

# Community Infrastructure Levy Draft Charging Schedule



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**1.1** The Community Infrastructure Levy (CIL) Draft Charging Schedule consultation commences on Friday 5 August 2016 and closes at 5pm on Friday 16 September 2016.

**1.2** Comments on the Draft Charging Schedule can be submitted to the Council's online consultation web page at: [maidstone-consult.limehouse.co.uk/portal](http://maidstone-consult.limehouse.co.uk/portal).

**1.3** Comments can also be submitted using the CIL consultation form, which is available from the council web page, or in hard copy from the Spatial Policy team. CIL consultation forms or other written comments can be submitted either electronically or by post.

### Introduction

**2.1** Consultation on the Preliminary Draft CIL Charging Schedule was undertaken between 21 March and 7 May 2014, alongside consultation on the draft Maidstone Borough Local Plan (2011 - 2031). Planning, Transport and Development Overview and Scrutiny Committee subsequently considered responses to the consultation on 16 September 2014.

**2.2** This document produces the Draft CIL Charging Schedule for consultation which is the next stage in the process in introducing the CIL for Maidstone Borough.

**2.3** The Council will seek to implement the CIL in a timely manner following adoption of the Maidstone Borough Local Plan (2011 - 2031). The table below outlines the key stages and timetable for adoption of CIL.

Stage	Date
Preliminary Draft CIL Charging Schedule	March - May 2014
Draft Charging Schedule	August - September 2016
Submission of CIL Draft Schedule to Planning Inspectorate	December 2016
CIL Examination	March 2017 <sup>(1)</sup>
Adoption and implementation of CIL	Autumn 2017 <sup>(2)</sup>

Table 1: CIL Timetable

1. Dependent upon outcome of Local Plan EiP
2. Dependent upon outcome of Local Plan EiP

**2.4** The Government considers that the CIL should provide a faster, fairer, more certain and transparent means of collecting developer contributions towards infrastructure, compared to individually negotiated section 106 agreements. The CIL is a per square metre charge payable on almost all new development which creates net additional floorspace (calculated on gross internal area). The charge can be differentiated by geographical area, and by development type, and must be based on viability evidence.

**2.5** The purpose of the charge is to provide a funding source which will help to deliver necessary infrastructure to accommodate new development across the borough. This necessary infrastructure is identified within the Maidstone Borough Local Plan and the accompanying Infrastructure Delivery Plan.

**2.6** Some types of development, notably affordable housing, self-build housing and charitable uses, are exempt from being charged the CIL. A size threshold of 100m<sup>2</sup> also applies to non-residential developments. Where exemptions do not apply, the council must set a CIL charge, even if it is £0 per m<sup>2</sup>. The proposed CIL charging rates are set out in part five of this document.

**2.7** In light of the viability evidence, and given the very rare circumstances in which relevant criteria would be satisfied, the council has decided not to introduce exceptional circumstances relief policy.

### Infrastructure Delivery

#### Maidstone Borough Local Plan

**3.1** The Maidstone Borough Local Plan (2011 - 2031) will replace the existing Maidstone Borough-Wide Local Plan 2000. The new Local Plan sets out a strategy to meet identified development needs for housing through the provision of at least 18,560 homes, in addition to new employment, retail and open space and gypsy and traveller accommodation.

**3.2** The Infrastructure Delivery Plan (IDP) sets out the infrastructure schemes which have been identified as necessary to support the delivery of development proposed in the Maidstone Borough Local Plan. The IDP is published separately to the Local Plan and is updated as necessary. The infrastructure identified in the IDP is not intended to deal with existing deficits, rather it is to accommodate new development. However, in practice these two outcomes are often delivered together.

**3.3** The council has produced the IDP in consultation with a range of local service providers and partners, including but not limited to Southern Water, South East Water, Kent County Council, West Kent Clinical Commissioning Group and the Environment Agency. The IDP takes account of the latest available evidence including documents such as the Integrated Transport Strategy and the County Council's School Commissioning Plan for Kent, and identifies broadly how and when the schemes will be delivered.

#### Relationship between the CIL and Section 106 planning obligations

**3.4** The Community Infrastructure Levy Regulations (2010) (as amended) set into statute the tests for using section 106 planning obligations. This represents a tightening of the rules and has meant that local planning authorities and developers are both being more careful with regard to what potential planning obligations can be considered legitimate.

