

# DRAFT

**Revised Developer Contributions Technical Guidance**

**Planning Policy CP7 Infrastructure and Developer Contributions**

**Overview and detailed guidance on the main types of contributions**

DRAFT



**Brighton & Hove**

# **Contents**

Introduction

1. Types of Developer Contributions
2. Viability
3. S106 and its relationship with CIL
4. Types of Infrastructure to be funded by CIL
5. Types of Infrastructure to be funded by S106
6. Calculations/Formulas for S106 contributions
7. CIL & S106 Management, Monitoring Costs and Indexation

## **Introduction**

This document updates the 2017 Developer Contributions Technical Guidance in light of Brighton & Hove City Council's decision to introduce a Community Infrastructure Levy (CIL) scheduled to commence 5 October 2020. All planning applications determined after this date that require the use of planning obligations should be determined in accordance with this guidance.

It provides updated guidance on developer contributions; how each will be applied and how the different types of contribution relate to one another. This guidance looks specifically at the application of CIL, Section 106, Section 278 and Section 38 agreements.

The guidance sets out the types of mitigation and infrastructure that can be secured by S106 and CIL obligations. Specific infrastructure requirements to support the planned development of the city will be identified in the Council's Infrastructure Delivery Plan (IDP). The IDP is a living document and will be updated on a regular basis. It is currently referenced as Annex 2 of the City Plan Part One (March 2016) and will be updated during 2021.

Details of all developer contributions secured by the Council and how they will be spent will be provided in an Annual Infrastructure Funding Statement, which is a requirement introduced by the CIL Regulations 2010 as amended.

Developer contributions are sought in accordance with the relevant legislation, national planning policy guidance and policy objectives as set out in the adopted development plan for Brighton & Hove, including the adopted City Plan Part One and saved policies from the 2005 Local Plan. It also includes:

- East Sussex, South Downs and Brighton & Hove Waste and Minerals Local Plan (2013)
- East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Local Plan (2017)
- Shoreham Harbour Joint Area Action Plan (2019)

City Plan Part One Policy CP7 Infrastructure and Developer Contributions indicates the range of infrastructure for which developer contributions may be sought. Contributions will go towards the appropriate and adequate social, environmental and physical infrastructure to mitigate the impact of new development and to secure a successful development in planning terms.

As a matter of course all s106 obligations and CIL charges will be placed on the Council's local land charges register until they have been discharged

# 1: Types of Developer Contributions.

Developer contributions will often be required to make a planning application acceptable in planning terms. This section describes the different types of 'developer contributions' that can be used by the council to secure a successful development.

## Community Infrastructure Levy (or CIL)

CIL was first introduced in the Planning Act 2008, with regulations governing the operation of CIL first being introduced in April 2010. These have subsequently been amended several times (Part 6, Chapter 2 of the Localism Act 2011 has the effect of amending parts of the Planning Act 2008 as it relates to CIL)

CIL is a non-negotiable financial levy that local authorities can charge on new development to fund infrastructure to support the planned development of the area. It is levied on new Gross Internal Area (GIA) floor space over 100 sqm or where there is the creation of a new dwelling.

Unlike a S106 planning obligation, there does not have to be a direct relationship between the development from which CIL has been secured and how it is spent. CIL can be spent on infrastructure anywhere in the city or outside of the city's administrative boundary should the authority deem that this would be beneficial infrastructure. The key objective of CIL is to deliver infrastructure to support the planned development of the local area. The amounts to be charged for different types of development per sqm must be set out in an agreed CIL charging schedule; informed by bespoke viability assessment and testing which has been reviewed through an examination in public. It is also necessary to demonstrate an infrastructure funding gap to ensure that there is a 'need'. Details of the examination can be found on the Council's CIL examination page. (<https://www.brighton-hove.gov.uk/content/planning/planning-policy/cil-examination>)

The IDP sets out the infrastructure required to support the development of the local plan. The IDP will be regularly updated as infrastructure needs are identified and delivered. As CIL can be used to pay for infrastructure, this is a key document in identifying priorities.

CIL is non-negotiable and the CIL regulations state it should be paid within 60 days of commencement unless there is an agreed Instalments Policy which will establish alternative payment dates. The Council's Instalments Policy can be found in Appendix 1

BHCC has followed the required procedures and legislative requirements to produce a CIL Charging Schedule. The CIL Charging Schedule was formally adopted at the July 23 meeting of the full Council 2020 and is payable on all relevant planning consents granted permission on and from 5 October 2020.

## The CIL Charging Schedule Table

Use	Location	Levy (£/sq. m)
Residential - applies to C3 use classes	Zone 1	175
	Zone 2	150
	Zone 3	75
C2 Extra care / assisted living	Zone 1 & Zone 2	100
Nil CIL charge zone rate	DA2 Brighton Marina, Gas Works and Black Rock Area King Alfred leisure centre Brighton General Hospital site Sackville Trading Estate/ Coal Yard site	0
Purpose Built Student Housing / Purpose Built Shared Living Accommodation	City Wide	175
Retail – Larger format retail (warehousing / Supermarkets)	City Wide	100
Retail - Other retail: A1-A5	City Wide	50
All other uses	City Wide	0

For further details, explanations and background please refer to the adopted CIL Charging Schedule [\(link\)](#)

### NIL rated CIL sites

The CIL consultation process identified that four sites may not be viable for CIL, due to their specific abnormal costs of development. The Inspector who undertook the CIL examination process concluded that these sites would not be viable for CIL. They will still be required to enter into S106, S278 and/or S38 agreements as appropriate to secure site-specific infrastructure and to make the development acceptable in planning terms.

## **CIL Exemptions**

The 2010 CIL Regulations as amended identified types of development that can apply for an exemption/relief from CIL. This must be applied for before development commences, and the applicant should await confirmation before commencing with the development. There are specific forms which must be completed which are available on the planning portal.

