

Central Bedfordshire Council
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Community Infrastructure Levy (CIL) Draft Charging Schedule Background Paper

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1 Background

1.1 The Community Infrastructure Levy (CIL) is a new Government approach to funding the infrastructure that Councils need to support the well-planned growth of their areas and the needs of their residents. It is a development tax, adopted and collected locally, which is imposed on the grant of planning permission and becomes due for payment on the commencement of building works. Central Bedfordshire Council is a charging authority under the CIL legislation.

1.2 CIL can be used to fund a wide range of infrastructure including:

- Transport, such as highway improvements; bus / rail interchange and cycling facilities
- Local schools; further education facilities and community buildings
- Parks; play areas; leisure and cultural centres
- Community safety; health and social care provision

2 Why CIL?

2.1 CIL is a discretionary development land tax, which the Council can choose to adopt to help fund local infrastructure. CIL charges are fixed, non-negotiable and enforceable. They are based on simple formulae which relate the size of the charge imposed to the size of the proposed development, expressed as a charge per square metre (psm) of net additional floorspace created. Minor development below a net additional 100m² is exempt, but all new residential units are CIL chargeable.

2.2 CIL was originally introduced in the 2008 Planning Act. The process for setting and implementing the Charge is set out in the CIL Regulations 2010 (SI No 948), together with subsequent Amendment Regulations in 2011, 2012, 2013, 2014 and 2015. Under the CIL Regulations changes to the use of s106 Planning Obligations became law on 6th April 2015. This will significantly restrict current infrastructure funding practices whether or not a local CIL charge has been adopted.

2.3 What will the Council spend CIL revenue on?

The Council is required to apply CIL revenue received “to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area” (CIL Guidance 2012). In practice this will mean:

- The focus must be on supporting new infrastructure requirements, rather than rectifying existing deficits
- Existing facilities may be expanded and improved to meet increased demands


- Failing infrastructure may be repaired and maintained if necessary to support growth
 - A capped 15% proportion of CIL revenue will be available to parish and town councils from development in their areas, which will rise to an uncapped 25% for those areas with an adopted neighbourhood plan in place
 - The Council may utilise up to 5% of revenue received to meet its costs in administering the tax
 - CIL revenues may be used to meet the borrowing costs of financing infrastructure the delivery of which is brought forward in support of growth
- 2.4 The Council will continue to assess and monitor its infrastructure needs as described below and, should it adopt a CIL, will determine which projects and types of infrastructure are most appropriate for the allocation of local CIL funds. These projects will represent its “CIL infrastructure funding target” which is prioritised, in the Regulation 123 List.

3 The CIL Adoption Process

- 3.1 The Preliminary Draft Charging Schedule (PDCS) was the Council’s first stage consultation on its proposed CIL charge. It was an opportunity to consider whether the Council should proceed to formally adopt a CIL Charge and at what level or levels the Charge(s) should be set. The Draft Charging Schedule (DCS) was produced in response to the representations submitted during the consultation exercise on the PDCS and also in response to new viability evidence
- 3.2 The Draft Charging Schedule (DCS) is supported by this Background Paper which provides further details on the evidence drawn on by the Council in deciding its proposed rates of CIL. Both documents are issued for consultation to help set a CIL charge that meets the Council’s specific circumstances.
- 3.3 The process is detailed in the table below, although the Council can vary this, suspend it or choose not to pursue it at any time. Following the second stage Draft Charging Schedule consultation (known as publication), anyone who so wishes can request to be personally heard by the Examiner when an Examination in Public is held into the Council’s Draft CIL Charging Schedule. In circumstances where no objections need to be heard, the examination may be dealt with by a written representations procedure.

