

Core Strategy Review - Inspectors' Matters

Matter 11: Other Policies

July 2020



Matter 11: Other Policies

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Inspectors' Questions for Matter 11

Policy CSD3

1. Is the approach to rural and tourism development justified and consistent with national policy, including in relation to new buildings and the re-use of existing buildings in the countryside?
2. Is the approach to the protection of local facilities and tourist, recreation and rural economic uses justified? Is it sufficiently clear?
3. Are any main modifications to Policy CSD3 necessary for soundness?

Policy CSD4

4. Is Policy CSD4 justified and consistent with national policy? Is it sufficiently clear?
5. Are any main modifications to Policy CSD4 necessary for soundness?

Policy CSD5

1. Is Policy CSD5 justified and consistent with national policy? Is it sufficiently clear?
2. Is the requirement for the use of the optional higher water efficiency standard (110 litres per person per day) for residential development justified? What is the evidence in terms of the need for such a standard and the effect on viability?
3. Is the requirement for non-residential development to achieve the BREEAM 'outstanding' standard for water efficiency justified?
4. Does the policy provide an adequate and sufficiently clear approach to sustainable drainage and flood risk which is consistent with national policy?
5. Are any main modifications to Policy CSD5 necessary for soundness?

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Overall

6. What is the relationship with the Places and Policies Local Plan on the above issues (Policies CSD3, CSD4 and CSD5) and what role will it have in setting out a policy framework?

Policy SS5

7. What are the key elements of infrastructure required across the District (not specifically covered in earlier Matters)?
8. How will these be delivered and funded?
9. Does Policy SS5 set out a clear and effective approach to infrastructure planning which is justified and consistent with national policy, including where the transfer of land is necessary?
10. Are any main modifications to Policy SS5 necessary for soundness?

Council's Response to Matter 11 Questions

1. Policy CSD3

Question 1

Is the approach to rural and tourism development justified and consistent with national policy, including in relation to new buildings and the re-use of existing buildings in the countryside?

1.1. Policy CSD3 sets out a presumption against new development in locations outside the settlement hierarchy, except for certain types of development such as affordable housing and agriculture. Core Strategy Review Policy CSD3 is largely unchanged from Policy CSD3 in the adopted 2013 Core Strategy.

1.2. In undertaking the Core Strategy Review the council has had regard to national planning practice guidance which states:

“Under regulation 10A of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) local planning authorities must review local plans, and Statements of Community Involvement at least once every 5 years from their adoption date to ensure that policies remain relevant and effectively address the needs of the local community. Most plans are likely to require updating in whole or in part at least every 5 years. Reviews should be proportionate to the issues in hand.”¹

1.3. National planning practice guidance adds:

“Policies age at different rates according to local circumstances and a plan does not become out-of-date automatically after 5 years. The review process is a method to ensure that a plan and the policies within remains effective.”²

¹ Paragraph: 062 Reference ID: 61-062-20190315.

² Paragraph: 064 Reference ID: 61-064-20190315.

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“A local planning authority may need to gather new evidence to inform their review. Proportionate, relevant and up-to-date evidence should be used to justify a decision not to update policies.”³

- 1.4. In undertaking the Core Strategy Review, the council assessed the policies in the adopted 2013 Core Strategy against national policy and other considerations. A report was taken to the council’s Cabinet on 19 April 2017 (reference C/16/107)⁴ that assessed each of the policies in the adopted plan and identified those policies that:
- Needed review, for example where national policy or other circumstances had changed significantly since the plan was adopted;
 - Should continue to be monitored (for example, where national planning policy or regulations were expected to change); and
 - Could remain as existing (for example, where development was progressing on a strategic site).
- 1.5. This approach informed the early stage of plan review and this was supplemented by the comments received at subsequent consultation stages, to identify which policies should be amended and which remained relevant without amendment. Policy CSD3 was identified as a policy that did not need amendment.
- 1.6. Regarding Policy CSD3, the National Planning Policy Framework (NPPF) states that planning policies should avoid the development of isolated homes in the countryside unless it is essential for the needs of a rural worker (paragraph 79). Affordable housing is allowed for in paragraph 77 as an exception to meet identified local needs.
- 1.7. Paragraphs 83 and 84 of the NPPF set out measures to promote a prosperous rural economy. Planning policies should enable the sustainable growth and

³ Paragraph: 068 Reference ID: 61-068-20190723.

⁴ See: <https://www.folkestone-hythe.gov.uk/moderngov/ieListDocuments.aspx?CId=142&MId=3167>

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expansion of all types of businesses in rural areas, through the conversion of existing buildings and the construction of well-designed new buildings (paragraph 83(a)). Other elements promoted by the NPPF include: the development and diversification of agriculture and other land-based rural businesses (paragraph 83(b); sustainable rural tourism and leisure development that respects the character of the countryside (paragraph 83(c)); and the retention and development of accessible local services and facilities (paragraph 83(d)).

1.8. NPPF paragraph 84 recognises that:

“Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport.”

1.9. In summary, NPPF paragraphs 83 and 84 seek to direct development to existing settlements and existing buildings, while recognising that this will not be possible in all circumstances. Where a case can be made for an exception, this will need to be justified by factors such as an identified local need (affordable housing), a high standard of design (rural businesses) or development that is sensitive to its surroundings and exploits opportunities for sustainability (business and community development).

1.10. The council considers that this approach is reflected in Policy CSD3 and that the policy continues to be justified and consistent with national policy.

Question 2

Is the approach to the protection of local facilities and tourist, recreation and rural economic uses justified? Is it sufficiently clear?