#### Tests for a section 106 planning obligation

A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is -

- a. necessary to make the development acceptable in planning terms;
- b. directly related to the development; and
- c. fairly and reasonably related in scale and kind to the development.

**3.5** In addition, the CIL Regulations now restrict the pooling of section 106 agreements where five or more obligations for that project or type of infrastructure have already been entered into since 6 April 2010. The introduction of the CIL will therefore provide greater flexibility for the council and infrastructure providers in delivering strategic infrastructure, as receipts can be pooled and spent without such restrictions.

**3.6** Following the introduction of the CIL, the use of section 106 agreements will be scaled back and limited to site specific infrastructure necessary to make development acceptable in planning terms. The CIL will therefore become the primary mechanism by which developers make contributions towards the delivery of strategic infrastructure. The list of relevant infrastructure (Regulation 123 List) sets out how the CIL and section 106 agreements will be used following the introduction of the CIL.

**3.7** Where the council provides funding for infrastructure from CIL receipts, it will require an agreement, similar to a deed of obligation [used with section 106 obligations], that specifies how the infrastructure provider will use the funding for its intended purpose.

### **List of relevant infrastructure (Regulation 123 List)**

**3.8** The Local Plan and IDP support the development of the CIL Regulation 123 List which identifies the infrastructure types and/or projects intended to be funded wholly or partly by the CIL. The council must demonstrate that developers will not be charged twice for the same infrastructure projects, and therefore the Regulation 123 List also identifies the exclusions where section 106 agreements will continue to be used to fund infrastructure.

**3.9** It should be noted that the inclusion of a project or type of infrastructure in this list does not represent a commitment from the council to fund it, either in whole or in part. The order of the table does not imply any order of preference for the use of CIL receipts.

**3.10** The list of relevant infrastructure will be reviewed each year as part of the council's CIL monitoring process. This review will determine, as the Local Plan period progresses, whether the list remains appropriate to be able to deliver infrastructure in support of the Local Plan. This will take into account the ongoing performance of infrastructure delivery and will determine if for any reason the list needs to be amended. The council must consult on amendments to the list of relevant infrastructure, however, the specific process for doing this is within the council's discretion. Amendments to the list that adversely affect plan viability will prompt a necessary review of the charging schedule.

## Local Plan and CIL Viability Testing

**4.1** In July 2015, the council published a Revised Plan and CIL Viability Study<sup>(1)</sup> undertaken by Peter Brett Associates to inform updated Maidstone Borough Local Plan policies and the continued development of the CIL. The Viability Study considered the viability and deliverability of the Local Plan as a whole and assessed the viability of development allocations to inform the setting of CIL charging rates.

**4.2** The Viability Study provides a high level analysis, undertaken in accordance with the Royal Institute for Chartered Surveyors (RICS) valuation guidance, and tested a number of hypothetical and named schemes that represent the proposed allocation of development land, as identified in the Local Plan. The approach involves a comparison of the "residual value" with a benchmark land value to determine the balance that could be available to support policy costs, such as affordable housing and infrastructure.

**4.3** The viability testing was split between residential and non-residential uses.

### Residential

**4.4** To provide comprehensive coverage of the variety sites and schemes proposed in the Local Plan, some 24 different typologies of residential development were tested. The factors considered included small/large sites, brownfield/greenfield development and urban/rural locations, in addition to more specialist types of residential development including care homes, extra care facilities and retirement homes. Site specific assessments were undertaken for two urban brownfield development sites, including Springfield, Royal Engineers Road, Maidstone (Policy H1 (11) in the Local Plan).

**4.5** The assessment indicated that all typologies tested were viable without policy requirements, and proceeded to test a number of alternative scenarios to establish potential viability at a range of affordable housing rates. The assessment was used to inform the setting of affordable housing rates in the Local Plan, as set out in Policy DM13. A summary of the rates is provided below.