3.4 Charge Setting Process

The Council's current timetable for consideration is:

Preliminary Draft Charge Consultation		January 2013
Review of Consultation responses		Spring 2013
Draft CIL Charge Consultation		July 2015
Charge Schedule Submission		October 2015
Examination in Public		Winter 2015
Examiner's Report Issued		Winter 2015
CIL Charge adopted by CBC		Spring 2016

4 Viability Evidence

- 4.1 The CIL Regulations require a charging authority to set and adopt a Charge Schedule that is underpinned by clear and robust "appropriate available evidence". Charge Rates must strike "an appropriate balance" between generating funds for local infrastructure and ensuring the economic viability of development across its area. The National Planning Policy Framework (NPPF) stresses that Councils must assess the cumulative impact of their development standards and policies on viability. The latest Government CIL guidance requires authorities to demonstrate how their CIL charge will "contribute to the implementation of their relevant Plan and support the development of their area".
- 4.2 In order to set the rates the council has had to take into account:
- 1) The Viability Refresh Study 2015 (DCS7)
 - 2) The Infrastructure Delivery Plan (DCS8)
 - 3) The submitted Development Strategy Policies
- 4.3 The delivery of this growth through sustainable, quality development is dependent on the timely provision of supporting infrastructure and the Council has produced a schedule (DCS8) identifying the additional infrastructure which will be required to support the implementation of the submitted Development Strategy.
- 4.4 The proposed CIL is set at a rate that does not put at serious risk the overall development of the area by making development unviable. To achieve this, an appropriate balance has been struck between what CIL charge will best enable the necessary infrastructure for the local area and the potential effects the CIL charge will have on the viability of development. The proposed CIL rates are derived from a comprehensive viability assessment undertaken as published in January 2013. The study derived its viability assessment following developer/stakeholder consultation. The report includes clear evidence of the influence of developer, landowner and agents' responses to both the initial values and assumptions, and the first draft of the overall

viability analysis. This work has now been reviewed for Central Bedfordshire in a Viability update by Three Dragons published in June 2015 (DCS6).

Development Plan for Central Bedfordshire

- 4.5 Central Bedfordshire became a unitary authority in 2009; its area was formerly administered by Bedfordshire County Council and two district councils; Mid Bedfordshire District Council and South Bedfordshire District Council. There is therefore an adopted Core Strategy (2009) for the north of the CIL charging authority area, while the adopted development plan for the south remains the South Bedfordshire Local Plan (2004).
- 4.6 A new local plan known as the Development Strategy was progressed to cover the whole of the authority area and was submitted to the Secretary of State on the 24th October 2014. After initial hearing sessions in February 2015, the Inspector concluded that the Council had not complied with the Duty to Cooperate. The Council has launched a judicial review against the Inspectors findings and has not withdrawn the Development Strategy.
- 4.7 Its status therefore currently remains as a submitted plan that has not been withdrawn and its policies carry weight in accordance with the NPPF. This also reflects the fact that its preparation is based on a considerable amount of evidence gathered over a number of years and is therefore regarded by the Council as a sustainable strategy which was fit for submission to the Secretary of State for Communities and Local Government. The Council therefore remains committed to the growth plans and the resulting infrastructure requirements contained within the strategy.
- 4.8 Furthermore, much of the growth proposed in the strategy has been determined to be deliverable because it has outline planning permission. This is set out in the Council's housing trajectory which is updated on a rolling programme to evidence what is likely to come forward in the plan period. There is therefore a pressing need to secure infrastructure to support current and proposed development, and there is also an identified funding gap, which validates the implementation of CIL. In view of this background however, the Council commits to an early review of the Draft Charging Schedule to take account of any new infrastructure requirements that are identified as a result of work on new delivery targets in any further iteration of the development plan.

The Infrastructure Delivery Plan (IDP)

- 4.9 The funding gap identified through the Infrastructure Delivery Plan covers both CIL and s106. It brings together the results of extensive collaborative work with internal Council departments and external service providers, and provides a schedule of infrastructure requirements together with supporting commentary. Where possible, the schedule identifies where the need for the infrastructure arises; the known likely delivery costs at current prices and the potential funding sources that may be utilised to meet this cost. These sources include

government funding; private sector finance and the Council's own capital programme. Funding gaps impeding delivery have been identified where known or anticipated. This information is summarised in the Infrastructure Funding Gap Table overleaf.

