

Community Infrastructure Levy

Draft Charging Schedule: Background Report

May 2019



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1. Statement of Representation Procedure

KIRKLEES COUNCIL COMMUNITY INFRASTRUCTURE LEVY (CIL) – DRAFT CHARGING SCHEDULE (DCS) STATEMENT OF MODIFICATIONS STATEMENT OF REPRESENTATION PROCEDURE

Under Section 212 of the Planning Act 2008 (as amended by Section 114 of the Localism Act 2011), Kirklees Council intends to consult on the Community Infrastructure Levy Draft Charging Schedule Statement of Modifications.

Kirklees Council is inviting representation on the Community Infrastructure Levy Draft Charging Schedule Statement of Modifications from 9am Monday 20th May to 5pm on Monday 17th June 2019 under Regulation 16, 17, and 19 of the Community Infrastructure Levy Regulations 2010 (as amended).

In accordance with the Regulations, Kirklees Council has made available for consultation:

- Community Infrastructure Levy Draft Charging Schedule Statement of Modifications
- Relevant evidence to support the CIL Draft Charging Schedule Statement of Modifications

All of the above documents are published on the Council's online consultation website at: <http://consult.kirklees.gov.uk/portal> and paper copies can be viewed at:

Location/ address	Opening times
Huddersfield Customer Service Centre, Civic Centre 3, Huddersfield HD1 2TG	Mon-Wed and Fri 9:00am to 5:00pm Thurs 10:00am to 5:00pm
Dewsbury Customer Service Centre, The Walsh Building, Town Hall Way, Dewsbury WF12 8EE	Mon-Thurs 9:00am to 5:00pm Fri 10:00am to 5:00 pm

Comments on the CIL Draft Charging Schedule Statement of Modifications can be made in writing in the following ways:-

- On the Council's consultation website: <http://consult.kirklees.gov.uk/portal>
- Comment forms are available at Huddersfield Customer Service Centre and Dewsbury Customer Service Centre, or can be downloaded from the Council's website and returned to us by **email** at local.development@kirklees.gov.uk or by **post** to: Planning Policy Group, PO Box B93, Civic Centre 3, off Market Street, Huddersfield, HD1 2JR

Any organisation or individual may request the right to be heard at the Examination. This request must be submitted in writing (this can also be done on the online comment form) and received within the specified consultation period 9am on 20th May 2019 to 5pm on 17th June 2019. Representations may also be accompanied by a request to be notified, at a specified address of any of the following:

- The publication of the recommendations of the examiner and the reasons for these recommendations, and
- The approval of the Charging Schedule by the Council.

Any organisation or individual who makes representations about the CIL Draft Charging Schedule Statement of Modifications may withdraw those representations at any time by giving notice in writing

to the Council, sent to the specified address as detailed above.

Representations will be published on the Council's consultation website and made available for inspection on request. Representations cannot therefore, be treated as confidential.

Further information or help

If you require further help, please e-mail: local.development@kirklees.gov.uk

2. Introduction

- 2.1 This Background Report provides further information about the Community Infrastructure Levy (CIL) process and the CIL Draft Charging Schedule consultation. This report should be read alongside the Kirklees CIL Draft Charging Schedule and its supporting evidence.
- 2.2 The CIL charging schedule, when adopted, will sit alongside the Kirklees Local Plan which was formally adopted on 27th February 2019, , however it does not form part of the statutory development plan.

3. What is CIL?

- 3.1 The Community Infrastructure Levy (CIL) is a tariff based charge on new development. The money collected is used to fund identified infrastructure projects across the district, with a proportion going directly to local communities.
- 3.2 The CIL is calculated based on gross additional floorspace for a development when it exceeds 100 square metres or when it leads to the formation of a new residential property. There are some exemptions to CIL such as charitable developments or self-built dwellings. Full details of exemptions can be seen in Section 10.

The CIL is a discretionary charge that councils can choose to implement. Since April 2015 planning obligations, commonly known as Section 106 (S106) agreements have had their scope reduced and S106 agreements can no longer be pooled more than 5 times for any individual infrastructure type or project dated back to 6 April 2010, whether the council has adopted a CIL charge or not. The CIL however allows the pooling of contributions, and will therefore be the primary means of securing pooled developer contributions towards infrastructure projects within the district.

- 3.3 The CIL rates need to be set so they don't put at risk the development set out in the Local Plan. The rates have to be set also considering other costs that will be applied to development such as affordable housing. Once approved, CIL rates are a set and non-negotiable charge.

What are the benefits of CIL for Kirklees?

- 3.4 The CIL will bring a number of benefits, supporting the vision, objectives and planned growth within the district up to 2031 as set out in the Local Plan. The CIL is a fairer, faster and more transparent system for funding new infrastructure that:
 - delivers additional funding to carry out a wide range of infrastructure projects that support growth and will benefit the local community;
 - gives local authorities the flexibility and freedom to set their own priorities for what the money should be spent on - as well as a predictable funding stream that allows them to plan ahead more effectively;
 - provides developers with much more certainty 'up front' about how much money they will be expected to contribute, which in turn encourages greater confidence

and higher levels of inward investment;

- ensures greater transparency for local people, because they will be able to understand how new development is contributing to their community; and
- enables local authorities to allocate a share of the levy raised in a neighbourhood to deliver infrastructure the neighbourhood wants.

What types of development will be charged?

- 3.5 The CIL Charging Schedule, when adopted, will establish which types of development are liable for a CIL charge as set out in the Draft Charging Schedule. It will usually apply to those developments that create net additional floor space of 100 square metres or more, or create a new dwelling. Developments built under general consent are also liable to pay CIL. 'General consent' includes permitted development rights granted under the General Permitted Development Order 2015. Payment is due from the point of the commencement of development, and liability starts at the point in which planning permission is granted. Further information about which types of development are exempt from CIL charges can be found in Section 10.

Who will pay CIL and how will it be collected?

