supermarket is defined as “convenience-led stores selling mainly everyday essential items, including food, drinks, newspapers/magazines and confectionary, and where it is intended to utilise less than 50% of the gross retail floor area for the sale of comparison goods and where, depending on scale, weekly food shopping needs are met. In addition, the area used for the sale of goods will generally be above that applied for the purposes of the Sunday Trading Act of 280sq. m.” Retail warehousing (A1) with greater than 280 sqm net floorspace is charged at £50 in Commercial Zones 2 and 3 and £0 in Commercial Zone 1 and all Residential Zones. All other developments which includes Offices, Use Class B (business, industry, storage and distribution); Shared/Student Accommodation (C3, C4, Sui Generis) and Extra Care accommodation (Use Class C2 are charged at £0.

Gedling – with effect from 16th October 2015. Residential development is rated at £70, in zone 3; £45 in zone 2; and £0 in zone 1. Retail (A1-A5) is rated at £60 borough wide. All other uses are rated at £0.

Gloucester – with effect from 1st January 2019. Residential developments comprising between 11 and 449 dwellings are rated at £45. Such developments with less or more dwellings or developments in the Strategic Site are zero-rated.

Gosport – with effect from 1st February 2016. In Gosport Waterfront site (shown on plan attached to schedule) all residential developments are rated at £40; retail warehouses and supermarkets are rated at £60; and other non-residential uses are nil rated. Outside the Gosport Waterfront site retail warehouses (defined as a large store, typically on one level, that specialises in the sale of bulky goods such as carpets, furniture, electrical goods or DIY items) and supermarkets (a simple definition of a Supermarket for this purpose is a food based, self-service, retail unit greater than 280 square metres and governed by the Sunday Trading Act 1994) are rated at £60. Residential developments (covering any development within C3 other than public sector Sheltered Housing, public sector Extra Care facilities or other public sector specialist housing providing care to meet the needs of older people or adults with disabilities) with less than 10 dwellings are charged at £60 in zone 1; £100 in zones 2 and 3. If such residential development has 10 or more dwellings then the rates are £0 zone 1; £80 zone 2; and £100 zone 3. All other non-residential development are nil rated.
Greenwich with effect from 6th April 2015. There are two zones which are the same for all rateable uses. Supermarkets, superstores and retail warehousing which are 280 sqm and over are rated at £100 in both. Supermarkets and superstores are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food space as part of the overall mix and retail warehousing. Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers. Ancillary car parks (including undercroft parking) for supermarkets, superstores and retail warehousing which are 280 sqm and over are nil rated in both. Hotels are rated at £100 in both. Student housing is rated at £65 in both. Residential (excluding extra care housing which is defined in the CIL Viability Assessment) is rated at £70 in Zone 1 and £40 in Zone 2. All other developments are zero rated and includes all retail uses less than 280 sqm and retail uses 280 sqm or more not within the definitions of supermarket, superstore or retail warehouse; all B and D uses; all sui generis uses.

Hackney – with effect from 1st April 2015. There are four zones for residential development rated at £190, £55, £25 and nil. Office development is rated at £50 in the City Fringe and nil elsewhere in the borough. Large format retail is rated at £150 and is defined in the schedule as convenience based supermarkets and superstores and retail warehousing. Superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit. Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car borne customers. Other retail development is rated at £65 in the City Fringe and nil elsewhere in the borough. Hotel development is rated at £80 in the City Fringe and £55 elsewhere in the borough. Student housing is rated at £373 borough wide. All other developments including the development of operational buildings for emergency services is nil rated.

Hambleton – with effect from 7th April 2015. The rates are district wide. For private market housing (excluding apartments) the rate is £55. Retail warehouses is rated at £40. For these purposes it is stated that retail warehouses are usually large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods. They can be stand-alone units but are also often developed as part of retail parks. In either case, they are usually located outside of existing town centres and cater mainly for car-borne customers. As such, they usually have large adjacent, dedicated surface parking. Supermarkets are rated at £90. It is stated in the schedule that supermarkets are large convenience-led stores where the majority of custom is from people doing their main weekly foodshop. As such, they provide a very wide range of convenience goods, often along with some element of comparison goods. In addition to this, the key characteristics of the way a supermarket is used include (a) they are used for the sale of goods will generally be above 500sq. m; (b) the majority of customers will use a trolley to gather a large number of products; (c) the majority of customers will access the store by car, using the large adjacent car parks provided; and (d) servicing is undertaken via a dedicated service area, rather than from the street. Public/institutional facilities covering education, health, community and emergency services are nil rated. Similarly agricultural related development is nil rated. This will not include agricultural workers dwellings which
will be within residential. All other chargeable developments as identified in Regulations and Guidance are nil rated.

**Hammersmith and Fulham** – with effect from 1st September 2015. Residential development including houses in multiple occupation (Planning Use Classes C3 and C4) are charged at nil; £100, £200 or £400 dependent on the zone (which is shown by an attached map). Office development is nil rated save for zone Central A where the rate is £80. The rate of £80 applies in most but not all zones to developments involving student accommodation; retail (Planning Use Classes A including retail clubs); health and fitness leisure centres; hostels; night clubs; launderettes; taxi businesses; amusement centres and casinos. All other uses are nil rated. The Old Oak and Park Royal development area has been taken out of the Council’s area and is not subject to the Council’s Charging Schedule.

**Haringey** – with effect from 1st November 2014. There are three zones for residential and student accommodation and for each use the rate is the same in each zone starting at £15 then £165 and lastly £265. For supermarkets the rate is £95 whilst retail warehousing is £25. Standard definitions are used for these terms and there is no express area limitation. Office, industrial, warehousing and small scale retail (Use Class A1-A5) are nil rate as are health, school, higher education and all other uses.

**Harrow** – with effect from 1st October 2013 the rates are residential use within Class C3 £110; Hotel use within Class C1, residential institutions except hospitals (Class C2), student accommodation, hostels and HMO’s (sui generis) £55; Classes A1-A5 (retail, financial and professional services, restaurants and café, drinking establishments, hot food take-aways) £100; all other uses nil.

**Havant** – with effect from 1st August 2013. The rates are: residential £100 in a defined area and £80 elsewhere; retail out of town centre over 280 sq.m £80, under 280sqm £40, town centre £0; and all other developments £0.

**Havering** – with effect from 1st September 2019. Residential developments (including private care homes and retirement homes (excluding Extra Care)) are charged at the rate of £125 in Zone A (North) and £55 in Zone B (South). The map showing these two zones is contained in paragraph 3 of the charging schedule. Supermarkets, superstores and retail warehouses above 280 sq.m gross internal area are charged at the rate of £175. Supermarkets/Superstores are defined as shopping destinations in their own right, where weekly food needs are met, catering for a significant proportion of car-borne customers, and which can also include non-food floorspace as part of the overall mix of the unit. Retail Warehousing is defined as shopping destinations specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for a significant proportion of car-borne customers. All other retail (A1-A5) in Metropolitan, District and Local centres as shown on the retail zoning maps are charged at the rate of £50. These Centres are shown by the maps in Appendices A to C. Appendix D sets out the addresses included within these Centres. Hotel developments are rated at £20. Office and industrial developments and all other developments are zero-rated.

**Hertsmere** – with effect from 1st December 2014. For residential development there are three zones with rates of £120, £180 and nil. As regards commercial development there
are no zones. The rates are – hotel (C1) £120; specialist accommodation for the elderly and/or disabled including sheltered and retirement housing and nursing homes, residential homes and extra care accommodation £120; retail (A1) £80; and office (B1) and industrial (B2) nil.

**Hillingdon** – with effect from 1st August 2014. Large format retail development (A1) comprising greater than 1,000 sq. m, outside of designated town centres is rated at £215 but if within such centres rates are the same as zone. Designated town centres are shown on the maps in Appendix A to the Schedule. Office development (B1) is rated at £35. Hotel development (C1) is rated at £40. Residential development comprising dwelling Houses (C3) is rated at £95. Industrial development (B8) is rated at £5. All other uses are rated at £0.

**Horsham** – with effect from 1st October 2017. Residential developments (includes dwelling houses (C3), retirement homes falling within C3, houses in multiple occupation (C4), and purpose-built student accommodation (C2), but excludes all other forms of ‘residential institution’ in C2 are rated at 135 save in the Strategic Sites (Zone 2 on the map attached) which is rated at £0. Large format Retail Development (A1 to A5) including supermarkets (are shopping destinations in their own right where weekly convenience shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit) and retail warehousing (large stores specialising in the sale of: household goods (such as carpets, furniture and electrical goods); DIY items; and other ranges of goods, catering mainly for car-borne customers) are rated at £100 save for the Strategic Sites in Zone 2 which are zero-rated for all A, B, C, and D uses. All development not separately defined above, including, smaller retail development and (which will have a floor area for serving customers measuring up to and including 280 sqm. (Sunday Trading Act 1994).), offices, warehouses, leisure, education and health facilities (including B, C1, C2 excluding purpose built student accommodation is zero-rated.

**Hounslow** – with effect from 24th July 2015. Residential development (which includes all forms of residential use with the exception of student housing) is rated at £200 in Zone 1; £110 in Zone 2; and £70 in Zone 3 (which zones are shown on the attached map). Car parking for residential development will be charged at the same as residential development in the zone. Student housing is to be charged at the relevant rate for ‘All other uses’. Retail where the additional gross retailing space is over 280 sqm (Gross retailing space is the gross internal floor area including all ancillary floorspace but excluding covered parking that is ancillary to retail development and which is to be charged at the relevant rate for ‘All other uses’) is charged at the rate of £155. Healthcare, education and emergency service facilities are zero-rated. All other uses are charged at a rate of £20.

**Hull** – with effect from 1st February 2018. Residential developments are rated at £0 in Zones 1 and 2 (low value) and Zone 3 (medium value) and at £60 in Zones 4 and 5 (higher value). The zones are shown on the Map in the Schedule headed CIL Residential charging zones. All flats and apartments are rated at £0 city wide. Student accommodation is not charged. Retail warehouse developments are rated at £25 city wide. Large supermarket developments comprising over 500 sqm are rated at £50 whilst small supermarkets of less than 500 sqm are rated at £5.
Huntingdonshire – the charging schedule came into force on 1st May 2012. The rates apply across the whole of the area but vary according to the type of development. Retail development with an area of 500 sq. m or less is chargeable at £40 and if greater than 500 sq. m at £100. This differential in size with retail developments is being considered in a number of other areas and has met with opposition from some of the major retailers. The charging authority must justify such a differential with supporting evidence. After the coming into force of the 2014 Regulations a ground of objection based on the size of internal area is no longer possible. Hotel developments are chargeable at £60. Institutional residential developments are charged at £40 whilst for health developments the rate is £65. There is a nil rate for business (B1), general industrial storage and distribution (B2 and B3); community uses (D1 and D2) save for Health uses and agriculture. Any other development is chargeable at £85.

Islington – with effect from 1st September 2014. There are two zones for four types of development. These are (i) residential dwellings (C3 and C4); residential institutions (C2 and C2A) not including public health facilities and public care facilities - £300 and £250; (ii) retail (A1, A2, A3, A4, and A5) - £175 and £125; (iii) hotels (C1) and apartments - £350 and £250; office (B1a) - £80 and nil. Borough wide student accommodation is rated at £400 and £80 for conference centres, nightclubs, private members clubs, amusement centres and assembly and leisure (D2) not including public leisure facilities. There is a long list of uses which are nil rated.

Kensington and Chelsea – with effect on 6th April 2015. There are seven zones. Zone G described as Earl’s Court is nil rated for all uses as is a strategic site. For residential use (C3 and short terms lets) the rates are £750, £590, £430, £270, £190 and £110. For extra care housing the rates are £510, £350, £300, £160 and two zones are nil rated. Hotels in six zones are rated at £160 and student accommodation at £125. Industrial/warehousing, offices, retail uses, D1 and D2 uses and all other uses are nil rated.

Kings Lynn and West Norfolk – with effect from 1st April 2016. Residential developments are rated at £60 in North East and East areas of the Borough (East of the Great Ouse and north of A122/A134); at £40 in South and West of the Borough (West of the Great Ouse and south of A122/A134, including Downham Market); at £0 in King’s Lynn unparished area. Sheltered / Retirement Housing (C3) is rated at £0 in all areas. Strategic sites which are 150 or more units at (i) Boal Quay, King’s Lynn (ii) South of Parkway, King’s Lynn (iii) Bankside – West Lynn (iv) West Winch, strategic growth area (v) East of Lynn Rd, Downham Market (vi) Wisbech Fringe, Walsoken (all others should have the rate that applies to the area in which they lie). Supermarket developments including discount supermarkets are rated at £100 borough wide. Retail warehouse developments are rated at £100 borough wide. For these purposes (a) superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit; and (b) retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods) DIY items and other ranges of goods catering for mainly car-borne customers. All other retail developments and all other developments are zero-rated.