Infrastructure Funding Gap Table

June 2015

Infrastructure	Critical Costs	Critical Secured Funding	Essential Costs	Essential Secured Funding	Desirable Costs	Desirable Secured Funding	Total Cost	Total Secured Funding	Funding Gap
Broadband					£6,130,000	£4,269,000	£6,130,000	£4,269,000	£1,861,000
Community and Culture			£9,000,000	£7,200,000	£347,640	£109,025	£9,347,640	£7,309,025	£2,038,615
Economic Development			£78,048,000	£74,748,000	£4,480,000	£4,480,000	£82,528,000	£79,228,000	£3,300,000
Education			£226,399,383	£183,489,262			£226,399,383	£183,489,262	£42,910,121
Education - Early Years			£17,326,447	£10,699,019			£17,326,447	£10,699,019	£6,627,428
Green Infrastructure			£13,830,591	£5,246,076	£62,889,866	£12,086,033	£76,720,457	£17,332,109	£59,388,348
Health & Social Care			£36,123,512	£28,288,600			£36,123,512	£28,288,600	£7,834,912
Leisure			£58,389,271	£38,741,853			£58,389,271	£38,741,853	£19,647,418
Transport	£450,100,000	£433,600,000	£608,350,000	£595,507,000	£16,770,374	£1,918,000	£1,075,220,374	£1,031,025,000	£44,195,374
Utilities	£83,120,000	£83,120,000					£83,120,000	£83,120,000	£0
Waste			£4,758,000	£1,743,966	£421,290	£159,079	£5,179,290	£1,903,045	£3,276,245
Total	£533,220,000	£516,720,000	£1,052,225,204	£945,663,776	£91,039,170	£23,021,137	£1,676,484,374	£1,485,404,913	£191,079,461
	Funding Gap - Critical	£16,500,000	Funding Gap - Essential	£106,561,428	Funding Gap - Desirable	£68,018,033			

- 4.10 The Infrastructure Delivery Plan identifies a current total funding gap of **£191,079,461**. However it is apparent from the schedule that this gap includes a number of 'big ticket' items of identified infrastructure, which have significant associated costs. Infrastructure projects in the schedule have been categorised as critical, essential or desirable with all funding for critical projects identified at this time.
- 4.11 Infrastructure needs and the funding mechanisms to secure them will inevitably change over time and therefore the infrastructure funding gap will also be subject to continual change. The Schedule will be continually updated as and when new information is made available, such as when studies are completed or as planning applications are received and the infrastructure required and associated costs are identified. Future work will also continue to prioritise critical and essential projects. The Schedule should therefore be considered as a 'snap-shot', based upon the most up to date information available to the Council at the current time. Updated versions will be made available annually as part of the CIL monitoring and reporting requirements.
- 4.12 In summary, the Infrastructure Delivery Plan is a comprehensive list of all the identified infrastructure projects that it is estimated will be required by the planned growth set out in the Development Strategy up to 2031. This detailed work on infrastructure projects and the funding gap table derived from it evidences the demonstrable need for the introduction of CIL required by the December 2012 Government CIL Guidance. The Council has used the schedule and the 'funding gap' to develop its CIL infrastructure funding target in support of the Draft Charging Schedule.

4.13 **Economic Viability Appraisal**

An Economic Viability Appraisal (EVA) has been undertaken with specialist consultants Three Dragons to inform the Charging Schedule. The study assesses the viability of development across the area based on the planning requirements set out in the Development Strategy. The Appraisal has looked at the cumulative impact of three main aspects of the Development Strategy, namely:

- a) Higher quality design standards, in particular in relation to the Code for Sustainable Homes (CSH)
- b) Affordable Housing (AH) requirements and the ability of residential schemes to make a contribution across the area.
- c) The introduction of a CIL Charge, this varies according to where development is located.