- 3.6 The liability to pay CIL rests with the landowner unless this liability is claimed by another party. The liability to pay CIL sits with the land; therefore any change in ownership will transfer the CIL payment liability to the new owner, unless this has been claimed by someone else.
- 3.7 The CIL will be collected by the council, and the charge will be applied at the point planning permission is granted, or for general consents when a decision is made on a submission of a 'Notice of Chargeable Development'. If an applicant is seeking exceptions to the charge, they will need to provide additional information to state how they meet the criteria set out in any adopted exceptions policy. If the liability to pay the CIL is to be transferred to another individual or body, details of this also need to be provided. The calculated CIL charge will be issued in a 'Notice of Liability' which will set out the amount payable, when and how it is to be paid.
- 3.8 The developer will then need to submit an 'Assumption of Liability' form after the planning permission has been granted, if no such form is provided this liability will automatically rest with the land owner. The transfer of liability can occur at any point prior to development commencing, and there is a defined process of how to do this, with nationally available forms which can be completed and submitted to the council.
- 3.9 The Assumption of Liability to pay the CIL can also be withdrawn at any stage prior to the commencement of development. In such circumstances the liability will either default to the land owner, or can be claimed by another party or individual, or an exemption can be sought. If the council has difficulties in recovering the CIL from the stated individual or bodies, this will revert to the land owner. Again forms on how to change liability are available nationally and can be submitted to the council.
- 3.10 The CIL charge is due when development commences, and the developer will need to inform the council when development will commence prior to works starting. For the purpose of the

CIL, the definition of commencement of development is the same as that used in planning legislation. If planning permission has been granted after commencement, payment will be due immediately, and this will be set out in the 'Notice of Liability'. The council plans to introduce a CIL instalments policy to spread the cost of larger CIL payments. The draft instalments policy can be found in Section 10.

- 3.11 Prior to adopting CIL the council will, in advance, make available the details about how the CIL will operate in Kirklees. Further information about the CIL process can be found on the Planning Portal website:

https://www.planningportal.co.uk/info/200126/applications/70/community_infrastructure_levy

What can CIL be spent on and where?

- 3.12 The CIL will be spent on infrastructure priorities across the district to support the development proposed in the Local Plan.
- 3.13 A 'meaningful proportion' of CIL raised in an area (the neighbourhood proportion) must be spent on local infrastructure priorities. The council will work with local communities and Town and Parish Councils to agree their local spending priorities. The neighbourhood proportion can be spent on items on the Regulation 123 list, but it does not have to be, as long as it addresses the demands that development places on an area. The meaningful proportion and relationship with neighbourhood planning is identified in the table below:

Table 1: Community Infrastructure Levy Neighbourhood Proportion Summary	
Parish Council: YES Neighbourhood Plan: YES = 25% uncapped, paid to Parish	Parish Council: YES Neighbourhood Plan: NO = 15% capped at £100/existing dwelling, paid to Parish
Parish Council: NO Neighbourhood Plan: YES = 25% uncapped, local authority consults with community on how to spend	Parish Council: NO Neighbourhood Plan: NO = 15% capped at £100/existing dwelling, local authority consults with community on how to spend

4. Infrastructure Evidence and Funding Gap

Infrastructure Delivery Plan & Addendum

- 4.1 An assessment of the infrastructure which is necessary to support the development in the Local Plan was carried out by Arup and is contained in the council's Infrastructure Delivery Plan (IDP) (October 2015).
- 4.2 The IDP sets out the infrastructure requirements for the district across the Local Plan period up until 2031, considering the level of growth proposed. The infrastructure needs assessed include transport, utilities, communications, flood risk and drainage, waste, green infrastructure, sport / leisure / recreation, community / cultural, education, health and emergency services. The IDP has been formulated by working with infrastructure

delivery partners both within and outside of the council, and has set out the estimated and known costs and funding sources.

- 4.3 Following on from the publication of the IDP in 2015, taking account of on-going infrastructure planning and information received during the Local Plan and CIL consultation, the IDP Addendum has been created. The IDP Addendum does not replace the IDP (October 2015) but refreshes and builds on certain areas of infrastructure where new evidence has become available. This information has recently been re-considered where there is a known funding gap and is evidenced in Appendix A. The Council intends to review the Regulation 123 list and undertake a review of aspects of infrastructure provision and funding availability on an annual basis to comply with the new guidance published in NPPG.

Infrastructure Funding Gap

- 4.4 To establish a funding gap that CIL can help to address, the schemes in the IDP and IDP Addendum that have an identified funding gap have been refreshed, considered and included, where appropriate in the calculation of an infrastructure funding gap. This calculation and list of infrastructure types and schemes can be found in Appendix A. Going forward, other funding sources for these schemes may become available, however, where schemes do not have agreed funding, this constitutes an infrastructure funding gap that CIL can contribute to filling. The indicative funding gap identified is **£102,270,000**.

5 Viability Evidence

- 5.1 The Kirklees Local Plan and Community Infrastructure Levy Viability Study (Cushman & Wakefield) (October 2015) was produced to test the viability of a range of development types across the district, considering matters including build costs, land values, abnormal costs, professional and planning fees, section 106 planning obligations, and the impact of national and emerging local planning policies including affordable housing rates set out in the draft Local Plan. The report used evidence based on recent land transactions and house sales within the district.
- 5.2 A developer engagement workshop with local house builders, developers, planning agents and architects was held in June 2015 to provide local evidence, and refine the viability assumptions which Cushman & Wakefield have used to assess viability across the district. The workshop was followed by a questionnaire which was used to further test and refine the assumptions evidence base.
- 5.3 The Kirklees Local Plan Viability Addendum (September 2016) provided an update of the October 2015 Study considering the representations that had been made to the Local Plan and CIL consultation (9th November 2015 to 1st February 2016). It also provided further analysis and iteration of the viability evidence based on recent land transactions and house sales within the district.
- 5.4 The Kirklees Community Infrastructure Levy Viability update (April 2019) builds on the previous evidence by considering recent updates to the National Planning Policy Framework (NPPF) and National Planning Policy Guidance (NPPG), the time lapse since the last viability work and changes to the methodology relating to land values and updates to build costs. In summary, in order to strike an appropriate balance, the evidence suggests a small

improvement in the headroom for CIL across most sites and area compared to the 2016 Viability Addendum. The less headroom is for smaller sites below 50 units. The threshold differentiation between larger and smaller sites have now been removed.