Local facilities and recreation uses

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- 1.11. The NPPF emphasises the need to protect local facilities and recreational uses. Paragraph 83(d) states that planning policies should enable “*the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.*”
- 1.12. The council believes that this is reflected in the second paragraph of Policy CSD3, which seeks to resist the loss of these facilities. Appendix 2 of the Core Strategy Review⁵ gives a definition of ‘Community Infrastructure’ that includes church or village halls, doctor’s surgeries, hospitals, children’s playgrounds and sports facilities. The council acknowledges that this definition does not include reference to local shops, public houses and places of worship themselves (as opposed to church halls); the definition could be expanded to more closely match NPPF paragraph 83(d) if the Inspectors consider that this would aid clarity and consistency.

Tourist and rural economic uses

- 1.13. In relation to the protection of tourist and rural economic uses, the NPPF states at paragraph 80 that:
- “Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future.”*
- 1.14. As the supporting text of the Core Strategy Review stresses, many of the district’s enterprises are found in its villages and countryside, particularly along the coast, including beach resorts, the Romney Hythe and Dymchurch Railway and caravan and camping parks on the Romney Marsh (paragraphs 5.25 to 5.26). Other strengths include the district’s high-quality natural environment,

⁵ Glossary of Terms, see page 174.

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which helps support local food, drink, craft and natural produce enterprises, as well as its historic buildings, such as Westenhanger and Lympe Castles, and the Port Lympe Reserve (paragraph 5.31).

- 1.15. The Employment Land Review (EB 07.40) recognises that, outside the central commercial hub in Folkestone and Hythe, other parts of the district can be characterised as being mostly rural in nature, with more limited opportunities for new economic developments (paragraph 8.3).
- 1.16. While the NPPF does not explicitly set out a policy of protection for tourist and rural economic uses, it does encourage the expansion of all types of business in rural areas through the conversion of existing buildings (paragraph 83) and the use of previously-developed land to meet local business needs (paragraph 84). The council considers that it would be difficult to achieve this if existing tourist and rural business sites were lost to other uses (such as residential) without sufficient justification.
- 1.17. The council considers that Policy CSD3 is justified, consistent with national policy and clear.

Question 3

Are any main modifications to Policy CSD3 necessary for soundness?

- 1.18. The council considers that no main modifications need to be made to Policy CSD3 for soundness. As set out in paragraph 1.12, if the Inspectors consider that it would aid clarity, the glossary definition of 'Community Infrastructure' could be amended to more closely reflect NPPF paragraph 83(d).

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2. Policy CSD4

Question 4

Is Policy CSD4 justified and consistent with national policy? Is it sufficiently clear?

- 2.1. The council's approach to the Core Strategy Review is outlined above in paragraphs 1.4 to 1.5. CSD4 was identified as a policy that did not require amendment and so the text of Core Strategy Review policy CSD4 largely follows the text of the policy in the adopted 2013 plan.
- 2.2. The only significant change to the policy was the addition of wording to bullet point (a) stating that development should "*achieve net gain over and above residual loss.*" This was introduced to reflect the publication of the Government's 25 Year Environment Plan and the 'environmental net gain' principle this sets out.⁶ Changes were also made to the National Planning Policy Framework and planning practice guidance in 2019 to reflect this principle.⁷
- 2.3. In summary, Policy CSD4 seeks to:
- Establish the principle of seeking improvements to green infrastructure and biodiversity;
 - Distinguish between the hierarchy of sites, including sites of international importance, Sites of Special Scientific Interest and ancient woodland, locally designated sites and the Kent Downs Area of Outstanding Natural Beauty; and
 - Set out a strategic approach to the management of the green infrastructure network, its protection and enhancement and tackle deficiencies in the location and quality of provision.

⁶ 'A Green Future: Our Plan to Improve the Environment', DEFRA, 2018, pp. 32-34.

⁷ National Planning Policy Framework, paragraph 170(d); Planning Practice Guidance, Paragraph: 009 Reference ID: 8-009-2019072.

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- 2.4. The council considers that the policy follows current national planning policy and guidance.

Principle

- 2.5. The National Planning Policy Framework requires planning policies to contribute to and enhance the natural and local environment, particularly its landscapes, biodiversity and recreational value (NPPF, paragraphs 170 and 174). As outlined above, the principle of securing net gains for biodiversity is set out here.
- 2.6. The national planning practice guidance adds that: *“Plans, and particularly those containing strategic policies, can be used to set out a suitable approach to both biodiversity and wider environmental net gain, how it will be achieved, and which areas present the best opportunities to deliver gains.”*⁸
- 2.7. Policy CSD4 seeks to do this in the first two paragraphs.

Hierarchy of sites

- 2.8. The NPPF states that local plans should distinguish between the hierarchy of international, national and locally designated sites of landscape (paragraph 171) and biodiversity value (paragraph 174) to protect and enhance these assets.
- 2.9. Planning practice guidance provides further detail on Local Wildlife Sites and Local Geological Sites⁹ and Areas of Outstanding Natural Beauty and their setting.¹⁰
- 2.10. Policy CSD4 sets out this hierarchy in points (a) to (e) of the second paragraph.

Strategic approach to management

⁸ Paragraph: 021 Reference ID: 8-021-20190721.

⁹ Paragraph: 013 Reference ID: 8-013-20190721; Paragraph: 014 Reference ID: 8-014-20190721.

