

Community Infrastructure Levy (CIL) Frequently Asked Questions (FAQ's) Rother District Council

Introduction

Rother District Council is expected to introduce a Community Infrastructure Levy (CIL) Charging Schedule in 2016. However parallel to this work, is the requirement to establish a suite of protocols concerning CIL governance.

What is CIL?

The Community Infrastructure Levy is a new planning charge, introduced by the Government through the Planning Act 2008 to provide a fair and transparent means for ensuring that development contributes to the cost of the infrastructure it will rely upon, such as schools, open space, community facilities and roads. In Rother the levy applies to residential and retail development. Charges are stipulated in the adopted Charging Schedule.

Do Councils have to implement CIL?

No. Local authorities in England and Wales are empowered, but not required to introduce in their areas. It will be for individual authorities to decide. As from April 2015 'pooling' limitations restrict the use of Section 106. This means in the future Rother could lose out on contributions towards the provision of infrastructure. CIL is intended to be the mechanism to assist in the delivery of infrastructure. CIL is expected to raise more funds than S106 has done or will do. It is likely that many charging authorities will choose to implement CIL especially given the constraints on the use of S106 planning obligations.

What is infrastructure?

Infrastructure which can be funded by the levy includes schools, transport, flood defences, hospitals, community facilities and other health and social care facilities. This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and cultural and sports facilities and gives communities flexibility to choose what infrastructure they need.

The Levy can also be spent on 'the provision, improvement, replacement, operation or maintenance of infrastructure'.

What are the benefits of the CIL?

The Government has decided that a tariff-based approach provides the best framework to fund new infrastructure. CIL is considered to be fairer, faster and more certain and transparent than the current system of planning obligations (S106 Agreements) which are generally negotiated on a 'case-by case' basis (as the latter are rarely adequately taken into account when establishing land value). Levy rates will be set primarily through Viability assessments and in consultation with local communities and developers and will provide much more certainty 'up front' about how much money developers will be expected to contribute.

Why should development pay for infrastructure?

Almost all development has some impact on the need for infrastructure, services and amenities so it is only fair that such development pays a share of the cost. CIL is generally non-negotiable with only certain exceptions excluded from payment.

Statistics show that under the system of planning obligations only six per cent of all planning permissions nationally (usually the largest schemes) brought any contribution to the cost of supporting infrastructure. Through CIL, all but the smallest building projects will make a contribution towards additional infrastructure that is needed as a result of development. CIL captures all.

Will CIL drive up house prices?

A common misconception is that CIL will drive up local house prices. While development economics can be complicated, the prices of new houses are usually set with regard to comparable existing properties and subject to market forces. CIL will either reduce the profits of developers or, more likely in the longer term, the price that they pay for the land. To all intents and purposes, CIL is a development land tax, giving local communities some of the uplift in land values as a consequence of permission to build.

Is it the same as s106 developer contributions?

Government regulations mean that the scope for pooled s106 contributions is being more tightly focused on infrastructure which is more closely linked to development, but planning obligations will continue to play an important role in helping to make individual developments acceptable. However, reforms have been introduced to restrict the use of planning **obligations** (S106).

The CIL levy is intended to provide infrastructure to support the development of an area rather than to make individual planning applications acceptable in planning terms. As a result, there may still be some site specific impact mitigation requirements without which a development should not be granted planning permission (e.g. affordable housing, local highway and junction improvements and landscaping). Therefore, there is still a legitimate role for development planning obligations to enable a local planning authority to be confident that the specific consequences of development can be mitigated.

How does a charging authority set a rate for their levy?

Charging authorities must produce a document called a Charging Schedule which sets out the rate for their levy. This is a new type of document within the folder of documents making up the Council's Local Plan but will not be part of the statutory development plan.

The levy is intended to encourage development by creating a balance between collecting revenue to fund infrastructure and ensuring that the rates are not so high that they put development at serious risk. The Council draws on the infrastructure planning that underpins the development strategy for the area to help identify the total infrastructure funding gap.

Rates set should be supported by evidence, such as the economic viability of new development and the area's infrastructure needs. One standard rate can be set or, if

justified, specific rates for different areas and types of development can be established. The ability to set differential rates gives charging authorities more flexibility to deal with the varying circumstances.

Consultation with the local community must be undertaken on the draft Schedule and the proposed levy rates. A public examination by an independent person is then required before the charging authority can formally approve it.