Kingston upon Thames – with effect from 1st November 2015 residential developments are charged at 3210 in Zone 1; £130 in Zone 2; £85 in Zone 3; and £50 in Zone 4. Care
Homes and Retirement housing developments are charged at £50 in Zones 1 and 2 and £20 in Zones 3 and 4. Extra care housing development is charged at £20. Student Housing development is charged at £220. Retail Convenience based supermarkets and superstores and retail warehousing (net retail space >280sqm) are charged at £200. Superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit. Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers. All other retail (A1-A5) developments are charged at £200 in Kingston Town Centre Primary Shopping Area, including Extension to Primary Shopping Area and £20 in the rest of the borough. Public Services and community facilities are zero-rated. Public Service and Community Facilities are defined as public service includes development by the emergency services for operational purposes; development used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institution of higher education; and development used wholly or mainly for the provision of any medical or health services, community halls, community arts centres, theatres, museums and libraries where development is for the purposes of delivering a public service or community facility. All other uses are charged at £20. In Appendix A is a map of Kingston’s Residential Charging Zones. Appendix B is a map of Kingston’s Primary Shopping Area.

**Lambeth** – with effect from 1st October 2014. There are three zones for residential, hotel and office developments. Residential rates are £225; £150; and £50. Hotel rates are £100 in one zone and nil in the other two. Office rates are £125 in one zone and nil in the other. For the whole borough rates are – industrial nil; large retail development (retail warehouses and superstores/supermarkets using standard definitions) £115; other retail nil; student accommodation £215; all other uses not identified nil.

**Leeds** – with effect from 6th April 2015. Residential developments covers five zones at rates of £90, £23, £45, £5 and £5. Supermarkets (using the standard definition) over 500 sqm are rated at £110 in the City Centre and £175 outside. Comparison retail over 1000 sqm is rated at £35 in the City Centre and £55 outside. Offices in the City Centre are rated at £35. Zero rating applies to development by a publicly funded or not for profit organisation including sports and leisure centres, medical or health services, community facilities and education. All other uses not mentioned are rated at £5.

**Lewes** – with effect from 1st December 2015. Residential development is rated at £90 in the Low Zone (south of South Downs National Park) and £150 in the High Zone (north of SDNP). Residential Institution is rated at £0. Retail is rated at £100. All other types of development (including industrial, office, hotel) are zero rated.

**Lewisham** – with effect from 1st April 2015 but that has yet to be confirmed. There are two zones for CIL rating purposes. With residential (C3) development the rates are £100 and £75. For Use Class B developments (commercial office and industrial (including storage and distribution) the rates are nil. For all other use classes the rates are £80. This last set of rates is very wide as it is a catch all that has not been dealt with expressly. I wonder whether this will throw up unintended CIL liabilities.
Lichfield – with effect from 13th June 2016. Market houses within Strategic Development Allocations (SDAs) and the Broad Development Location (BDL) defined in the Local Plan Strategy 2008-2029 adopted 17 February 2015 (refer to Figure 1 and inset maps Figures 2 - 9) charged at £14. For the purposes of this schedule “Private Market Housing” is defined as Houses that are developed for sale or for private rent on the open market at full value. As such ‘affordable housing’ of any type is excluded from this definition but residential apartments are charged at £0. Apartments are defined as separate and self contained dwellings within the same building. They generally have shared access from the street and communal areas from which individual dwellings are accessed. Apartment buildings have dwellings on more than one floor and are subdivided horizontally by floor. Market Houses in the lower value zone (see figure 1) are charged at 325 and in the higher value zone are charged at £55. A Supermarket is charged at £160 and defined as Supermarkets are large convenience-led stores where the majority of custom is from people doing their main weekly food shop. As such they provide a very wide range of convenience goods, often along with some element of comparison goods. In addition to this the key characteristics of the way a supermarket is used include: (i) The area used for the sale of goods will generally be above 500 sq. m; (ii) The majority of customers will use a trolley to gather a large number of products (iii) The majority of customers will access the store by car, using the large adjacent car parks provided; and (iv) Servicing is generally undertaken via a dedicated service area, rather than from the street. Retail Warehouses are charged at £70 and defined as usually large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods. They can be stand-alone units but are also often developed as part of retail parks. In either case, they are usually located outside of existing town centres and cater mainly for car-borne customers. As such, they usually have large adjacent, dedicated surface parking. Neighbourhood Convenience Retail is charged at £20 and is defined as neighbourhood convenience stores are used primarily by customers undertaking ‘top-up’ shopping. They sell a limited range of convenience goods and usually do not sell comparison goods. The key characteristics of their use include: (i) Trading areas of less than 500 sq. m; (ii) The majority of customers will buy only as small number of items that can be carried around the store by hand or in a small basket; (iii) The majority of customers will access the store on foot and as such there is usually little or no dedicated parking; and (iv) Servicing is often undertaken from the street, rather than dedicated service areas. All other developments including residential apartments are charged at £0.

Lincoln – with effect from 5th February 2018 residential developments in the Lincoln Strategy Area are charged at £25 in relation to dwellings other than apartments and £0 in relation to apartments. Residential development sites at Western Growth Corridor and North East Quadrant sustainable urban extension are charged at £20 in relation to dwellings other than apartments and £0 in relation to apartments. Convenience retail developments are charged at £40 whilst all other uses including comparison retail and retail warehousing are zero-rated. The charging zones are shown on the attached map together with separate inset maps for the Western Growth corridor and the North East Quadrant.

London Legacy Development Corporation – with effect from 6th April 2015. The rates are – all residential development £60; convenience supermarkets and superstores and retail warehouses (over 1000 sqm) £100; hotels £100; student accommodation £100; comparison and all other retail (A1-A5) in Stratford Retail Area £100 and nil outside;
education and healthcare nil; all other uses nil. In addition there will be the Mayoral CIL of £20 if the development site is within Newham and Waltham Forest and £35 if within Tower Hamlets or Hackney. There is no Mayoral CIL on education or healthcare.

London Mayoral

(a) Original (MCIL 1) - with effect from 1st April 2012. Applies to all developments other than developments for medical or health uses or which are wholly or mainly for provision of education as a school or college. The rates are £50 for zone 1; £35 for zone 2; and £20 for zone 3 (for these zones see Part A of the Third Appendix).

(b) 2019 Revision (MCIL 2) – with effect from 1st April 2019. Applies to all developments save that nil CIL rate with regard to development used wholly or mainly for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner and development used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institution of higher education. The rates are £80 in zone 1; £60 in zone 2; and £25 in zone 3. A few authorities have changed zones. For these zones see Part B of the Third Schedule. In addition in Central London and the Isle of Dogs (which two areas can be found on the MCIL Mapping Tool on the Mayor of London’s website) there are specific charges which are:

(i) Office developments are charged at rate of £185; Office is defined as any office use including offices that fall within Class B1 Business of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order. Uses that are analogous to offices which are sui generis, such as embassies, will be treated as offices.

(ii) Retail developments are charged at £165 which is defined as all uses that fall within Classes A1, A2, A3, A4 and A5 of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order, and related sui generis uses including retail warehouse clubs, car showrooms, launderette.

(iii) Hotel developments are charged at £140 which Hotel means any hotel use including apart-hotels uses that fall within Class C1 Hotel of the Town and Country Planning (Use Classes) Order 1987 as amended.

Maidestone – with effect from 1st October 2018. Residential development (C3) is chargeable at £93 within the Urban Boundary; £99 outside the Urban Boundary; and £77 at site H1 at Springfield Road. Retirement (which is within Use Class C3, for groups of dwellings that provide independent, self-contained homes, specifically for older people, usually with some element of communal facilities) and extra care developments (which are dwellings that provide independent, self-contained homes, specifically for older people, with access to 24 hour care and support) are rated at £45. Care homes and nursing homes (C2 and C2a) are not included. Retail development which is wholly or mainly convenience is rated at £150. Retail development which is wholly or mainly comparison and outside the Town Centre Boundary (set out in figures 2 and 2a in Appendix A) is rated at £75. Wholly or mainly means more than 50% of the floor space is used for that purpose. All other developments are zero-rated.

Malvern Hills - with effect from 4th September 2017. Residential other than in the Main Urban area and the strategic sites is charged at £40; Student accommodation is charged
at £100; Food Retail (Supermarkets) at £60; Retail warehouses at £60 and Residential in other areas, Shops, Hotels, Industrial and Office and all other uses (including education, health and community uses) at £0. Residential Includes buildings classed as 'dwellingshouses' within class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) but excludes Extra Care / Sheltered Accommodation which consists of self-contained homes for older people, with access to on-site care and/or other on-site facilities. Food Retail (Supermarkets) is defined as a supermarket is a retail shop selling food and household items on a self-service basis with the products usually, but not necessarily, arranged in aisles. It may also, but not necessarily, include a range of comparison goods in the overall retail mix. Customers may use a supermarket for their main weekly shop. Retail warehouses usually occupy a single floor, the majority of which is devoted to sales, with some ancillary storage and office use. They may be sited singly or grouped together, most frequently in fringe or out of town locations and cater mainly for car borne customers. Retail warehousing includes all non-food retail units without restriction to size, specialising in the sale of household goods (for example: carpets, furniture, electrical goods), DIY items and other ranges of goods. Generally their construction shows a much greater visual similarity to warehousing than to that of standard shop units. Education, health, community and other uses includes buildings that are often provided by the public sector, not for profit and charitable sectors and include the following classes within the Town and Country Planning (Use Classes) Order 1987 (as amended): residential institutions (C2, C2a), non-residential institutions (D1) and assembly and leisure uses (D2). Industrial Development is defined as B1, B2 and B8 uses as per the Town and Country Planning (Use Classes) Order 1987 (as amended).

Merthyr Tydfil – with effect from 2nd June 2014. There are three zones for residential development (C3). One is rated at £25 and the other two at nil. Retail (A1) is rated at £100 and retail (A3 –restaurant and cafes) at £25.

Merton – with effect from 1st April 2014 there are two zones for the residential rates which are £220 and £115. There is a single rate of £100 for retail warehouses and superstores (defined in the schedule).

Mid Suffolk - with effect from 11th April 2016. Residential developments (C3) excluding specialist older persons housing are rated at £75 in the Low Zone if the development comprises between one to fourteen dwellings; £50 in the Low Zone if the development comprises fifteen or more dwellings; £115 in the High Zone; and £0 in the Strategic Sites (which Zones and Strategic Sites are set out in the maps in paragraph 6 of the Schedule). Specialist older persons housing describes developments that comprise self-contained homes with design features and support services available to enable self- care and independent living. Sometimes also known as sheltered/retirement housing and extra care accommodation. These are zero-rated. Wholly or mainly Convenience retail developments are rated at £100 in all areas. Where no particular form of retail use is conditioned, the LPA will assume that the ‘intended use’ for the CIL charging purposes may encompass “wholly or mainly” convenience retail as an open ended permission would allow this. All other uses are zero-rated.

Mole Valley – with effect from 1st October 2017. Residential developments (C3) are charged at the rate of £175 in built up areas and £250 in rural areas and both areas are shown on Map A. 'Retail - convenience' is defined as a shop or store where the principal
use is selling wholly or mainly everyday items including food, drink and non-durable household goods and which can also include non-food, comparison goods as a minority part of the sales mix. It is rated at £140. 'Retail-comparison outside town centres' is defined as a shop or store outside the town centres defined on Map B where the principal use is for retail purposes that does not fall within the definition of retail convenience given above. It is rated at £140. All other development is zero-rated.

New Forest DC – with effect from 6th April 2015 the CIL rates are dwelling houses (C3) £80; £0 retail (A1), industry and offices (B1, B2 and B3), hotels (C1), residential institutions (C2) and any other uses.

Newark and Sherwood DC –

(a) Original - the charging schedule took effect on 1st December 2011 and divides the area into six zones for the purposes of residential development with varying rates - two £0, two £45, one £55, one £65 and the last £75. Other types of development are divided both by area as there are seven zones and class of development of which there are nine (hotel; residential institution; industrial; offices; retail; community/institutional; leisure; agricultural; and sui generis). Most are at £0 but retail is £100 in six zones and £125 at Newark Growth Point.

(b) 2018 Revised – Residential developments are rated at £0 in relation to apartments in all zones; £0 in Housing Low Zone 1; £45 in Housing Medium Zone 2; £70 in Housing High Zone 3; £100 in Housing Very High Zone 4. These zones are shown on a map headed Community Infrastructure Levy Zones –Residential. All retail developments (A1-A5) are rated at £100 district wide. All other non-residential developments are zero-rated.

Newcastle upon Tyne – with effect from 14th November 2017. Residential developments (C3) (including dwellings and flats and sheltered housing) are rated at £60 in Residential Zone A; £30 in Residential Zone B; £0 in Residential Zone C and Newcastle Central Area Zone 1. These residential zones are shown a map linked ion the Authority’s website. Student Accommodation development (purpose built student accommodation which usually has an element of communal facilities) (C3, C4, Sui Generis) is rated at £50 in Newcastle Central Area Zone 1 and Commercial Zone 2 and at £0 in Commercial Zone 3. The Commercial zones are shown on a map linked from the Authority’s website. Hotel developments (C1) are rated at £0 in Newcastle Central Area Zone 1 and Commercial Zone 3 and £40 in Commercial Zone 2. Small retail development (A1) comprising units equal to or less than 280 sqm net floorspace are rated at £0 in Newcastle Central Area Zone 1 and Commercial Zone 3 and £30 in Commercial Zone 2. Supermarket developments (A1) comprising more than 280 sqm net floorspace are rated at £10 in Newcastle Central Area Zone 1, Commercial Zone 2 and Commercial Zone 3. For these purposes supermarkets are convenience-led stores selling mainly everyday essential items, including food, drinks, newspapers/magazines and confectionary, where it is intended to utilise less than 50% of the gross retail floor area for the sale of comparison goods and where, depending on scale, weekly food shopping needs are met. In addition, the area used for the sale of goods will generally be above that applied for the purposes of the Sunday Trading Act of 280sq. m. Retail Warehousing developments (A1)comprising more than 280 sqm net floorspace are
rated at £50 in Commercial Zone 2 and Commercial Zone 3 and at £0 in Newcastle Central area Zone 1. For these purposes Retail warehouses are usually large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods. They can be stand-alone units, but are also often developed as part of retail parks. In either case, they are usually located outside of existing town centres and cater mainly for car-borne customers. As such, they usually have large adjacent, dedicated surface parking. All other development (including Office, Use Class B business, industry, storage and distribution, Extra Care (C2)) are rated at £0.