Residential Viability Evidence

- 5.5 The October 2016 Study identified a variable rate for residential development across 4 zones, with a district wide rate for retail warehouses. This work has been retested in response to changes to the NPPF/NPPG and updated market data and also comments received during previous consultations. This resulted in:
- a reduction of residential charging zones from 4 to 3 merging charging zones 2 and 3;
 - an amendment to the value assumptions based on these revised charging zones.
 - Removal of charge difference between sites of 10 units and under and over 10 units
 - A zero rate charge for retail warehousing across the district.

Nominal Residential Charging Rate (£5 rate) Evidence

- 5.6 The viability assessment identifies that in some areas of the district there is limited viability to charge any CIL for residential developments. It is proposed to set a £5 per square metre rate in these areas so that all liable housing developments across the district make a contribution towards the improvement of infrastructure, and assist in meeting the infrastructure funding gap which has been identified. The updated Kirklees CIL Draft Charging Schedule therefore includes a £5 per sq. m charge in residential charging zone 3 as outlined in Appendix G.
- 5.7 This nominal charge is considered appropriate in achieving the appropriate 'balance' between funding infrastructure and ensuring the viability of schemes. This approach can be justified using evidence including recent S106 agreements in the areas of low viability to demonstrate that individual schemes can afford some charges. At this nominal level, the rate is not realistically likely to put delivery at risk.
- 5.8 From reviewing previous S106 data for schemes within zone 3 where nominal charges are proposed it can be demonstrated that recent development proposals in this area have been able to withstand contributions towards infrastructure improvements without being rendered unviable. Evidence of this can be found in Appendix B.
- 5.9 The relatively minor impact of low CIL charges on development viability compared to other variables such as build costs and sales values also provides further justification. The nominal charge would ensure that all local communities benefit from a meaningful proportion of the CIL charge and have direct benefits to local communities.

Commercial Viability Assessment:

- 5.10 It is not considered that commercial uses will generate the same infrastructure requirements as residential uses, and therefore a nominal charge for these developments is not proposed. Commercial uses for example would not generate the same demand for education or recreational space, and therefore commercial developments have a lesser impact on infrastructure needs than residential schemes. Therefore a nominal charge of

other uses is not considered justified in this instance given the viability set out in the viability assessment.

Older Person's Accommodation

- 5.11 The 2019 Draft Charging Schedule does not propose to set a CIL charging rate for older person's accommodation. The Local Plan and CIL Viability Study (October 2015) tested a care home development which demonstrated that there was no headroom to charge CIL. Following consultation upon the 2016 Draft Charging Schedule and advice from Cushman & Wakefield it is proposed to add a condition to the residential charging rates in the draft charging schedule to ensure that certain forms of older person's accommodation that fall into the 'C3' residential charging rate are not charged, as the nature of these developments differ from other types of C3 housing, increasing the risk that a CIL charge could render these types of development unviable. The conditional text added to the residential section of the Draft Charging Schedule is as follows:

*Residential Development (C3)**

**Not including 'Retirement Living Accommodation' defined as residential units which are sold with an age restriction typically over 50s/55s with design features and support services available to enable self-care and independent living.*

Student Accommodation

- 5.12 Included within the Kirklees Local Plan and CIL Viability Addendum was an appraisal of Student Residential Development. The assessment tests a number of assumptions based on research carried out by Cushman & Wakefield drawing on their in house student residential team and recent developments in and around Huddersfield Town Centre.
- 5.13 The results in section 5 of the Addendum suggested that at a mid-point development yield assumption of 6.75%, a modest £15 per square metre charge could be levied on student accommodation. The results do however suggest a degree of caution around some of the development assumptions, including the yield variation, and a degree of uncertainty around abnormals and land value, due to the likelihood of these developments being town centre based.
- 5.14 Due to the relatively moderate headroom and other uncertainties, it is not proposed to include a CIL charge for student accommodation in the 2019 Draft Charging Schedule.

Commercial Viability Evidence

- 5.15 To assess commercial viability, all standard commercial development types have been examined in a number of different locations across the district. The development types include retail, office, industrial and leisure uses such as a hotels and restaurants. These have been assessed both for in town locations and out of town locations to consider the full spectrum of commercial development types which could come forward.
- 5.16 The updated viability evidence concludes that there is limited or no headroom for CIL on commercial development types, including retail warehousing to accommodate a CIL charge. This is a change from the previous 2016 evidence in that the new evidence demonstrates a

reduction in land values for this use. The draft charge for commercial and retail warehousing is therefore £0 per square metre across the whole district.

- 5.17 To add clarity to the charging schedule and reflect the type of development tested in the viability report, Retail Warehousing has been defined as follows:

*Retail Warehousing (A1)***

***Retail Warehouse definition: large stores in edge-of-centre and out-of-centre locations specialising in the sale of household goods (such as carpets, furniture and electrical goods), clothes, DIY items and other ranges of goods, catering mainly for car-borne customers.*

6. Striking an appropriate balance

- 6.1 Regulation 14 (1) of the Regulations requires the council, in setting its CIL charges, to strike an appropriate balance between:

- 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
- the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across the district.

- 6.2 The funding gap section of this report (Appendix A) has established an indicative infrastructure funding gap of **£102,270,000**. An estimate of potential CIL income that could be raised throughout the Local Plan period up to 2031 has been undertaken (See Appendix D). This calculation considers the number of residential units allocated in the local plan against the charging zones that they fall into. There are a number of assumptions and caveats to such a calculation including unforeseeable changes in the housing market, charging rate reviews, build out rates and the impact of windfall development. Notwithstanding these variables it is estimated that the Kirklees CIL can raise **£33,482,160** up to 2031.