Depending on the circumstances, the following forms of relief may be available:

- minor development exemption
- exemption for residential annexes or extensions
- mandatory charitable relief
- discretionary charitable relief
- mandatory social housing relief
- discretionary social housing relief
- self-build exemption (for a whole house)
- exceptional circumstances relief

## Section 106 agreement

This process has been how developer contributions have been secured in Brighton & Hove prior to the introduction of CIL (Community Infrastructure Levy). The agreement identifies the planning obligations required pursuant to Section 106 of the Town and Country Planning Act 1990, which make a development proposal acceptable in planning terms.

A S106 obligation can:

- Restrict the development or use of the land in any specified way;
- Require specified operations or activities to be carried out in, on, under or over the land;
- Require the land to be used in any specified way; or
- Require a sum or sums to be paid to the authority on a specified date or dates or periodically.

Common uses of S106 planning obligations are:

- To secure onsite provision of affordable housing and to specify the amount, type and timing of such housing provision.
- To secure commuted sums for affordable housing in line with planning policy requirements;
- To secure other financial contributions to provide specific infrastructure

They can also be used to secure non-financial obligations such as works required by the developer to mitigate the impacts of a development e.g. measures to guard and preserve a protected species or provide biodiversity enhancements.

A legal agreement is entered into between the Council, landowners, developers and potentially other affected third parties as appropriate. It imposes financial and non-financial obligations on a person or persons with an interest in the land and becomes binding on that parcel of land. It also includes covenants on each party as a signatory to the agreement, including the Council.

Developers can also enter into agreements as a unilateral undertaking to the Council by which they covenant to provide infrastructure or funding without any commitments from the local authority.

S106 agreements will typically be sought from major developments, they may also be required for smaller developments or where the Council deems they are required in order to make the development policy compliant.

The 2010 CIL Regulations set out in Regulation 122 that S106 agreements should be used to provide onsite infrastructure and site-specific infrastructure which 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.

A s106 will be used to secure site specific infrastructure. The sums and payment terms are negotiated between the Council and the developer.

## **Section 278 agreement**

This refers to the section of the Highways Act 1980. A S278 is used to ensure that work is carried out on the highway by the developer and that it is completed to the standards and satisfaction of the Council (as the Local Highway Authority.) Typically, it describes the scope of any off site works that are required to mitigate the impact of the development on the existing road network. It is a legally binding agreement which describes the proposed modifications to the existing highway network to facilitate or service a proposed development. It includes provision for a bond or deposited sum as a financial payment which is held by the Council until:

- appropriate certificates are issued for entering into a maintenance contract
- or a certificate of completion has been issued that the works are satisfactory

at which point the payment is returned.

## **Section 38 agreement**

This refers to the section of the Highways Act 1980. It is used when a developer proposes to construct a new estate road for residential, industrial or general-purpose traffic, usually within the development, that may then be offered to the Council for adoption as a public highway. The developer will usually undertake all the works required and then pass it to the Council, often with a financial bond attached and ongoing maintenance sums. It is a legally binding agreement between the Council and the developer.

## **Grampian Conditions**

The Local Planning Authority can also use Grampian (or negatively worded) conditions which restrict development until works have been carried out.

## **2: Viability**

### **Development viability**

Developer contributions are a necessary cost of development and it is expected that these requirements should be factored into the development proposal at an early stage in the same way as all other costs.

When developers consider that schemes may not be viable, these issues should be raised as soon as possible and detailed viability/cost information should be submitted to the Council for independent assessment and review. It is a local validation requirement that, if you are unable to meet your planning obligations, you must submit a viability assessment with your planning application. This will help reduce any delay in negotiations and agreeing the final s106 legal agreement to provide site specific planning obligations.

The onus is on the developer to provide robust evidence to demonstrate the non-viability of a development proposal. To substantiate a claim, the Council will require a full financial appraisal through an informed and independent assessment of viability signed by an appropriately qualified and independent valuer or financial professional. An independent assessment cannot provide binding arbitration, but the Council will consider its findings in considering viability issues on applications.

In all cases the Council will require an electronic version of the viability assessment tool in a working compatible format to test calculations and the figures provided.

### **Review Mechanism**

In meeting planning policy objectives for ensuring appropriate levels of contributions, a review mechanism may be required. This is often where the Council has agreed reduced contributions due to viability issues at the time of determining the planning application.

Such a mechanism will allow for re-evaluation of the viability of the scheme and an increase in the level of developer contributions to be provided where, for example land value assumptions may have been fixed at an early stage or an unpredicted rise in sales/revenue values.

The developer will be expected to pay all the Council's verification costs in making any assessment and reassessment.

### 3: The relationship between S106 and CIL

CIL does not necessarily replace the requirement to have a S106 agreement, should one be necessary. In some circumstances both can be requested for the same development site. A S106 obligation is for site specific mitigation, to make the proposed development acceptable and to provide for specific onsite policy requirements, whereas CIL provides funding for city wide infrastructure improvements required because of demand from all new developments.

Prior to the introduction of CIL, many S106 agreements requested contributions to mitigate matters which were site related but which were also sometimes provided for in the vicinity of the site such as sustainable transport improvements, public realm improvements and education provision. With the introduction of CIL, S106s will be considerably scaled back to being site specific and CIL will be collected to pay for off-site infrastructure improvements and to address the cumulative impacts of development.

The Government Guidance note on CIL states:

*'The levy is not intended to make individual planning applications acceptable in planning terms. As a result, some site-specific impact mitigation may still be necessary for a development to be granted planning permission. Some of these needs may be provided for through the levy but others may not, particularly if they are very local in their impact. There is still a legitimate role for development specific planning obligations, even where the levy is charged, to enable a local planning authority to be confident that the specific consequences of a particular development can be mitigated'* <https://www.gov.uk/guidance/community-infrastructure-levy>

#### Differences between CIL and S106

CIL is a non-negotiable financial levy (charge) on specific types of development as set out in the adopted CIL Charging Schedule. It has been rigorously tested for viability, through the preparation and examination process. CIL is a clear and transparent method for developers and others to calculate the amount of CIL which will be levied on the development site. CIL costs can therefore be factored in at a very early stage in the feasibility process.

S106 planning agreements are negotiable, with varying costs depending on the precise development proposal and requirements for the site. Contributions can be financial and/or non-financial.

CIL liability only arises if on completion the gross internal area of new build will be over 100 square metres or where the chargeable development comprises one or more dwellings.