Newham- with effect from 1st January 2014. There are two zones for residential developments with rates of £80 and £40. For the whole area the remaining rates are £30 for retail; £120 for hotels; £130 for student accommodation; and remainder £0.

North Kesteven – with effect from 22nd January 2018. Residential developments excluding apartments are rated at £25 in Zone 1 (the Lincoln Strategy Area); £15 in Zone 2 (the non-Lincoln Strategy Area); and £20 in Zone 3 (certain specified areas). Apartments are zero-rated in all zones. Developments involving convenience retail are rated at £40. All other uses (including comparison retail and retail warehousing) are zero-rated.

North Somerset – with effect from 18th January 2018. Residential development (C3/C4) are rated at zero in Zone A (Weston Town Centre); £20 Strategic Development Areas in Zone B (Outer Weston); £40 in Zone B which not Strategic Development Areas; £40 Strategic Development Areas in Zone C (rest of district); £80 in Zone C which not Strategic Development Areas. Purpose-built student accommodation/halls of residence are rated at £40. Large-scale retail (A1/A2/A3/A4/A5) which is more than 280 sqm net sales area is rated at £120 and if less than 280 sqm at £60. Zero-rating applies to extra care housing which is accommodation available to rent or buy for older people or others in need of care and which meets the following criteria: (i) residents are subject to an assessment of minimum care needs to establish eligibility to buy or lease a property; (ii) residents are required to purchase a ‘minimum care package’ as a condition of occupation, to include at least 2 hours of domiciliary care per week focused on the health and social care needs of those residents; and (iii) the development has a minimum non-saleable floorspace in excess of 30% of GIA. If the criteria are not met then the housing is charged as residential under C3. Commercial developments (B1, B2 and B8) and all other qualifying developments are zero-rated.

North Tyneside – with effect from 14th January 2019. Residential developments are chargeable at £0 in Zero Rate Area U0; £19 in Built-Up Area Zone U1; £24 in Built-Up Area Zone U2; £47 in Remaining Area Zone R1; £68.60 in Remaining Area Zone R2. These areas and zones are shown on an attached residential map. Hotel developments (C1) are charged at £30 in Commercial Zone B and zero-rated in Commercial Zones A and C as shown on the Commercial Zones map. Developments of small retail units (A1) which are less than 280 sqm are rated at £20 in Commercial Zone B; £15 in Commercial Zone C; and zero-rated in Commercial Zone A. Office development (B1a and B1b) is rated at £5 in Commercial Zone B and zero-rated in Commercial Zones A and C. All other developments are zero-rated.
Northampton – with effect from 1st April 2016. Residential developments are rated at £50 both in SUEs and the remainder of the Borough. These areas are shown in the Residential Charging map in the Schedule. Retail development is rated at £100 in the Borough excluding the Central Zone as shown on the Central Zone (nil retail charging) map in the Schedule. All other uses are zero-rated.

Norwich – with effect from 15th July 2013 the rates are residential development (Classes C3 and C4 excluding affordable housing) including domestic garages but excluding shred-user and decked garages £75; flats in blocks of 6 or more £65; large convenience goods based stores (more than 50% of net floor area is intended for sale of convenience goods) of 2000 sqm or more £135; all other retail uses (A1-A5) and assembly and leisure development plus sui generis uses such as retail warehouse clubs, petrol stations, nightclubs, amusement centres and casinos £25; Class C2, C2A and D1 and sui generis fire and rescue stations, ambulance stations and police stations £0; all other uses covered by CIL regulations (including share-user/ decked garages) £5.

Oxford – with effect from 21st October 2013 uses in Classes A1-A5 (shops, financial and professional services, restaurants and cafes, drinking establishments, and hot food establishments) have a rate of £100; uses in Classes B1 (business), B2 (general industrial), B8 (storage or distribution), C1 (hotels) and C2 and C2A (residential institutions and secure residential institutions) are rated at £20; uses in Classes C3 (dwellinghouses including self-contained sheltered accommodation and self-contained graduate accommodation) and C4 (houses in multiple occupation) and student accommodation are rated at £100; uses in Classes D1 (non-residential institutions) and D2 (assembly and leisure) are rated at £20; all other development uses are rated at £20.

Peterborough – with effect from 24th April 2015. With residential development on all sites with 500 dwellings or more there is a nil rate (required by the examiner). There are then three zones for other types of residential development. If the development produces less than 15 market houses the rates are £140, £120 and £100. With developments of 15 or more market houses the rates are £70, £45 and £15. With developments comprising apartments on sites of less than 15 units the rates are £70, £45 and £15. City wide supermarkets (500 sqm or more) are rated at £150; retail warehouses (500 sqm or more) at £70 and neighbourhood convenience stores (less than 500sqm) at £15. All other developments are nil rated. More definitions will be added in response to the examiner but will not be known until the final charging schedule is published.

Plymouth – These are due to take effect on 1st June 2013 with most rates are set at £0 so as to encourage development. Residential is £30; purpose built student accommodation is £60 save it is £0 if located within a particular zone within the city; and £100 for superstores and supermarkets with gross internal floor space of 1000 square metres or more including any extensions. Oddly both superstores and supermarkets appear to have the same definition which is that used for supermarkets by Wycombe, namely “shopping destinations in their own right where weekly food shopping needs can be met and which also include non-food floor space as part of the overall mix of the unit”. If this is correct then many retail superstores will not be caught as they will not meet the weekly food needs of their customers. It is noteworthy that Wycombe has a different definition which is applicable to superstores.
Poole –

(i) **Original** - with effect from 2nd January 2013 a simple charging schedule has been introduced. There are three zones with residential developments chargeable at rates of £150, £100 and £75. Any other development is chargeable at £0.

(ii) **2019 Revision** – with effect from 21st February 2019. Residential developments (C3) excluding retirement housing are rated at £230 in Zone A (Lilliput / Branksome Park, Sandbanks, Canford Cliffs); £60 in Zone B(i) (Poole town centre - excluding Twin Sails Regeneration Area); £0 Zone B(ii) (Poole town centre – Twin Sails Regeneration Area; £115 in Zone C (Central Poole and North Poole). These zones are shown on the map headed Residential Charging Zones at the end of the Schedule. Developments comprising residential retirement housing (C3) and assisted living housing (C2) in Zone A are rated at £115. Retail developments (A1) are rated at £0 in Zone D(i) (Poole town centre, district centres, local centres and neighbourhood parades) and £200 in Zone D(ii) (all parts of the borough outside of Poole town centre, district centres, local centres and neighbourhood parades). These zones are shown on the map headed Commercial Charging Zones at the end of the Schedule. All other developments are zero-rated.

**Portsmouth** – took effect on 1st April 2012 with a basic CIL rate of £105 for any development not specifically mentioned. A CIL rate of £53 applies to in-centre retail of any size, out of centre retail for less than 280 square metres, hotels and residential institutions. A £0 rate applies to office and industrial developments and community uses.

**Preston** – with effect from 30th September 2013 the rates are dwelling houses (excluding apartments) £65 save for those in the Inner Preston Zone when the rate is £35; apartments £0; convenience retail (excluding neighbourhood convenience stores) £160; retail warehouse, retail parks and neighbourhood convenience stores £40; community uses £0 and all other uses £0. The various uses are defined in Appendix two to the Charging Schedule.

**Purbeck** – with effect from 5th June 2014 the rates are £75 for A1 retail; £20 for A2-5; for C2 (care homes) and C3 (sheltered homes) there are three zones with rates of £100, £30 and nil; for C3 (not sheltered homes) and C4 there are four zones with rates of £180, £100, £30 and £10; for all other developments nil.

**Reading** – with effect from 1st April 2015. Borough wide there is a rate of £120 for residential, hotels, sheltered housing, and private rented accommodation (including student accommodation). Care homes providing nursing care and fully catered are nil rated. A1 retail is nil rated in Central Reading (defined in the Reading Central Action Plan (2009)). Elsewhere if 2000 sqm or over (including foodstores) the rate is £150 and if under 2000 sqm is nil rated. Offices in the Central core (walk time catchment of Reading Rail Station) are rated at £30. All other chargeable developments are nil rated.

**Redbridge** - this authority has a single CIL rate applicable to all types of development wherever located in the area. It has been set at £70 per square metre with effect from 1st January 2012.
Reigate & Banstead – with effect from 1st April 2016. Residential development (C3) rated at nil in Charge Zone 1; at £140 in Charge Zone 2; at £80 in Charge Zone: at £180 in Charge Zone 4; and at £200 in Charge Zone 5 £200. These zones are shown on the Charging Zones for residential development: Overview map annexed to the Schedule. Retail development which is wholly or predominantly (a development is considered to be predominantly for the sale of convenience goods where more than 50% of the net sales area is given over to the sale of such goods) for the sale of convenience goods (defined as everyday essential items including but not limited to food, alcoholic and non-alcoholic beverages, confectionary, tobacco, newspapers and periodicals and non durable household goods) including superstores and supermarkets, throughout the borough are rated at £120. Superstores/supermarkets are defined as self-service stores which provide either weekly or top-up shopping needs and which sell mainly convenience goods but can also include a proportion non-food, comparison floorspace as part of the mix. All other development throughout the borough are rated at Nil.

Rhondda Cynon Taf – with effect from 31st December 2014. There are three zones for residential development rated at nil, £40 and £85. Retail (A1) is rated at £100 and all other development types are nil rated.

Richmond – with effect from 1st November 2014. There are two zones for residential development with rates of £250 and £190. The rate for office development outside Richmond Town Centre is £25. Borough wide the rate for retail (wholly or mainly convenience) is £150. The schedule provides that convenience retail is a shop or store where the planning permission allows selling wholly or mainly everyday items, including food, drinks, newspapers/magazines and confectionary. The same rate of £150 applies for wholly or mainly comparison retail in Richmond Town Centre. Comparison rates is stated by the schedule to be a shop or store selling wholly or mainly goods which are not every day essential items such as clothing, footwear, household or recreational goods. Hotels and Care homes in the area known as the lower band are rated at £25. All other uses not expressly covered are nil rated.

Rother – with effect from 4th April 2016. Residential developments are rated at £200 in Zone 1 (Battle, Rural North and West); £135 in Zone 2 (Rye, Hastings Fringes and Rural East); £50 in Zone 3 (a) (Bexhill – Urban); £170 in Zone 3(b) (Bexhill – Rural); £75 in Zone3(c) (Bexhill–Strategic urban extensions). Sheltered/Retirement Homes developments (C3) in Zone 1 rated at £140 and in Zones 2 and 3 are treated as dwellings. Extra Care Housing developments rated throughout District at £25. The three Zones are shown on the Residential CIL Charging Zones Map and the subdivision of Zone 3 is shown on the Bexhill Inset Zones 3a, 3b and 3c. Convenience retail development which is in centre is rated at £100. Convenience retail development which is out of centre is rated at £120. Comparison retail development which is out of centre is rated at £250. The in centre and out of centre areas are shown on the Retail CIL Charging Zones maps. All other forms of development are rated at £0.

Rotherham – with effect from 3rd July 2017. Residential development is rated at £55 in Residential Zone 1; at £30 in Residential Zone 2; at £15 in Residential Zone 3 and Residential Zone 4 (which zones are shown on the maps attached to the Schedule). Retirement living is rated at £20 across the borough. It is defined as residential units which are sold with an age restriction typically over 50s/55s with design features and support services available to enable self-care and independent living. For the purposes
of the CIL charge, this type of development has been excluded from the residential use category. Supermarket developments are rated at £60. Supermarkets are shops above 370 square metres gross internal floorspace where weekly and daily food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit. A development involving Retail Warehouses/Retail Parks are rated at £30. These are defined as “stores above 1,100 square metres gross internal floorspace (this includes any mezzanine floorspace) selling comparison goods such as bulky goods, furniture, other household and gardening products, clothing, footwear and recreational goods”. All other uses are zero-rated across the borough.

**Rutland – with effect from 1st March 2016.** Residential development (which means new dwellings/flats. It does not include any other developments within Class C1, C2 or C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) such as residential care homes, Extra Care housing and other residential institutions) is rated at £100. Developments involving Sheltered Housing and Extra Care Housing are rated at nil. Developments involving distribution (B8) are rated at £10. Developments of Food Retail Supermarkets are rated at £150. The Schedule defines Food Retail (Supermarkets) as “shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit. Details of this approach were set out by Geoff Salter in his report following his examination of the Wycombe DC CIL Charging Schedule (September 2012).” Developments of Retail Warehouses are rated at £75. Retail warehouses are defined as “large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods catering for mainly car-borne customers”.

