

DRAFT FOR EXECUTIVE (07.11.16)

Community Infrastructure Levy (CIL)

Draft Charging Schedule

Cherwell District Council

PROPOSED CIL CHARGES

November 2016

1. Introduction

- 1.1. The Community Infrastructure Levy (CIL) is a charge that local authorities can choose to apply to new development in their area. The funds raised can then be used to support the delivery of infrastructure that the Council and the community consider necessary to support development.
- 1.2. Cherwell District Council is a charging authority under CIL legislation and is undertaking consultation on this Draft Charging Schedule with a view to adopting CIL. This is the second consultation stage in the preparation of CIL prior to submitting the CIL Draft Charging Schedule for independent examination.

2. Background to CIL and setting CIL charges

Background

- 2.1. CIL was introduced by the 2008 Planning Act with the process for setting and implementing CIL charges set out in the CIL Regulations 2010 as amended in 2011, 2012, 2013, 2014 and 2015. Amended CIL Regulations introducing changes to the use of Planning Obligations came into force on 6 April 2015. These changes restrict the pooling of planning obligations to a maximum of 5 contributions towards a same item of infrastructure. This reform restricts infrastructure funding whether the Council has adopted a CIL Charging Schedule or not.
- 2.2. The government intends that CIL will:
 - supplement other sources of funding to deliver infrastructure supporting growth;
 - allow the Council, Parishes, Town Councils or neighbourhood areas more flexibility on how to fund infrastructure and the setting of priorities within their area;
 - provide certainty to developers about how much CIL will have to pay;
 - enable the Council to allocate a share of the levy raised to communities to deliver local infrastructure projects.
- 2.3. CIL is a discretionary tariff that the Council can choose to adopt to support the provision of infrastructure. Once adopted CIL is fixed, non negotiable and enforceable.
- 2.4. CIL is charged on new development, it is a charge per square metre on the gross internal floor space of development. It applies to all development comprising 100 square metres or above. It also applies to all new residential dwellings even if the floor space created falls below 100 square metres.
- 2.5. CIL Regulations exempt the following types of development:
 - Social/Affordable housing;
 - Development by charitable institutions;
 - Changes of use that do not increase floorspace;
 - Buildings into which people do not normally go or go only intermittently for the purpose of maintaining or inspecting machinery;
 - Buildings with temporary planning permissions;
 - Self-build housing.

- 2.6. CIL Regulations as amended in 2014 allow for housing provided at no more than 80% of market rent to be eligible for social housing relief. Councils have the discretion to grant relief for exceptional circumstances in respect of CIL liable development.

Setting CIL charges

- 2.7. The Council adopted the Cherwell Local Plan Part 1 (2011 – 2031) in July 2015 and is currently preparing Local Plan Part 2 on development management policies and non-strategic sites, and Local Plan Part 1 Partial Review concerning Oxford's unmet housing need. This Draft Charging Schedule supports adopted Local Plan Part 1 Policy INF1 and the delivery of infrastructure addressing Cherwell's Local Plan growth.
- 2.8. Cherwell District Council must set a CIL rate or rates in a Charging Schedule, and follow 2 stages of consultation and an Examination in Public prior to adoption and implementation of CIL. The 2014 amendments to CIL Regulations Part 3, Regulation 14 mean that when setting CIL rates, the Council must strike an appropriate balance between the desirability to fund infrastructure through CIL and the potential effect (taken as a whole) of the levy on the economic viability of development in the area where CIL charges apply. When considering infrastructure costs, the Council needs to estimate the cost of infrastructure to support development and take into account other sources of funding.

CIL Regulations 2010 (as amended), Part 3, Regulation 14:

'14.—(1) In setting rates (including differential rates) in a charging schedule, a charging authority must 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 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.

(2) In setting rates in a charging schedule, a charging authority may also have regard to actual and expected administrative expenses in connection with CIL to the extent that those expenses can be funded from CIL in accordance with regulation 61...'