- 6.3 The council therefore considers that the charges proposed in the Draft Charging Schedule strike the appropriate balance required by Regulation 14 (1). In reaching this conclusion, the council has taken into account:

- the growth ambitions and scale of development expected to come forward within Kirklees in the period to 2031;
- the importance of the infrastructure identified in the IDP in supporting this development and the positive effect that infrastructure and development will have across Kirklees;
- the responses by consultees to the consultations on the Draft Charging Schedule 2016; and
- the impact (taken as a whole) of the imposition of CIL on the economic viability of development across Kirklees as examined in the updated viability evidence 2019 (taking into account likely residual S106 costs)

7. Regulation 123 List and Relationship between CIL and Planning Obligations

- 7.1 The council is required to set out a list of those projects or types of infrastructure that it intends will be, or may be, wholly or partly funded through the CIL. This is called the Regulation 123 List, after the relevant CIL Regulation. These infrastructure types and schemes are those identified for CIL funding, although the list does not prioritise the schemes, and does not prevent other funding sources being identified in the future to help to fund the projects.
- 7.2 The list is based on the infrastructure requirements for the Local Plan as set out in the council's infrastructure planning evidence (IDP & IDP Addendum 2016). The list has remained unchanged from the CIL 2016 Draft Charging Schedule stage.
- 7.3 It is intended that the council will review the Regulation 123 List periodically alongside the monitoring of the Local Plan. This will be informed by the most up to date infrastructure planning evidence and the monitoring of CIL collection and spending. Any changes to the list will be justified, clear and subject to appropriate local consultation, in line with the CIL Regulations.
- 7.4 The Regulation 123 list includes details about what S106 obligations will continue to be required. For large scale developments there will still be the requirement to provide obligations for matters necessary to make a development acceptable in planning terms, such as open space. For the following sites in the Local Plan, school infrastructure will be required using planning obligations as follows:
- primary provision for Bradley Strategic Site (HS11)
 - primary and secondary provision for Chidswell Strategic Site (MXS7)
 - primary and secondary provision for Dewsbury Riverside Strategic Site (HS61)
- 7.5 The council will ensure that these obligations meet the statutory tests, and that such requirements will not be funded in conjunction with CIL receipts or be in contravention of pooling restrictions set out in the CIL Regulations. The statutory tests for S106 obligations are as follows:
- Planning obligations should only be sought where they meet all of the following tests:*
- *Necessary to make the development acceptable in planning terms;*
 - *Directly related to the development; and*
 - *Fairly and reasonably related in scale and kind to the development.*
- 7.6 The CIL is intended to help fund infrastructure to support the development of an area rather than making an individual planning application acceptable in planning terms, which is the purpose of a planning obligation (S106 agreement). The CIL will not fully replace planning obligations but is a complementary measure for infrastructure delivery.

CIL and Section 278 Agreements

- 7.7 A 278 agreement (of the Highways Act 1980) is:

- an agreement between the council and developer which describes proposed modifications to the existing highway network to facilitate or service a proposed development
- typically the scope of any off site works that are required to mitigate the impact of the development on the existing road network
- examples of works covered by this type of agreement could include:
 - roundabouts,
 - signalised junctions,
 - right turn lanes,
 - safety related works such as traffic calming,
 - street lighting,
 - improved facilities for pedestrians and cyclists.

7.8 Items identified on the Regulation 123 list for CIL funding will not be able to receive S278 funding as the CIL Regulations prevent double charging similar to S106 agreements. However S278 agreements are not limited to pooling restrictions like S106 agreements.

Affordable Housing

7.9 The provision of affordable housing is not covered by the CIL, and remains a separate policy area that can be delivered through s106 agreements. The Local Plan affordable housing policy has been tested by the Local Plan and updated CIL Viability Assessment , and used to inform the CIL rates. The Local Plan affordable housing policy states:

Developments more than 10 units:	20% of units to be affordable
Development of 10 Units or less:	Zero affordable housing

7.10 The affordable housing rate and threshold at which the policy starts to apply has been drafted based on the up to date viability evidence and affordable housing needs during the Local Plan process. It is judged that developments of over 10 dwellings are more likely to be able to deliver affordable units. This is not to say that all developments of 10 dwellings and under cannot demonstrate some residual value. This issue forms part of the wider balance that has to be considered between the delivery of affordable housing, infrastructure funding and ensuring Local Plan delivery.

**Kirklees Council Draft Infrastructure List
(Required by Regulation 123 of Community Infrastructure Levy (CIL) Regulations)**

- i. Infrastructure Projects it is intended to fund through CIL*:

Regulation 123 List CIL Infrastructure
Strategic transport infrastructure Kirklees wide
Strategic education infrastructure Kirklees wide
Strategic open space infrastructure Kirklees wide
Strategic flood alleviation schemes Kirklees wide
Strategic community and cultural infrastructure Kirklees wide
Strategic sports, leisure and recreation infrastructure Kirklees wide

*Extracted from the Local Plan Infrastructure Delivery Plan and the Kirklees Local Plan Infrastructure Delivery Plan Addendum) – see for further information on strategic infrastructure projects.

- ii. Infrastructure Projects it is intended to fund through S106 & S278 Agreements:

S106 & S278 planning obligations
Transport infrastructure directly related to a specific site which makes a development acceptable in planning terms and is fairly and reasonably related in scale and kind.
Strategic development site school provision which makes a development acceptable in planning terms and is fairly and reasonably related in scale and kind: <ul style="list-style-type: none"> • primary provision for Bradley Strategic Site (HS11) • primary and secondary provision for Chidswell Strategic Site MXS7) • primary and secondary provision for Dewsbury Riverside Strategic Site (HS61)
On-site open space / green space provision as required by Local Plan Policies (which includes requirements for a financial contribution in lieu of on-site provision in certain circumstances) directly related to a specific site which makes a development acceptable in planning terms and is fairly and reasonably related in scale and kind
On-site flooding and drainage mitigation directly related to a specific site which makes a development acceptable in planning terms and is fairly and reasonably related in scale and kind
On-site community and cultural infrastructure directly related to a specific site which makes a development acceptable in planning terms and is fairly and reasonably related in scale and kind
On-site sports, leisure and recreation infrastructure directly related to a specific site which makes a development acceptable in planning terms and is fairly and reasonably related in scale and kind
Affordable housing

8. Previous Planning Obligation Delivery (S106 Agreements) within Kirklees

8.1 Information about the S106 agreements that have been made in recent years from developments within Kirklees can be found in Appendix B. This includes amounts of contribution agreed by infrastructure category and the extent to which the council's affordable housing requirements have been met.