**Ryedale – with effect from 1st March 2016.** Residential developments comprising Private market houses (excl. apartments) are rated at £45 in low value areas and £85 in all other areas. The areas are shown on the map in the Schedule. Supermarket developments are rated at £120 and Retail Warehouse developments at £60. For these purposes (a) Supermarkets are large convenience-led stores where the majority of custom is from people doing their main weekly food shop. As such, they provide a very wide range of convenience goods, often along with some element of comparison goods. In addition to this, the key characteristics of the way a supermarket is used include: (i) the area used for the sale of goods will generally be above 500 sq. m.; (ii) the majority of customers will use a trolley to gather a large number of products; (iii) the majority of customers will access the store by car, using the large adjacent car parks provided; and (iv) servicing is undertaken via a dedicated service area, rather than from the street; (b) Retail Warehouses – are usually large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods. They can be stand-alone units, but are also often developed as part of retail parks. In either case, they are usually located outside of existing town centres and cater mainly for car-borne customers. As such, they usually have large adjacent, dedicated surface parking. Public/Institutional facilities as follows: education, health, community and emergency services are rated at £0 as are all other chargeable development (incl. apartments).

**Sandwell – with effect from 1st April 2015.** The rates are – retail units (this covers A1-A5 excluding superstores/supermarkets and retail warehouses) at West Bromwich
Strategic Centre £50; borough wide supermarkets/superstores and retail warehouses (defined in the schedule) over 280 sqm £60; residential developments for 14 or less units £30; residential developments for 15 or more units £15; all other uses nil. Residential developments exclude residential institutions (C2).

Sedgemoor – with effect from 1st April 2015. The rates are – residential development in urban areas £40; residential developments in all other areas £80; supermarkets and retail warehouses (defined in the schedule) £100; hotel developments £10; all other developments nil.

Selby – with effect from 1st January 2016. Residential developments for private market houses excluding apartments are rated at £10 in Low value areas; at £35 in Moderate value areas; and at £50 in High value areas. These areas are shown on the annexed map for CIL Residential Charging Zones. Supermarket development is rated at £110. For these purposes supermarkets are large convenience-led stores where the majority of custom is from people doing their main weekly food shop. As such, they provide a very wide range of convenience goods, often along with some element of comparison goods. In addition to this, the key characteristics of the way a supermarket is used include: (i) the area used for the sale of goods will generally be above 500 sq. m; (ii) the majority of customers will use a trolley to gather a large number of products; (iii) the majority of customers will access the store by car, using the large adjacent car parks provided; (iv) servicing is generally undertaken via a dedicated service area, rather than from the street. Retail warehouse developments are rated at £60. For these purposes retail warehouses are usually large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods. They can be stand-alone units, but are also often developed as part of retail parks. In either case, they are usually located outside of existing town centres and cater mainly for car-borne customers. As such, they usually have large adjacent, dedicated surface parking.

Public/Institutional Facilities as follows: education, health, community and emergency services are rated at £0. All other chargeable development (incl.

Sevenoaks – with effect from 4th August 2014 the rates are residential (Class C3) £125 and £75 dependent on the zone and a single rate for supermarkets and superstores primarily selling convenience goods of £125; retail warehousing £125; and other forms of development £0. The uses have their own definitions in the schedule.

Sheffield – with effect from 15th July 2015. Residential developments (C3 and C4 except retirement, extra care, sheltered housing and assisted living) charged at £0 in zones 1 and 2; £30 in zone 3; £50 in zone 4; and £80 in zone 5. All Retail (A1) is rated at £30 in City Centre Prime Retail Area and £60 in Meadowhall Prime Retail Area. Outside the two Prime Retail Areas any Major Retail Schemes comprising retail outlets of 3,000 sqm of gross internal floor or more including Superstores (shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit) and Retail Warehouses (large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), clothes, DIY items and other ranges of goods, catering mainly for car-borne customers) are rated at £60. There is excluded from any residential development car parking provided for the use of the development. Hotels (C1) are rated at 340 and Student Accommodation at £30.
Shepway – with effect from 1st August 2016. Residential developments (C3 and C4 including sheltered accommodation) are rated at £0 in Zone A; £50 in Zone B; £100 in Zone C; £125 in Zone D (zones A, B, C, and D on maps in Appendices 1 and 2); £0 in four Strategic and Key Development Sites (see appendix 4). All comparison and convenience retail developments and other development akin to retail rated at £0 in Folkestone Town Centre Area (shown in Appendix 3). All developments (A, B, C and D uses) rated at £0 in four Strategic & Key Development Sites In remainder of the district supermarkets, superstores and retail warehousing with net retail selling space over 280 sqm rated at £100. For these purposes (a) superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit and (b) Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers. Also in the remainder of the district other large scale development akin to retail (including sui generis uses akin to retail including petrol filling stations; selling and/or displaying motor vehicles; and retail warehouse clubs) which has net retail selling space of over 280 sqm is rated at £100. In the remainder of the district other retail development and developments akin to retail with net selling space up to 280 sqm are rated at £0. All other developments not addressed by these tables (B, C1, C2 and D uses) are zero-rated district wide.

Shropshire - with effect from 1st January 2012 new residential development in Shrewsbury, the market towns and key centres is set at £40 whilst it is £80 for new residential development elsewhere. Any other development is at a nil rate.

Solihull – with effect from 12th April 2016. Residential (C3) development is rated at £75 in the mature suburbs; £150 in the rural area; and zero-rated in Blythe Valley Park (these are shown by the maps in the Schedule). Residential institutions (C3) (excluding hospitals and training centres) are zero-rated in the Blythe Valley Park and elsewhere at £25. Supermarkets/convenience stores are zero-rated in the Blythe Valley Park and elsewhere at £25. Supermarkets/convenience stores of greater than 550 sqm are rated £300 in the rural areas, mature suburbs including Solihull and Shirley Town Centres whilst zero-rated in North Solihull. Convenience stores with less than 550 sqm are rated at £150 in the rural areas, mature suburbs including Solihull and Shirley Town Centres whilst zero-rated in North Solihull. Other retail formats are rated £50 in the mature suburbs and rural areas; £25 in Solihull and Shirley Town Centres; and zero-rated in North Solihull. Car dealerships (sui generis) are rated £75 save for zero-rating in North Solihull. In all areas financial and professional services (A2) are rated £25; restaurants and cafés (A3), drinking establishments (A4) and hot food takeaways (A5) are rated £100; hotels are rated £25; and all other uses are zero-rated. In the event of a mix use development then unless otherwise specified (e.g. by condition which sets out the floorspace in each category) the higher CIL will be charged.

Somerset West and Taunton (formerly Taunton Deane) – with effect from 1st April 2014. There are four zones for residential development (£125, £70 and two at nil rate). For these purposes there is excluded from residential Class C2 use but there is included student housing and similar types of institutional accommodation. Retail development (Classes A1-A5) outside Taunton and Wellington town centres are rated at £140. All other developments are nil rated.
South Downs National Park – with effect from 1st April 2017. Residential developments are rated at £100 in Zone 1 (Petersfield, Lewes, Petworth, Midhurst) and £200 in Zone 2 (the remainder of the area). ‘Residential’ includes all development within Use Class C3 of the relevant Order. For these purposes ‘Residential’ also includes agricultural workers dwellings and holiday lets as these uses are considered to be normal homes for the purposes of calculating CIL and any restrictive occupancy conditions do not provide exemption from CIL liability. However, they may be exempt from CIL liability if they are self-built or converted from an existing building. The Zones are shown on a map at the end of the Schedule. Large format retail developments are rated at £120. For these purposes ‘Large format retail’ means convenience-based supermarkets and superstores and retail warehouses with a net retail selling space of over 280m2 providing shopping destinations in their own right where weekly food shopping needs are met and can include non-food floorspace as part of the overall mix. Also retail outlets specialising in household goods (such as carpets, furniture and electrical), DIY items and other ranges of goods, catering for mainly car-borne customers. All other developments are zero-rated.

South Gloucester – with effect from 1st August 2015. Residential developments are rated at £55 in the Communities of North & East Fringe of Bristol, Yate/Sodbury and Severn Beach save the rate is £100 for small sites in those areas that fall below the affordable housing threshold; £80 in the rest of South Gloucestershire (excepted the two areas specified immediately after as CPNN and EoHSNN) save the rate is £130 for small sites in that area that fall below the affordable housing threshold); £0 in Cribbs Patchway New Neighbourhood1 (CPNN) & East of Harry Stoke New Neighbourhood (EoHSNN) which also applies to all other types of development within these areas. The ‘Affordable housing threshold means 10 units or below in urban areas and 5 units or below in rural areas in accordance with Policy CS18 of the Core Strategy, applied taking account of the NPPG revision (ID: 236-012-20141128) dated 28/11/14’. The zones and areas are shown in the two Residential CIL Charging maps in the Schedule. Developments relating to Residential Care Homes (class C2) & Extra Care facilities (Class C2/C3) and sheltered retirement (class C3) are rated at £0. Developments relating to Agricultural Tied Houses are zero-rated. Office developments (class B1a) are rated at £30 in the Prime Locations area and £0 in the Non-Prime Locations area. Developments relating to R&D, Light Industrial, General Industrial, storage & distribution (classes B1b, B1c, B2 & B8) are zero-rated in both the Prime Locations area and the Non-Prime Locations area. Retail developments (classes A1-A5) (including retail warehouse clubs) are rated at £160 in the Prime Locations area and £120 in the Non-Prime Locations area. Hotel developments (class C1) are rated at £90 in the Prime Locations area and £0 in the Non-Prime Locations area. Student Accommodation developments are rated at £60 in the Prime Locations area and £0 in the Non-Prime Locations area. Developments relating to the sale or display for sale of motor vehicles are rated at £90 in both the Prime Locations area and the Non-Prime Locations area. The prime Locations area is shown on the map in the Schedule headed CIL – Prime Locations non-residential uses. Developments relating to any of those uses in CPNN and EoHSNN are zero-rated. All other uses are rated at £10 save in CPNN and EoHSNN and save that infrastructure projects such as schools, libraries, clinics etc (Residential & Non Residential Institutions (classes C2, C2a, D1) including
development by the emergency services for operational purposes) funded and owned by the public sector will be £Nil CIL.

**South Lakeland** – with effect from 1st June 2015. In the two regeneration areas of Kendal and Ulverston Canal Head all development is charged at a nil rate. In the remainder of the area residential (Planning Use Class C3 a, b and c) is charged at £50 save that the Croftlands Strategic Housing site is to be charged at £20; agricultural workers dwellings (which is a dwelling regarding which the occupancy is limited (usually by condition) to those employed in agriculture) are charged at a nil rate; supermarkets and retail warehouses (with standard definitions) are charged at £150; hotels are nil rated; sheltered-retirement housing (within Planning Use Class C3 for older people and people requiring support with a reasonable degree of independence and no or limited care needs) is charged at £50; extra care housing (residential accommodation and care to people in need of care within Planning Use Class C2) is nil rated; and all other uses are also nil rated.

**South Norfolk** – with effect from 1st May 2014 there are two zones for residential development (C3 and C4 excluding affordable housing) including domestic garages but excluding shared-user and decked garages £75 and £50. A rate of £135 applies to large convenience goods based stores (more than 50% of net floor area is intended for sale of convenience goods) of 2000 sqm or more; all other retail uses (A1-A5) and assembly and leisure development plus sui generis uses such as retail warehouse clubs, petrol stations, nightclubs, amusement centres and casinos £25; Class C2, C2A and D1 and sui generis fire and rescue stations, ambulance stations and police stations £0; all other uses covered by CIL regulations (including share-user/decked garages) £5.

**South Northamptonshire** – with effect from 1st April 2016. Residential developments are rated at £50 in Residential Urban Zone and SUEs; £100 in Residential Rural Zone (sites at or above affordable housing threshold); £200 in Residential Rural Zone (sites below affordable housing threshold). These Zones are shown on the Residential Charging Zones map. Retail development is rated at £100. All other uses are rated at £0.

**South Oxfordshire** – with effect from 1st April 2016 residential developments are charged at £150 in Zone 1 District; £85 in Zone 2 Didcot and Berinsfield; £0 in the strategic sites Didcot North-East, Ladygrove East and Wallingford Site B; and £0 in rural exception sites. Retirement housing including extra care incorporating independent living (C3) (which includes all types of housing designed for older people which provides for continued independent living which is self-contained such as, but not limited to, Extra Care Housing, Enhanced Sheltered Housing in independent living within a Care Village) and care home and residential institutions (C2) are zero-rated. As regards student accommodation: where some of the living accommodation is of communal nature e.g. shared living areas and/or kitchens. Student accommodation which is self-contained (e.g. studio flats) will be charged CIL at the relevant residential rate, for example, where such accommodation is provided to meet the University’s disability requirement. Where schemes are mixed and include both types of accommodation the nil CIL charge applies only to the floorspace of the units with communal accommodation including associated communal areas. Floorspace of self-contained units including associated communal areas will be charged CIL. Office development including research and development is charged at £0. Supermarkets,
superstores and retail warehouse developments are charged at £70. Retail warehouses: are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers. Superstores and supermarkets: are shopping destinations in their own right, selling mainly food or nonfood goods, which normally have a dedicated car park. Retail warehouses and supermarkets can be defined as retail stores that exceed 280 sqm and are classified as larger stores under the Sunday Trading Act 1994. Other retail development, hotels and other uses are all charged at £0. The Charging Zones are shown on an attached map and on a separate map the three strategic sites.