- 2.9. Regulation 13 of the CIL Regulations 2010 (as amended) makes provision for the setting of differential rates for different geographical areas, different development types/uses, and development size or a combination of them. Any differential rate should be justified by economic viability evidence.
- 2.10. The Council has used evidence in the CIL Economic Viability Study (January 2016) and its September 2016 Update to inform appropriate CIL rates. These and the geographical area in which they apply are shown in Section 3.
- 2.11. The Infrastructure Funding Gap supporting the first stage of CIL consultation in February 2016 estimated the infrastructure cost of development envisaged in the Local Plan, looked at potential sources of funding and identified a funding gap towards which CIL funds could contribute. It explained the level of infrastructure funding needed after considering all known sources of funding and any likely contribution from a future CIL (the infrastructure funding gap). Nothing has changed substantially since then to amend that evidence. The Infrastructure Funding Gap, February 2016 remains relevant evidence for this Draft CIL stage.

- 2.12. Infrastructure and economic viability evidence supporting the Draft Charging Schedule illustrates that an appropriate balance between funding infrastructure and economic viability has been sought.

Planning obligations and CIL

- 2.13. CIL Regulation 123 (as amended) limits the number of planning obligations a local authority can pool towards a same item of infrastructure to a maximum of 5 and sets requirements to ensure that developments are not charged for the same item of infrastructure through S106 Agreements and CIL.
- 2.14. Once CIL is adopted, the Council will seek CIL payments in accordance with its CIL Charging Schedule. Affordable housing will continue to be provided through planning obligations and although CIL, alongside other sources of funding, will be the main mechanism for delivering off-site infrastructure, developers will be expected to mitigate against impacts that arise directly as a result of development.
- 2.15. The Council has prepared a Draft list of infrastructure items that it intends to fund through CIL, known as the 'Draft Regulation 123 list'. This is derived from the Council Infrastructure Delivery Plan (IDP). An update of the IDP was published in January 2016. The Draft Regulation 123 List will be reviewed ahead of submission for examination with comments from this consultation and the yearly update of the Council's Infrastructure Delivery Plan IDP later in the year.
- 2.16. The purpose of the 'Regulation 123 list' is to make clear what infrastructure schemes or types of infrastructure the Council intends to fund through CIL and which through S106s Agreements. The inclusion of projects in the list does not commit the Council to fund or partly fund the projects/Infrastructure types.
- 2.17. Appendix 2 contains the 'Draft Regulation 123 list' for consultation.
- 2.18. The Council is consulting on a Draft Developer Contributions SPD at the same time as this CIL Draft Charging Schedule. The SPD provides further guidance on the application of both instruments.

3. Proposed CIL charges

- 3.1. The Council commissioned Montagu Evans to undertake a Viability Study to assess the viability of development in the District to inform the first stage of CIL preparation. This study has now been updated to address responses to the 1st stage of CIL consultation (February 2016) and other changes in circumstance since its first publication. The Study Update shows that the ability of development to support a CIL charge varies by type of development. The ability of residential development to support the levy varies geographically and that of retail development varies also depending on whether it is 'centre' or 'out of centre' retail.
- 3.2. The study update recommended a differential rate to be applied to residential development across 3 areas ranging from £100 to £270 per m². The evidence shows that residential development in rural and southern areas can accommodate a higher CIL charge than in and around Banbury.