What development is liable for CIL?

Development will be liable for CIL if it:

- Involves new build of at least 100m² gross internal area (GIA) floorspace; or
- Involves the creation of one or more dwellings.

This includes development permitted by a 'general consent' (including permitted development). The levy charge becomes due when development commences and the CIL regulations assume as a default payment within 60 days of commencement if there is no Instalment Policy in place.

Development may not be liable for CIL if it:

- development of less than 100 square metres (see [Regulation 42 on Minor Development Exemptions](#)) - unless this is a new dwelling, in which case the levy is payable
- houses, flats, residential annexes and residential extensions which are built by 'self builders' ([see Regulations 42A, 42B, 54A and 54B, inserted by the 2014 Regulations](#))
- affordable housing that meets the relief criteria set out in [Regulation 49](#) or [49A](#) (as amended by the 2014 Regulations)
- charitable development that meets the relief criteria set out in [Regulations 43 to 48](#)
- buildings into which people do not normally go ([see Regulation 6\(2\)](#))
- buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery ([see Regulation 6\(2\)](#))
- structures which are not buildings, such as pylons and wind turbines
- specified types of development which local authorities have decided should be subject to a 'zero' rate and specified as such in their charging schedules
- vacant buildings brought back into the [same use](#) ([see Regulation 40 as amended by the 2014 Regulations](#))
- If the development only involves the subdivision or installation of a mezzanine floor (measuring less than 200 square metres) within a building which has been occupied in its lawful use for at least six continuous months of the previous three years

In accordance with the Regulations the following developments may also receive relief from CIL:

- Charitable development
- Social housing development
- Self-build development
- Self-build residential annex or extension; and

- Starter Homes on underused and unviable commercial/industrial sites.

What if existing buildings are being demolished or converted?

The gross floorspace of any existing buildings on the site that are going to be demolished or reused may be deducted from the calculation of the CIL liability. However, deductions are only applied where those buildings have been in lawful use for a continuous period of at least six months within the period of 12 months ending on the day planning permission first permits the chargeable development. In this context, “in use” means that at least part of the building has been in use.

The “day planning permission first permits development” is defined in the CIL Regulations as the date at which development may commence. If there are pre-commencement conditions attached to the planning permission, this date is the date at which the final pre-commencement condition is discharged. If there are no such conditions, then the date is the date of the planning permission.

Will a development be liable to pay CIL if planning permission is granted before a CIL Implementation date (4th April 2016) is adopted?

No. There is no CIL liability for a planning permission if that planning permission was granted before the 4th April 2016. The relevant date is the date of the issuing of the planning permission decision notice.

My development is for new build floorspace of over 100 sqm e.g. a large domestic extension; it isn't eligible for relief and isn't zero rated but it is permitted development so does not need planning permission. Will I be liable to pay CIL?

Development commenced under 'general consent' maybe liable to pay CIL. 'General consent' includes permitted development rights granted under the General Permitted Development Order 1995, and developments permitted through a Local Development Order. If you intend to develop under general consent you must submit a Form 5 'Notice of Chargeable Development' to the Council before development commences. CIL is not chargeable if your development is less than 100 sqm of new floorspace and it does not comprise one or more new dwellings. If a development of 101 sqm is liable taking account of existing floorspace, reliefs etc then CIL will be charged on the whole floorspace rather than just that part above 100sqm.

How much CIL will I pay?

The charging schedule was approved by an independent inspector last autumn and would involve a charge for both residential and retail development. Please refer to the charging schedule below.

Charging Schedule

The Council has set the CIL charging rate for certain types of development at £0 per sqm in order for them to remain financially viable. There is clear evidence of higher house prices in certain parts of the district and a viability report commissioned by the Council showed that certain areas could accommodate a higher residential CIL rate without adversely affecting the overall viability of development. This pattern was not clearly found for other uses that are being charged. Consequently, the Council has robust evidence to introduce a differential CIL Charging Rates for residential and retail development.