S106 financial requirements are traditionally determined by reference to proposed units and estimated occupancy and mainly on major applications of sites over 10 units more and large non-residential sites.

CIL is captured on much smaller sites than the threshold used for s106 liable planning applications.

CIL cannot be used for the provision of affordable housing, which can only be secured through s106.

S106 is used to secure affordable housing both on site and for commuted sums for the provision of affordable housing off-site.

S106 financial contributions must be spent on site specific infrastructure; there must be a relationship between the development and where and how the money is spent. The agreement will specify the precise nature of how the financial contribution will be spent.

CIL is a levy on liable development which shall be used to provide infrastructure across the whole city, there does not have to be a relationship between the development which generated the CIL and where it is spent.

A charging authority must apply CIL to fund the provision, improvement, replacement, operation or maintenance of infrastructure to support development within its area. (Reg 59)

There are two main types of CIL spend:

1. Strategic Infrastructure
2. Non-strategic (neighbourhood portion)

The strategic portion does not have to be spent on or near the development which generated the CIL, whereas the non-strategic portion should be spent in the local area.

The council will agree and publish on the website governance arrangements for approving both the expenditure of the Strategic Infrastructure element and the neighbourhood portion (outside of the area represented by Rottingdean Parish Council.)

## **4: Types of Infrastructure to be funded by CIL**

CIL is a levy on liable development which can be used to provide infrastructure across the whole city to address the cumulative impacts of development.

The CIL regulations set out that CIL can be spent on the provision, improvement, replacement, operation or maintenance, of infrastructure to support the development of the local area.

As part of the preparation of the Council's CIL Charging Schedule, a list was drawn up to indicate the types of infrastructure that CIL receipts could be spent on. The list below indicates the infrastructure type or project which may be funded from CIL receipts.

### **Air Quality**

All off-site citywide air quality mitigation and monitoring measures priorities where identified in Infrastructure Delivery Plan.

### **Education facilities**

All off-site provision and improvements to new or existing schools and public sector funded education facilities.

### **Emergency Services**

Cumulative impacts of development upon services where identified in Infrastructure Delivery Plan.

### **Energy and Utilities**

Strategic renewable energy projects, measures and facilities provision where identified in Infrastructure Delivery Plan.

### **Flood Risk Management**

Strategic Sustainable Urban Drainage Systems (SuDS) surface water flooding - priorities where identified in Infrastructure Delivery Plan

### **Health Facilities**

Off-site citywide health care facilities provision.

### **Open Space Provision**

All off-site provision and improvements to publicly accessible parks and other recreation open space facilities including amenity green areas and areas for food growing.

### **Recreation space built facilities**

All off-site provision and improvements including built provision to play space, indoor/outdoor sports, and playing fields.

### **Provision and enhancement of Green Infrastructure network**

Green infrastructure network connectivity including cross boundary infrastructure, rights of way, biodiversity measures and tree planting.

## **Public realm and cultural infrastructure**

Strategic public realm upgrade including environmental improvements, components for delivery of arts, cultural provision and production space and technology.

## **Transport and Highways**

City wide transport improvements including walking and cycling facilities and networks, public transport facilities and services, road safety, and parking and traffic management.

Off-site provision, improvement and maintenance to new and existing public highways infrastructure and rights of way including traffic signals, junction upgrades and lighting.

The alphabetical order of the list does not imply any preference or priority but is derived from objectives in approved council strategies and plans and detailed in Annex 2 of the Brighton & Hove City Plan Part One - Infrastructure Delivery Plan update 2017 which identifies infrastructure required to support development over the plan period to 2030.

The inclusion of a specific infrastructure type on this list does not commit the council to fund the project (either in whole or in part) through CIL, it merely provides an indication of the type of project.

The precise way in which the CIL receipts have been spent will be set out in an Annual Infrastructure Funding Statement which is a requirement of the 2010 CIL Regulations as amended. This states that charging authorities must prepare and publish an annual Infrastructure Funding Statement (IFS) which identifies the amount of developer contributions (including non-monetary) the Council has received from both CIL and S106; what it proposes to spend them on and what it has actually spent contributions on each financial year.

## 5: Types of Infrastructure to be funded by S106

CIL and S106 will exist alongside each other. Developer contributions for nil rated CIL sites will be expected to sign a S106, S278 and/or S38 as appropriate to the site. Most major development sites (e.g. sites of 10+ residential units) will most likely be subject to CIL and S106, whilst smaller residential sites are likely to only be CIL liable.

Where appropriate, developers and/or land owners will still be expected to provide site-specific infrastructure which is:

- necessary to make the development acceptable in planning terms
- directly related to the development
- fairly and reasonably related in scale and kind to the development

The Council will seek S106 obligations, for on-site and site specific matters that are required to make the development acceptable in planning terms.

The list below reflects what was set out as part of the preparation of CIL to identify what S106 agreements would continue to secure :

1. Affordable Housing - on-site provision for development of 10 (net) units and over. For sites of between 5 and 9 (net) units the Council will request a commuted sum in lieu;
2. On-site recreation/sports facilities and/or open space provision where required by site-specific policy allocation;
3. On-site schools/education land and/or building provision where required by site-specific policy allocation;
4. Development related transport access, trunk roads and highways works provision under s278 and/ or s38 of the Highways Act 1980;
5. On-site transport and accessibility provision where required
6. On-site Local Employment training/job opportunities provision with supporting financial contribution;
7. On-site public realm provision including artistic element;
8. Development related flood defences and coastal engineering including site-specific policy allocation mitigation;
9. Development related water supply & utilities provision, & wastewater drainage;
10. On-site health care facilities, emergency services facilities and other community buildings;
11. Development related nature conservation and ecological measures;

## **Contributions which will no longer be secured from S106**

In line with the types of infrastructure to be funded by CIL, the items below demonstrate areas for which the Council previously secured S106 contributions which will be scaled back from 5 October 2020. S106 contributions for these off-site works will now be provided through CIL.

- Off-site Recreation space contributions;
- Off-site Education provision contributions;
- Off-site Sustainable Transport contributions.