- 3.3. The study update assessed larger strategic sites (500+ residential units) and recommended a CIL rate of £70 per m² for such sites in Areas 1 (OX16 - Banbury) and 2 (Bicester and rural areas – principally postal districts OX15, OX17, OX25, OX26). The viability results indicate that Area 3 (Kidlington and south Cherwell – principally OX5) could absorb a CIL charge of £270 m² for all residential development.
- 3.4. Nine strategic housing sites allocated in the adopted Local Plan Part 1 would fall within the 500 or more dwellings category. Many of these sites have either outline planning permission or a resolution to approve and likely to have gained outline planning permission, ahead of CIL adoption.
- 3.5. In setting an appropriate CIL rate for larger strategic sites (500+), the Council has considered the first stage of CIL consultation, viability evidence, the need to enable strategic sites to come forward to ensure a continuous supply of housing through the lifespan of the Local Plan and the desirability of setting a set of charges which are not too complex to implement or administer. The Council is proposing a nil CIL rate for sites larger than 500 residential units in Areas 1 and 2.
- 3.6. The study also recommended that out of centre retail and sui generis retail uses: petrol filling stations, car showrooms, and retail warehouse clubs could support a £170 m² CIL charge.
- 3.7. Viability evidence shows that all other development tested including employment is unlikely to sustain a CIL charge.
- 3.8. The proposed CIL rates are shown in Table 1 and the geographical areas for the 3 residential rates are shown in Appendix 1 which also shows the Local Plan Part 1 strategic allocations subject to nil CIL charges. These sites are expected to contribute towards infrastructure through S106 agreements.

Table 1: Proposed Draft Charging Schedule

Development Type	Use Class Order	Area 1	Area 2	Area 3
Residential	C3	£100	£230	£270
Strategic allocation for 500 or more residential units in Local Plan Part 1*	C3	£0		£270
District wide				
Out of centre retail**	Out of centre A1-A5	£170		
Retail in town centres***		£0		
Any other development type		£0		
<p>* Policy Banbury 1: Banbury Canalside Policy Banbury 2: Hardwick Farm, Southam Road (East and West) Policy Banbury 4: Bankside Phase 2 Policy Banbury 17: South of Salt Way - East Policy Bicester 1: North West Bicester Eco-Town Policy Bicester 2: Graven Hill Policy Bicester 3: South West Bicester Phase 2 Policy 12: South East Bicester Policy Villages 5: Former RAF Upper Heyford</p> <p>**Includes sui generis retail uses: petrol filling stations, car showrooms, retail warehouse clubs</p> <p>***Town centre and out of centre as per Cherwell's Local Plan Proposals Map</p> <p>For the purpose of this Draft Charging Schedule: Residential means - C3 development excluding C3 assisted/sheltered accommodation</p>				

- 3.8 In addition to work on the emerging Local Plan Part 2, the Council is working on Local Plan (Part 1) Partial Review concerning Oxford's unmet housing need. The Council will consider the approach to CIL with regard to Local Plan Part 1 Review as it progresses to next stages of preparation and will review the need to amend the subsequent Draft Charging Schedule if necessary.

4. Supporting information on calculating, collecting and spending CIL

- 4.1. Once CIL is adopted, Cherwell District Council will be the charging and collecting authority for the purpose of implementing CIL in Cherwell.
- 4.2. CIL Regulations require the District Council to pass on 15% of any CIL revenues collected directly to those Parish and Town Councils where development has taken place. This amount increases to 25% where there is a Neighbourhood Development Plan in place.
- 4.3. Currently there are 9 designated neighbourhood areas in Cherwell at different stages of Neighbourhood Development Plan preparation. Hook Norton is the only Parish with a Neighbourhood Development Plan in place (a 'made' DPD) .
- 4.4. If a Neighbourhood Development Plan is not in place, the amount of CIL receipts to be passed onto Parish and Town Councils is capped to up to £100 per existing Council tax dwelling.
- 4.5. The District Council will spend CIL receipts on infrastructure that has been identified as being necessary to support future growth. The Council intends to use a proportion of its CIL revenue (up to 5% of total receipts) to cover the costs of setting up CIL and administering its implementation.
- 4.6. Cherwell District Council and any community in receipt of CIL revenues must report annually on how much money they have received through CIL and what it has been spent on.
- 4.7. The District Council intends to report on its CIL receipts through the Council's Annual Monitoring Report. As work on CIL progresses, the Council will liaise with Parish and Town Councils to ensure a system is in place to report on CIL receipts.