Development Type/Location	Affordable Housing Rate (%)
Residential (Urban)	30
Residential (Rural)	40
Residential (Springfield H1 (11) )	20
Retirement housing / extra care	20
Residential care homes / nursing homes	0

Table 2: Local Plan Affordable Housing Rates (Policy DM13)

<sup>1</sup> <http://www.maidstone.gov.uk/residents/planning/local-plan/evidence>

**4.6** Taking these rates into account, CIL charges are calculated using the residual "headroom" and allowing for a buffer to account for potential section 106/278 costs and changes in site specific circumstances.

### **Non-residential**

**4.7** Viability testing of non-residential uses adopted a similarly high level approach and considered the viability of 10 different typologies including a variety of retail, commercial and business uses to reflect the types of uses likely to come forward during the period of the Local Plan. The assessment specifically considered the viability of retail and office uses within the town centre.

**4.8** The development types tested do not need to coincide with those defined in the Use Classes Order (as updated in 2013). In practice this means that for viability and CIL purposes, a degree of sensitivity can be applied to uses that in traditional terms might be considered to be part of the same use class. The principal example of such differentiation within the same use class having been applied is in the case of retail. Charging Authorities have sought to justify a differentiation between convenience and comparison retail, based on varying characteristics and, importantly, significant differences in development viability. In Maidstone, it is clear that town centre comparison retail cannot sustain a CIL charge, whereas comparison retail located outside of the town centre can. The assessment suggests however that convenience retailing can sustain a CIL charge both within and outside of the town centre.

**4.9** Although a variety of other non-residential uses were tested for viability, the assessment indicates that none of the other uses would be able to sustain a CIL charge.

## Implementation

### Setting the CIL Rates

**5.1** The rates are informed by the viability evidence base at a level that does not put the overall quantum of development proposed in the Local Plan at risk. CIL charges should not be set near the margins of viability and therefore the proposed rates accommodate an adequate buffer to allow for potential section 106/278 costs and changes in site specific circumstances. In accordance with the CIL Regulations, for any types of uses that are unable to sustain a CIL charge a £0 CIL rate has been applied.

**5.2** Charges for residential development vary depending on the location of development. Development located outside of the Urban Boundary will attract the higher rate whereas development located within the Urban Boundary will attract the lower rate. Land at Springfield, Royal Engineers Road, Maidstone (Policy H1 (11)) attracts a significantly lower rate, based on the viability evidence. Figure 1 at Appendix A shows the boundaries applicable to residential development.

**5.3** Charges for comparison retail also vary depending on the location of development. Development located outside of the Town Centre Boundary will attract a charge, whilst development within the Town Centre Boundary will not. Figure 2 at Appendix A shows the boundaries applicable to comparison retail development.

**5.4** All other charges apply at the same rate across the borough.

**5.5** The proposed charging schedule is set out below.

<b>Development Type / Location</b>	<b>CIL Charge (£ per sqm)</b>
Residential (Within the Urban Boundary)	<b>£93</b>
Residential (Outside the Urban Boundary)	<b>£99</b>
Site H1 (11) Springfield, Royal Engineers Road, Maidstone	<b>£77</b>
Retirement and extra care housing	<b>£45</b>
Retail - wholly or mainly convenience	<b>£150</b>
Retail - wholly or mainly comparison (Outside the Town Centre Boundary)	<b>£75</b>
All other forms of CIL liable floorspace	<b>£0</b>

Table 3: Proposed CIL Charging Rates

### Payment in Kind

**5.6** In accordance with Regulation 73 of the CIL Regulations, the Council may support the payment of part of a CIL liability in the form of one or more land payments. This will be subject to the following conditions:

- The Council must be satisfied that the land to be transferred would be appropriate for the provision of necessary infrastructure to support growth in the Borough. It is entirely at the Council's discretion as to whether to accept a land transfer in lieu of CIL.
- Transfers of land as payment in kind in lieu of CIL will only take place in exceptional circumstances and is in addition to any transfer of land which may be required via section 106 agreements.
- The chargeable development must not have commenced before a written agreement with the Council to pay part of the CIL amount in land has been made. This agreement must state the value of the land to be transferred.
- The person transferring the land to the charging authority as payment must have assumed liability to pay CIL and completed the relevant CIL forms.
- The land to be transferred must be valued by a suitably qualified and experienced independent person as agreed with the Council. The valuation must represent a fair market price for the land on the day that it is valued and reflect the relevant purposes for which the land will be utilised.
- The land, subject to the transfer, must be free from any interest in land and encumbrance to the land, buildings or structures.
- The land, subject to the transfer, must be fit for a relevant purpose being the provision of necessary infrastructure to support growth in the Borough.
- The Council may transfer the land, at no cost, to a third party for the provision of infrastructure.