## **6:Calculations/ Formulas for S106 contributions**

In the majority of cases the actual cost of what will need to be provided for on site will be calculated by the relevant department and shared with the applicant by the planning application case officer.

For affordable housing sums in lieu and the Local Employment and Training Scheme which specifically refer to a financial contribution, the formulas from the 2017 technical guidance remain in place. For all other areas there are no formulas but an indication of the type of contributions that will be expected.

Agreement to the overall contribution will be subject to negotiations with the developer prior to, and/or during, the planning application process.

### **6.1 Affordable Housing**

In accordance with Policy CP20 in City Plan Part One on-site provision of affordable housing is the Council's first priority for all suitable larger development sites (40% on sites of 15 (net) units or more, and where practicable, 30% on sites of between 10 and 14 (net) units).

#### **Alternative Developer Contributions / Commuted Sums for Affordable Housing**

Off-site provision of affordable housing on an alternative site or by way of a financial payment in lieu (or commuted sum) will only be acceptable in exceptional circumstances or where between 5 and 9 (net) units are being provided.

#### **Off-site Provision / Commuted Sums for Larger Development Sites**

In accordance with Policy CP20 in the City Plan Part one onsite provision of affordable housing is the councils first priority for all suitable larger development sites (40% on sites of 15 units or more, and where practicable,30% on sites of 10 – 14 units). Off-site provision of

affordable housing on an alternative site or by way of financial payment in lieu (or commuted sum) will only be acceptable in exceptional circumstances

There will need to be robust planning or housing reasons to accept offsite provision or a commuted payment on larger development sites. Such justification will need to be carefully made as the presumption will remain for onsite provision unless scheme specific circumstances indicate otherwise. This is a matter for the developer to demonstrate and for the planning authority in conjunction with strategic housing services to consider and agree.

Circumstances which might justify offsite provision or a payment in lieu could include:

- Where mixed community objectives/housing priorities could be better met in an alternative location. For example where family sized (3 + bedroom, outdoor space) housing cannot easily be provided for on the development site itself, and then it may be preferable to seek offsite provision or a commuted sum to fund such affordable housing elsewhere.
- Where there are high housing costs for occupiers associated with the development. For example, in high value areas where development leads to high service/maintenance charges and where this cannot be satisfactorily overcome or avoided by alternative design, massing or separate new build for the affordable housing.
- Where a Registered Provider finds it uneconomic or impractical to provide the affordable units agreed. An example could be where on some sites it is not practical, from a management perspective, to provide and manage a small number of on-site affordable housing units.

It is important to note that economic viability is not the key test for whether there should be on or offsite provision. Viability determines the overall amount of affordable housing contribution i.e. the appropriate percentage overall and the type (tenure, size mix) of affordable housing sought - whether provided onsite, offsite or as a commuted payment.

Neither off-site provision nor financial contributions will be a less expensive option than on-site provision, but will be equitable. In such circumstances where the proportion of affordable housing is being negotiated the Council may require the development's financial information be provided on an open book basis which will be required as part of the process.

**Calculation:** Where the case is agreed for accepting a payment in lieu of onsite provision, the calculation of the commuted sum will follow the same approach as set out for smaller development sites (5-9 units or sites of between 10 to 14 units)

## **Offsite provision on an alternative site**

Where the case for no on-site provision is agreed, then the Council may consider off-site affordable housing provision on an alternative development site. An example may be where a private developer can 'pair' up development sites.

Provision of affordable housing on an alternative development site will be in addition to any requirement arising from the development of the alternative site. Where an alternative site is insufficient in area to accommodate all the affordable housing requirement then financial contributions to remedy the shortfall will be sought.

## Commuted sums on Small Development Sites for Affordable Housing on sites of 5-9 (net) units and 10-14 (net) units

This guidance sets out the revised methodology and calculation of commuted sums (payment in lieu) in accordance with the sliding scale requirements for smaller development sites as set out in City Plan Part One CP20 Affordable Housing.

The Brighton & Hove City Plan Part One was adopted 24 March 2016. The City Plan sets out strategic housing policies regarding future housing delivery in the city to 2030 and Policy CP20 Affordable Housing replaces the 2005 Local Plan Policy HO2 for affordable housing.

Policy CP20 'Affordable Housing' requires an affordable housing contribution on all sites of 5+ net units:

- 20% affordable housing as an equivalent financial contribution on sites of 5-9 (net) dwellings;
- 30% onsite affordable housing provision on sites of 10-14 (net) dwellings or as an equivalent financial contribution; and
- 40% onsite affordable housing provision on sites of 15 or more (net) dwellings.

**Table 1** below indicates the equivalent number of affordable housing dwelling units for which a commuted sum would be required under Policy CP20. The numbers have been rounded to the nearest whole dwelling unit. This reflects the policy approach which is currently taken for onsite provision.

For example, for a scheme proposing 6 dwelling units, the equivalent number of affordable housing units for which a commuted payment would be sought is 1 unit. For 9 dwellings, the equivalent number of affordable housing units for which a commuted sum would be sought would be 2 units.

**Table 1: Sliding scale of affordable housing contributions Policy CP20**

No of units	20% affordable housing (equivalent no. units)		30% affordable housing (equivalent no. units)	
	20%	Rounded	30%	Rounded
5	1	1		
6	1.2	1		
7	1.4	1		
8	1.6	2		
9	1.8	2		
10			3	3
11			3.3	3
12			3.6	4
13			3.9	4

## Commuted Payments Calculation:

The general approach to the calculation of the commuted payment remains essentially the same as that currently outlined in the original Developer Contributions Technical Guidance as first established by Environment Committee February 2011.

The commuted payment will be based on a sum equal to the difference between an Open Market Value (OMV) and Affordable Housing Value (AHV).

Brighton & Hove City Council commissioned DVS Property Specialists to undertake the relevant valuations required in 2017 and from this to provide a schedule of commuted sum payments.

DVS were instructed to provide:

- A schedule of average market values for 1,2,3 bedroom flats and 2,3,4 bedroom houses across Brighton & Hove
- An analysis of different value areas in Brighton & Hove (i.e. low, medium and high).
- A schedule of average Affordable Housing values for the above unit types.
- A schedule of commuted sum payments.