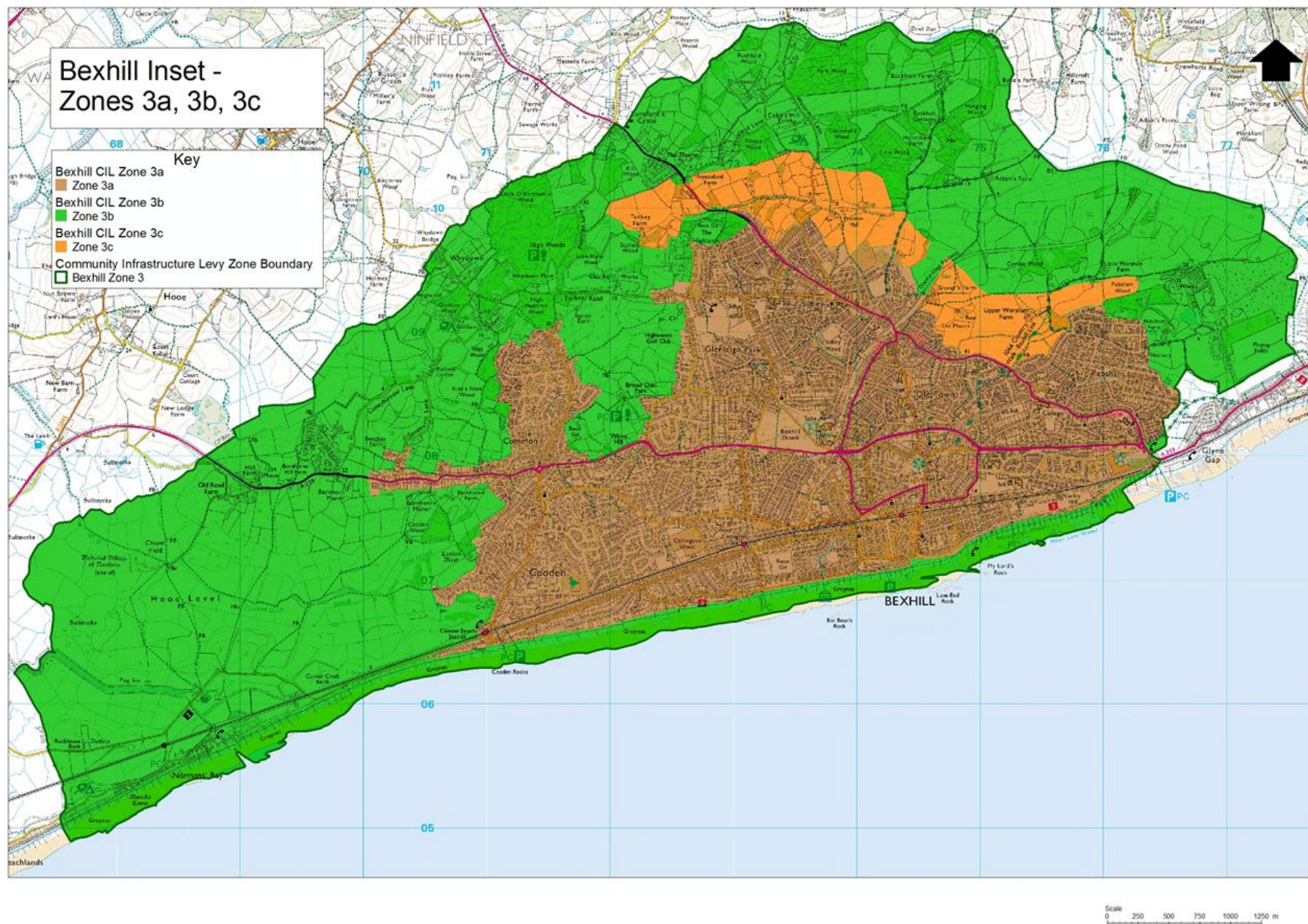
CIL Charging Zones – Residential and Retail

Residential Development (see the CIL Residential Charging Zones Map)	CIL Rate (£ per sq.m)
Zone 1	
Battle, Rural North and West	£200
Sheltered/Retirement Homes (C3)	£140
Zone 2	
Rye, Hastings Fringes and Rural East	£135
Zone 3	
a) Bexhill - Urban	£50
b) Bexhill - Rural	£170
c) Bexhill – Strategic urban extensions	£75
Extra Care Housing (throughout District)	£25
Non-Residential Development (see Inset Maps for in centre areas)	
Retail – in centre convenience	£100
Retail – out of centre convenience	£120
Retail – out of centre comparison	£250
All other forms of Development	£0