### Duty to pass CIL to local councils

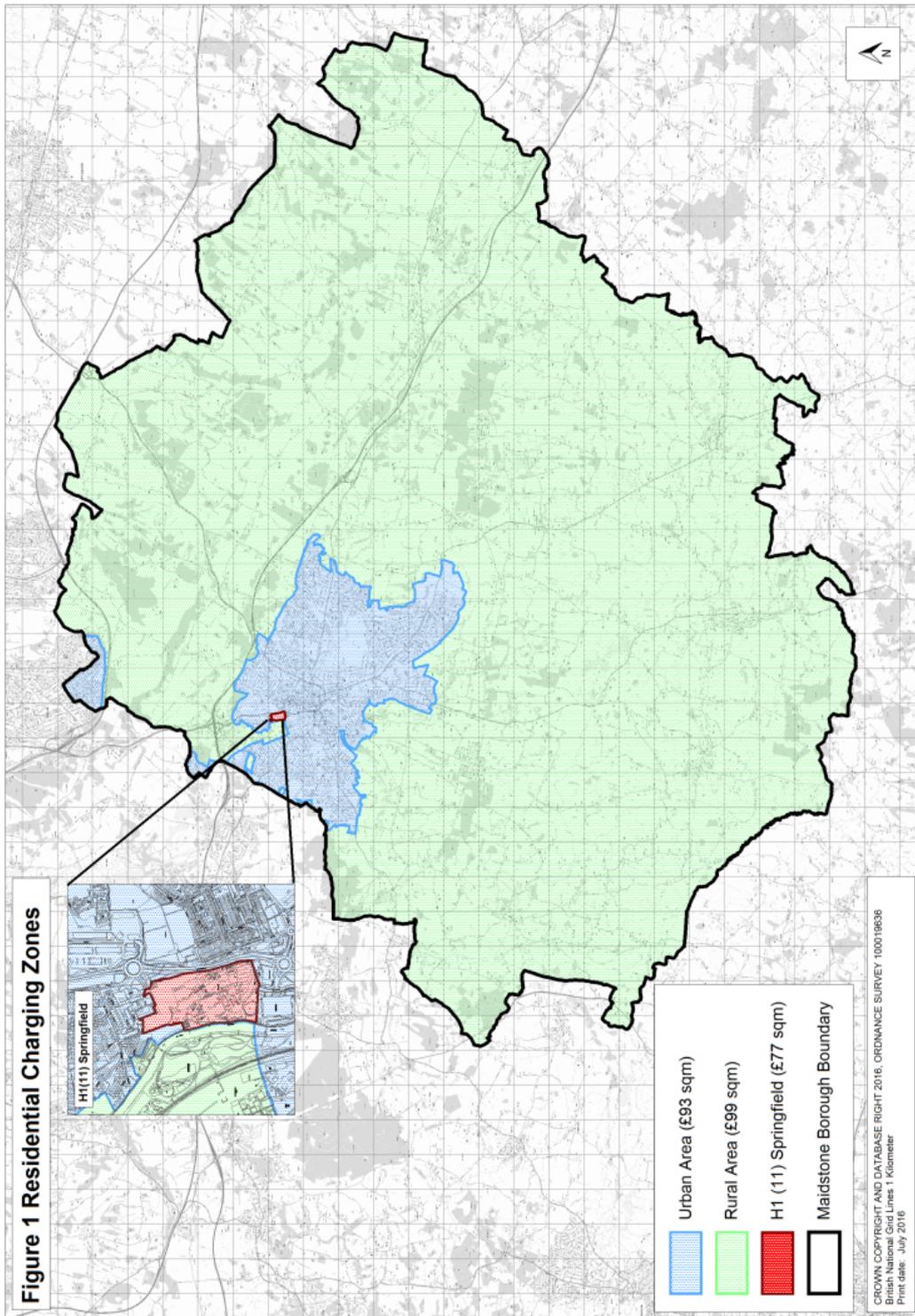
**6.1** The Community Infrastructure Levy (Amendment) Regulations 2013 make provision for a proportion of CIL receipts - known as the neighbourhood portion - to be passed to Parish Councils, or be spent on behalf of communities where there is no Parish Council. The proportion passed to the Parish Council, or spent on behalf of the neighbourhood, is dependent on whether or not a neighbourhood plan has been "made" within the relevant area.