¹⁰ Paragraph: 039 Reference ID: 8-039-20190721; Paragraph: 040 Reference ID: 8-040-20190721; Paragraph: 041 Reference ID: 8-041-20190721; Paragraph: 042 Reference ID: 8-042-20190721.

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- 2.11. Plans should also take a strategic approach to managing networks of green infrastructure and habitats and plan for their enhancement at a catchment or landscape scale, looking across local authority boundaries (NPPF, paragraph 171).
- 2.12. National planning practice guidance adds that: “*Strategic policies can identify the location of existing and proposed green infrastructure networks and set out appropriate policies for their protection and enhancement.*”¹¹ This is reinforced in text on biodiversity, quoted in paragraph 2.6 above, which states that plans can be used to identify areas which offer the best opportunities for delivering gains.
- 2.13. Policy CSD4 seeks to do this in the final paragraph. Reference is made to the Sustainable Access Strategy for Dungeness, produced through long-term joint working with neighbouring Rother District Council (documents EB 08.10 to 08.14). The policy refers to Figure 5.2 of the plan (page 126) where areas of opportunity and wider connections to neighbouring districts are highlighted. This draws on the Green Infrastructure Report for the district (document EB 08.20).

Question 5

Are any main modifications to Policy CSD4 necessary for soundness?

- 2.14. The council considers that Policy CSD4 is justified and consistent with national policy.
- 2.15. The Statement of Common Ground between Kent County Council and Folkestone & Hythe District Council (EB 13.10) puts forward suggested changes to Policy CSD4 as follows:
- The introduction of an additional criterion to state: “*Planning applications will need to be supported by ecological surveys, mitigation strategies*”

¹¹ Paragraph: 007 Reference ID: 8-007-20190721.

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(when required) and enhancement plans, in order to follow and apply the mitigation hierarchy, as appropriate”; and

- An amendment to Policy CSD4, point d. to state: *“Appropriate and proportionate protection will be given to habitats that support higher-level designations, and sub-national and locally designated wildlife/geological sites, to include Local Wildlife Sites (LWS) (in addition to including Kent Biodiversity Action Plan habitats, and other sites of nature conservation interest).”*

2.16. The title of the Sustainable Access Strategy for Dungeness was amended on publication to the Sustainable Access and Recreation Management Strategy (SARMS) and this could also be updated for consistency.

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3. Policy CSD5

Question 1

Is Policy CSD5 justified and consistent with national policy? Is it sufficiently clear?

- 3.1. The council's approach to the Core Strategy Review is described above in paragraphs 1.2 to 1.5. Policy CSD5 was identified through this process as a policy that remained valid and did not need major amendment.
- 3.2. The policy wording of Core Strategy Review Policy CSD5 largely follows that of the adopted 2013 Core Strategy Policy, except in relation to points (a) and (b) (see the council's response to Question 2 and Question 3 below).
- 3.3. Water and coastal management remains an important issue within the district. The district is covered by a Water Scarcity Status designation and the careful management of the water cycle is critical to ensure reliable supply and protection of the district's environmental assets.
- 3.4. The district's coastal location means that it is susceptible to maritime flooding and requires significant flood defences, while its coastal environments are protected for their habitats, both nationally and internationally. Parts of the coastline are also protected by the Folkestone to Dover Heritage Coast designation.
- 3.5. The National Planning Policy Framework states that the planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change (paragraph 148).
- 3.6. Development should be directed away from areas at highest risk of flooding (NPPF, paragraph 155) and ensure that development does not increase the risk of flooding elsewhere (paragraph 163). Major developments should incorporate sustainable drainage systems (SuDS), unless there is clear evidence that this would be inappropriate (paragraph 165). Integrated Coastal Zone Management should be pursued across local authority and land and sea boundaries, to

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ensure effective alignment of the terrestrial and marine planning regimes (paragraph 166). Further guidance is given in the national planning policy guidance and Kent County Council, as the Lead Local Flood Authority, has published a policy statement on planning and drainage to inform plan-making, that provides more technical detail.¹²

- 3.7. While more detailed points are picked up in the questions below, the council considers that Policy CSD5 remains important in providing a strategic framework for water and coastal management and overall is supported by national planning policy and guidance. The policy supports more detailed policies in the Places and Policies Local Plan (PPLP) (see Question 6 below).

Question 2

Is the requirement for the use of the optional higher water efficiency standard (110 litres per person per day) for residential development justified? What is the evidence in terms of the need for such a standard and the effect on viability?

- 3.8. In relation to water supply, the National Planning Policy Framework (paragraph 149) states that:

“Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures ...”

- 3.9. Further background is set out in paragraph 5.65 of the Core Strategy Review (page 134), which states:

“Most of the district’s recent residential planning permissions have required Code for Sustainable Homes standards, predominantly at what was level 3. This level (and Code level 4) required design features to enable a maximum

¹² See: <https://www.kent.gov.uk/about-the-council/strategies-and-policies/environment-waste-and-planning-policies/flooding-and-drainage-policies/drainage-and-planning-policy-statement>

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consumption of 105 litres of water per person per day. Since the adoption of the 2013 Core Strategy, there have been significant changes to the planning and building regulations systems relating to energy efficiency and low carbon development. Following the Housing Standards Review, the Code for Sustainable Homes was withdrawn (effective from 26 March 2015). As a result of this, local planning authorities can no longer stipulate compliance with Code levels or require Code assessments in planning policy. In place of this, the government introduced a number of changes to building regulations standards, along with some new standards. These included for water (Part G), a new optional standard (110 litres per person per day) for water-stressed areas that has been added to the baseline standard of Part G (125 litres per person per day).”