- 4.14 The work has entailed examining the viability of a number of scenarios for both residential and non-residential developments, using a residual land value approach. The EVA complies with the requirements of Government Guidance by exploring the potential effects of a range of proposed CIL Charges on the economic viability of development across Central Bedfordshire.
- 4.15 CIL Regulations allow a charging authority to differentiate across its area both geographically and by reference to different intended uses of development. Central Bedfordshire is a large, extensive and varied area which, whilst predominately rural in character, includes several small to medium-sized towns including Dunstable to the south adjoining the Luton conurbation. The Three Dragons work with regard to the residential market identifies that the area demonstrates distinct value differences which should accordingly be addressed by separate residential charge rates.
- 4.16 The small developments of 10 dwellings or fewer in villages and market towns demonstrate relatively strong viability in all of the value areas, which results from no affordable housing or other s106 obligations.
- 4.17 A further charge zone is proposed demarcating the areas identified in the Development Strategy as Strategic Urban Extensions, in accordance with paragraph 34 of the December 2012 Guidance from DCLG. This differentiation is shown on the Proposed Charging Area Map (section 10).
- 4.18 With regard to non-residential development, the EVA concluded that in the current depressed market conditions many commercial uses would not be viable if a CIL charge was applied to them at this time. The exception is retail uses which are again best differentiated in order to better understand and identify viability issues. The Council's proposed charges for a limited number of retail use types reflect paragraph 35 of the Planning Practice Guidance which confirms that differentiation by use need not be restricted purely to definitions derived from the 1987 Use Classes Order.

5 Planning Obligations

- 5.1 An updated Planning Obligations Strategy has been prepared and will sit alongside the CIL Charging Schedule in setting out the Council's approach to planning contributions.
- 5.2 Central Bedfordshire Council has previously operated Planning Obligations Supplementary Planning Documents (SPDs) for the North and for the South, alongside S106. These SPDs contained a formula based approach to planning obligations for a number of contribution types. The CIL Regulations 2010 (as amended) mean that from 6th April 2015 this approach could no longer be applied in Central Bedfordshire. Once adopted, the Planning Obligations Strategy will therefore supersede both of these SPDs and they will be formally revoked at the same time, although in effect, these documents have been out of use since 28 November 2014 following changes to National Planning Practice Guidance that prohibited the use of tariff style contributions.

- 5.3 Specifically Regulation 122(2) of the CIL Regulations 2010 (as amended) introduced into law three tests for planning obligations:
- 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.
- 5.4 In addition to this, the CIL Regulations 2010 (as amended) prevent the pooling of S106 obligations towards an infrastructure project or 'type', where five or more such obligations have been entered into on or after 6 April 2010. It is certainly the case that for the types of generic infrastructure, this limit on five has already been exceeded and CIL will now have to fund these types of infrastructure. Five contributions may however be pooled where they meet the site specific tests outlined above.
- 5.5 A number of developers have indicated that, in many cases and particularly in relation to the strategic urban extensions (SUE), they would prefer to continue to use freely entered into and negotiated Planning Obligations in order to retain direct control over the timely provision of on-site and near-site works which are critical / essential to the effective completion and occupation of their developments. This is appropriate for the identified SUEs under the proposed Charging Schedule, and may be acceptable for other strategic sites if the proposed obligations meet the three legal tests set out above.
- 5.6 The Council has examined the size and range of s106 contributions that have been secured in support of planning permissions in the last three years since the current Planning Obligations Strategies were developed. As part of the Three Dragons EVA, the Council's recent experience in securing s106 contributions has been compared to a predicted reduced use of s106 anticipated from 6th April 2015, in order to assess the overall impact on viability.
- 5.7 Current s106 revenues for new residential units received equate to a CIL charge of some £75 psm, which for a large 3 bedroom house of 100 square metres represents a cost of £7,500. Developers are therefore already paying S106 contributions which would be equivalent to this level of CIL charge. It is estimated that such contributions may be reduced by some 46% following the introduction of CIL, meaning that the first £35 of any new CIL Charge for such a development is needed to maintain existing revenues for infrastructure provision in the future. It should be emphasised that this can be no more than a guide figure at this stage, as it is difficult to directly compare the two regimes. In particular Affordable Housing requirements are exempt from CIL Charges and for developments of ten or fewer dwellings or 1000 square metres of gross floorspace. The Council will therefore continue to seek to provide social housing through the use of s106 in line with the restrictions outlined above and any relevant adopted development plan policy.