CIL Residential Charging Zones Map

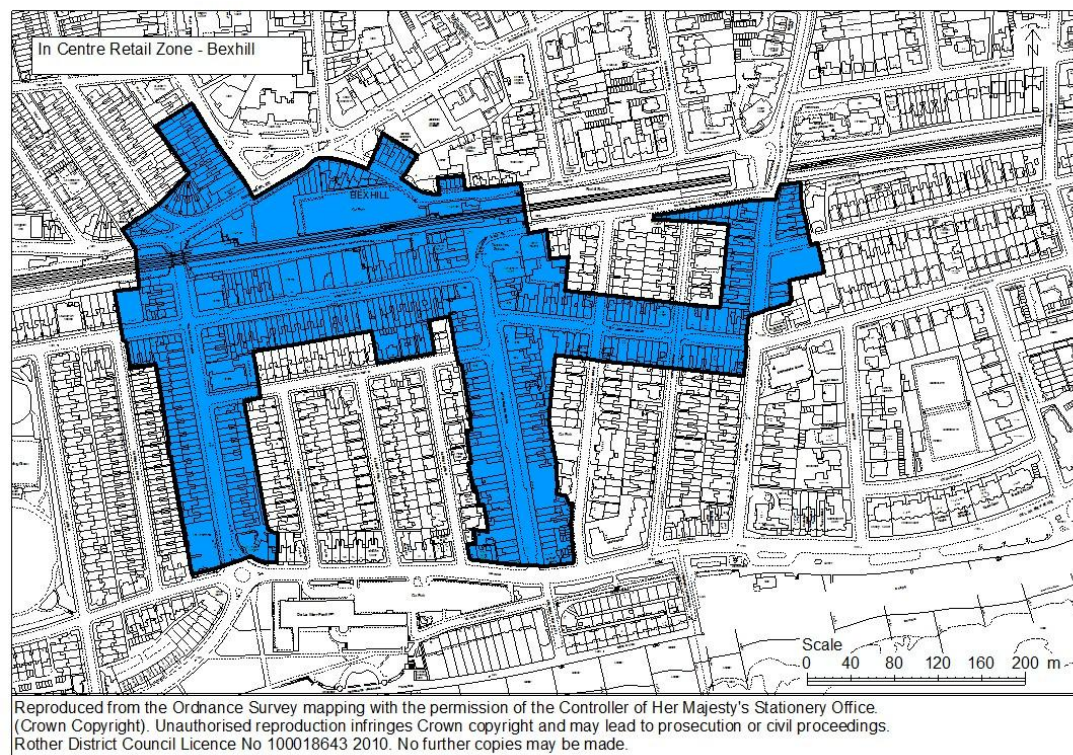


CIL Residential Charging Zones Map - Inset



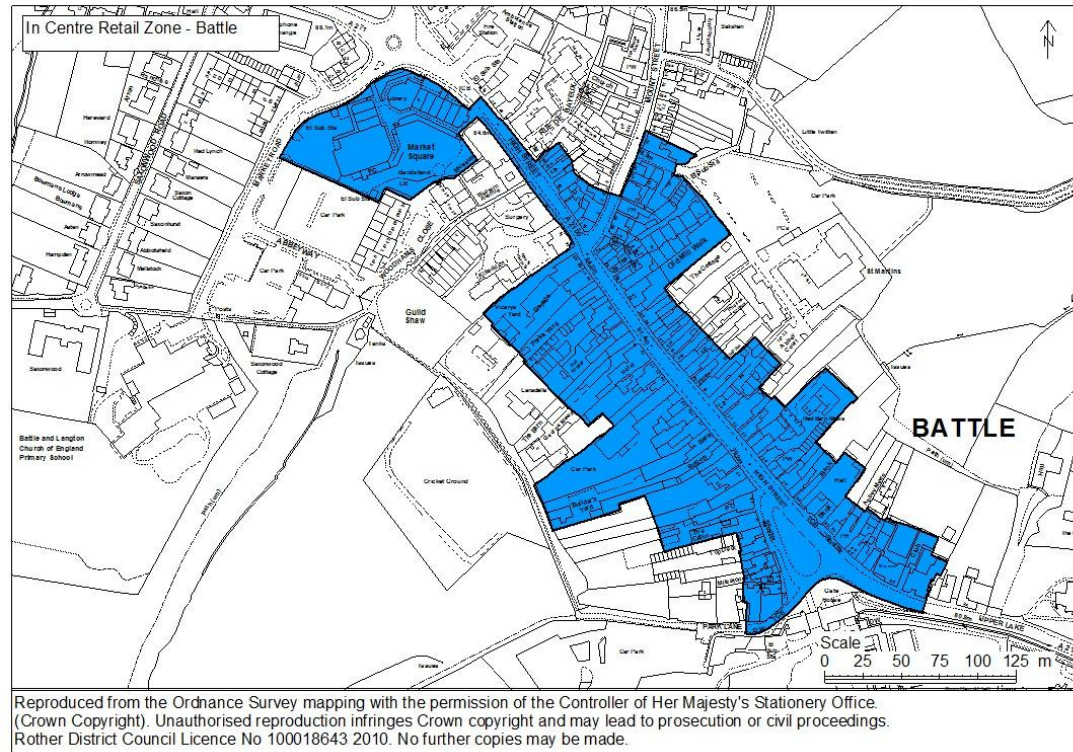
CIL Charging Zones Map: Retail

Bexhill



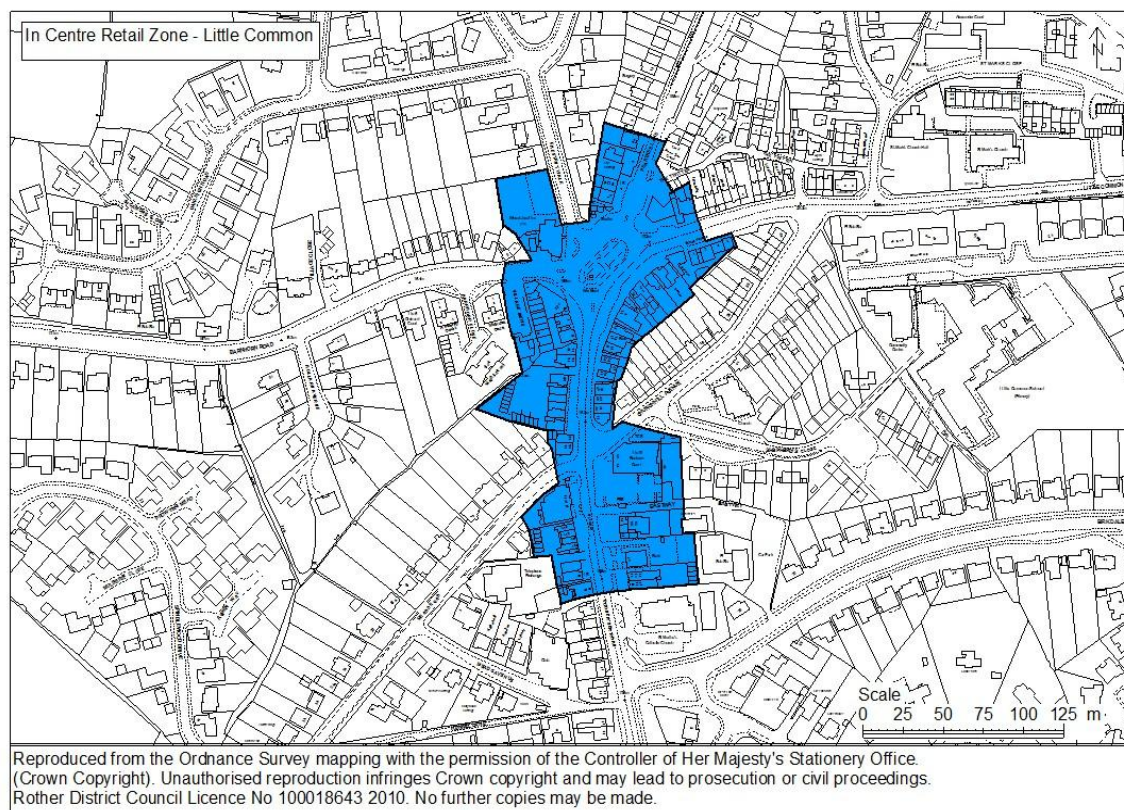
CIL Charging Zones Map: Retail

Battle

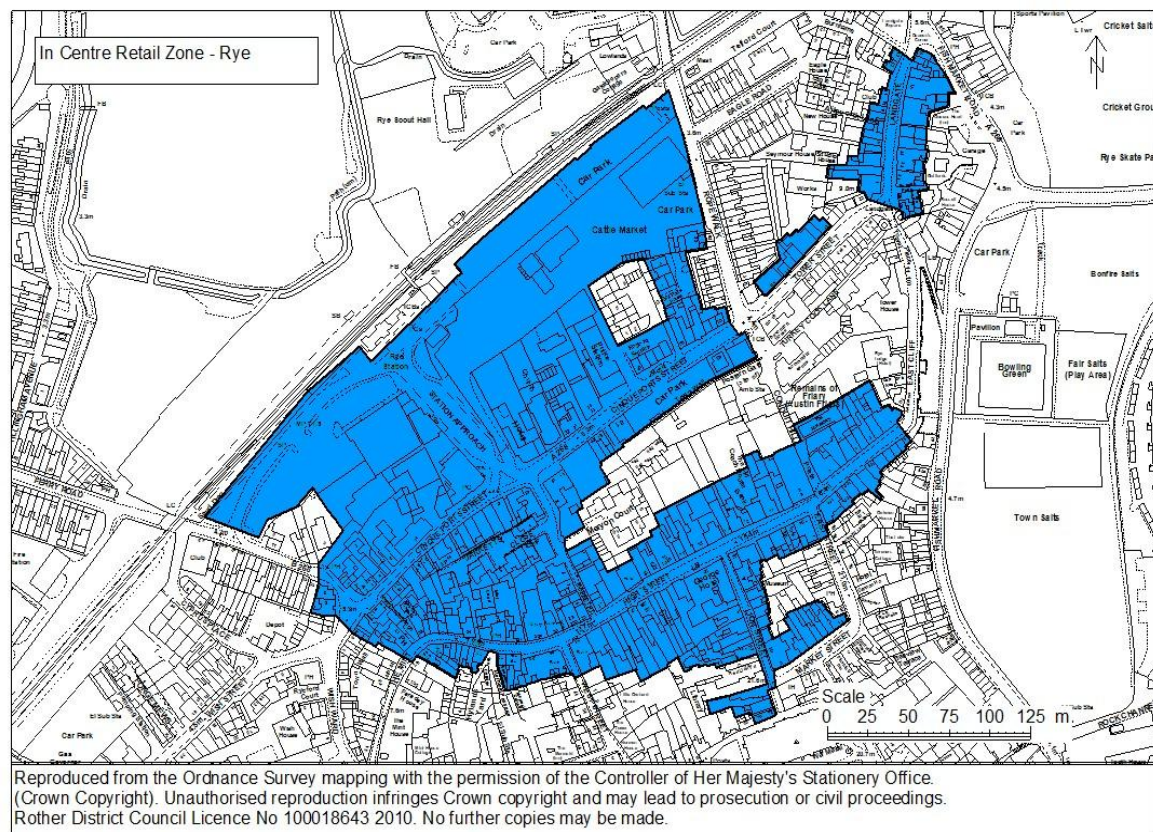


CIL Charging Zones Map: Retail

Little Common, Bexhill

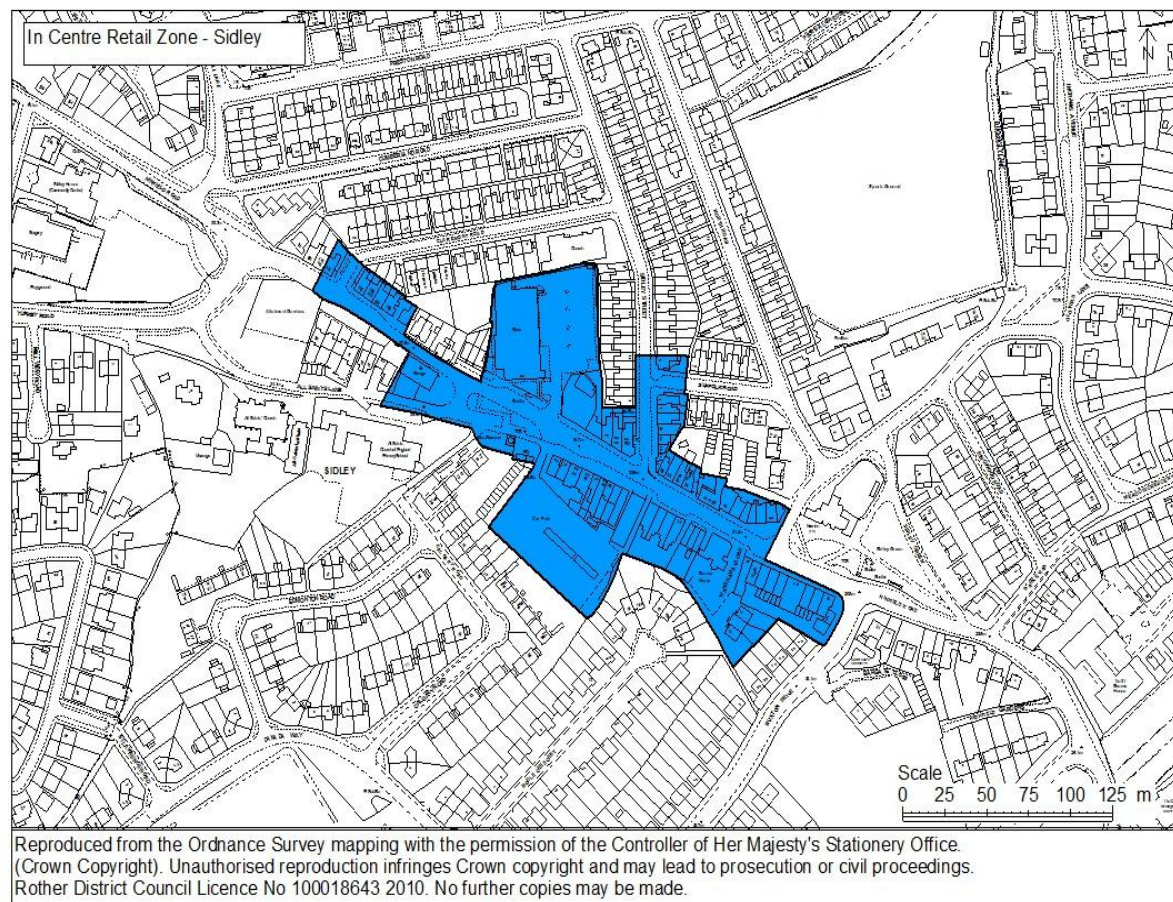


Rye



CIL Charging Zones Map: Retail

Sidley, Bexhill



Can CIL be paid in instalments?

Yes, CIL can be paid in instalments. This is considered to be best practice as it is not expected for developers to pay full liability upon commencement of development. This is unrealistic and would be a significant burden on developer's cash flow. Many schemes would be left unviable. The Council's **CIL Instalment Policy will come into effect on the 4 April 2016.**