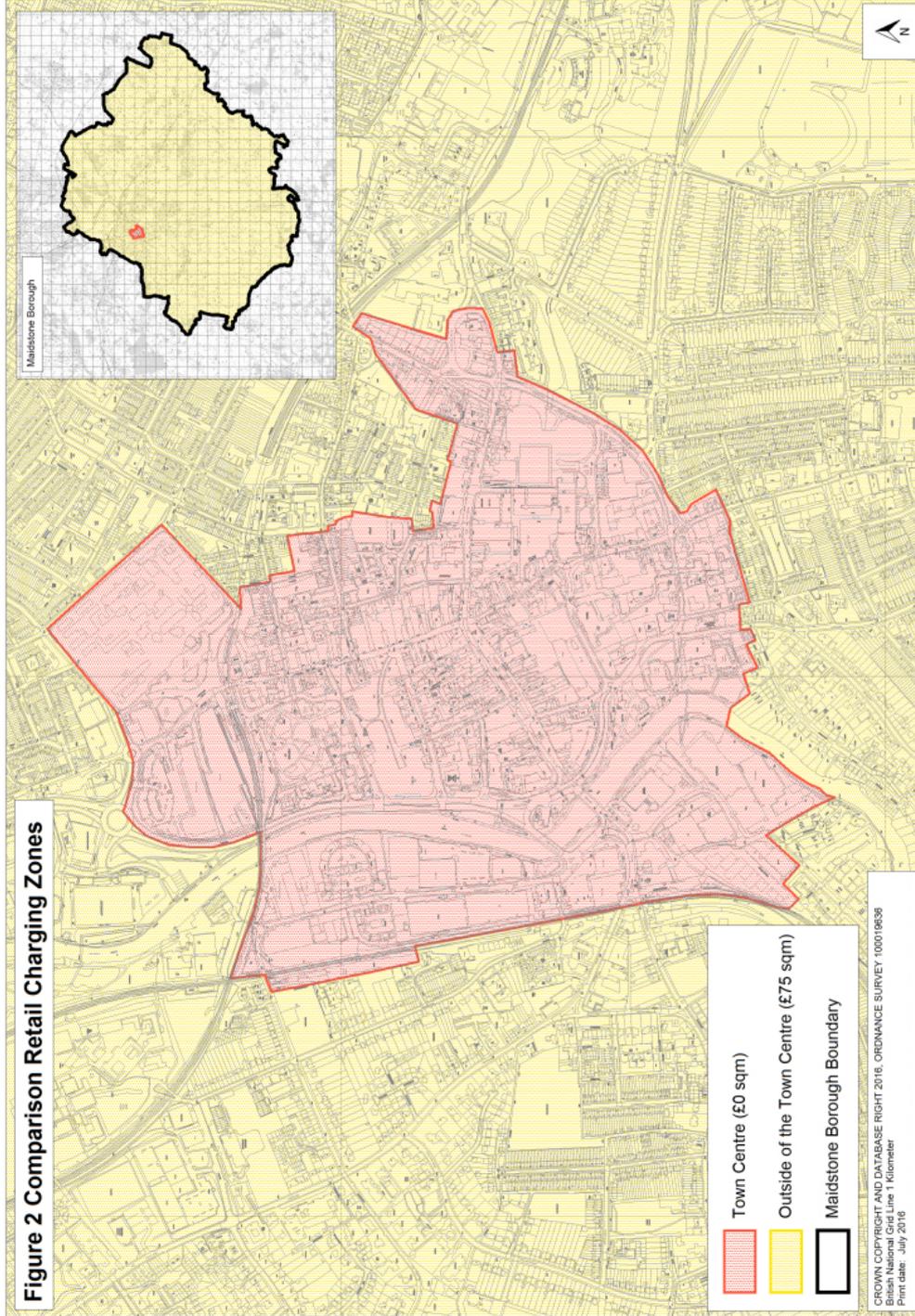
**6.2** In areas where no neighbourhood plan is in place, 15% of the receipts associated with a development in that area (capped at £100 per existing council tax dwelling) will be paid to the Parish Council or will be spent on behalf of the community. Where a neighbourhood plan has been "made" 25% of CIL receipts (with no cap) will be passed to the Parish Council or will be spent on behalf of the community.