South Ribble – with effect from 1st September 2013 the rates are dwelling houses (excluding apartments) £65; apartments £0; convenience retail (excluding neighbourhood convenience stores) £160; retail warehouse, retail parks and neighbourhood convenience stores £40; community uses £0 and all other uses £0. The various uses are defined in Appendix two to the Charging Schedule.

South Somerset – with effect from 3rd April 2017. Residential developments in the Yeovil Sustainable Urban Extensions (as shown in Appendix 1 to the Schedule) and the Chard Eastern Development Area (as shown in Appendix 2 to the Schedule) are rated at £0. All other residential developments district wide (as shown in Appendix 3) except those in the specified areas are rated at £40. Developments involving convenience-based Supermarkets and Superstores, and Retail Warehouse Parks (outside of defined Town Centres and Primary Shopping Areas and excluding the specified areas in Appendices 1 and 2 and those included in Appendices 4-15) are rated at £100. For these purposes (a) supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix. The majority of custom at supermarkets arrives by car, using the large adjacent car parks provided; (b) superstores are self-service stores selling mainly food, or food and non-food goods, with supporting car parking; (c) retail warehouses are large stores specialising in the sale of comparison and household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering mainly for car-borne customers; (d) Town Centres are as defined through Policy EP11 of the South Somerset Local Plan (2006 – 2028); and (e) Primary Shopping Areas in Yeovil and Chard as defined through Policy EP11 in the South Somerset Local Plan (2006 – 2028). All other uses are zero-rated.

Southampton – with effect from 1st September 2013. The rates are £43 for retail developments (A1-A5) and £70 for residential (C3, C4 and houses in multiple occupation) but not C2 (residential institution).

Southend-on-Sea – with effect from 27th July 2015. Residential developments (C3 and C4) are rated at £20 in Zone 1; at £30 in Zone 2; at £60 in Zone 3. These zones are shown on the map in Figure 1: Residential Charging Zones. Extra care and retirement housing developments is rated at £20. This is housing within Class C3 which is purpose built or converted for sale to elderly people with a package of estate management and care services as necessary and which consists of grouped, self-contained accommodation with communal facilities. These premises often have emergency alarm systems and/or wardens. These properties would not provide the same level of care as residential care homes (Class C2) where residents do not live in self-contained
accommodation. Supermarkets and superstores and retail warehousing developments with net retailing space of over 280 square metres are rated at £70. For these purposes (a) Supermarkets/superstores are shopping destinations in their own rights where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit: and (b) Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers.

Development by a predominantly publicly funded or ‘not for profit’ organisation including medical and health services, social care, education, emergency services, waste facilities, community facilities, sport and leisure facilities only are rated at £0. A ‘not for profit organisation’ is an organisation that does not earn profits for its owners but conducts business for the benefit of the general public; all the money earned by or donated to the organisation is used in pursuing the organisation’s objectives. All other uses not cited above are rated at £10.

Southwark – with effect from 1st April 2015. There are three zones for a number of uses. Office is rated at £70 in zone 1 and nil rated in zones 2 and 3. Hotel is rated at £250 in zone 1 and £125 in zones 2 and 3. Residential is rated at £400, £200 and £50. Student housing which is directly rented is £100 in all zones and student housing by nomination (let below average weekly rent of £168 per week and this is secured by a section 106 planning obligation) is nil rated. All retail (A1-A5 and sui generis which includes petrol stations, shops selling or displaying cars and retail warehouse clubs) are rated at £125 in all zones. Nil rating applies to town centre car parking (available to all visitors), industrial, warehousing, public libraries, health, education and all other uses.

Spelthorne – with effect from 1st April 2015. There are three zones for residential development (C3). If for a scheme with fewer than 15 units to which Policy HO3 Affordable Housing does not apply the rates are £100, £140 and £160. If the scheme is 15 or more units to which policy HO3 Affordable Housing scheme applies the rates are nil, £40 and £60. Purpose built student housing is rated at £120. Out of centre larger convenience based supermarkets and superstores and retail warehousing (net retail selling space of more than 280 sqm) is rated at £120. Hotels, care homes, offices, commercial and all other uses are nil rated.

Stratford – with effect from 1st February 2018. Residential Developments in Gaydon/Lighthorne Heath new settlement (GLH) and Long Marston Airfield (LMA) are rated at £0; in the Canal Quarter Regeneration Zone (11 units or more) at £85; Small Sites (up to and including 10 units) at £75; and the Rest of District (11 units or more) at £150. Extra Care is charged at the prevailing rates as set out. Retirement Dwellings are rated at £0. Retail developments (A1-A5) are rated at £0 within all Identified Centres; at £10 within Gaydon/Lighthorne Heath and Long Marston Airfield; and at £120 out of Centre Retail. All other forms of non-residential liable floor space are rated at £0.

Stroud – with effect from 1st April 2017. Residential developments (excluding older persons homes) are rated at £80 save in Strategic Sites identified in the Local Plan within the Stroud Valleys area which are rated at £0. The areas are shown by an interactive map on the authority’s website and Annex 2 to the Schedule. Supermarkets and Retail warehouses are rated at £75. For these purposes (a) supermarkets are
shopping destinations in their own right where weekly food shopping needs are met and can include non-food floorspace as part of the overall mix of the unit; and (b) retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers.

Suffolk Coastal – with effect from 13th July 2015. For the purposes of residential developments the area has been designated between low value, mid value and high value as shown on the appended map. Residential developments (Planning Use Classes C3 and C4 excluding sheltered/retirement accommodation schemes which are defined as grouped( units, usually flats, specially designed for older people encompassing communal non-saleable facilities) are charged at £50 in low value areas; £90 in mid value areas; and £150 in high value areas. Any residential development of the strategic site at Adstral Park is nil rated. Wholly or mainly convenience retail is charged at £100 and wholly or mainly comparison retail is nil rated. All other uses are nil rated.

Surrey Heath - with effect from 1st December 2014. There are zones but different ones for residential (C3) developments and retail development other than supermarkets/superstores and retail warehousing. One of the zones for residential development is rated at nil. With each of the other two zones the rate varies dependent on whether the residential development does or does not provide its own open space in the form of Suitable Accessible Natural Greenspace as avoidance for European Sites. The rates in one zone are £189 without such provision and £55 with. In the other zone the rates are £220 and £95. Borough wide the rates for retail warehousing and supermarkets/superstores (defined in the schedule) are £200. Other retail (A1-A5) are rated at nil in one zone and £100 in the other zone. All other developments are rated at nil.

Sutton - with effect from 1st April 2014. Residential is rated at £100 psm and retail which is wholly or mainly convenience at £120 psm. There is a nil rate for retail which is wholly or mainly comparison; office; hotels; industrial; community uses (schools and hospitals) and all other developments not separately defined. Appendix 2 to the charging schedule sets out what constitutes convenience goods and comparison goods.

Swindon - with effect from 6th April 2015 there are two residential zones rated at zero for Swindon’s New Communities and £55 for the rest of the borough. For this purpose residential is any use within Class C3 including ancillary development such as garages. As regards retail use the Town Centre and New Communities are zero rated and the rest of the borough is rated at £100. For these purposes retail is any use within A1-A5 including sui generis uses that are shops and premises selling and or displaying motor vehicles, retail warehouse clubs, launderettes, taxi or vehicle hire businesses, amusement centres, petrol filling stations. All other uses are zero rated.

Tamworth – with effect from 1st August 2018. Residential developments comprising one or two unit residential schemes are rated at £0; between 3 and 10 units are rated at £68; 11 or more units are rated at £35. Specialist Residential Retirement dwellings, extra care and care homes developments are rated at £0. For these purposes retirement dwellings – Also known as sheltered housing, these are usually groups of dwellings, often flats and bungalows, which provide independent, self-contained homes often with some element of communal facilities, such as a lounge or warden. Extra care – Also
known as assisted living, this is housing with care whereby people live independently in their own flats but have access to 24-hour care and support. These are usually defined as schemes designed for an elderly population that may require further assistance with certain aspects of daily life. Care homes – Residential or nursing homes where 24-hour care is provided together with all meals. Residents usually occupy under a licence agreement. Out of Centre Retail Comparison and convenience retail development located outside the Town Centre, Local Centres and Neighbourhood Centres as defined in the accompanying Charging Zones Maps are rated at £200. In Centre Retail Comparison and convenience retail development located inside the Town Centre, Local Centres and Neighbourhood Centres as defined in the accompanying Charging Zones Maps are rated at £0. All other developments are zero-rated.

Tandridge – with effect from 1st December 2014. All residential development excluding sheltered/retirement housing and extra care accommodation (defined as grouped units, usually flats, specially designed or designated for older people encompassing communal non-saleable facilities over 25% gross floorspace) is rated at £120. Convenience retail including convenience based supermarkets and superstores (which are defined in the schedule as shopping destinations in their own right where weekly shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit) is rated as £100. Comparison retail, offices and all other uses are nil rated.

Taunton Deane (now Somerset West and Taunton) – with effect from 1st April 2014. There are four zones for residential development (£125, £70 and two at nil rate). For these purposes there is excluded from residential Class C2 use but there is included student housing and similar types of institutional accommodation. Retail development (Classes A1-A5) outside Taunton and Wellington town centres are rated at £140. All other developments are nil rated.

Teignbridge – with effect from 13th October 2014. Retail is rated at £150 outside identified town centres and nil within them. There are five rates for residential development dependent on the location of the development site (£70, £85, £125, £150 and £200). But there is no CIL rate on affordable housing. All other development or uses are rated at nil.

Test Valley – with effect from 1st July 2016. Residential developments are rated at £175 in zone 1; at £140 in zone 2; at £105 in zone 3; at £70 in zone 4; and at £0 in the Strategic sites. The zones are described in table 1 in the Schedule and on the maps in Appendix 1 showing the residential charging zones and the maps in Appendix 2 showing the six strategic sites. Extra care accommodation is rated at £0 in all zones and strategic sites. For these purposes a development of one and two bed apartments, for rent and/or for sale, grouped together with communal facilities, that through the provision of on site care and support services 24 hours a day and 7 days a week offers a viable alternative to a residential care home for many vulnerable older people and vulnerable adults with particular care needs, enabling them to remain a part of and active within the wider community. Developments concerning retail supermarkets and superstores and retail warehouses are rated at £180 in all zones and £0 in the strategic sites. For these purposes (a) retail superstores/supermarkets over 280 square metres are shopping destinations in their own right meeting weekly food shopping needs and often includes non-food floor space as part of the overall mix of the unit; and (b) retail warehouses are
large stores over 280 square metres specialising in the sale of household goods (such as carpets, furniture and electrical items), DIY items and other range of goods catering mainly for car-borne customers. All other retail developments are rated at £0 in all zones and strategic sites. All developments concerning Industrial, Office, Distribution, Hotel, Community use including non-residential institution, Retirement living housing and all other uses are zero-rated.

**Tewkesbury** – with effect from 1\(^{st}\) January 2019. The rate applicable to residential developments (which appears to exclude residential institutions, care homes, extra care and retirement living housing for older people (C2) albeit this is not clearly spelt out) depends on the number of dwellings and location. The rate is £35 if the development is in one of six Strategic sites. If the development is for 10 or less dwellings the rate is £104; if between 11 and 449 dwellings the rate is £200; and if 450 or more dwellings the rate is £35. Further testing is required before rates applicable to any other uses can be introduced.

**Three Rivers** – with effect from 1\(^{st}\) April 2015. Residential development (Use Class C3) is rated at £180 psm in Area A; 3120 psm in Area B and nil in Area C. Retail development (Use Class A1) in Areas A and B are rated at £60 psm and nil in Area C. Hotels (Use Class C1) are rated at nil boroughwide as is Residential Housing (Use Class C3. For these purposes it is stated that Retirement Housing is housing which is purpose built or converted for sale to elderly people with a package of estate management services and which consists of grouped, self-contained accommodation with communal facilities. These premises often have emergency alarm systems and/or wardens. These properties would not however be subject to significant levels of residential care as would be expected in care homes or extra care premises (C2). It is further provided that for the avoidance of doubt this excludes registered not for profit care homes. Other non-residential development is nil rated boroughwide.

**Torbay** – with effect from 1\(^{st}\) June 2017. Residential developments with residential charging zones in maps 1-39 in para. 2.3 of the Schedule:

<table>
<thead>
<tr>
<th>Zone</th>
<th>Number of dwellings and charge (£ per sq m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>1-3 dwellings</td>
</tr>
<tr>
<td></td>
<td>Zero</td>
</tr>
<tr>
<td>5.</td>
<td>Elsewhere in the built up area</td>
</tr>
<tr>
<td>6.</td>
<td>Future Growth Areas, plus outside the built up area, plus Watcombe Heights, Ilisham Valley, Torquay, and Bascombe Road, Churston.</td>
</tr>
</tbody>
</table>

Residential includes dwellings within Use Classes C3 and C4 and sui generis Houses in Multiple Occupation (HMOs). It includes sheltered housing, where extra care is not provided. Extra care housing and student halls of residence will be zero rated for CIL, so long as secured for such use through condition or legal agreement. For these purposes extra care housing will be taken to mean: Housing designed with the needs of frailer
older people in mind and with varying levels of care and support available on site. People who live in extra care housing have their own self contained homes, their own front doors and a legal right to occupy the property. Extra care housing is also known as very sheltered housing, assisted living, or simply as 'housing with care'. It comes in many built forms, including blocks of flats, bungalow estates and retirement villages. It can provide an alternative to a care home. In addition to the communal facilities often found in sheltered housing (residents' lounge, guest suite, laundry), Extra Care includes additional flexible care packages that must be purchased as a condition of occupancy, and additional facilities such as restaurant or dining room, health & fitness. Sheltered or retirement dwellings which are not extra care units as per the above definition, will be considered to be residential units that are liable to CIL.

