

Community Infrastructure Levy (CIL) Procedure for Payment in Kind Provision of Land or Infrastructure

Adopted May 2018

For implementation from 25 June 2018



Basingstoke
and Deane

Community Infrastructure Levy (CIL) Procedure for Payment in Kind Provision of Land or Infrastructure

1. Introduction

- 1.1 The 'Payment in Kind' mechanism is offered at the discretion of Basingstoke and Deane Borough Council and the right is reserved to refuse any application.
- 1.2 In accordance with Regulations 73 and 73A of the Community Infrastructure Levy Regulations 2010 (as amended), Basingstoke and Deane Borough Council ("the Borough Council") may support the payment of a Community Infrastructure Levy (CIL) liability in the form of either land provision or infrastructure provision.

2. Provision of Land as a Payment in Kind

Any land provided as 'Payment in Kind' will be subject to the following conditions:

- 2.1 The Borough Council must be satisfied that the land to be transferred would be able to be used to provide or facilitate the provision of infrastructure to support the development of the Borough and must aim to ensure that this is done.
- 2.2 "Land" may include existing buildings and other structures, land covered with water, and any estate, interest or right in or over land.
- 2.3 It is entirely at the Borough Council's discretion as to whether to accept a land transfer in lieu of CIL. The Borough Council may accept one or more land payments in satisfaction of the whole or part of the CIL due in respect of a chargeable development. Where CIL is paid by way of a land payment the amount of CIL paid is an amount equal to the value of the acquired land. The land payment is made by the person who would be liable to pay CIL in respect of a chargeable development on commencement of that development.
- 2.4 The chargeable development must not have commenced before a written agreement with the Borough Council to make the land payment in lieu of CIL has been entered in to. This agreement must state the value of the land to be acquired and clearly identify the land to be transferred on a plan from HM Land Registry at an appropriate scale to provide sufficient clarity of the boundaries.
- 2.5 The person or body transferring the land must have assumed liability to pay CIL and completed the relevant forms.
- 2.6 The value of the land to be transferred must be determined by an independent person with appropriate qualifications and experience and is the price that the land might reasonably be expected to obtain if sold on the open market on the day the valuation takes place.
- 2.7 The independent person who is to carry out the valuation must be appointed by a person other than the charging authority with the agreement of the charging authority and the person liable to pay CIL in respect of the development.

- 2.8 The cost of undertaking the valuation will be borne by the liable party and this cost will not be deducted from the chargeable amount.
- 2.9 The chargeable amount payable must be greater than £50,000.
- 2.10 The land subject to the transfer must be free from any other interest in land and any other encumbrance to the land, buildings or structures, unless expressly agreed with the Borough Council.
- 2.11 The written agreement to make the land payment may not form part of a planning obligation entered into under Section 106 of the Town and Country Planning Act 1990 (as amended).
- 2.12 The acquired land may be acquired by the Borough Council or a person nominated by the Borough Council. If it is proposed that a third party is to assume responsibility for the land or infrastructure, their prior approval will be required.

3. Provision of Infrastructure as a Payment in Kind

Any infrastructure item provided as a 'Payment in Kind' will be subject to the following conditions:

- 3.1 The Borough Council must be satisfied that the infrastructure to be transferred would be able to be used to support the development of the Borough and must aim to ensure that this is done.
- 3.2 The Borough Council may, at its discretion, accept an infrastructure payment relating to infrastructure to be provided outside its area if it considers that the infrastructure will support the development of its area.
- 3.3 The Borough Council must be satisfied that the infrastructure to be provided is "relevant infrastructure" within the meaning of Regulation 123 of the 2010 Regulations and that it is not necessary to make the development granted permission by the relevant permission, acceptable in planning terms.
- 3.4 It is entirely at the Borough Council's discretion as to whether to accept an infrastructure payment in lieu of CIL. The Borough Council may accept one or more infrastructure payments in satisfaction of the whole or part of the CIL due in respect of a chargeable development. Where CIL is paid by way of an infrastructure payment the amount of CIL paid is an amount equal to the value of the infrastructure provided. The infrastructure payment is made by the person who would be liable to pay CIL in respect of a chargeable development on commencement of that development.
- 3.5 The chargeable development must not have commenced before a written agreement with the Borough Council to make the infrastructure payment in lieu of CIL has been entered in to. This agreement must state the value of the infrastructure item to be provided and clearly identify the infrastructure item to be

transferred on a plan from HM Land Registry at an appropriate scale to provide sufficient clarity of the boundaries.