- 3.10. The Government updated Building Regulations Part G in 2015, introducing an ‘optional’ requirement of 110 litres per person per day for new residential development, which should be implemented through local policy where there is a clearly evidenced need.
- 3.11. As the district falls within a designated Water Scarcity Status Area, water efficiency measures are necessary in new developments. The evidence, outlined in the supporting Water Cycle Study (EB 05.20), justifies the need for more stringent water efficiency targets for new residential development in the district.
- 3.12. Policy CSD5 provides a strategic policy, with policies in the Places and Policies Local Plan (PPLP) setting out more detail. PPLP Policy CC2: Sustainable Design and Construction sets out this higher water efficiency standard. This policy was examined during the public examination of the PPLP and the plan has recently been found ‘sound’ by the Inspector.¹³ This policy will be applied to development across the district.

¹³ Report on the Examination of the Folkestone and Hythe Places and Policies Local Plan, 26 June 2020, PINS/L2250/429/8.

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- 3.13. In granting planning permission for new residential development the council's Development Management team routinely applies a water efficiency planning condition, as follows:

“No development shall commence above foundation level until written documentary evidence has been submitted to, and approved in writing by, the local planning authority proving the development will achieve a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended). Such evidence shall be in the form of a design stage water efficiency calculator.

The development hereby permitted shall not be occupied until written documentary evidence has been submitted to, and approved by, the local planning authority, proving that the development has achieved a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended).

Such evidence shall be in the form of a post-construction stage water efficiency calculator.

Reason

In accordance with the requirements of policies CSD5 and SS3 of the Shepway Core Strategy Local Plan 2013 which identify Shepway as a water scarcity area and require all new dwellings to incorporate water efficiency measures. Water efficiency calculations should be carried out using ‘the water efficiency calculator for new dwellings.’¹⁴

- 3.14. Development Management colleagues have confirmed that this condition is routinely discharged without any issues being presented on grounds of viability.

¹⁴ See: <https://www.gov.uk/government/publications/the-water-efficiency-calculator-for-new-dwellings>

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Question 3

Is the requirement for non-residential development to achieve the BREEAM 'outstanding' standard for water efficiency justified?

- 3.15. The council's aspirations for a high standard of development for the new garden settlement are set out in the council's response to Matter 7: North Downs Area.
- 3.16. The Places and Policies Local Plan (PPLP) sets out standards for water efficiency in Policy CC2: Sustainable Design and Construction. Following the examination of the Places and Policies Local Plan and the issuing of the Inspector's Report, which found the plan 'sound',¹⁵ the council considers that amendments should be made to Policy CSD5 to bring it into line with the PPLP.
- 3.17. Given that Policy CSD5 is intended to apply to development across the district, the council considers that 'outstanding' standard for non-residential development should be expressed as an aspiration, with 'very good' standard as the requirement, in line with PPLP Policy CC2.
- 3.18. Policy CSD5 point b. could be amended to read:

"For non-residential development, the development achieves BREEAM 'Very Good' standard including addressing maximum water efficiencies under the mandatory water credits, where technically feasible and viable. The council will encourage development to achieve 'Outstanding' standard where possible; ..."

Question 4

Does the policy provide an adequate and sufficiently clear approach to sustainable drainage and flood risk which is consistent with national policy?

- 3.19. The council's approach to the Core Strategy Review is outlined above in paragraphs 1.2 to 1.5.

¹⁵ Report on the Examination of the Folkestone and Hythe Places and Policies Local Plan, 26 June 2020, PINS/L2250/429/8.

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3.20. Point (c) of Policy CSD5, regarding sustainable drainage and flood risk, has been incorporated largely unaltered from the adopted 2013 Core Strategy plan policy.

3.21. The policy requires development to ensure that:

- Surface water runoff from a site is not increased above the existing rate;
- Sustainable drainage systems are incorporated;
- Water quality must be maintained or improved; and
- Flood risk must not be increased.

3.22. The National Planning Policy Framework (paragraph 20) sets out a general requirement that:

“Strategic policies should set out an overall strategy for the pattern, scale and quality of development, and make sufficient provision for:

...

b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);

...

d) conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.”

3.23. NPPF paragraph 149 adds that:

“Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures. Policies should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts, such as providing space for physical protection measures, or making

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provision for the possible future relocation of vulnerable development and infrastructure.”

Surface water runoff

- 3.24. Policy CSD5 states that the peak rate of surface water runoff from a site should not be increased above the existing surface water runoff rate.
- 3.25. Kent County Council, as the Lead Local Flood Authority, published a policy statement on planning and drainage to inform plan-making in December 2019.¹⁶ This statement includes a policy on drainage design, SuDS 2: Deliver effective drainage design, which states:

“Any proposed new drainage scheme must manage all sources of surface water and should be designed to match greenfield discharge rates, and volumes as far as possible.

Development in previously developed land should also seek to reduce discharge rates and volumes off-site and utilise existing connections where feasible.

Drainage schemes should provide for exceedance flows and surface flows from offsite, ensure emergency ingress and egress and protect any existing drainage connectivity, so that flood risk is not increased on-site or off site.”¹⁷

- 3.26. Given this, the council considers that the wording of Policy CSD5, bullet point c. could be amended to read:

“... and designed so as to match greenfield discharge rates and volumes and for development on previously developed land to reduce discharge rates and volumes where feasible, incorporating sustainable drainage systems ...”