9. Consultation

9.1 The chronology of consultation on the CIL is as follows:

9.2 Consultation on the Kirklees CIL Preliminary Draft Charging Schedule (2015) was held from 9th November 2015 to 1st February 2016. The following supporting evidence documents were made available for comment during this consultation:

- Kirklees Preliminary Draft Charging Schedule
- Kirklees Local Plan and Community Infrastructure Levy Viability Study, (Cushman & Wakefield, October 2015)
- Kirklees Local Plan Infrastructure Delivery Plan (Arup, October 2015)
- Kirklees Community Infrastructure Levy Preliminary Draft Charging Schedule Background Report (Kirklees Council, November 2015)

9.3 Comments received and responses can be found on the council's website in the Kirklees Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule Consultation Report (Kirklees Council, November 2016). The comments received during the Preliminary Draft Charging Schedule consultation were considered in the review of viability evidence and production of the Draft Charging Schedule.

9.4 For the consultation on the Kirklees CIL Draft Charging Schedule (2016) (Monday 7th November 2016 to 5pm on Monday 19th December 2016) the following additional documents were produced:

- Kirklees Local Plan and CIL Viability Addendum (Cushman & Wakefield, September 2016)
- Kirklees Local Plan Infrastructure Delivery Plan Addendum (Kirklees Council, November 2016)
- Draft Regulation 123 List (Kirklees Council, November 2016) (Section 7 / Draft Charging Schedule Appendix B)
- Draft CIL Instalments Policy (Kirklees Council, November 2016) (Section 10 / Draft Charging Schedule Appendix C)
- Kirklees Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule Consultation Report (Kirklees Council, November 2016)
- Kirklees Community Infrastructure Levy Draft Charging Schedule Background Report (Kirklees Council, November 2016)

9.5 Comments received and responses can be found on the council's website in the Kirklees Community Infrastructure Levy (CIL) Draft Charging Schedule Consultation Report (Kirklees Council, November 2016). The comments received during the Draft Charging Schedule consultation have been considered in the review of viability evidence and production of

the amended Draft Charging Schedule 2019.

9.6 For consultation on the Kirklees CIL Draft Charging Schedule; Statement of Modifications (9am Monday 20th May 2019 to 5pm on Monday 17th June 2019) the following documents have been produced:

- Kirklees Community Infrastructure Levy: Statement of Modifications (May 2019)
- Kirklees Community Infrastructure Levy: Viability Assessment Update (April 2019)
- Kirklees Community Infrastructure Levy: Regulation 123 List (May 2019)
- Kirklees Community Infrastructure Levy: Draft Charging Schedule (May 2019)
- Kirklees Community Infrastructure Levy Draft Charging Schedule Consultation: Background Report (May 2019)
- Kirklees Community Infrastructure Levy Draft Charging Schedule Consultation: Explanatory Note (May 2019)

9.7 Comments made during this consultation will be considered in line with the relevant CIL Regulations prior to the continuation of the examination. The Statement of Modifications and all supporting evidence is available on the Council's CIL webpage at

<https://www.kirklees.gov.uk/beta/planning-policy/community-infrastructure-levy.aspx>

10 Payment of CIL

10.1 The CIL will be calculated in accordance with the Regulations which are set out in Appendix E. The calculation ensures that existing lawfully used floor space, and inflation are taken into account when calculating the CIL charge to ensure that it remains in proportion to other development costs.

10.2 The CIL regulations also allow for a number of discretionary methods to secure payments for CIL, these include:

CIL Exemptions

10.3 As set out in the CIL Regulations the following do not pay the levy:

- development of less than 100 square metres (see Regulation 42 on Minor Development Exemptions) – unless this is a whole house, in which case the levy is payable
- houses, flats, residential annexes and residential extensions which are built by 'self builders' where an exemption has been applied for and obtained, and in regard to a self build home or residential annex, a Commencement (of development) Notice served prior to the commencement of development. See Regulation 7, and section 56(4) of the Town and Country Planning Act 1990, for definition of commencement of development (see Regulations 42A, 42B, 54A, 54B and 67(1A) inserted by the 2014 Regulations)
- social housing that meets the relief criteria set out in Regulation 49 or 49A (as amended by the 2014 Regulations) and where an exemption has been obtained and a Commencement (of development) Notice served, prior to the commencement of development
- charitable development that meets the relief criteria set out in Regulations 43 to 48

and where an exemption has been obtained, and a Commencement (of development) Notice served prior to commencement of development

- buildings into which people do not normally go (see Regulation 6(2))
- buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery (see Regulation 6(2))
- structures which are not buildings, such as pylons and wind turbines
- specified types of development which local authorities have decided should be subject to a 'zero' rate and specified as such in their charging schedules
- vacant buildings brought back into the same use (see Regulation 40 as amended by the 2014 Regulations)
- where the levy liability is calculated to be less than £50, the chargeable amount is deemed to be zero so no levy is due.
- mezzanine floors,, inserted into an existing building, are not liable for the levy unless they form part of a wider planning permission that seeks to provide other works as well.

Exceptional Circumstances Relief

10.4 The CIL Regulations allow for the council to provide further relief at their discretion, to avoid rendering a site with specific and exceptional cost burdens unviable, should circumstances arise. The council do not have to offer this relief, but if they chose to do so, it must adopt a discretionary relief policy. In line with best practice, should the circumstances arise the council would issue such a policy document in line with the CIL Regulations once the Charging Schedule has been implemented. It should be noted that the power to offer relief can be deactivated at short notice once a Charging Schedule is in place, in line with the CIL Regulations. Exceptional circumstances should be rare and should not constitute state aid.

10.5 The council can consider implementing exceptional relief if the CIL is adopted.

Phased Payments of CIL

10.6 The CIL Regulations allow for the council to make provisions for phased payments, at their discretion. A phased payment approach and / or an instalment policy helps developers with cash flow, assisting in making development more viable, therefore, helping the charging system to be flexible. Phased payments can be permitted where a planning application is subdivided into phases for the purpose of the levy. This is useful for large scale applications. Each phase would be a separate chargeable development and, therefore liable for payment in line with any instalment policy in force. The principle of phased delivery must be apparent from the planning permission and can be established at the planning application stage.