**6.3** Much of Maidstone Town lies outside of established Parish boundaries and a significant level of development is expected within this area. CIL receipts collected in this area will be retained by the council as Charging Authority, however the council will engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding. Where development takes place within an area with a neighbourhood plan, the council and communities will consider how the neighbourhood portion can be used to deliver the infrastructure identified in the neighbourhood plan as required to address the demands of development.

**6.4** The neighbourhood portion of the levy funding is subject to a much wider definition in regards to how the monies can be spent. The monies must be spent on supporting the development of the area however this can be achieved through:

- The provision, improvement, replacement, operations or maintenance of infrastructure; or
- Anything else that is concerned with addressing the demands that development places on an area.





## Calculation of the CIL Charge

The method of calculation of the CIL charge is set out in Regulation 40 in the CIL Regulations 2010 as amended by the 2014 Regulations:

### “Calculation of chargeable amount

**40.**-(1) The collecting authority must calculate the amount of CIL payable (“chargeable amount”) in respect of a chargeable development in accordance with this regulation.

(2) The chargeable amount is an amount equal to the aggregate of the amounts of CIL chargeable at each of the relevant rates.

(3) But where that amount is less than £50 the chargeable amount is deemed to be zero.

(4) The relevant rates are the rates, taken from the relevant charging schedules, at which CIL is chargeable in respect of the chargeable development.

(5) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula-

$$\frac{R \times A \times I_p}{I_c}$$

Where-

A = the deemed net area chargeable at Rate R, calculated in accordance with paragraph (7);

$I_p$  = the index figure for the year in which planning permission was granted; and

$I_c$  = the index figure for the year in which the charging schedule containing rate R took effect.

(6) In this regulation the index figure for a given year is-

(a) the figure for 1<sup>st</sup> November for the preceding year in the national All-in Tender Price Index published from time to time by the Building Cost Information Service of the Royal Institution of Chartered Surveyors(1); or

(b) if the All-in Tender Price Index ceases to be published, the figure for 1<sup>st</sup> November for the preceding year in the retail prices index.

(7) The value of A must be calculated by applying the following formula-

$$\frac{G_R - K_R - (G_R \times E)}{G}$$

Where -

$G$  = the gross internal area of the chargeable development;

$G_R$  = 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, 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;

$E$  = 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  $E_x$  (as determined under paragraph (8)), unless  $E_x$  is negative,

provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

(8) The value  $E_x$  must be calculated by applying the following formula-

$$E_p - (G_p - K_{PR})$$

Where-

$E_p$  = the value of E for the previously commended phase of the planning permission;

$G_p$  = the value of G for the previously commenced phase of the planning permission; and

$K_{PR}$  = the total of the values of  $K_R$  for the previously commenced phase of the planning permission.

(9) Where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building.

(10) Where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish-

- a. whether part of a building falls within a description in the definitions of  $K_R$  and E in paragraph (7); or
- b. the gross internal area of any part of a building falling within such a description,

It may deem the gross internal area of the part in question to be zero.

(11) In this regulation-

“building” does not include-

- i. a building into which people do not normally go,
- ii. a building into which people go intermittently for the purpose of maintaining or inspecting machinery, or
- iii. a building for which planning permission was granted for a limited period;

“in-use building” means a building which-

- i. is a relevant building, and
- ii. contains a part that been in lawful use for continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development;

“new build” means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings;

“relevant building” means a building which is situated on the relevant land on the day planning permission first permits the chargeable development;

“relevant charging schedules” means the charging schedules which are in effect-

- i. at the time planning permission first permits the chargeable development, and
- ii. in the area in which the chargeable development will be situated;

“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.

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