- 3.6 The value of the infrastructure item to be transferred must be determined by an independent person with appropriate qualifications and experience and is the cost to the liable party of providing that infrastructure item (including related design costs) on the day the valuation takes place.
- 3.7 The independent person who is to carry out the valuation must be appointed by a person other than the charging authority with the agreement of the charging authority and the person liable to pay CIL in respect of the development.
- 3.8 The cost of undertaking the valuation will be borne by the liable party and this cost will not be deducted from the chargeable amount.
- 3.9 The person or body transferring the infrastructure item to the Borough Council must have assumed liability to pay CIL and completed the relevant forms.
- 3.10 The chargeable amount payable must be greater than £50,000.
- 3.11 The infrastructure item subject to the transfer must be free from any other interest in land and any other encumbrance to the land, buildings or structures, unless expressly agreed with the Borough Council.
- 3.12 The infrastructure item may be acquired by the Borough Council or a person nominated by the Borough Council. If it is proposed that a third party is to assume responsibility for the infrastructure item, their prior approval will be required. In such a case the Borough Council must be satisfied that such a person will use the infrastructure to support the development of the Borough Council's area.
- 3.13 The liable party must satisfy the Borough Council that it has, or is likely to have, sufficient control over the land on which the infrastructure is to be constructed to enable the liable party to provide the infrastructure.
- 3.14 The liable party must satisfy the Borough Council that it has obtained, or will be likely to be able to obtain, any relevant statutory authorisations that are necessary to enable the infrastructure to be constructed.
- 3.15 The written agreement mentioned in paragraph 3.5 must state the date by which the infrastructure is to be provided and provide for payment to the Borough Council of –
 - (i) the CIL cash amount, and
 - (ii) interest,in money if the infrastructure is not provided by that date, or in accordance with an agreed extension to that date.
- 3.16 The written agreement mentioned in paragraph 3.5 must ensure that by the time the CIL cash amount would be payable if it was being paid in money, an amount equal to the CIL cash amount must either-

- (i) have been used to provide the infrastructure; or
- (ii) be subject to an arrangement so that-
 - (a) it can only be used by the liable party for the purposes of providing the infrastructure,
 - (b) the liable party cannot use that amount as a means of securing additional funding or in any other way that would benefit the liable party,
 - (c) any interest or other benefit received in relation to that amount from that date belong to the Borough Council as the Charging Authority,
 - (d) any funds subject to the arrangement remaining once the infrastructure has been provided belong to the charging authority, and
 - (e) if the CIL cash amount becomes payable in money, any funds subject to the arrangement are used for that purpose.

4. General Conditions

- 4.1 In order to progress any application for a payment in kind, it is essential that discussions are commenced with the relevant Planning Development Officer and the Borough Council's Legal Services Team at the earliest opportunity.
- 4.2 An application for payment in kind will only be considered where it demonstrates compliance with national criteria within the applicable legislation and guidance, the CIL Regulations 2010 (as amended) and any local criteria of the Borough Council.
- 4.3 The liable party will be required, at its own expense, to undertake such searches as the Borough Council requires on the land to be transferred and share this information with the Borough Council before it agrees to accept a payment in kind. The liable party must also notify the Borough Council of any restrictions on the use or disposal of the land that is proposed to be transferred before the Borough Council agrees to accept any payment in kind
- 4.4 Payments in kind must be provided to the same timescales as cash payments, or otherwise as agreed with the Borough Council, subject to any applicable regulations and legislation. Providing Payments in Kind in instalments may be permitted if compliant with the Borough Council's policy in respect of payment by instalments.
- 4.5 Where the Borough Council accepts land and/or an infrastructure asset as payment in kind, the equivalent Neighbourhood Fund must still be paid to the Borough Council for passing to the relevant body, as follows:
 - 25% where a Neighbourhood Plan is in place or within a Neighbourhood Development Order; or
 - 15% where there is no Neighbourhood Plan, capped at a maximum of £100 per Council Tax dwelling.

The exception to this will be when agreement has been reached with the community that the Neighbourhood Fund is to be included within the value of the land to be transferred.

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