Instalment Policy

10.7 The council has chosen to offer an Instalment Policy which allows developers to pay their CIL charge in instalments to provide flexibility in the CIL charging regime. The details are set out in Appendix B of the CIL Draft Charging Schedule (May 2019). The policy will be made available on the council's website on adoption of the CIL. The policy is not subject to an examination and can be revised or withdrawn as appropriate, in-line with the CIL Regulations.

Payments in Kind

- 10.8 The CIL Regulations allow for the council to accept payments in kind, in the form of land or infrastructure, to be offset against the CIL liability, where agreed by the council as more desirable instead of monies. This must only be done with the intention of using the land to provide, or facilitate the provision of infrastructure to support the development of the area.
- 10.9 It is not proposed to offer a payment in kind policy at this time, although this can be considered at a later date if the CIL is adopted.

11 Reporting, Monitoring and Review

- 11.1 The council has to report on the CIL for each financial year which it is collected and report on the total CIL receipts, total CIL expenditure, and a summary of the details which the CIL has been spent on. The report also needs to detail payments to Parish and Town/Community forums and areas with neighbourhood plans, and provide details of other forms of payments such as payments in kind, late payments, or refunds. The report has to be issued by no later than the 31st of December following the end of the financial year.

Monitoring and Review

- 11.2 The council needs to keep the charging schedule under review to ensure that the charges remain appropriate and reflective of current market conditions and any changes in local or national policy. The CIL sits separately to the local plan and can be reviewed when considered to be appropriate, either entirely or in part.
- 11.3 The CIL will be monitored a part of the Local Plan Annual Monitoring Report (AMR) and any review would need to adhere to the same process of that used to devise the CIL. Monitoring of the CIL in this way will ensure that there is accountability and transparency to the level of CIL secured and see what infrastructure is funded by the CIL.
- 11.4 The Regulation 123 list will be reviewed annually to ensure that it remains representative of the infrastructure needs of the district. Any changes to the list will be justified and be subject to appropriate local public consultation.

12 Conclusion

- 12.1 Kirklees Council considers that it has complied with the CIL Regulations in preparation of its Draft Charging Schedule, and in particular Regulations 14, 15, 16, 17 and 19. For the reasons summarised above, the council also considers that the rates as set out in the Draft Charging Schedule strike the appropriate balance required by Regulation 14 (1).

Appendix A: Infrastructure Schemes Identified for CIL funding through the Regulation 123 List, taken from Kirklees Local Plan IDP and IDP Addendum (Updated April 2019):

Transport

IDP Reference / Scheme Name		Funding Gap
TS1 - Huddersfield to Leeds	A638/High Street/B6117 Market Street	£1,000,000
	A62/A652 (Birstall Smithies)	£3,000,000
	A62/A643 (Coach and Six)	£3,000,000
TS3 - Huddersfield Southern Gateways	A62 Queensgate/A616 Chapel Hill/A62 Man Rd	£3,000,000
	A629/Somerset Road	£1,500,000
TS5 - Mirfield to Dewsbury to Leeds (including NKGZ)	A644/Huddersfield Road/Calder Road/North Road (Ravensthorpe Gyratory)	tbd
	A644 Huddersfield Road/B6117 Thornhill Road	
	A644 Webster Hill / A638 Dewsbury Ring Road	
	A638 Dewsbury Ring Road/A638 Halifax Road	
	A638/Mill Street West	
	A652 Bradford Road/Town Street	
	A652/B6123 (Rouse Mill Lane)	
	A652/B6124 (Soothill Lane)	
	A652/B6128 (Stocks Lane)	
	A653 Leeds Road – B6128 Challenge Way	
TS10 - Walking and Cycling Improvement Schemes	Huddersfield Town Centre and Connectivity – Future phases	£10,000,000
	Huddersfield Narrow Canal – future phases	£5,000,000
	Calder Valley Greenway: Bradley to Brighouse	£4,000,000
	Dalton to Deighton Greenway	£2,000,000
	Dewsbury Town Centre and Connectivity	£2,000,000
	Shepley Bridge Marina, Mirfield to Spen Valley Greenway	£2,000,000
	Spen Valley Greenway (East) extension (Calder & Hebble Canal - Dewsbury to Horbury)	£750,000
	Spen Valley Sports College Link	£2,000,000
	Spen Valley Ringway-south extension (High Street to Walkley Lane, Heckmondwike)	£2,000,000
	Birstall to Batley	£3,000,000

	Birstall to Oakwell	£2,000,000	
	Fenay Greenway	£3,000,000	
	Holmfirth to Huddersfield	£5,000,000	
	Pennine Bridleway - Dark Peak Link	£1,500,000	
		Sub Total:	£55,750,000
Education			
	IDP Reference / Scheme Name	Funding Gap	
E3	Delivering the school places identified through the Local Plan education needs modelling exercise (excluding: primary provision for Bradley Strategic Site (H1747 & H351), primary and secondary provision for Chidswell Strategic Site (MX1905), primary and secondary provision for Dewsbury Riverside Strategic Site (H2089))	tbd	
		Sub Total:	tbd
Community and Cultural			
	IDP Reference / Scheme Name	Funding Gap	
C4	Create a visitor centre in Holmfirth to build on strong heritage of area	tbd	
C7	Castle Hill and Victoria Tower Refurbishment	£1,500,000	
		Sub Total:	£1,500,000
Open Space and Green Infrastructure			
	IDP Reference / Scheme Name	Funding Gap	
G1	Expansion of Dewsbury Country Park	tbd	
G4	Provision of new open space to rectify identified deficits (not funded through S106)	tbd	
G5	Measures to improve the quality of open space (not funded through S106)	tbd	
		Sub Total:	tbd
Sport, Leisure and Recreation			
	IDP Reference / Scheme Name	Funding Gap	
S1	Measures to implement recommendations of Playing Pitch Strategy (not funded through S106)	tbd	
		Sub Total:	tbd
Flood Risk and Drainage			
	IDP Reference / Scheme Name	Funding Gap	