Development liable to pay CIL, exemptions and reliefs

- 4.8. CIL liable development is that which results in:
- 100m² or more new built floor space measured in Gross Internal Area (GIA);
 - the creation of one or more dwellings independently of floor space created;
 - the conversion of buildings no longer in lawful use.
- 4.9. CIL Regulations allow for CIL relief in certain circumstances. This relief is mandatory, subject to an application for CIL relief for: social housing, including affordable rent (CIL Regulation 49), development by charities for charitable purposes (CIL Regulation 43), and self-build housing (CIL Regulation 54A).

- 4.10. CIL Regulations also allow for discretionary CIL relief to be sought for investment activities for charitable purposes (CIL Regulation 44), and exceptional circumstances relief on economic viability grounds (CIL regulation 55).
- 4.11. Cherwell District Council does not intend to offer discretionary relief from CIL.

Calculating the CIL chargeable amount

- 4.12. The total amount payable is calculated on the basis of the gross internal area (GIA) of any net additional liable development. That is, CIL is chargeable only on the amount of new floor space created.
- 4.13. The Charging Authority (CDC) can choose whether to accept payment in money, as a land payment, infrastructure payment or a combination of the three (CIL Regulation 74).
- 4.14. In calculating CIL charges the Council will apply the national All-In Tender Price Index for construction costs published by the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors. This is to ensure the levy is responsive to market conditions.
- 4.15. Appendix 3 sets out how the CIL chargeable amount is calculated.

When is CIL Paid and who is responsible for the payment?

- 4.16. A CIL charge is imposed on development liable to pay CIL at the time planning permission is granted (CIL Regulation 8). Payment is required upon commencement which for the purpose of CIL is defined by Section 56 (4) of the Town and Country Planning Act 1990.
- 4.17. The CIL chargeable amount is a local land charge and liability runs with the land. The responsibility for paying the levy rests with the landowner although anyone can come forward and assume liability for the charge.

CIL payment in instalments

- 4.18. CIL regulations allow for the payment of CIL in instalments (CIL Regulation 69B). The time of the first instalment is calculated from the date development is commenced. For the purpose of this Draft Charging Schedule the Council has assumed CIL payments in full within 60 days of commencement of development.
- 4.19. The Council acknowledges the potential positive effect of instalment policies and proposes the following Instalments policy overleaf.