Sustainable drainage systems

¹⁶ Kent County Council Drainage and Planning Policy – a Local Flood Risk Management Strategy Document, KCC, December 2019. See: https://www.kent.gov.uk/data/assets/pdf_file/0003/49665/Drainage-and-Planning-policy-statement.pdf

¹⁷ Kent County Council Drainage and Planning Policy – a Local Flood Risk Management Strategy Document, KCC, December 2019, Section 5.2.2, page 27.

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3.27. NPPF paragraph 165 states:

“Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should:

- a) take account of advice from the lead local flood authority;*
- b) have appropriate proposed minimum operational standards;*
- c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and*
- d) where possible, provide multifunctional benefits.”*

3.28. The national planning policy guidance adds that:

“Local authorities and developers should seek opportunities to reduce the overall level of flood risk in the area and beyond. This can be achieved, for instance, through the layout and form of development, including green infrastructure and the appropriate application of sustainable drainage systems, through safeguarding land for flood risk management, or where appropriate, through designing off-site works required to protect and support development in ways that benefit the area more generally.”¹⁸

3.29. Sustainable drainage systems are important, the national planning policy guidance maintains:

“Sustainable drainage systems are designed to control surface water run off close to where it falls and mimic natural drainage as closely as possible. They provide opportunities to:

- reduce the causes and impacts of flooding;*
- remove pollutants from urban run-off at source;*

²¹ Planning Practice Guidance, Paragraph: 001 Reference ID: 26-001-20191001.

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- *combine water management with green space with benefits for amenity, recreation and wildlife.*¹⁹

3.30. In deciding when a sustainable drainage system should be considered, the national planning policy guidance states:

“Additionally, and more widely, when considering major development, as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015, sustainable drainage systems should be provided unless demonstrated to be inappropriate.”²⁰

3.31. Planning practice guidance states: *“The National Design Guide can be used by all those involved in shaping places including in plan-making and decision making.”²¹*

3.32. The National Design Guide stresses the importance of an integrated approach to the drainage of new developments, incorporating sustainable drainage systems (paragraph 96):

“In well-designed places, water features form part of an integrated system of landscape, biodiversity and drainage. This includes new water features that manage drainage and also existing watercourses. Together with green and brown roofs, swales, rain gardens, rain capture and other drainage, water features create multifunctional ‘green’ sustainable drainage systems. They also enhance the attractiveness of open spaces and provide opportunities for play, interaction and relaxation.”

3.33. The Guide adds that (paragraph 149):

“Well-designed places have sustainable drainage systems to manage surface water, flood risk and significant changes in rainfall. Urban environments make use of ‘green’ sustainable drainage systems and natural flood resilience

¹⁹ Paragraph: 051 Reference ID: 7-051-20150323.

²⁰ Paragraph: 079 Reference ID: 7-079-20150415.

²¹ Planning Practice Guidance, Paragraph: 001 Reference ID: 26-001-20191001.

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wherever possible ... Homes and buildings also incorporate flood resistance and resilience measures where necessary and conserve water by harnessing rainfall or grey water for re-use on-site.”

- 3.34. Policy CSD5 is intended to provide guidance on these issues. However, given the above, the council considers that Policy CSD5 point (c) could be improved by making it clear that the requirement for sustainable drainage systems applies to *major* developments, rather than all developments.
- 3.35. Policy CSD5 is intended to provide a strategic approach to water management. More detail on sustainable drainage systems is set out in Places and Policies Local Plan (PPLP) Policy CC3. The PPLP has been through public examination and has recently been found ‘sound’ by the Inspector.²²

Water quality

- 3.36. Regarding water quality, the NPPF states at paragraph 170:

“Planning policies and decisions should contribute to and enhance the natural and local environment by:

...

- e) *preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; ...”*

- 3.37. In assessing how the planning system can plan positively for water supply and water quality, the national planning policy guidance states that:

“Multiple benefits for people and the environment can be achievable through good design and mitigation. For example, flood risk can be reduced and

²² Report on the Examination of the Folkestone and Hythe Places and Policies Local Plan, 26 June 2020, PINS/L2250/429/8.

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*biodiversity and amenity improved by designing development that includes permeable surfaces and other sustainable drainage systems, removing artificial physical modifications (for example, weirs and concrete channels) and recreating natural features. Water quality can be improved by protecting and enhancing green infrastructure ...*²³

3.38. Plan-makers may need to consider whether measures to improve water quality, for example sustainable drainage schemes, can be used to address impacts on water quality in addition to mitigating flood risk.²⁴

3.39. As Lead Local Flood Authority, Kent County Council (KCC) has produced 'Drainage and Planning Policy – A Local Flood Risk Management Strategy Document' (December 2019)²⁵ to be used by local planning authorities in developing local planning and land use policy.

3.40. Drainage and Planning Policy states at SuDS Policy 7: Safeguard Water Quality (Section 5.2.7, page 39):

“When designing a surface water management scheme, full consideration must be given to the system’s capacity to remove pollutants and to the cleanliness of the water being discharged from the site, irrespective of the receiving system. Interception of small rainfall events should be incorporated into the design of the drainage system.”

3.41. The supporting text emphasises that:

“The design of any drainage proposal should therefore ensure that surface water discharges do not adversely impact the water quality of receiving water bodies, both during construction and when operational. Sustainable drainage design principles have the potential to reduce the risk of pollution, particularly through managing the surface water runoff close to the source and on the

²³ Paragraph: 019 Reference ID: 34-019-20140306.