F3	Dewsbury Flood Alleviation Scheme	£6,500,000	
F4	Huddersfield A62 Corridor Flood Alleviation Scheme	£1,400,000	
F5	Kirklees Culvert Programme	£1,550,000	
F6	Liversedge Flood Alleviation Scheme	£1,600,000	
F7	Batley Beck Scheme - Replacement Culverts / Wall Repairs	£4,900,000	
F8	Dewsbury Scheme Replacement	£6,500,000	
F9	Spennithorne Flood Alleviation Scheme	£9,400,000	
F10	Clayton West and Scissett Flood Alleviation Scheme	£1,800,000	
F12	Ings Crescent Flood Alleviation Scheme	£220,000	
F13	New Mill Road (Brockholes) Flood Alleviation Scheme	£40,000	
F14	Ravensthorpe Flood Alleviation Scheme	£2,500,000	
F15	Grimescar Dike	£175,000	
F17	Schools in Kirklees Flood Alleviation Scheme	£50,000	
F18	Blackhouse Dike Culvert	£910,000	
F20	Crimble Clough Culvert	£2,240,000	
F21	Crowhill Culverts	£165,000	
F22	Marsden Flood Alleviation Scheme	£1,000,000	
F23	Spennithorne Culverts Replacement	£220,000	
F24	Mirfield Flood Alleviation Scheme	£2,500,000	
F26	Property Clusters FRM	£1,350,000	
		Sub Total:	£45,020,000

Total:	£102,270,000
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Appendix B: S106 Agreements in CIL Charging Zone 4

Applications for Residential use (C3) located within CIL Draft charging schedule zone 3 (previously zone 4) and approved subject to S106 (1 April 2014 to 31 March 2019)

Application Number	Ward	Proposal	Reason for S106	S106 (£)	Proposed £5 CIL Rate charge (£) (Assuming an average unit size of 90 sq.m. per unit)	Difference between agreed S106 and proposed £5 CIL rate (£)	Number of units approved
2014/91970	Batley East	Erection of 8 dwellings and formation of private road, adoptable turning head and footpath to Willow Road (within a Conservation Area)	Landscaping, allotments	£24,000	£3,600	£20,400	8
2013/90249	Dewsbury South	Outline application for erection of 104 dwellings, demolition of existing buildings and removal of disused railway embankment	Education, cycleway and footpath improvements, landscape	£190,000	£46,800	£143,200	104
2015/90022	Cleckheaton	Erection of 23 dwellings	Open Space	£57,500	£10,350	£47,150	23
2014/93099	Crosland Moor and Netherton	Outline application for phased development comprising up to 200 dwellings with associated infrastructure and open space; retail units (open use class A1); accommodation for potential neighbourhood uses (use class A2/D1/D2/sui generis); restaurant/public house (use class A3/A4); and petrol filling station (sui generis)	Open Space, highways, education, bus infrastructure, metro cards, highways, travel plan monitoring	£841,055	£90,000	£751,055	200
2014/92998	Cleckheaton	Proposed residential development (114 dwellings)	Landscaping	£105,101	£51,300	£53,801	114
2016/91997	Heckmondwike	Erection of 10 dwellings	Metrocard	£4,813	£4,500	£313	10
2015/90035	Cleckheaton	Outline application for erection of residential development of up to 44 dwellings	Open space, education	£193,903	£19,800	£174,103	44
2014/90037	Batley East	Erection of 34 dwellings and 4 apartments with associated private gardens and access parking, and	Open space	£33,981	£15,300	£18,681	34

		formation of new access road					
2018/90586	Ashbrow	Erection of 160 residential units, including a 50 unit extra care facility (C3), provision of public open space and engineering operations	Open space, education	£376,192	£72,000	£304,192	160
2017/93515	Golcar	Erection of 16 dwellings with associated access and parking facilities.	Open Space, metrocard	£92,700	£7,200	£85,500	16

Appendix C – Previous S106 Agreements and Affordable Housing Completions in Kirklees

Table to show previous S106 Agreements signed for years 2013/14 to 2018/19							
	Year S106 Signed						
Infrastructure Category	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	Category Total
Highways	£55,600	£349,493	£18,000	£533,077.53	£521,151	£190,182.10	£1,667,504
Education	-	£350,170.80	£245,238	£173,639.68	£1,411,854	£689,439	£2,870,341.48
Housing	£20,000	£27,500	£190,000	£474,583.04	£19,875	£105,183	£837,141
Landscape	£292,531	£254,570.87	£406,901	£354,353.85	£289,350	£396,442.70	£1,944,149
Misc Obligations	£30,000	-	-	£24,000	£1,549,585	£129,457	£1,733,042
Annual Total	£398,131	£981,735	£860,139	£1,559,654.10	£3,791,815	£1,510,703.80	

	2013/14	2014/15	2015/16	2016/17	2017/18
Social Rented Homes (HCA Grant Support)	0	0	0	19	0
Social Rented Homes (developer contributions only (S106))	27	16	100	19	38
Social Rented Other (e.g. regeneration funding/PFI)	251	78	33	14	4
Total S106	278	94	133	52	42
Affordable Rent (80% market rent)	20	80	22	69	58
Intermediate Homes	22				
Affordable Homes Total	320	180	155	121	100

Appendix D - CIL Income Estimate Calculation

Allocation	CIL Zone	CIL Rate (per sqm)	Local Plan Housing Allocated in CIL Zone	CIL Net (minus affordable housing and other exemptions)	15%	25%
Housing	1	£80	4318	£18,653,760	£2,798,064	£4,663,440
Housing	2	£20	12040	£13,003,200	£1,950,480	£3,250,800
Housing	3	£5	6760	£1,825,200	£273,780	£456,300
				£33,482,160		

CIL proportion to neighbourhoods

Without Neighbourhood Plans (15%)

With Neighbourhood Plans (25%)

£5,022,324

£8,370,540

Assumptions

- That all housing allocations will be built out during the plan period up to 2031 at current draft CIL rates
- 20% affordable housing removed from gross CIL total as affordable housing is exempt from CIL
- 20% other exemptions removed from gross CIL total
- 90sqm floorspace assumed based on 3 bed house floorspace assumption in viability assessment
- Based on Local Plan allocations over 0.4ha
- Local Plan windfall allowance not calculated

Appendix E - Calculating the CIL Charge (Regulation 40):

The CIL will be calculated in accordance with Regulation 40 of the Community Infrastructure Levy Regulations 2010 (as amended by the Amendment Regulations 2011 and 2012 and 2014).