- 5.8 The latest guidance obliges the Council to “set out at Examination a draft list of the projects and types of infrastructure that are to be funded in whole or part by the levy”. The draft Regulation 123 List has been published alongside this Draft Charging Schedule. Following CIL adoption, this draft list will then form the basis for the Authority’s ‘Regulation 123 list’ of CIL funded projects for which s106 cannot also be sought. This list has to be publicised and any revisions to it are subject to public consultation. These and other requirements now established in the CIL Regulations and statutory guidance have all been specifically designed to prevent such “double-charging” of developers.
- 5.9 During the CIL consultations and adoption process, the Council will consider further its ongoing use of s106 contributions, in particular which categories of infrastructure provision are best funded through CIL and which, being site specific measures, should remain for negotiation through s106. An indicative list can which illustrates this split is appended to the Draft Planning Obligations Strategy. Furthermore, the preparation of this strategy is aligned to the timetable for the CIL Charging Schedule to ensure that the Council’s approach to planning contributions as a whole is a co-ordinated one.

6 Proposed CIL Charging Schedule

6.1 Striking an ‘Appropriate Balance’ – Factors to Consider

In setting CIL the Council has weighed up various policy priorities – particularly those that affect what is paid for and delivered by the development industry. The payments of CIL, the delivery of affordable housing, the potential for additional s106 payments and the construction of development to the required environmental standards are all costs to a developer. It is recognised that by introducing a new charge such as CIL, there will be a corresponding knock on effect on the other requirements when developers are assessing the overall viability of a scheme.

Regulation 14 (as amended) sets out the context for setting the rates of CIL the relevant parts say:

- 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.

- 6.2 CIL rate setting is not an exact science but a qualitative judgement based on appropriate and available evidence. Rates are set in the context of CIL Regulations 13 and 14 (of the CIL Regulations 2010 as amended) plus the specific evidence identified in point 4.2 of this Background Paper. In setting

the proposed rates the Council has taken a cautious approach having regard to the results of the viability studies. Caution is taken due to the continuing uncertainty in the development industry and economy more widely.

6.3 Proposed Charging Rates

Development Type	Definition (Use Class Order 1987)	Area A £ / square metre	Area B £ / square metre	Area C £ / square metre	SUEs £ / square metre
Please see Proposed Charging Area Map					
Residential	(C3, excluding Assisted living) 11 units and above	130	75	40	0
Residential	(C3, excluding Assisted living) 10 units and below	330	245	135	0
Retail	Large superstores of 2,500 m ² and above (A1 food, 50%+ Convenience Goods)	85	85	85	85
Retail	Out of centre convenience of below 280 sq m trading area	40	40	40	40
	Out of centre comparison retail/retail warehouse	50	50	50	50
All other uses	All other uses including town centre retailing (includes B1, C1-C2, D & sui generis)	0	0	0	0

Residential Charge for SUEs: The proposed zero charge rate reflects the increased costs of s106 provisions expected to be necessary in opening up the urban extensions for development. The advanced stage of development of some of the proposals means that planning applications may have been determined prior to any introduction of CIL.

Assisted Living: 'Assisted living' is used to describe developments that comprise self-contained homes with design features and support services available to enable self-care and independent living. Sometimes also known as sheltered/retirement housing and extra care accommodation.

C2 Residential Institutions: Residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres.

Large superstores: foodstores with at least 50% of sales floorspace selling convenience goods

Sui Generis: individual non-classified uses. The Council is not proposing a charge on any sui generis uses at this time but may wish to do so at a later stage following more detailed analysis of such uses.