²⁴ Paragraph: 006 Reference ID: 34-006-20161116

²⁵ See: <https://www.kent.gov.uk/about-the-council/strategies-and-policies/environment-waste-and-planning-policies/flooding-and-drainage-policies/drainage-and-planning-policy-statement>

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surface. Below grade pipes and tanks which are efficient for drainage purposes may not provide appropriate water quality treatment.”

- 3.42. The council therefore considers that Policy CSD5, as it relates to water quality, remains relevant and justified.

Flood risk

- 3.43. Policy CSD5 requires that developments should not increase flood risk within the district. This remains a fundamental requirement of planning policy, as National Planning Policy Framework paragraph 163 states:

“When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere ...”

- 3.44. The national planning practice guidance adds that:

“Local authorities and developers should seek opportunities to reduce the overall level of flood risk in the area and beyond. This can be achieved, for instance, through the layout and form of development, including green infrastructure and the appropriate application of sustainable drainage systems, through safeguarding land for flood risk management, or where appropriate, through designing off-site works required to protect and support development in ways that benefit the area more generally.”²⁶

- 3.45. KCC’s ‘Drainage and Planning Policy – A Local Flood Risk Management Strategy Document’ (December 2019) also stresses the importance of seeking to reduce flood risk through new developments. SuDS Policy 4: Seek to Reduce and Avoid Existing Flood Risk (Section 5.2.4, page 33) states:

“New development should be designed to take full account of any existing flood risk, irrespective of the source of flooding.

²⁶ Paragraph: 050 Reference ID: 7-050-20140306.

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Where a site or its immediate surroundings have been identified to be at flood risk, all opportunities to reduce the identified risk should be investigated at the masterplanning stage of design and subsequently incorporated at the detailed design stage.

Remedial works and surface water infrastructure improvements may be identified in the immediate vicinity of the development to facilitate surface water discharge from the proposed development site.”

3.46. Supporting text adds that:

“Where a developer’s Drainage Strategy has identified that there are existing flood risks affecting a site or its surroundings, there would be an expectation that the developer manages the identified risk appropriately to ensure that there are no on or off site impacts as a result of any development. Similarly, where there are opportunities to reduce the off-site flood risk through carefully considered on-site surface water management, we will encourage developers to explore these fully.”

3.47. The council therefore considers that Policy CSD5, as it relates to flood risk, remains relevant and justified.

Question 5

Are any main modifications to Policy CSD5 necessary for soundness?

3.48. As outlined above, the council considers that modifications could be made as follows:

- Policy CSD5 point b. could be modified to refer to BREEAM ‘Outstanding’ as an aspiration, with BREEAM ‘Very good’ standard as the requirement, as outlined above in paragraph 3.18;
- Policy CSD5 could be improved by modifying point c. to emphasise that sustainable drainage systems will be required by major developments

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unless the applicant can demonstrate that this would be inappropriate, as set out above in paragraph 3.31; and

- Policy CSD5, bullet point c. could be improved by a modification relating to surface water runoff to state that this should match greenfield discharge rates and volumes and for development on previously developed land that development should reduce discharge rates and volumes where feasible, as outlined above in paragraph 3.26.

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4. Overall

Question 6

What is the relationship with the Places and Policies Local Plan on the above issues (Policies CSD3, CSD4 and CSD5) and what role will it have in setting out a policy framework?

- 4.1. Policies CSD3, CSD4 and CSD5 are intended to provide a strategic framework beneath which more detailed policies in the Places and Policies Local Plan will fit.

Strategic policies

- 4.2. The National Planning Policy Framework states in paragraph 20 that strategic policies should:

“... set out an overall strategy for the pattern, scale and quality of development, and make sufficient provision for:

- a) housing (including affordable housing), employment, retail, leisure and other commercial development;*
- b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);*
- c) community facilities (such as health, education and cultural infrastructure); and*
- d) conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.”*

- 4.3. The NPPF adds in paragraph 21 that:

“These should be limited to those necessary to address the strategic priorities of the area (and any relevant cross-boundary issues), to provide a clear

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starting point for any non-strategic policies that are needed. Strategic policies should not extend to detailed matters that are more appropriately dealt with through neighbourhood plans or other non-strategic policies.”

- 4.4. The council considers that policies CSD3, CSD4 and CSD5 meet the description of strategic policies set out in the NPPF, particularly as they relate to issues of the quality of development, water supply, coastal management, conservation of the natural environment and climate change mitigation and adaptation.

Non-strategic policies

- 4.5. In relation to non-strategic policies, the NPPF states in paragraph 28 that these should:

“... be used by local planning authorities and communities to set out more detailed policies for specific areas, neighbourhoods or types of development. This can include allocating sites, the provision of infrastructure and community facilities at a local level, establishing design principles, conserving and enhancing the natural and historic environment and setting out other development management policies.”

- 4.6. The Places and Policies Local Plan (PPLP) sets out a number of non-strategic policies to supplement those in the Core Strategy Review.

- 4.7. The PPLP is nearing adoption, having been recently found ‘sound’ by the Inspector.²⁷

- 4.8. Core Strategy Review Policy CSD3 is supplemented by detailed PPLP policies, including:

- Policy E2: Existing Employment Sites;
- Policy E3: Tourism;

²⁷ Report on the Examination of the Folkestone and Hythe Places and Policies Local Plan, 26 June 2020, PINS/L2250/429/8.

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- Policy E5: Touring and Static Caravan, Chalet and Camping Sites;
- Policy E6: Farm Diversification;
- Policy E7: Reuse of Rural Buildings;
- Policy RL8: Development Outside Town, District and Local Centres;
- Policy C2: Safeguarding Community Facilities; and
- Policy NE3: Protecting the District's Landscape and Countryside.