Commercial development and non-residential development with zones shown on Commercial Charging Zones map:

<table>
<thead>
<tr>
<th>Figure 4: CIL Charging Schedule: Commercial and Non-Residential Development</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of Development</strong></td>
</tr>
<tr>
<td>-------------------------</td>
</tr>
<tr>
<td>1) Town Centres, St. Marychurch and Preston District Centres</td>
</tr>
<tr>
<td>Class A1 retail less than 300 sq m.</td>
</tr>
<tr>
<td>Class A1 retail over 300 sq m. Applies to all A1 retail uses including bulky retail and sui generis retail uses</td>
</tr>
<tr>
<td>Food and drink (Class A3, A4, A5)</td>
</tr>
<tr>
<td>Class A2 Financial and</td>
</tr>
<tr>
<td>Class</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>Class B employment uses.</td>
</tr>
<tr>
<td>Class D1 Non-residential institutions (see Note 3).</td>
</tr>
<tr>
<td>Class D2 Assembly and leisure/non residential institutions</td>
</tr>
<tr>
<td>Class C1 Hotels and commercially rated holiday accommodation. (See (a) below).</td>
</tr>
<tr>
<td>Class C2 and C2A Residential Institutions (see (b) below).</td>
</tr>
</tbody>
</table>

(a) Holiday accommodation (chalets, apartments etc) will be zero rated for CIL so long as they are subject to a condition and planning obligation restricting their occupation for tourism purposes, and are rated for business rates. If permission is subsequently sought for either a change of use or release of condition in order to permit permanent residential accommodation, the Council will seek contributions towards the additional infrastructure impact of permanent residential use.

(b) Care Homes are taken to be non-self contained accommodation for persons who, by reason or age or infirmity, are in need of care. Sheltered or retirement dwellings which are not extra care units as per the above definition, will be considered to be residential units that are liable to CIL.

**Tower Hamlets** – with effect from 1st April 2015. For residential developments there are three zones rated at £200, £65 and £35. In addition there are identified large allocated sites which are nil rated for all developments including residential, hotel, retail, student housing (whether let at market rent or not) and office developments. Office development in the zone described as the City Fringe is rated at £90 but elsewhere is rated at nil. Convenience supermarkets/superstores and retail warehousing (defined in the schedule) is rated at £120 borough wide except for the large allocated sites. Other retail is rated at £79 in two zones and nil elsewhere. Hotel development is
rated at £180 borough wide apart from large allocated sites. Student housing let at market rent is rated at £425 borough wide apart from large allocated sites. Student housing let at below market rents is rated at nil. To qualify as student housing let at below market rent it must be (i) university led development with the university having at least one teaching facility in the area; (ii) the developer must have entered a nomination agreement or equivalent; (iii) the housing must be to meet an identified need secured by a section 106 planning obligation; (iv) the below market rent must be in place for a minimum of seven years; (v) the rent discount must as a minimum equate to the amount of CIL not paid by reason of it being student housing let at a market rent; and (vi) there must be a valuation supporting the discount by an independent valuer at the cost of the applicant. Unless the student housing qualifies as let at below market rent it will be rated as student housing let at market rent. All other uses are rated at nil.

**Trafford** – with effect from 7th July 2014. The terminology and approach is a little different from other charging schedules. There are three zones for private market houses – helpfully called cold, moderate and hot. The rates are £20, £40 and £80. For apartments (which include sheltered housing and retirement apartments) the rates in those zones are £0; £0; and £65. The remainder of the rates are retail warehouses (defined in the Appendix to the Charging Schedule) £75; supermarkets outside town centres (similarly defined) £225; supermarkets in defined town centres £0; public and institutional facilities for education, health, community and emergency services and public transport £0; offices, industry and warehousing £0; leisure £10, hotels £0; all other developments £0.

**Vale of White Horse** – with effect from 1st September 2017. Residential development (including student accommodation and sheltered housing) is rated at £120 in Zone 1; £85 in Zone 2; and £0 in Zone 3 (which zones are shown in map I of para. 1.3). Residential development which is required to enable a rural exception site under Core Policy 25 is rated at £0. District wide extracare, nursing and care homes are rated at £0. These are defined as homes that provide accommodation and ongoing nursing and/or personal care. Personal care includes: assistance with dressing, feeding, washing and toileting, as well as advice, encouragement and emotional and psychological support. Supermarkets and retail warehousing are rated at £100. All other developments are rated at £0.

**Wakefield** – with effect from 1st April 2016. Residential (C3) developments are rated at £55 in High zone; £20 in Medium zone; and zero-rated in Low zone. Retail Warehouse (A1) (defined as large stores in edge-of-centre and out-of-centre locations specialising in the sale of household goods (such as carpets, furniture and electrical goods), clothes, DIY items and other ranges of goods, catering mainly for car-borne customers) developments are rated at £89. Large supermarkets greater in area than or equal to 2,000 sqm are rated at £103. All other developments including light industrial (B1), office (B1), general industrial (B2), storage and distribution (B8), retail other than the two specifically rated retail including restaurants and bars (A3 and A4) and takeaways (A5), hotel (C1), care home (C2), cinema and commercial leisure (D2).

**Waltham Forest** – with effect from 15th April 2014. There are two zones for residential development with rates at £70 and £65. The remainder of the rates apply across the area. Those rates are publicly funded care homes £0; convenience superstores and retail
warehouses - £150; hot takeaways and restaurants - £80; betting shops - £90; and hotels - £20.

Wandsworth – these took effect on 1st November 2012 and the CIL Rates are determined by four different areas within the borough. The Mayor of London charge will also apply. Dependent on the area
(a) the residential rates are 575; £265; £250; and £0.
(b) office or retail rates are £265; £250; and £0.
(c) all other developments £0.

Warwick – with effect from 18th December 2017. General residential developments are rated at £195 in Zones B and D (much of Leamington, Whitnash and high value rural); £140 in Zone C (Kenilworth); and £70 in Zone A (Warwick, East of Leamington and lower value rural). These Zones are shown on a Residential CIL Charging map linked to from the Authority’s website. Residential developments on identified Strategic Local Plan housing sites with over 300 dwellings - H03 East of Whitnash (500 dwellings) at £0 (Nil); H06 East of Kenilworth (Thickthorn) (760 dwellings) at £25; H40 East of Kenilworth (Crewe Lane, Southcrest Farm and Woodside Training Centre) (640 dwellings) at £25; H42 Westwood Heath (425 dwellings) at £55; H43 Kings Hill (up to 4000 dwellings) at £55. Student housing development in the District is rated at £100. Retail development up to 2500 square metres floorspace is rated within Leamington Prime Retail Zone at £65 and outside at £0 (Nil). Retail Development comprising 2500 square metres floorspace or over in the District is rated at £105. All other developments including Hotels, Offices, Industrial and warehousing, and all other uses is rated at £0 (Nil).

Watford – with effect from 1st April 2015. All developments in Major Developed Areas (as shown on the map attached to the Schedule) are nil rated. Residential developments are rated at £120. Hotels and specialist accommodation for the elderly and/or disabled including sheltered and retirement housing and nursing homes, residential care homes and extra care homes (excluding registered not for profit care homes) within Class C2 and C3 are rated at £120. Retail (A1-A5) in the Primary shopping Area is rated at £55 and elsewhere £120. There is a nil rate for offices, industrial and other uses.

Waveney – with effect from 1st August 2013. There are four residential charging zones and the rates are £150; £60; £45; and £0. For holiday lets the rate is £40. For Supermarkets, superstores and retail warehouses the rate is £130. All other developments are £0.

Waverley – with effect from 1st March 2019. All uses at Dunsfold Aerodrome Strategic Site are nil rated. Residential developments with more than 10 units are rated at £395 in Zone A and £372 in Zone B (these zones and Zone C are shown on the map attached to the schedule). With residential developments comprising 10 or fewer dwellings the rates are £452 in Zone A and £435 in Zone B. Developments comprising old person housing (retirement and supported living) with affordable housing are rated at £118 in Zone A and £100 in Zone B whilst those without affordable housing are rated at £280 in Zone A and £268 in Zone B. Care homes are excluded from these rates. For these purposes it is provided in the Schedule that (i) Retirement housing - is often known as “Sheltered Housing” or “Retirement Living”. Retirement Housing usually provides some facilities that you would not find in completely independent accommodation.
These can include secure main entrance, residents’ lounge, access to an emergency alarm service, a guest room. Extra facilities and services are paid for through a service charge on top of the purchase price or rent. To move into retirement housing you are assumed to be independent enough not to need care staff permanently on site.

(ii) Supported housing - is often known as “Extra Care Housing” or “Assisted Living”. Everyday care and support will be available. Facilities will include those available in retirement housing plus others (such as a restaurant, communal lounges, social space and leisure activities, staff on site 24 hours a day). Service charges are likely to be higher than in retirement housing but this reflects the more extensive range of facilities.

Developments comprising small convenience stores (having a majority (in excess of 50%) of its net selling area conditioned for the sale of convenience goods in a total gross store size of no larger and including 300 sqm gross) are rated at £75. Supermarkets (store has a majority (in excess of 50%) of its net selling area conditioned for the sale of convenience goods in a total gross store size of greater than 300 sqm gross) are rated at £65. Retail other than convenience is rated at £25 in Town Centres shown on maps 5-8 attached to the Schedule and at £95 out of town centres. All other uses including care homes are nil rated. It is stated in the Schedule that for the avoidance of doubt ‘Care homes’ are excluded from this older person housing charge and are separately considered as ‘All other uses’ and therefore a zero CIL rate will apply to development meeting the following definition - residential care homes or nursing homes where integral 24 hour personal care and/or nursing care are provided together with all meals. A care home is a residential setting where a number of older people live, usually in single rooms and people occupy under a licence arrangement.

Wealden – with effect from 1st April 2016 and excluding the area covered by the South Downs National Park Authority. Residential developments are charged at £200 in higher band and £150 in the lower band (which bands are shown on map attached to schedule). Retail which is wholly or mainly convenience retail is charged at £100 whilst wholly or mainly comparison retail is charged at £20. All other developments are nil rated.

West Berkshire – with effect from 1st April 2015. There are two zones for the residential (C3 and C4) rate (£125 and £75) whilst the retail (A1-A5) rate is £125 in both. The rate for business, hotel and residential institutions is £0 across the area.

West Dorset (part of Dorset Council) – with effect from 18th July 2016. Residential developments (C3) are rated at £100. For these purposes “dwellings” include houses and flats and dwellings used as second homes, but exclude affordable housing. Dwellings with restricted holiday use are also rated at £100. These include holiday lets i.e. residential houses which are restricted to holiday use. The definition excludes second homes, hotels, guesthouses and some B&Bs, and more temporary tourist accommodation such as caravans and tents. Essential rural workers’ dwellings are rated at £0. This is housing located outside defined development boundaries for full time workers in rural businesses which require essential 24 hour supervision. All other developments are zero-rated. All developments on the following Strategic Site Allocations are zero-rated namely: Littlemoor Urban Extension – LIT1 Chickerell Urban Extension – CHIC2 Land at Crossways – CRS1 Land at Vearse Farm – BRID 1. There is a map on the Dorset council website showing the areas.
West Lancashire – with effect from 1st September 2014. There are two zones. In zone B the rate is nil for all developments. In zone A the rates are – residential dwelling house (C3a,b,c) £85; apartments (defined as dwellings with shared access and communal areas on more than one floor) (including retirement apartments) nil; agricultural workers dwellings (dwelling in which the occupancy is limited usually by condition to those employed in agriculture) nil; comparison retail Any building selling mainly comparison goods such as clothing, footwear, household and recreational goods) nil; convenience retail (any building selling mainly everyday essential items, including food, drink, newspapers/magazines and confectionery. In the case of a mixture of convenience and comparison goods the rate will be based on the main use) £160; food and drink (A3/A4/A5) £90; all other uses nil.

West Lindsey – with effect from 22nd January 2018. Residential developments comprising houses are rated £25 in Zone 1; £15 in Zone 2; £20 in Zone 3; and £0 in Zone 4 (which zones are shown in the attached maps to the Schedule). Apartments are rated at £0 in all zones. Developments involving Convenience Retail (everyday items including food, drink and non-durable household goods) are rated at £40 across the district. All other uses (including comparison retail and retail warehousing) are zero-rated.