The council will review these figures annually or as appropriate in line with changes in market conditions.

<https://www.brighton-hove.gov.uk/content/planning/planning-applications/affordable-housing-guidance-commuted-sums-vacant-building>

### Taking account of unit size mix

The appropriate unit size mix for the affordable housing contribution will be advised having regard to the balance of unit sizes across the proposed scheme as a whole. The commuted payment will then be calculated using the schedule above.

#### **Example 1: 6 residential units comprising 4 one bed and 2 two bedroom units**

The affordable housing contribution will be based on a commuted sum equivalent to 1 affordable unit (as indicated in Table 1). As the scheme is balanced more towards one bedroom units overall then the commuted payment will be that calculated for a one bedroom unit reflecting the appropriate value zone. For a flatted scheme in Zone 2 this will be £120,750.

Had the scheme comprised an even split of one bedroom and two bedroom properties then the commuted payment sought would be for a one bedroom unit.

#### **Example 2: 9 residential units comprising 4 one bedroom units, 4 two bedroom units and 1 three bedroom units**

Under this example, the appropriate affordable housing contribution for which a commuted sum would be secured would be equivalent to 2 affordable units (as indicated in Table 1). The commuted payment would be calculated on the basis of 1 one bedroom unit and 1 two bedroom unit reflecting the appropriate value zone. For a scheme of 9 flats in Zone 2 this will be £285,250.

## Securing the commuted payments and proposed uses

Developers have the option to secure commuted payments or a proposed use through either a Unilateral Undertaking or a S106 Agreement. Payments will be required upon scheme commencement.

Applicants are advised to confirm the appropriate commuted sum with a Planning Officer.

It is proposed that the Council would use commuted payments to fund the provision of affordable housing in the City in the following ways:

- To contribute to the costs of building new affordable housing;
- To contribute to the costs of area regeneration in connection with Council owned land that would provide new affordable housing;
- To contribute to the costs of purchasing land or properties either off-plan or existing buildings for as new affordable housing
- To contribute to the cost of bringing long term empty homes back into use as affordable housing; and
- To buy back former council owned homes sold under the Right to Buy under the Councils Home Purchase Policy

The approach for accepting a commuted sum in lieu is that financial contributions should be of 'broadly equivalent value' – the commuted sum should be equivalent to the developer/landowner contribution if the affordable housing was provided on-site.

In such circumstances where the proportion of affordable housing is being negotiated the Council may require the development's financial information be provided on an open book basis which will be required as part of the process.

This guidance will be incorporated into the Council's Affordable Housing Brief.

Guidance may be introduced regarding Build to Rent schemes in the future

## **6.2 On-site recreation/sports facilities and/or space provision where required by site-specific policy allocation;**

Where specifically identified as a requirement in a site-specific policy these should be provided for on-site as part of the proposed development.

On all other sites, open space and sports provision requirements will continue to be sought on site where it is feasible and practicable to do so in accordance with the adopted standards set out in City Plan Part One Policy CP16 and CP17 Sports Provision.

Where it is not practicable for all or part of the open space and/or sports provision requirements to be provided onsite then offsite contributions will now be replaced by CIL.

## **6.3 On-site schools/education land and/or building provision where required by site-specific policy allocation.;**

The Council will seek school / education land and or building contributions from sites which have a specific policy allocation or which come forward and are of such a scale that the development of the site would require a new school.

Education requirements are calculated using standard formulae, as set down by the Department for Education in the relevant Building Bulletin. This sets out standards of provision for education facilities, including the size and number of classrooms needed to accommodate a specific number of children and the cost multiplier for building costs per pupil places in schools in the city. The need for development to provide for an additional school will be guided by adjusted pupil forecasts produced by the Council from General Practitioner registration data provided by the Health Authority.

Where it is not provided onsite then offsite contributions will now be replaced by CIL.

## **6.4 Development related transport access, trunk roads and highways works provision under s278 and/ or s38 of the Highways Act 1980;**

### **Off Site Transport provision**

Following the introduction of CIL, the majority of new off-site transport provision (e.g. new traffic signals, junction improvements, new bike hubs and other sustainable transport measures) will not be subject to S106 contributions, but funded through other council programmes (e.g. Local Transport Plan and CIL)

Improvements and changes to the public highway may be necessary to ensure that the access to and egress from a site is acceptable. This will include how it is joined to the public highway and any alterations or relocation required to highway assets adjacent or opposite to the site (as defined by the redline boundary in the planning application) that are directly required because of the development of the site. Obligations will also be secured for future maintenance payments where reasonable.

Examples of the type of off-site contributions that may be required include:

- Relocating an existing bus stop that is no longer in a safe location due to the new development (but excluding the costs of any upgraded provision for shelters, real time bus information not provided by the current facility)
- Upgrading and repairs to the footpaths adjacent to the site to maintain public amenity
- Amendments and improvements to those parts of existing cycle paths that are located adjacent to the development
- Provision of additional spaces and cycles in existing adjacent Bike Hubs when linked to a site travel plan (but excluding the costs of providing new Bike hubs)

Developers may also wish to propose the inclusion of contributions for the cost of making other alterations to the public realm in order to improve the overall appearance and amenity of the wider setting in which their development is situated.

### **On-site transport provision where required**

Any transport related works required on site will be the responsibility of the developer and will be secured via a S106 agreement. Agreement to specific measures and the overall contribution will be subject to negotiations with the developer prior to, or during, the planning application process.