4.9. Policy CSD4 is supplemented by detailed PPLP policies, including:

- Policy C3: Provision of Open Space;
- Policy C4: Children's Play Space;
- Policy NE1: Enhancing and Managing Access to the Natural Environment;
- Policy NE2: Biodiversity;
- Policy NE3: Protecting the District's Landscape and Countryside; and
- Policy HW4: Promoting Active Travel.

4.10. Policy CSD5 is similarly supplemented by a suite of detailed PPLP policies including:

- Policy NE8: Integrated Coastal Zone Management;
- Policy NE9: Development Around The Coast;
- Policy CC1: Reducing Carbon Emissions;
- Policy CC2: Sustainable Design and Construction; and
- Policy CC3: Sustainable Drainage Systems (SuDS).

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5. Policy SS5

Question 7

What are the key elements of infrastructure required across the District (not specifically covered in earlier Matters)?

- 5.1. The key elements of infrastructure required across the district are reported in the Infrastructure Delivery Plan documents prepared as part of the evidence base to the Core Strategy Review, and likewise for the Places and Policies Local Plan.
- 5.2. SS5 is a general policy designed to be applied to ensure that development should provide, contribute to or otherwise address the district's current and future infrastructure needs. The policy asserts that infrastructure that is necessary to support development must exist already, or a reliable mechanism must be available to ensure that it will be provided at the time it is needed. The associated role that the Community Infrastructure Levy (CIL) and Section 106 contributions is to play is clearly articulated.
- 5.3. The key elements of infrastructure required across the district not specifically covered in previous matters are appropriately captured within the Infrastructure Delivery Plans prepared in support of the Core Strategy Review and Places and Policies Local Plan, and the reader is signposted to these documents in this regard.
- 5.4. The district council is to prepare an Infrastructure Funding Statement (IFS) by the end of the 2020 calendar year that will profile Section 106 developer contributions, and provide coverage of those items of infrastructure that will be part-funded through use of CIL receipts. Preparation of the IFS will require close engagement with county council colleagues. As the IFS is to be reviewed and updated annually it provides another means of cross-checking the flow of developer contributions – both payments to the district council, and thereon the transfer of contributions to external service providers, such as the county council.

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Question 8

How will these be delivered and funded?

- 5.5. Developer contributions that were secured through the signing of the Section 106 legal agreement entered into by the landowners and district council will be paid to the district council in accordance with the details set out in schedule 2 of the Section 106 document, with supplementary information contained within subsequent schedules of the Section 106 document.
- 5.6. Where the district council is the responsible service provider, for example the play space contribution, when Section 106 money is available (i.e. is held on account by the district council following receipt of payment from the developer), and that money is required for the delivery of a specific project, the party seeking a transfer payment (e.g. the internal department at Folkestone & Hythe District Council responsible for managing play spaces) will be required to contact the Development Control Manager and clearly set out details of the project, its Section 106 justification, responsibilities for governance on spend and associated programming for delivery for Section 106 monies to be released.
- 5.7. Likewise, where the county council is the responsible service provider, for example in respect of libraries, education, social care, highways and transportation, when Section 106 money is available (i.e. is held on account by the district council following receipt of payment from the developer), and that money is required for a project, an officer (or officers) of the county council will be required to contact the Development Control Manager and clearly set out details of the project, its Section 106 justification, responsibilities for governance on spend and associated programming for delivery for Section 106 monies to be released.
- 5.8. This approval process necessitates that monies are spent in accordance with the specific legal agreements in a controlled project management environment.

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Question 9

Does Policy SS5 set out a clear and effective approach to infrastructure planning which is justified and consistent with national policy, including where the transfer of land is necessary?

5.9. As set out in corresponding supporting text to Policy SS5 (paragraphs 4.127 refers):

“Critical and necessary infrastructure needed to support the spatial strategy is set out in the Infrastructure Delivery Plan. All projects highlighted are important, however, critical infrastructure is outlined in order to assist with the delivery of the Core Strategy Review and to provide initial guidance for planning and investment decisions. Policy SS5 allows more detailed and financially specific provisions to be made through CIL, while addressing priority requirements flowing from the spatial strategy and strategic allocations.”

5.10. Policy SS5 articulates the appropriate, strategic level requirement that new development should deliver, or contribute towards the provision of, necessary supporting infrastructure.

5.11. 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).

5.12. The district council has adopted a discretionary payment-in-kind policy (the item presented in Cabinet (see Appendix 1: Cabinet Report – CIL Payment in Kind Policy, December 2017 (C/17/64)), in support of part or all payment of due Community Infrastructure Levy receipts owing, subject to specified conditions being met. A copy of the council’s payment-in-kind policy is appended to this

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statement (Appendix 2: CIL Payment in Kind Policy – Land, Buildings and Infrastructure).

- 5.13. A planning obligation cannot contain a positive obligation to transfer land as this would fall foul of Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. However, the effect of requiring a transfer of land can be achieved by way of a restriction pursuant to Section 106(1) (a).
- 5.14. The council considers Policy SS5 sets out a clear and effective approach to infrastructure planning which is justified and consistent with national policy, and corresponding provisions within associated regulations, namely the CIL Regulations 2010 (as amended) or otherwise Section 106 of the Town and Country Planning Act 1990, allow for the transfer of land, as/where required.
- 5.15. For the purpose of clarity, should the Inspectors be minded to recommend the incorporation of a form of words to cite the transfer of land to deliver necessary infrastructure, where required, the wording of Policy SS5 and/or its supporting text could be modified, in discussion with key infrastructure providers.