7 Payment of CIL and Instalments Policy

- 7.1 The CIL charge related to any chargeable development and the responsibility for its payment is dealt with through a liability notice issued by the Authority (Reg. 65) which informs the applicant of the amount they will be required to pay. An interested party assuming responsibility for this liability will the need to inform the Council as charging / collecting authority accordingly.
- 7.2 The CIL Regulations issued in 2010 set a default for full payment of the CIL charge to within 60 days of the commencement of the chargeable development, unless the planning permission was for a phased development will allows the CIL liability to be met at the commencement of each phase. Following representations from the development industry, the 2011 Amendment Regulations introduced the option for the charging authority to offer developers more flexible payment deadlines within the terms of a declared Instalments Policy.
- 7.3 A flexible and simple approach has been chosen. The intention is to ensure that such a policy, which may benefit developers in terms of spreading costs and easing cash flow is applied transparently, openly and fairly.
- 7.4 The timing of development costs including planning obligations has an impact on viability, as any monies paid out before the scheme produces values will have to be sourced from elsewhere and will incur finance charges. It therefore represents both a development risk and additional cost. The Council is therefore minded to offer an instalments policy which will provide a potential improvement, however marginal, to overall development viability.
- 7.5 **Payment of CIL**

Amount of CIL	Number of Instalments	Payment Period and Amount
Up to £50,000	No Instalments	Total amount payable within 60 days of commencement of development
Greater than £50,000	Four Instalments	25% within 60 days of commencement 25% within 180 days of commencement 25% within 270 days of commencement 25% within 360 days of commencement

8 Exemptions

- 8.1 The CIL Regulations 2010 Part 6 set out in detail the statutory exemptions paying a CIL Charge. These include:

- Minor developments – gross internal area of less than 100 m² unless it is a new dwelling (Reg. 42)
- Chargeable developments for charitable purposes at 100% relief (Reg. 43) including investment activity by charitable institutions etc. (Reg. 44 - 48)
- Social Housing Relief at 100%, including affordable housing (Reg. 49 - 55). Social housing relief is a mandatory discount that applies to most social rent, affordable rent, intermediate rent provided by a local authority or Private Registered Provider, and shared ownership dwellings. Subject to meeting specific conditions, social housing relief can also apply to discounted rental properties provided by bodies which are neither a local authority nor a private registered provider. Regulation 49 (as amended by the 2015 Regulations) defines where social housing relief applies