Westminster – with effect from 1st May 2016. Residential developments (including all residential C use classes) are rated at £550 in the Prime Residential Area; £400 in the Residential Core Area; and £200 in the Fringe Residential Area (which areas are shown on the Residential Zones charging map in Appendix A to the Schedule). All commercial developments (including offices, hotels, nightclubs and casinos, and retail (all ‘A’ use classes and sui generis retail)) are rated at £200 in the Commercial Prime Area; £150 in the Commercial Core Area; and £50 in the Fringe Commercial Area (which areas are shown on the Commercial Zones Charging map in Appendix A). All other uses are zero-rated.

Weymouth Portland (part of Dorset Council) - with effect from 18th July 2016. Residential developments (C3) are rated at £80 in Portland and £93 in all other areas. For these purposes “dwellings” include houses and flats and dwellings used as second homes, but exclude affordable housing. Dwellings with restricted holiday use are rated at £80 in Portland and £93 in all other areas. These include holiday lets i.e. residential houses which are restricted to holiday use. The definition excludes second homes, hotels, guesthouses and some B&Bs, and more temporary tourist accommodation such as caravans and tents. Essential rural workers’ dwellings are rated at £0. This is housing located outside defined development boundaries for full time workers in rural businesses which require essential 24 hour supervision. All other developments are zero-rated. All developments on the following Strategic Site Allocations are zero-rated namely: Littlemoor Urban Extension – LITT1 Chickerell Urban Extension – CHIC2 Land at Crossways – CRS1 Land at Vearse Farm – BRID 1. There is a map on the Dorset council website showing the areas.

Wiltshire – with effect from 18th May 2015. Residential development (Planning Use Classes C2, C2A, C3 and C4) by reference to two zones defined in Appendix A to the Schedule. In Zone 1 is charged at £85 save as regards strategically important sites (as
set out in the Wiltshire Core Strategy) where it is charged at £40. In Zone 2 the rate is £55 but £30 in strategically important sites. Student accommodation (Planning Uses Classes C2, C2A, C3, C4 and sui generis akin to student accommodation) is charged at £70 as are hotel developments (Planning Use Class C1). There is a nil rate for Service Family Accommodation for members of the Armed Forces which is housing exclusively constructed by the MOD or its appointed contractors for use by members of the Armed Forces and their families as secured by a section 106 agreement between OD and Wiltshire Council. A rate of £175 is charged on retail warehouse development (which are large stores specialising in the sale of a broad range of household goods (including but not limited to carpets, furniture and electrical goods) DIY items and other ranges of goods, catering for mainly car-borne customers) and superstore/supermarket developments (which are shopping destinations in their own right where weekly food shopping needs are met and which can include non-food floorspace as part of the overall mix of the unit). Other types of retail development (Planning Use Classes A1 to A5 and sui generis uses akin to non-food retail) are charged at either £70 or nil dependent on which defined area they come within (set out in Appendix C to the Schedule). All other uses (Planning Use Classes B1, B2 and B8, D1, 2 and other sui generis uses (including military single living accommodation ancillary to a military establishment).

Winchester – with effect from 7th April 2014 the area is divided into three zones. In Zone 1 there is a £0 rate. In Zone 2 the rate for residential and retail development is £120. In Zone 3 the residential rate is £80 whilst the retail rate is £120. The rate for all other developments is £0.

Windsor & Maidenhead – with effect from 1st September 2016. Residential developments (including retirement (C3) and extra care homes (including C2, sheltered housing, retirement housing, extra care homes and residential care accommodation) are rated at £0 in Maidenhead town centre (AAP area); at £100 in Maidenhead urban area; and at £240 in the rest of the borough. Retail warehouse developments are rated at £100 across the borough. For these purposes retail warehouses are large stores specialising in the sale of comparison goods, DIY items and other ranges of goods catering mainly for car borne customers. Developments comprising all other retail uses, office use and all other uses are rated at £0 across the borough.

Woking – with effect from 1st April 2015. With regard to residential development there are two zones rated at £125 and £75. For these purposes residential means either use as a dwelling house (whether or not a main residence) by (a) a single person or by persons to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as single household where no care is provided to residents (other than use within Class C4) or use of a dwelling house by three to six residents as a house in multiple occupation. All types of retail are rated at £75. All other commercial and non-residential use is nil rated.

Wokingham – with effect from 6th April 2015. There are four rates applicable for residential development (excluding sheltered housing, extra care housing and residential institutions) which are £300, £320, £340 and £365. These relate to four strategic development locations (“sdl”) and the rest of the borough. As regards sheltered housing the rate is £365 in the four sdl and £150 in the rest of the borough. For these purposes sheltered housing is self-contained accommodation for older people, people
with disabilities and/or other vulnerable groups which include some shared/communal facilities and where a degree of support is offered. As regards residential institutions and extra care housing the rate is £100 in the four sdl and £60 in the rest of the borough. For these purposes “extra care housing” means “purpose built accommodation in which varying amounts of care and support can be offered and where some services and facilities are shared (including a minimum of 30% of GIA provided as communal facilities). For retail use the rate is nil for existing town/small town and district centres identified on attached maps and a named sdl and for the rest of the borough it is £50. All other development types are nil borough wide.

Worcester – with effect from 4th September 2017. Student accommodation is charged at £100; Food Retail (Supermarkets) at £60; Retail warehouses at £60 and Residential, Shops, Hotels, Industrial and Office and all other uses (including education, health and community uses) at £0. Retail warehousing includes all non-food retail units without restriction to size, specialising in the sale of household goods (for example: carpets, furniture, electrical goods), DIY items and other ranges of goods. Generally their construction shows a much greater visual similarity to warehousing than to that of standard shop units. Food Retail (Supermarkets) is defined as a supermarket is a retail shop selling food and household items on a self-service basis with the products usually, but not necessarily, arranged in aisles. It may also, but not necessarily, include a range of comparison goods in the overall retail mix. Customers may use a supermarket for their main weekly shop. Retail warehouses usually occupy a single floor, the majority of which is devoted to sales, with some ancillary storage and office use. They may be sited singly or grouped together, most frequently in fringe or out of town locations and cater mainly for car borne customers. Education, health, community and other uses includes buildings that are often provided by the public sector, not for profit and charitable sectors and include the following classes within the Town and Country Planning (Use Classes) Order 1987 (as amended): residential institutions (C2, C2a), non-residential institutions (D1) and assembly and leisure uses (D2).

Worthing – with effect from 1st October 2015. Residential developments (C3) are rated at £100 in Zone 1 and zero-rated in Zone 2 (which zones are shown on the map in Appendix 1). Retail development (A1-A5) excluding ancillary car parking is rated at £150 in both zones.

Wychavon – with effect from 5th June 2017. Residential development (includes buildings classed as ‘dwellinghouses’ within class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) but excludes Extra Care / Sheltered Accommodation (which consists of self-contained homes for older people, with access to on-site care and/or other on-site facilities)) is rated at £0 for main urban areas (Droitwich, Evesham and Pershore) and Strategic Sites listed in table 2 and otherwise is rated at £40. Student accommodation developments are rated at £100. Food retail supermarkets (which is a retail shop selling food and household items on a self-service basis with the products usually, but not necessarily, arranged in aisles. It may also, but not necessarily, include a range of comparison goods in the overall retail mix. Customers may use a supermarket for their main weekly shop.) is rated at £60. Retail warehousing (which includes all non-food retail units without restriction to size, specialising in the sale of household goods (for example: carpets, furniture, electrical goods), DIY items and other ranges of goods. Generally their construction shows a
much greater visual similarity to warehousing than to that of standard shop units. Retail warehouses usually occupy a single floor, the majority of which is devoted to sales, with some ancillary storage and office use. They may be sited singly or grouped together, most frequently in fringe or out of town locations and cater mainly for car borne customers) are rated at £60. All other uses including shops, hotels, industrial, office, education, health and community uses (which includes buildings that are often provided by the public sector, not for profit and charitable sectors and include the following classes within the Town and Country Planning (Use Classes) Order 1987 (as amended): residential institutions (C2, C2a), non-residential institutions (D1) and assembly and leisure uses (D2)) are zero-rated.

Wycombe – with effect from 1st November 2012 the area is divided into two charging zones. The rate for residential developments (including sheltered accommodation) is £150 in one zone and £125 in the other. In both zones there is a rate of £200 for convenience based supermarkets (defined as shopping destinations in their own right where weekly food shopping needs can be met and which also include non-food floor space as part of the overall mix of the unit) and retail warehousing (defined as large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers) with net retail selling space of over 280 square metres. All other retail and uses akin to retail are chargeable at £125. Any other developments are at £0.
Part 2 – Authorities which have instigated a review

(i) East Devon – consultation on a draft revised charging schedule has begun in 2019. It is proposed to increase CIL rates for residential developments by £50 psm; to exclude rural exception sites from residential rates; to remove Cranbrook from CIL charges; and to reduce rates on out of town retail development.

(ii) Exeter – a review was approved at a Council meeting on 9th July 2019 and is expected to take two years.

(iii) Fareham – consulted on a revised draft charging schedule in 2014 with a view to introducing it 2015 but that has not happened.

(iv) Haringey - instigated a review in March 2017 which relates only to the Eastern charging zone of the borough. The reason is the increase in property prices in that zone. Currently the CIL rate is £15 for residential development including warehouse living and student accommodation. It is proposed to sub-divide the Eastern charging zone leaving the CIL rate the same in the Northern part whilst increasing the CIL rate to £130 in the southern part.

(v) Havant – has consulted on a draft charging schedule which it is now proposed to take to examination. It involves increases in some of the CIL rates in particular with regard to certain residential and retail developments.

(vi) Hounslow – a preliminary draft charging schedule has been published which is being consulted on with a view to a further draft charging schedule being produced.

(vii) Lewisham – it is proposed to publish a draft new schedule in 2019 with significantly increased rates (residential rates proposed to increase from £100 and £70 to £200 and £125 and the other current rate from £80 to £160.

(viii) London Legacy Development Corporation – a draft revised charging schedule is being examined. This proposes the increase of the residential rate from £60 to £73.90; increase most rates other than residential from £100 to £123.17; extend retail comparison rate from Strategic Retail Area to whole of areas; increase rate for all other uses from £0 to £20.

(ix) London Mayoral – with effect from 1st April 2019 a new charging schedule has been introduced which increase the general rates; imposes specific charges in the Isle of Dogs and Central London for office, hotel and retail developments; moves a few authorities into different charging zones.

(x) Newark & Sherwood – the original Charging Schedule was reviewed and a new Charging Schedule introduced in 2018.

(xi) Oxford City Council – has consulted towards the end of 2018 on a draft revised charging schedule which it was then going to send to examination. It is proposed to increase the original £100 and £20 CIL rates to £200 and
£50. This includes retail (A1-A5) use; business use (B1, B2 and B8); and residential use (C1-C4).

(xii) Poole - the original Charging Schedule was reviewed and a new Charging Schedule introduced in 2019.

(xiii) Redbridge – a consultation has just ended in January 2019. It is proposed to replace the fixed rate of £70 for all chargeable developments across the Borough by differential rates in different zones. The highest residential rate will be £75 whilst hotel, student accommodation and retail developments will be at the rate of £150.

(xiv) Tower Hamlets – a review is being conducted with a supplementary consultation ending in April 2019. It is proposed to increase the CIL rates across all developments; change the areas covered by the charging zones; and will incorporate in the charging zones the large allocated sites currently subject to a nil charge.

(xv) Waltham Forest – a consultation on a preliminary draft revised charging schedule has started with the aim of implementing a new charging schedule. It is proposed that residential development, including private care/retirement homes be increased in Zone A from £65 to £76 and in Zone B from £70 to £120; a new rate be added in relation to student accommodation and large scale purpose built shared living to be rated at £0 in Zone A and £120 in Zone B; the rate for convenience based supermarkets/superstores and retail warehousing be increased from £150 to £176; the rate for hot food takeaways and restaurants be increased from £80 to £94; the rate for betting shops be increased from £90 to £106; and the rate for hotels be increased from £20 to £23.
Second Appendix

Contribution areas in London for Cross rail contributions through section 106 obligations prior to introduction on MCIL 2
(with the permission of the Mayor of London reproduced from the Supplementary Planning Guidance April 2013)

1. Central London contribution area
2. Isle of Dogs contribution area

3. Rest of London contribution area – West London
4. Rest of London contribution area – East London
Third Appendix

Part A - Zones for Original Mayoral CIL (MCIL 1)

Zone 1

Camden, City of London, City of Westminster, Hammersmith and Fulham, Islington, Kensington and Chelsea, Richmond-upon-Thames, Wandsworth

Zone 2

Barnet, Brent, Bromley, Ealing, Greenwich, Hackney, Haringey, Harrow, Hillingdon, Hounslow, Kingston upon Thames, Lambeth, Lewisham, Merton, Redbridge, Southwark, Tower Hamlets

Zone 3

Barking and Dagenham, Bexley, Croydon, Enfield, Havering, Newham, Sutton, Waltham Forest

Part B - Zones for Original Mayoral CIL (MCIL 2)

Zone 1

Camden, City of London, City of Westminster, Hammersmith and Fulham, Islington, Kensington and Chelsea, Richmond-upon-Thames, Wandsworth

Zone 2

Barnet, Brent, Bromley, Ealing, Enfield, Hackney, Haringey, Harrow, Hillingdon, Hounslow, Kingston upon Thames, Lambeth, Lewisham, Merton, Redbridge, Southwark, Tower Hamlets, Waltham Forest, London Legacy Development Corporation, Oak and Park Royal Development Corporation.