Question 10

Are any main modifications to Policy SS5 necessary for soundness?

- 5.16. The district council considers Policy SS5 to be effective and no modifications are considered necessary in order to find this policy sound. However, as set out within the response to Question 9 above, a minor modification could be inserted to provide coverage of the transfer of land, should the Inspectors feel this is required for Policy SS5 to be found sound.
- 5.17. The Statement of Common Ground between Highways England and Folkestone & Hythe District Council (EB 13.90) puts forward a suggested modification to Policy SS5 that would introduce an additional objective to state:

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“To consider and manage the travel demand of new development proposals, and develop tailored solutions to limit car use generated by new developments.”

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**Appendix 1: Cabinet Report – CIL Payment in Kind Policy,
December 2017 (C/17/64)**

This Report will be made public on 6 December 2017.

Folkestone

Hythe & Romney Marsh
Shepway District Council



Report Number **C/17/64**

To: Cabinet
Date: December 2017
Status: Non-key Decision
Head of service: Ben Geering - Strategic Development
Cabinet Member: Councillor John Collier, portfolio holder for the District Economy

SUBJECT: Community Infrastructure Levy (CIL) Annual Monitoring Report 2016/17 and minor amendments to Payment in Kind Policy

SUMMARY: The Council adopted a Community Infrastructure Levy (CIL) in August 2016, herein referred to as 'the levy'. This report provides a copy of the draft CIL Monitoring Report for 2016/17. In addition, minor changes are proposed to the CIL Payment in Kind Policy in order to clarify that the delivery of appropriate infrastructure can satisfy a charge arising from the levy.

REASONS FOR RECOMMENDATIONS:

Cabinet is asked to approve the recommendations set out below in order to enable CIL monitoring reporting to take place in accordance with legislative requirements, and to enable appropriate infrastructure via the Payment in Kind mechanism to be applied, where appropriate.

RECOMMENDATIONS:

1. To receive and note report C/17/64.
2. That the CIL Monitoring Report is agreed by Cabinet and subsequently added to the Council's website in accordance with legislative requirements.
3. That an amendment to the Payment in Kind policy is agreed by Cabinet, so as to clarify that the delivery of appropriate infrastructure to satisfy a charge arising from the levy can be met via a Payment in Kind when appropriate to do so.

1. OVERVIEW

1. CIL Monitoring Report 2016/17

1.1 The introduction of a CIL in August 2016 necessitates the development of new governance arrangements for spending the money to be collected. There are a number of reasons for this. Under CIL, SDC acts as a designated charging authority, conferring responsibility on to the Council to:

- Prepare and publish the CIL Charging Schedule (published August 2016),
- Apply the levy revenue it receives to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support development of its area (infrastructure requirements are set out in the Infrastructure Delivery Plan), and
- Report to the local community on the amount of levy revenue collected, spent and retained each year.

1.2 The Council must be committed to ensuring the use of CIL is open and transparent and as such needs to publish an annual report, which also includes details provided by Town and Parish Councils, setting out how much CIL money has been received and the infrastructure to which this has been applied (Reg 62).

1.3 The report should inform the Authority Monitoring Report however be a separate entity that is reported to CMT, Cabinet and the Planning and Licensing Committee for information purposes. The report must be published on the Council's website before the end of December following each financial year.

1.4 It is proposed that the draft report, attached as Appendix 1 is reported to and agreed by Cabinet before being published on the Council's website.

2. Suggestions amendments to the adopted CIL 'Payment in Kind' mechanism and further information

2.1 In adopting a CIL, the Council adopted a Payment in Kind Policy. Whilst this policy specifically mentions both Payments in Kind via the provision of land and the provision of infrastructure to comply with the CIL Regulations, the wording of the policy only specifically refers to the transfer of land within key sections and, therefore, the policy is ambiguous as currently worded.

2.2 An updated (draft) Payment in Kind policy is attached as Appendix 2 to this report. It is recommended that this updated policy replace the currently adopted wording, and that following Cabinet approval the Council's website is updated accordingly.

3. Implications

3.1 Please give consideration to the following and provide information here (if relevant):

Legal (DK) – There are no legal implications arising directly out of this report. Regulation 62 of the Community Infrastructure Levy Regulations 2010 (as amended) requires the charging authority to prepare a report for any financial year in which a) it collects CIL, or CIL is collected on its behalf; or b) an amount of CIL collected by it or by another person on its behalf has not been spent. In addition under regulation 73 of the CIL Regulations a charging authority may accept one or more land payments in satisfaction of the whole or part of the CIL due in respect of a chargeable development.

Finance (AK) – This report refers to a change in policy and as such there are no direct financial implications.

4. Contact officers and background documents

- 4.1 Councillors with any questions arising out of this report should contact the following officers prior to the meeting:-

James Hammond, Strategic Policy Officer
Telephone: 01303 853435
Email: James.Hammond@folkestone-hythe.gov.uk

Ben Geering, Head of Planning
Telephone: 01303 853457
Email: Ben.Geering@folkestone-hythe.gov.uk

APPENDICES

Appendix 1 – Community Infrastructure Levy (CIL) Monitoring report for the reported year 2016/17

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

[James Hammond]
[Strategic Policy Officer]

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**Appendix 2: CIL Payment in Kind Policy – Land, Buildings
and Infrastructure**

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.