<http://www.legislation.gov.uk/ukxi/2014/385/regulation/6/made> Regulation 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

$$R \times A \times I_p \times I_c$$

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 KR for the previously commenced phase of the planning permission.

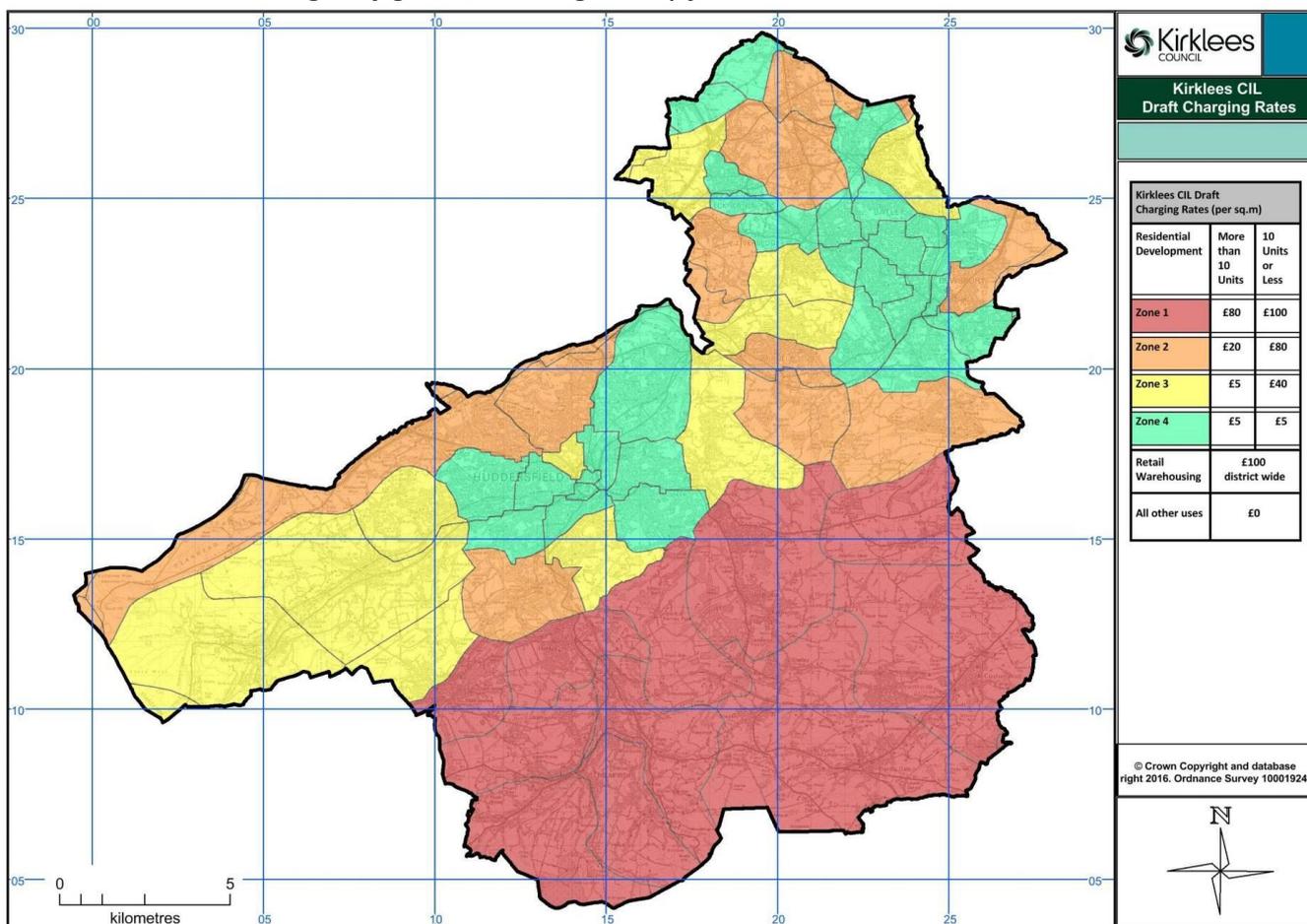
- 9) Where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building.
- 10) Where a collecting authority does not have sufficient information,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

Appendix F – 2016 Draft Charging Schedule Charging Rates and Map

Kirklees CIL Draft Charging Rates (per sq.m)		
Residential Development (C3)*	More than 10 Units	10 Units or Less
Zone 1	£80	£100
Zone 2	£20	£80
Zone 3	£5	£40
Zone 4	£5	£5
Retail Warehousing (A1)**	£100 district wide	
All other uses	£0	

*Not including 'Retirement Living Accommodation' defined as residential units which are sold with an age restriction typically over 50s/55s with design features and support services available to enable self-care and independent living.

**Retail Warehouse definition: large stores in edge-of-centre and out-of-centre locations specialising in the sale of household goods (such as carpets, furniture and electrical goods), clothes, DIY items and other ranges of goods, catering mainly for car-borne customers



Appendix G: 2019 Amended Draft Charging Schedule Charging Rates and Map

Kirklees CIL Draft Charging Rates (per sq.m)	
Residential Development (C3)*	All sites
Zone 1	£80
Zone 2	£20
Zone 3	£5
Retail Warehousing (A1)**	£0 district wide
All other uses	£0

**Not including 'Retirement Living Accommodation' defined as residential units which are sold with an age restriction typically over 50s/55s with design features and support services available to enable self-care and independent living.*

***Retail Warehouse definition: large stores in edge-of-centre and out-of-centre locations specialising in the sale of household goods (such as carpets, furniture and electrical goods), clothes, DIY items and other ranges of goods, catering mainly for car-borne customers*