Zone 3

Barking and Dagenham, Bexley, Croydon, Greenwich, Havering, Newham, Sutton
Fourth Appendix

Curtilage

There is no certain and precise definition of what is a “curtilage”. On the contrary the Courts have considered it ill-advised to attempt to provide a comprehensive definition. Inevitably when an issue arises in a case consideration of the term goes back to the fifteenth century and there is the citation of numerous definitions from dictionaries starting with the Oxford English Dictionary.

In Sheppards Touchstone it is defined as a “little garden, yard, field, or piece of void ground, laying near and belonging to the messuage and house belonging to the dwelling-house and the close upon which the dwelling-house is built at the most”. It indicates that there has to be a connection with the “messuage” but it is no more than a starting point and does not tackle a number of the issues which have been raised subsequently or the complexity of the factual matters that the Courts have had to consider.

The concept is relied on in other statutory areas concerning property including the ownership of sewers and drains. Changes within a curtilage may not require planning permission or listed building consent when they would if outside the curtilage. A property will be exempt for unoccupied property rates if part of a listed building. A tenant’s right to buy under the relevant Housing Acts may be excluded if within the curtilage of a building used for purposes other than housing. An application for enfranchisement will cover everything within the curtilage of the dwelling. Although the statutory contexts are different the decisions as to whether or not buildings or land are within the curtilage of another building have been accepted as being relevant when the issue arises in the context of a different statute.

It is clear that the concept has changed. Originally it was a small area enclosed by walls or buildings but over time the need for physical enclosure has disappeared. However, the same degree of connection has been retained albeit not requiring physical enclosure. Buckley LJ stated that “one must be as intimately associated with the other as to lead to the conclusion that the former in truth forms part and parcel of the latter”. Similarly, Sir Richard Tucker stated that to be within a curtilage “connotes a building or piece of land attached to a dwelling-house and forming one enclosure with it. It is not restricted in size but it must fairly be described as being part of the enclosure of the house to which it refers.” They must constitute an integral whole.

In Challenge Fencing Limited v Secretary of State for Housing, Communities and Local Government the issue of the extent of a curtilage arose in respect of an industrial unit

2416 Vol. 1 at page 94
2418 Methuen-Campbell v Walters [1979] 1 QBD 525 at pages 543/544
2419 Lowe v First Secretary of State [2003] 1 PLR 81 at para 21
2420 [2019] EWHC 553 (Admin)
and application for a certificate of lawful use or development. The issue was whether the replacement of hardstanding was permitted under Class J of the GPDO as within the curtilage of an industrial building. After considering the Calderdale, Dyer and Skerritts cases Lieven J summarised the law regarding curtilage:

“From these cases I draw the following propositions:

i) The extent of the curtilage of a building is a question of fact and degree, and therefore it must be a matter for the decision-maker, subject to normal principles of public law;

ii) The three Stephenson factors must be taken into account;

   a) Physical layout;

   b) The ownership past and present;

   c) The use or function of the land or buildings, past and present.

iii) A curtilage does not have to be small, but that does not mean that the relative size between the building and its claimed curtilage is not a relevant consideration. Skerritts p.67;

iv) Whether the building or land within the claimed curtilage is ancillary to the main building will be a relevant consideration, but it is not a legal requirement that the claimed curtilage should be ancillary; Skerritts p.67C;

v) The degree to which the building and the claimed curtilage fall within one enclosure is relevant, Sumption at para 17 and the quotation form the OED of curtilage as " A small court, yard or piece of ground attached to a dwelling house and forming one enclosure with it". In my view this will be one aspect of the physical layout, being the first of the Calderdale factors.

vi) The relevant date on which to determine the extent of the curtilage is the date of the application; but this will involve considering both the past history of the site, and how it is laid out and used at the time of the application itself; Sumption at [27]. It appears from Sumption that the Judge considered future intended use of the land or buildings may be relevant, but in my view some care would be needed in applying this proposition to the facts of a particular case. A developer cannot change the curtilage simply by asserting that s/he intends to use the site in a particular way in the future”

In determining whether there is a sufficient degree of connection between a building and another building or piece of land a number of points arise from the numerous decisions on the subject:-

1 Fact - The issue is one which is a factual question in each case and is heavily dependent on the individual facts;
2 Not limited to house - It is permissible to refer to the curtilage of a building and not just a house.\textsuperscript{2421}

3 Ancillary – To be within the curtilage of a building the other building or land must be ancillary to it and not independent of it. The House of Lords emphasised this in Debenhams plc v Westminster\textsuperscript{2422}. The case involved Hamley’s toy shop which is a listed building. Exemption from unoccupied property rates was claimed for a building on the opposite side of a street to it on the basis of it being fixed to the listed building. Previously the two buildings had been linked by a bridge at second floor level and a tunnel at basement level. The other building was held not to be within the curtilage of Hamley’s because it was not ancillary to the toy shop. This was contrasted with the terrace of cottages being ancillary to the mill in the Calderdale case\textsuperscript{2423} although Lord Mackay did say that the Calderdale case was a very special case. It was not overruled but it was said that the width of the judgment of Stephenson LJ was not accepted.

4 General factors - Three general factors are of particular importance when considering the issue. In the Calderdale case they were spelt out by Stephenson LJ\textsuperscript{2424} and have been followed in later cases

(i) physical layout;
(ii) ownership past and present;
(iii) use or function of the property past and present

The decision in the Calderdale case was unusual and surprising. The context it arose in was whether the Secretary of State’s consent was required before a terrace of cottages could be demolished. The specific issue was whether the terrace was within the curtilage of a mill which was a listed building. The mill had been built in 1820 and the terrace in 1870 to house the mill workers. The terrace was connected to the mill by a bridge which provided access to three cottages and the only means of access to one. The first cottage was used for storage and offices. The mill was listed in 1971. Subsequent to that all but one of cottages were conveyed to the housing authority. Notwithstanding the severance of ownership and of use, as the cottages were not occupied by mill workers, it was held that the terrace was still within the curtilage of the mill as the terrace remained “so closely related physically and geographically as to constitute single unit”\textsuperscript{2425}. The substantially unchanged layout of the area was considered to be the strongest indication.

Were this decision to be applied in the context of the ownership of sewers and drains it would mean that all the drains serving only the mill and terrace would remain in private ownership until they left the curtilage.

The curtilage can be extended to incorporate recently acquired land.\textsuperscript{2426}

\textsuperscript{2421} Nourse LJ in Dyer v Dorset CC supra at page 358
\textsuperscript{2422} (1961) 178 EG 221
\textsuperscript{2423} See para. 4 below
\textsuperscript{2425} Stephenson LJ at page 409
\textsuperscript{2426} Sumption v Greenwich LBC [2007] EWHC 2776 (Admin) Collins J. at para. 24
Ownership - The expectation would be that the curtilage of a property would not exceed the property’s boundaries but might be smaller. The Calderdale case shows that, surprisingly, curtilage can straddle different ownerships albeit that it will be much less easy to find that properties within different ownerships are within the same curtilage.\textsuperscript{2427} In those cases where it arises it will mean that ownership may be vested in more than one property owner which will leave plenty of scope for disputes between them.

6 Separation - If the physical circumstances are such as to suggest that the two are separate from each other then they will not be part of the same curtilage.

This can be illustrated by what is within the curtilage of a country house which has featured regularly in the decisions because of its conversion to other uses. Nourse LJ regarded such a curtilage as including stables, outbuildings, gardens up to the ha but not the surrounding park land.\textsuperscript{2428} In Dyer v Dorset CC a college lecturer had applied to enfranchise a cottage on the boundary of an agricultural college which had previously been a manor house in a park. It was held that the cottage was not within the curtilage of the manor house or any other building and so could be enfranchised. The park and any building within it were not part of the main house’s curtilage.

Sir Richard Tucker in Lowe v First Secretary of State supra stated that the curtilage of a country hall would include stables, outbuildings, gardens (whether walled or not) and accommodation land such as a small paddock close to the hall but would not include the whole of the parkland setting or a driveway. In that case a chain link fence had been erected along a 650 metre drive to the hall. The hall was listed and if this was within the curtilage consent was required. It was held that it was not. The reason for the fence, to define the boundary, and the drive being in common ownership was held to be irrelevant. However, when a wall is erected to bring more land into the garden of a house then that additional land and the wall will become part of the curtilage of the house.\textsuperscript{2429}

In Skerritts of Nottingham v Secretary of State for the Environment\textsuperscript{2430} the issue was whether the stables of a country house converted to a hotel which was a grade II listed building were within the curtilage of the hotel. Double glazing windows had been installed in the block and if within the curtilage of the hotel consent was needed. It was held that the curtilage of a substantial listed building is likely to extend to what are or have been in terms of ownership and function ancillary buildings but that such satellite buildings are bound to be relatively limited.

A similar approach to that in Dyer v Dorset CC supra was adopted with regard to houses built near a fire station to accommodate firemen. The houses were separated by a wall from the fire station and had their own addresses and own access to the public highway. It was held that the houses were not within the curtilage of the fire station building.\textsuperscript{2431}

\textsuperscript{2427} Stephenson LJ at page 408  
\textsuperscript{2428} Dyer v Dorset CC supra at page 358  
\textsuperscript{2429} Sumption v Greenwich LBC [2008] 1 PCR 336  
\textsuperscript{2430} 4\textsuperscript{th} June 1999 – CO/1912/98  
\textsuperscript{2431} Barwick v Kent CC [1992] 24 HLR 341
In the Sumption case the disputed land was enclosed by shrubs and trees dividing it from the remainder of the land but that did not prevent Collins J. from holding that it was part of the curtilage.2432

With less grand buildings it is a question of looking at the particular layout to see whether there are physical features separating or connecting the two. A tennis court in a field 100 metres from a house and separated by an area of undergrowth and grassland was not within the curtilage of the house.2433 There was no appearance of close association nor were they in the same enclosure. A paddock at a lower level than the house’s garden and separated from the garden by a post and wire fence was not within the curtilage of the house for the purposes of an application for enfranchisement.2434 An old barn was held not to be within the curtilage of an old farmhouse because it “turned away” from the farmhouse and was separated by a wall. There was an outhouse between the two.2435 It was considered by Sullivan J not to be enough that the barn would have been a constituent part of the farming enterprise as the question was whether it was within the curtilage of the farmhouse and not the farm. A distinction had to be made between the part of the farm which was principally concerned with residential use and the part concerned with agricultural use. A similar result was reached in Morris v Wessex CBC2436 where there was no ready access between the two buildings and a brick wall separated them.

7 Facilitation - It is not enough that it is convenient to have a building or land for use of the main building or that it is a valuable amenity to come within the curtilage of the main building. It must facilitate occupation of the main building.2437

8 Which building - It is important to determine accurately by reference to what building the curtilage is to be determined. In Dyer v Dorset the question was whether the cottage was within the curtilage of the main college building or any other building and not the whole college. Similarly, in Barwick v Kent CC supra the question was whether the house was within the curtilage of the fire station building and not the whole fire station. The fire station building included the garages and the yard but not the houses. A similar distinction has to be drawn with farmhouses as opposed to the whole farm.

9 Size - It has been argued based on the judgments in Dyer v Dorset CC supra that a curtilage can only be a small area. This was rejected in the Skerritts of Nottingham case and it was stated that smallness was not material.

10 Automatically pass with conveyance - One test as to whether land or a building is within the curtilage of another building is whether a conveyance of the principal building would automatically carry the land or other building without there being a specific mention in the conveyance.2438

2432 Sumption v Greenwich LBC [2007] EWHC 2776 (Admin) at para. 23 and 27
2433 James v Secretary of State for Environment and Chichester DC (1990) 61 PCR 234
2434 Methuen-Campbell v Walters supra
2435 R v Taunton Deane BC [2008] EWHC 2752
2436 [2001] EWHC 697
2437 Barwick v Kent CC supra; and Buckley LJ in Methuen-Campbell v Walters supra at page 543 stated that test is not whether enjoyment of one is advantageous or convenient or necessary for full enjoyment of other.
2438 Buckley LJ in Methuen-Campbell v Walters supra at page 543
11 Boundary - As is apparent from the above the extent of the curtilage is not identical to the boundary of a property. Confusingly although legislation refers to curtilage when this topic is discussed boundary is often substituted for curtilage as in the debates on the transfer of water pipes in the House of Lords on 17th May 2011. This is not the case as the curtilage may be significantly smaller in area than the area owned and in a few cases might be larger.

The point at which a drain running to a sewer in public highway leaves the curtilage of an ordinary house was raised in the House of Lords debates on 17th May 2011 and Lord De Manley stated that the point would be the back end of the pavement running along the street. It must obviously depend on the precise physical layout. In some case there may be a significant distance between the boundary wall of the house and the pavement. What will be disregarded is any soil up to the mid-point of the public highway within the ownership of the house abutting on the road.

Lord De Manley also indicated that the approach will be the same if the road is not a public highway but remains unadopted.

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\(^{2439}\) As in APP/A4710/X/18/3218370 Decision date: 12th June 2019 which concerned a concrete base for a cow shed and whether it was within the curtilage of a farmhouse or part of the wider. Although in the same title as the farmhouse after a division of the ownership it was found not to be in the farmhouse’s curtilage based on past use and perception of physical layout.