Examples of the type of onsite contributions that may be required include (but are not exclusive to):

- Works to overcome and issues relating to the site layout or permeability
- Schemes to improve the management of traffic and parking on site (including any extension of an existing CPZ to cover new dwellings being created)
- Onsite works to provide for and encourage the use of sustainable forms of travel such as pedestrian, cycle and buses, e.g. bus stop improvements,
- On site measures that improve safety and reduce or prevent casualties.
- Cycle parking and provision of new bike hubs
- Electric vehicle charging points and enabling infrastructure
- On street parking controls
- CCTV
- Street lighting

### **Implementing Works**

These works will be secured through a S106 agreement and implemented either through a Section 278 or S38 Highways Agreements. If highway works are to be carried out on the public highway by a developer, the Council as Highway Authority will enter into a Legal Agreement under Section 278 of the Highways Act 1980. If new estate

roads are to be constructed and then adopted as public highway, the Council as Highway Authority will enter into a Section 38 agreement under the Highways Act 1980. This agreement will allow the developer to construct the new roads under supervision of the Council once the full construction details have been agreed. These agreements allow developers to carry out highway works at their expense whilst insuring the Council against poor or incomplete workmanship. A bond covering the full costs of the works will be secured and released on completion of the works to the Council's satisfaction. The developer will be required, to pay for maintenance for a minimum agreed period following completion of the works after which the Council will then be responsible

## Travel plans

The justification for seeking obligations in respect of Travel Plans is set out in Paragraph 111 of the NPPF, policy CP9 of City Plan Part One and Policy DM 35 of the emerging City Plan Part Two.

The starting point for a Travel Plan is a Transport Assessment which shows what the issues are. The Travel Plan puts forward specific objectives to address these issues in relation to access and sets out all the measures to be implemented in detail, with an action plan, timescales, targets and responsibilities for implementation, monitoring and review. Where a development may cause significant amounts of movement it may be possible for a travel plan to address these and reduce them to acceptable levels.

The type and scale of development that will normally trigger the requirement for a Transport Assessment or Transport Statement and Travel Plan can be found in Policy DM 35 of the emerging City Plan Part Two (insert link to CPP2 webpage.) Travel plans secured under a S106 will be for a duration of no more than 5 years from the date of occupation. Developers may apply for them to be discharged as a condition sooner if sufficient evidence can be supplied that demonstrates the modal shift objectives contained in the plan have been met.

The estimated cost of the proposed travel plan measures to be included in the S106 will be considered as part of any viability assessment (and subsequent reviews) that the Council requires in accordance with Chapter/Section 2 of this guidance. The cost elements that will be used to calculate the value of the travel plan obligation can be calculated using the following methodology:

Travel Subsidies (Easit discount schemes, free bus or train tickets, car club credits etc as agreed)	Lump sum per dwelling/new full time job created
Provision of formal cycle training to residents and employees of the development	Lump sum per trainee (number of trainees calculated as 5% of the number of cycle spaces required by BHCC Parking Standards)
Provision of Cycle Maintenance Tools and Equipment	Lump sum per cycle space required by BHCC Parking Standards (Lump Sum)
Provision of Doctor Bike Sessions	Lump sum (based on 2 sessions per annum for 5 years)
Provision of a Travel Plan Co-Ordinator (including co-ordination of Bicycle User Group, production of travel packs, administration of free/discounted travel, travel planning advice & maintenance of	Lump sum (fixed cost per annum for 5 years)

site travel information)	
TRICS SAM Surveys	Lump sum (assumes a fixed fee per survey undertaken for 5 surveys over lifetime of development)
Management & Monitoring Fees to cover: <ul style="list-style-type: none"> <li>• Agreement of objectives, targets, actions and measures/incentives for the first travel plan (including future review frequency &amp; mechanisms)</li> <li>• Undertake reviews of updated travel plans submitted by the developer at agreed intervals</li> <li>• Auditing the developer's annual financial statement of expenditure on travel plan costs incurred</li> </ul>	Published set of fee charges using appropriate mechanism (lump sum or fee percentage as appropriate)

This sum will then be capped as the overall contribution charged for travel plans in the S106, although it will be subject to RPIX indexation in accordance with Chapter 7 of this guidance. A worked example of this calculation and the current lump sum rates that developers should use are published on the CIL pages of the BHCC website.

The first travel plan should be submitted at least 3 months prior to first occupation of the development, along with full payment of the agreed obligation (including the management and monitoring fees.)

The developer will be required to submit with each subsequent revision of the agreed travel plan full information on the expenditure that they have incurred in commissioning, managing and delivering the various travel plan initiatives funded through this obligation. This will include any information where a different expenditure pattern is emerging (eg lower than estimated take up of free bus travel, demand for additional bike maintenance schemes) to ensure that the plan continues to meet the needs of the occupants of the development.

All revenues generated from the fees for each travel plan obligation will only be used by the council for the purposes of monitoring and managing that specific S106 agreement.

For some development, a travel plan implementation bond may be required as part of a planning obligation. The travel plan implementation bond acts as surety against failure by the developer to implement the travel plan. The bond is based on the cost of implementing the travel plan, which is to be calculated by the developer. The timescale on which the bond is based covers a five year period, but can vary depending on phasing of the development. Where bonds are secured, the travel plan will be monitored annually, with one fifth of the bond (depending on development phase) released back to the developer if the travel plan is successfully implemented. If the developer fails to implement the travel plan then the Council may use the bond to deliver the travel plan measures.

For large development (see Appendix B of the Department for Transport's: Guidance on Transport Assessment (2007) or development located in existing areas where there are transport problems, a travel plan target bond may be

required in addition to the implementation bond. An annual target to reduce vehicle use and increase sustainable transport will be agreed between the developer and the council. If annual monitoring shows that targets have not been met, part of the bond will be called upon by the council to address the situation. If targets are partially met then a percentage may be deducted from the bond and provided back to the developer, with the rest being used to tackle unmet areas. The travel plan target bond may be secured through a planning obligation.

## **6.6 On-site Local Employment training/job opportunities provision with supporting financial contribution;**

As part of the objectives of City Plan Part One Policy CP2 (and SA6 Sustainable Neighbourhoods), apprenticeships, training and job opportunities for local residents will continue to be sought from developers on major development schemes. City Plan Part One Policy CP7 Infrastructure and Developer Contributions aims to ensure adequate infrastructure including appropriate social infrastructure through the provision of employment, regeneration and training initiatives on major development sites at demolition and construction phases in accordance with the Brighton & Hove Local Employment Scheme (BHLES).