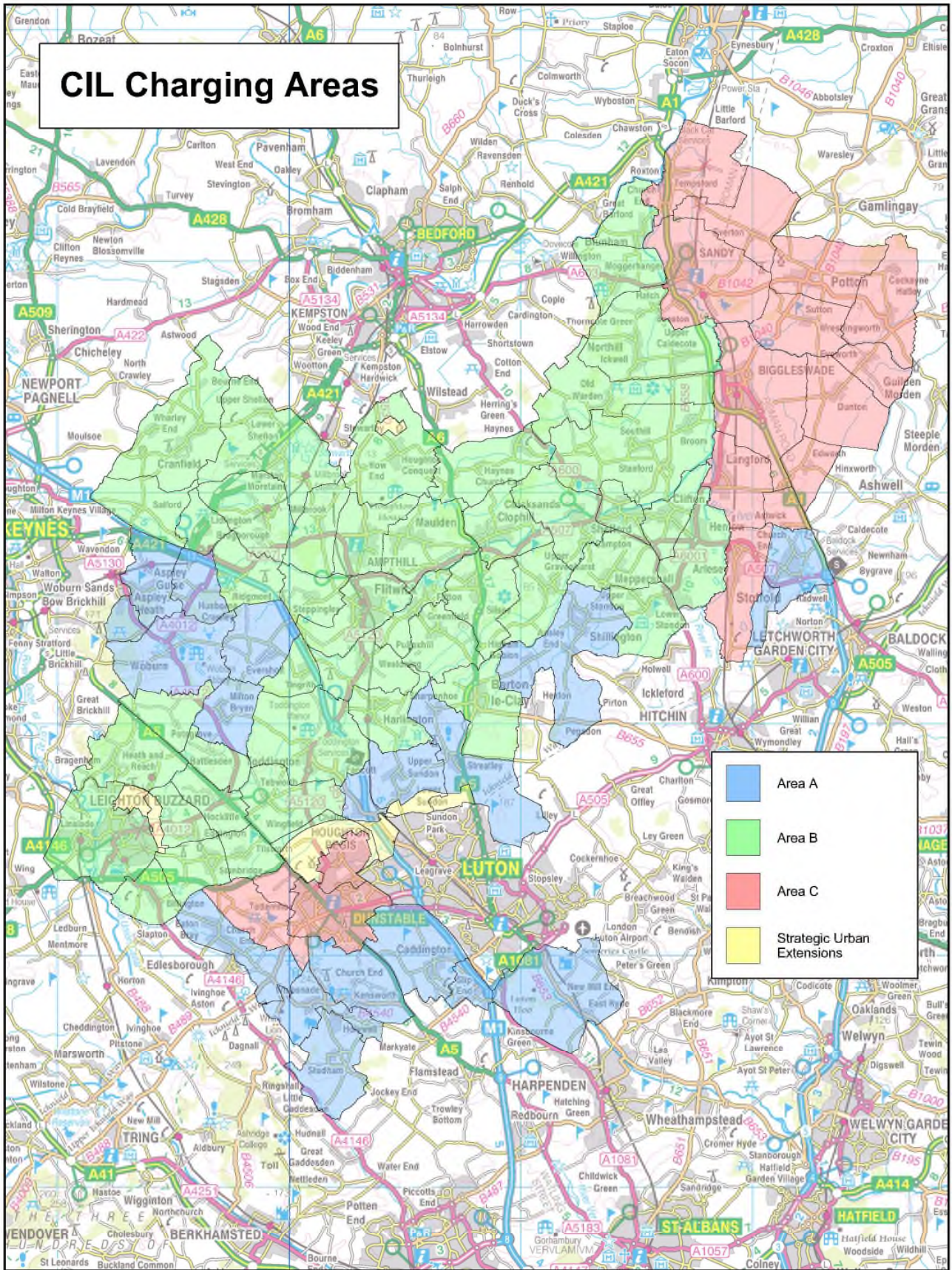
8.2 CIL charges are levied on the net additional gross internal floor area created by a development. If the net additional floor area following the demolition of previously used buildings is less than 100m² there is no CIL liability provided that these buildings were previously in lawful use prior to the development gaining planning permission. Affected and / or interested parties are advised to consult the primary legislation or take specialist advice on the scope of these exemptions.

9 Exceptional Circumstances

9.1 Regulations 55 – 57 give charging authorities the discretion to grant “relief for exceptional circumstances” from liability to pay CIL charges in their area where a specific scheme would become unviable if the CIL charge were to be levied. The regulations stress that such circumstances would only occur where a s106 agreement was in place which incurred a cost to the developer greater than the CIL charge itself. In addition there are European state aid implications which Councils are required to consider before an applicant could receive such a benefit. De minimis benefit in excess of the ceiling of 200,000 euros across the whole of a recipient individual or firm’s business in a three year trading period currently constitutes notifiable state aid.

9.2 The Council is **not** at this stage proposing to offer exemptions or relief beyond that which is set out as a statutory requirement in the 2010 Regulations (as amended). The Council will review responses before considering whether to adopt any CIL discretionary relief on the implementation of CIL. The regulations on this matter make clear that relief should only be granted in ‘exceptional circumstances’.