Table 2: Proposed Instalments Policy

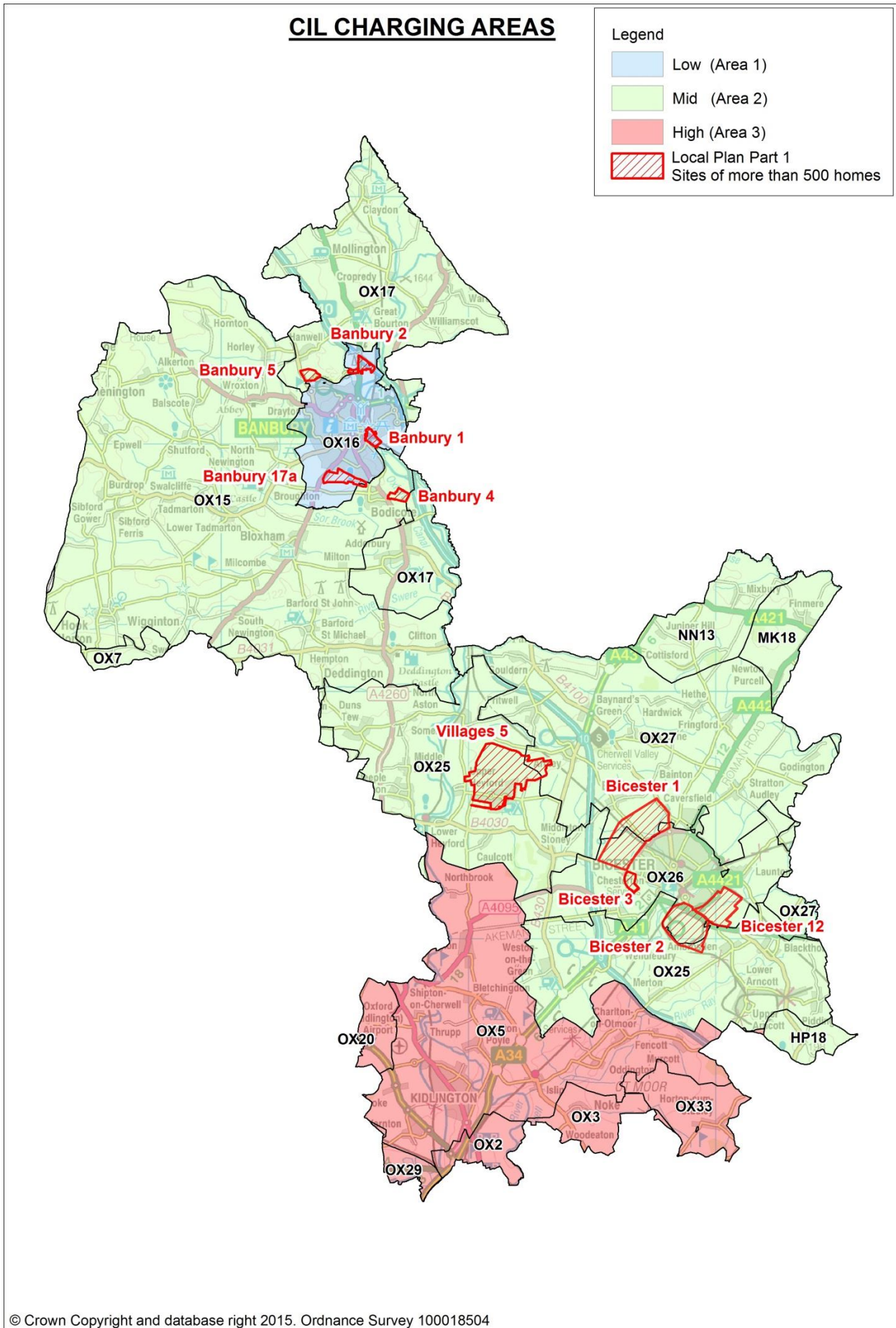
CIL liability	No of payments	Payment periods			
		1 st payment	2 nd payment	3 rd payment	4 th payment
Less than £10K	1	Within 60 days of commencement			
£10K or more and less than £500K	2	50% Within 60 days of commencement (2 months)	50% Within 180 days of commencement (6 months)		
£500K or more and less than £2m	3	40% Within 60 days of commencement (2 months)	30% Within 180 days of commencement (6 months)	300% Within 270 days of commencement (9 months)	
£2m or more	4	25% Within 60 days of commencement (2 months)	25% Within 180 days of commencement (6 months)	25% Within 270 days of commencement (9 months)	25% Within 540 days of commencement (18 months)

4.20. In drafting the proposed Instalments Policy in Table 2, the Council has sought to address the comments received during the first CIL consultation stage in Feb. – Mar. 2016 and reach a balance between the desire to help viability of development proposals with an approach which does not prejudice the ability of the Council to fund infrastructure as and when it is needed.

4.21. Further supporting information is available in the Department for Communities and Local Government (DCLG) planning practice guidance web-based resource <http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/> and the Planning Advisory Service website <http://www.pas.gov.uk/community-infrastructure-levy> .

5. Next Steps

- 5.1. Following consideration of comments received through this consultation, the Council will prepare a Submission Charging Schedule in 2017 for public examination and intends to adopt a CIL Charging Schedule in Autumn/Winter 2017.
- 5.2. The collection, administration and monitoring of CIL in accordance with the regulations and how it will affect Parish and Town Councils is currently being considered, and will be reported as CIL progresses through next steps.