### **The Brighton & Hove Local Employment Scheme (BHLES)**

The Council is keen to ensure ongoing developer support for the provision of local training and employment agreements for all major developments. Major development proposals will be required to provide direct provision of employment and training initiatives by the developer together with a financial contribution towards an agreed and established programme with a local partnership. The training is for the benefit of the construction industry as a whole, to mitigate the impact of the predicted skills shortage in the sector and is necessary to meeting policy objectives in respect of Social Infrastructure in providing suitably trained individuals required for demolition/construction services for new development.

The training provision would be for people living within the administrative boundary of Brighton & Hove, and directly related to the employment needs of the development with the aim to maximise opportunities to develop local skills and business performance and expand employment provision.

Seeking contributions for training co-ordination benefits all parties by providing employment, training, enabling sustainable development and mitigating the potential for delays to the construction process. A local workforce will enable easier recruitment and retention and will reduce the environmental impact of a commuting workforce. The advertising of all jobs, which relate to the development, should be accessible to local people through local, approved employment agencies such as Job Centre Plus and its partners.

An obligation will secure contributions towards the city-wide coordination of training and employment schemes to support local people to employment within the construction industry. Development will also directly contribute towards a workplace co-ordinator who facilitates easier routes to employment with contributions directly relating to the construction of developments and training for local people benefiting the city's major development sites across the city.

The methodology for securing contributions towards employment and training will enable the Council and delivery organisations to:

- engage in long term planning of the scheme;
- educate residents and trainees, who are then able to develop their skills and qualifications both on and off site;
- support developers in achieving a commitment to local employment and training;
- support the development industry;
- Support long-term monitoring and compliance with obligations.

A planning obligation for employment and training may include a number of elements such as:

- a contribution by the developer towards pre and post construction training;
- a commitment to recruit residents for jobs pre and post development;
- the provision of waged construction training placements on the development site;
- larger schemes to include the provision of a serviced, on site recruitment and/ or training facility and/or workplace coordinator;
- the provision of information that the Council can use to monitor the success of the scheme;
- the developer to enter into a partnership with a local college or training provider
- A dedicated Local Employment Scheme Co-ordinator

## How financial contributions are calculated for the BHLES

Financial contributions will be required for supporting the on-site training provision aided directly through the role of the Local Employment Scheme Co-ordinator and a local employment training off-site programme and its running costs, including the provision of an appropriately qualified tutor. The contributions will support both capital and revenue costs on the ‘Futures’ programme for residents and small businesses.

### Threshold and provisions

Contributions will be required from all new major developments including net gain provision on conversion and change of use, on or above the thresholds detailed below. Provision of contributions on all development will need to be agreed in detail by the Council and the developer and be met prior to the commencement of development.

All developments will provide an agreed percentage (a minimum 20%) of local employment on site and provision of training opportunities in negotiation with the Local Employment Scheme Co-ordinator.

### Residential Development Contributions

<u>All Residential Uses</u>	<u>Student /studio units</u>	<u>1 – 2 bed units</u>	<u>3+ bed units</u>	<u>Note</u>
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Contribution per unit (schemes of 10 units and above)	£100	£300	£500	Falling under Use Class C1 or C3
	£100	£300	£500	Falling under Use Class C2 and Sui Generis (Hostel)

### Non Residential Development Contributions

<u>Type of Development</u>	<u>Threshold</u>	<u>Contribution</u>	<u>Note</u>
All uses (except see below)	500m <sup>2</sup>	£10 per m <sup>2</sup>	All Use Classes except B2 and B8
Storage or distribution/general industrial	235m <sup>2</sup>	£5 per m <sup>2</sup>	Falling under Use Classes B2 and B8

Example of development contribution:-  
 750 m<sup>2</sup> B1 commercial space x £10 per m<sup>2</sup> = £7,500.  
 50 x student /studio units x £100 per dwelling =£5,000

The proposed thresholds and formula applied would be negotiated taking into account wider considerations linked to the development of the scheme.

## 6.7 On-site public realm provision including artistic element;

Contributions may be sought from major schemes towards direct on site provision in accordance with adopted City Plan Part One Policy CP7 Infrastructure and Developer Contributions which seeks development to contribute towards necessary social, environmental and physical infrastructure including artistic components secured as public realm improvements; and policy CP13 Public Streets and Spaces which seeks to

improve the quality and legibility of the city's public realm.

Where it is not practicable for public realm provision to be provided onsite then offsite contributions will now be replaced by CIL.

### **6.8 Development related flood defences and coastal engineering including site-specific policy allocation mitigation;**

Contributions will be sought from schemes towards direct on-site provision for sites which need to manage and reduce flooding risk in accordance with City Plan Part One CP11 Managing Flood Risk and where stated specifically in policy, for example policy DA2 Brighton Marina and DA7 Shoreham Harbour. Development proposals will need to mitigate any adverse effects on people and property in accordance with the findings of the Strategic Flood Risk Assessment. Where a risk is identified a site-specific flood risk assessment should be submitted which identifies how these risks will be mitigated and minimised. Development should include appropriate sustainable drainage systems to avoid any increase in flood risk and to reduce flood risk.

### **6.9 Development related water supply & utilities provision, & wastewater drainage**

Contributions will be sought for all necessary onsite works relating to water supply and utilities provision.

### **6.10 On-site health care facilities, emergency services facilities and other community buildings.**

Contributions will be sought for all necessary onsite provision relating to health care facilities, emergency services facilities and other community buildings

### **6.11 Development related nature conservation and ecological measures;**

Requirements and contributions for ensuring development provides appropriate nature conservation and ecology measures will be sought in accordance with City Plan policies CP7 Infrastructure and Developer Contributions and CP10 Biodiversity and the Nature Conservation and Development Supplementary Planning Document (SPD) 011 and any update of the SPD.

## **7: CIL & S106 Management, Monitoring Costs and Indexation**

### **CIL Management and Monitoring Fee**

The CIL Regulations state that up to 5% of CIL receipts can be spent on administering the Community Infrastructure Levy. This will pay for dedicated CIL officers to monitoring and manage the scheme as well as specific software to assist with the administration.