10 CIL Charging Areas Map in Central Bedfordshire

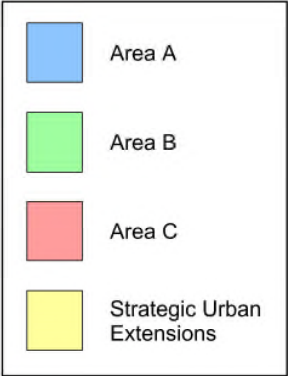
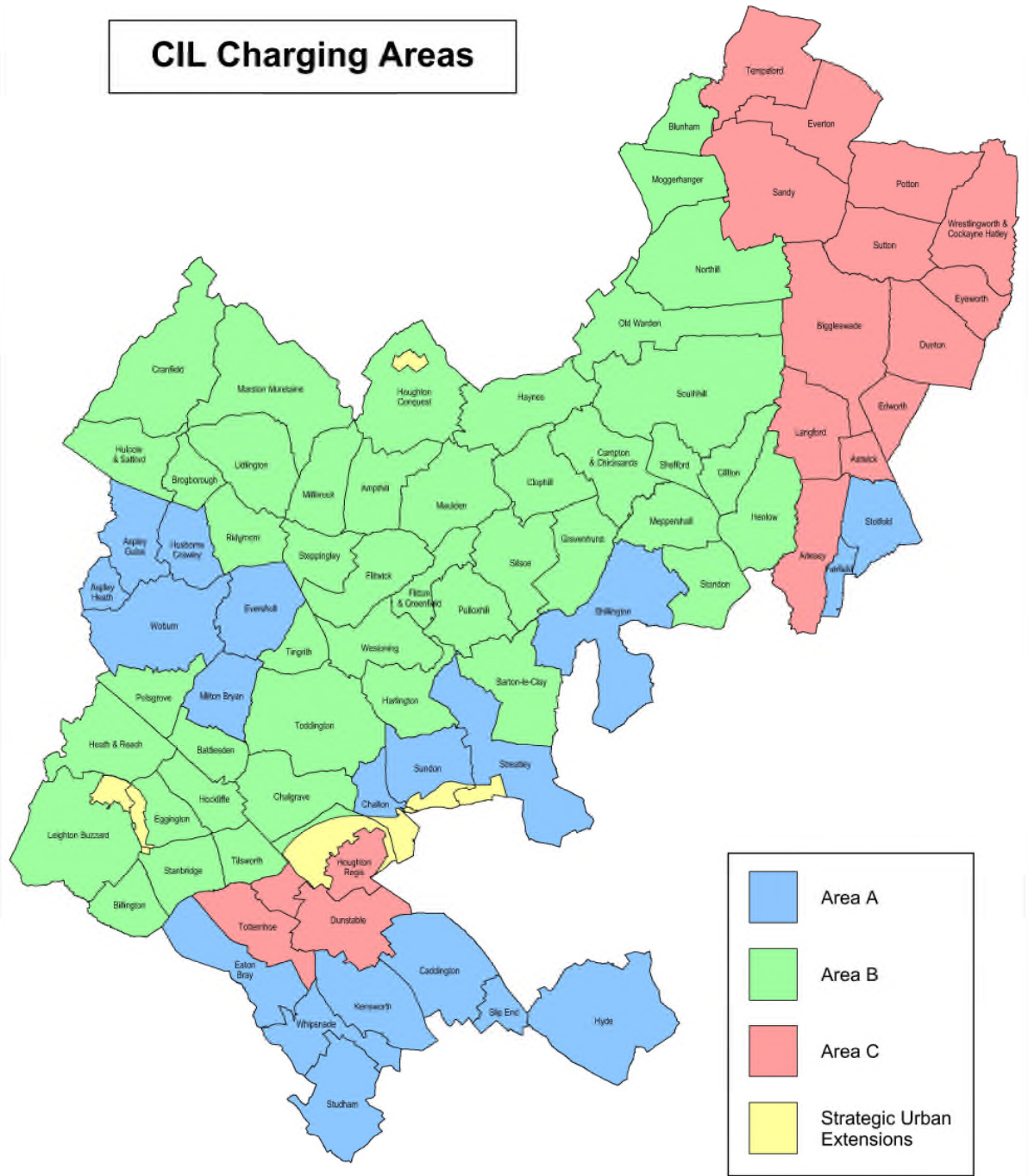


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CIL Charging Areas



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