APPENDIX 2

Draft CIL Regulation 123 list

Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended) requires local authorities to indicate the list of infrastructure projects or infrastructure types they intend to fund (wholly or in part) through CIL.

The indicative table below outlines projects identified in Cherwell Infrastructure Delivery Plan Update 2015 that may be prioritised for CIL funding.

The purpose of the list is to ensure that development proposals are not charged twice for the same infrastructure through S106 Agreements¹, S278 Agreements² and CIL.

The inclusion of an infrastructure scheme or infrastructure type on the list does not constitute a commitment from the Council to fund them (in whole or in part). Neither does it represent the Council's prioritisation of projects.

This draft list will be amended as a result of consultation and informed by the progression of Local Plan Part 2 and Local Plan Part 1 Partial Review as their infrastructure needs are identified. Considering the amount of growth planned and the emerging plans, at this stage the Regulation 123 list approach allows for an element of flexibility in its wording while still making clear what is expected to be secured through CIL and through S106/S278 Agreements.

CIL	Exclusions (S106s/S278s)
Transport	
London Road Level Crossing - vehicular solution.	Provision of new or improvements to existing transport infrastructure directly related to a specific development site and included in the Councils IDP.
Electric vehicle initiatives Charging points for electric vehicles (Banbury and Bicester)	
Car parking routeing and guidance system	
Reviewing the need for a bus station and rejuvenating and/or relocating Banbury Bus Station, including adding capacity and better linkage with the town centre.	
Increasing long term highway capacity: Link Road East of M40 J11 (Overthorpe Road to A422)	
Increasing long term highway capacity: Potential link road crossing from Tramway to Higham Way or a South East Link Road	
Education- refer to notes	
Provision of additional primary school capacity at existing schools; Provision of additional secondary school capacity at existing schools;	Provision of new or improvements to existing education facilities which are directly related to a specific development site and are included in the Councils IDP.
Health	
No CIL schemes identified at this stage.	Provision of new or improvements to health facilities which are directly related to a specific development site and are included in the Councils IDP.
Indoor sport, recreation and community facilities	
Indoor Recreation to be provided as part of development throughout Bicester/throughout Banbury/throughout Kidlington and Rural areas in accordance to Local Plan standards	Provision of new or improvements to indoor sport, recreation and community facilities which are directly related to a specific development site and are included in

¹ A section of the Town and Country Planning Act 1990 that allows legal agreements between Local Authorities and developers as part of a planning application

² A section of the Highways Act 1980 that allows legal agreements between Local Authorities and developers to make alterations or improvements to a public highway, as part of a planning application

	the Councils IDP.
Open space recreation and Biodiversity	
Community Woodland (43ha) –Chesterton (Burnehyll)	Provision of new or improvements to existing open space, recreation and biodiversity which are directly related to a specific development site and are included in the Councils IDP.
South West Bicester Sports Village Phase 3 P3b – Tennis courts P3c – athletics track next to school	
Canal Towpath Improvements (3000 linear metre)- Access to the Countryside (urban centre to Cherwell Country Park)	
Wildmere Community Woodland	
Cherwell Country Park - In IDP with funding secured	
Restoration, maintenance and new habitat creation at Tusmore and Shellswell Park - Conservation Target Area	
Restoration, maintenance, new habitat creation at River Ray Conservation Target Area	
Restoration, maintenance and new habitat creation at Northern Valleys - Conservation Target Area	
Restoration, maintenance and new habitat creation at Upper and Lower Cherwell Conservation Target Areas	
Restoration, maintenance, new habitat creation at Otmoor Conservation Target Area	
Restoration of BAP habitats on Parish sites.	

Regulation 40 of CIL Regulations 2010 (as amended)**“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 1st 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 1st November for the preceding year in the retail prices index.

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

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

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 commenced 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 only 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 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;

“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 .”