## **S106 – Management and Monitoring Fees**

### **Management of Section 106 Agreements**

The Council starts managing and monitoring each s106 agreement from the moment it is signed. This is a complex process as the individual S106 agreements contain different trigger points and obligations. The Council employs a dedicated CIL & S106 monitoring team to oversee this complex programme and ensure compliance with, and ultimately the delivery of, the obligations secured through s106 agreements. The Council has an established process for recording and monitoring Section 106 Agreements and other relevant legal agreements, including a database with details of all agreements

To ensure the efficient operation of the S106 process the Council will:

- Monitor all 'trigger points' (stages of development);
- Ensure that benefits and/or monies identified in the Agreements appropriate to that trigger are secured; Manage the receipt of monies and the setting up and monitoring of the bespoke accounts relating to each mitigating project;
- Procure the required works from third parties where necessary; and manage spending of S106 money and infrastructure delivery.

In order to compensate for any loss of value of received S106 receipts arising from inflation, pending expenditure all monies received will be held in interest bearing accounts. Any interest accrued will be applied by the Council to s106 related projects.

Specific numerical information relating to prices, formulas and, subsequently, the level of contributions due will need to be updated on a regular basis in order that the document remains relevant. The changes will be published in the Annual Monitoring Report. Any amendments to fee schedules will also be published on the website.

### **Financial Obligations**

Where a S106 agreement contains a financial obligation, details of how to make the payment will be provided on the demand notice or invoice which the Council will issue. The payment will be logged onto the Council's systems, once received.

Once a financial contribution is received by the Council, the service area with the responsibility for delivery of the s106 project will be informed. The CIL & S106 team will then regularly monitor the programme and progress to deliver the project(s) funded through the obligation.

All S106 obligations agreed, payments received from developers and expenditure by the council will be recorded appropriately and reported at least annually to the appropriate committee (s) of the council.

### **Non – Financial Obligations**

Where a non-financial obligation is required through a S106 agreement, the developer should provide evidence of compliance with the obligation to the Council's CIL & Section 106 team. This evidence would be required in any case should an application be made to discharge the Obligations at a later, unspecified point in time.

The delivery of non-financial contributions, or in-kind obligations, will be monitored by the appropriate service areas responsible for project delivery or the CIL & S106 team as appropriate. For example, where there is an Affordable Housing element to a legal

agreement, the Affordable Housing Team will monitor this section of the agreement to ensure that it is complied with.

## Management Fees

A S106 management fee will be charged for each S106 agreement. The fees for this will be reviewed on an annual basis and published separately on the Council's website.

The total fee chargeable and the current fee structure is outlined below:

S106 Fee Cap	The fees for each S106 agreement will be capped at no more than 5% of the total value of the financial contributions agreed (excluding any fees relating to agree deeds of variation)
Non Monetary Obligations	A fixed charge per head of term will be charged to monitor and manage the discharge of each non-monetary obligation
Monetary Obligations	A fixed charge per head of term will be charged to monitor and manage the delivery of each monetary obligation by the council.
Deed of Variation	A reasonable fee will be agreed with the developer on a case by case basis depending upon the complexity of the matter being agreed.

All management and monitoring fees will be due for payment to the Council upon the commencement of the development. Additional fees related to specific technical activities relating to individual obligations ( For example but not exclusive to: travel plan review fees, administration of the employment and training scheme, agreement of a scheme employment strategy) will be agreed separately as part of the negotiations for that particular obligation.

Any revenues generated from the fees will be used for S106 administration, monitoring and management purposes only.

The Council will review the fees annually and any changes will take effect from the 1<sup>st</sup> April for all new agreements (including those approved as "minded to grant" but remain unsigned on 31<sup>st</sup> March) entered into from that date. Management fees will not therefore be the subject of indexation (see below.)

### Deed of Variation

Following the completion and signing of a S106 Agreement, either the Applicant or the Council may find it necessary to modify the contents of an Agreement. Additional time, and therefore cost, will be required by the council and in the negotiation, preparation and the drafting of such agreements. Where the deed of variation request is instigated by (or because of actions caused by) the developer, reasonable fees will be charged for this, which will vary dependent on the complexity of the matter.

### Legal Fees

A standard clause within all S106 Agreements will require the applicant to pay the Council's legal fees for drafting and reviewing S106 agreements, and for reviewing unilateral undertakings whether or not the matter proceeds to completion.

### Enforcement

The developer should notify the Council upon commencement of development – or when other agreed triggers have been reached. Where the Council is not notified of this, and obligations become overdue, the Council will seek to enforce the obligation. From the 5<sup>th</sup> October 2020, standard clauses will be included in the S106 agreement to insert an additional financial penalty where any obligations become overdue. This is proposed at £500 (minimum) or 5% of total value of the obligation outstanding - whichever is the greater amount for the particular scheme where contributions become overdue-

## **CIL & S106 – Indexation**

### **CIL Indexation**

CIL is subject to annual indexation as set out in the CIL Regulations 2010 as amended. There is now a bespoke index, based on the Building Cost Information Service's (BCIS) All-in Tender Prices Index, which is known as the 'RICS CIL index'.

This index figure will be generated at the end of each year and will be applied to developments throughout the next calendar year to reflect changes in the amounts set out in the charging schedule . It will be made publicly available on the councils website and will not change throughout the year.

### ***RICS CIL Index for the year in which BHCC CIL was adopted is as follows.***

<i>Year</i>	<i>Index</i>	<i>Published</i>
2020	334	28th October 2019

### **S106 Indexation**

All financial contributions (with the exception of management fees) will be index-linked in order to allow for the fluctuation of prices between the date the agreement is signed and the date the payment is made. This is calculated based on the indexation adjustment of the relevant index, from the date the s106 agreement is signed to the expected date of payment. The additional amount paid on top of the financial contribution adjusts the contribution in accordance with inflation.

The method of indexation will be specified within the legal agreement. This will usually either be the Retail Price Index (RPI) published by the Department of Trade and Industry (DTI) or the Building Cost Information Service Index (BCIS) published by the Royal Institution of Chartered Surveyors (RICS), depending on the nature on the contribution. The BCIS index will be used for all obligations that are required to fund capital investment projects (e.g. new classrooms, replacement boilers, highways infrastructure etc.)

No indexation of costs will be applied to any non-financial obligations.