

Appendix 2 – suggested changes to Appendix 4 of the Council’s Community Infrastructure Levy Charging Schedule

Appendix 4 Shepway District Council Community Infrastructure Levy (CIL) Payment in Kind Policy: Land, Buildings and Infrastructure (June 2016 as Amended December 2017)

Background

The Community Infrastructure Levy (CIL) Regulations 2010 (as amended), provide a local authority with the discretion to accept land, buildings or infrastructure payments, as all or part of a CIL payment due in respect of a liable development.

Regulation 73 specifies that an agreement to accept land and buildings as payment in kind would be where the value of CIL paid is equal to the agreed value of the land and buildings acquired in kind (as determined by an independent person). Other key aspects of regulation 73 include:

- the amount of CIL payable for a development must be greater than £50,000 (Regulation 73(6) (a));
- the person from whom land is acquired has assumed liability to pay CIL (Regulation 73(6) (c)); and
- an agreement to make a land payment must be entered into before the development is commenced (Regulation 73(6) (d)).

CIL Regulations 73A and 73B also provide a local authority with the discretion to accept infrastructure payments as all or part of a due CIL payment. A key requirement is for an infrastructure payment to be in scope with the types of project covered by a Council’s Regulation 123 list. An agreement for infrastructure payments must also be entered into before development commences.

The benefits of adopting a payment in kind policy include supporting the delivery of developments that are complex in their nature and scale. The disadvantages include a requirement for additional administrative and technical resources and costs for a Council and developers, in the administration of CIL.

Payments in Kind Policy

Shepway District Council has decided to adopt a discretionary payment in kind policy, in support of part or all payment of due CIL, subject to the following conditions:

- 1) The Council must be satisfied that the land to be transferred, and/or the infrastructure provided, represents an appropriate in kind payment to support delivery of the Local Plan.
- 2) The chargeable development must not have commenced before a written agreement is in place with the Council to pay in kind either part or the entire CIL amount due. This agreement must state the value of the land and buildings to be transferred, or the infrastructure provided as verified by an independent valuation.

- 3) The person transferring the land to the charging authority or providing the infrastructure as payment must have assumed liability to pay CIL.
- 4) The land, subject to the transfer, must be free from any interest in the land and any encumbrance to the land, buildings or structures.
- 5) The land, subject to the transfer, must be fit for a relevant purpose to support delivery of the Local Plan. This may require the owner to demonstrate that the land is suitable through the submission of further information to the Council, including but not limited to, topographical information, reports on contamination and archaeology and details of any underground services.
- 6) The Council may transfer at its own discretion, the land, at nil cost, to a third party for the provision of infrastructure.
- 7) The agreement to pay in land or via infrastructure provision may not form part of a planning obligation entered into under Section 106 of the Town and Country Planning Act 1990 (as amended).

The Council is not obliged to accept any offer of payment in kind by land or infrastructure.

Adoption and Review

The Payment in Kind policy will take effect at the same time as the commencement date of the Council's adopted CIL Charging Schedule.

The CIL regulations require a Local Authority to produce an annual report, which indicates how CIL receipts have been used. Any Payments in Kind will be reported as part of this annual report.