Amount of CIL Liability	Number of Instalments	Payment Periods and Amounts
Any amount less than £50,000	1	<ul style="list-style-type: none">100% payable within 60 days of commencement
Amounts from £50,000 to £300,000	2	<ul style="list-style-type: none">50% payable within 120 days of commencementA further 50% payable within 360 days of Commencement (or upon completion of development if earlier).
Amounts over £300,000	3	<ul style="list-style-type: none">30% payable within 60 days;A further 35% payable within 420 days, andThe final 35% payable within 660 days (or upon completion of development if earlier).

How will payment of the levy be enforced?

The levy's charges are intended to be easily understood and easy to comply with. Most of those liable to pay the levy are expected to pay their liabilities without problem or delay. However, where there are problems in collecting the levy charging authorities will have the means to penalise late payment. In cases of persistent noncompliance the regulations also enable collecting authorities to consider more direct action such as the issuing of a CIL Stop Notice or applying to the courts for seizure of assets to pay the outstanding monies or for custodial sentences.

How will the levy be spent?

Charging authorities are required to spend the levy's revenue on what they see as the infrastructure needed to support the development of their area. The assessment of 'need' will largely be informed by the Infrastructure Delivery Plans (IDPs) published by each authority alongside their Local Plans. What the Council spends on its CIL receipts on is outlined on its R123 List. The levy is intended to focus on the provision of new or improved infrastructure and should not be used to remedy pre-existing deficiencies unless those deficiencies will be made more severe by new development.

How will local communities benefit from CIL?

Charging authorities must allocate a 'meaningful proportion' of levy revenues raised in each neighbourhood back to that neighbourhood. This amounts to 15% of CIL receipts generated in an area taking on development goes back to the local community but increases to 25% if there is a Neighbourhood Plan in place. The money should go to the appropriate body usually a Parish council or a Town Council. This will ensure that where a neighbourhood experiences a new development, it receives sufficient money to help it manage the resulting impacts on the locality.

Is there a mechanism for the CIL to be spent outside of the charging authority?

Charging authorities may pass money to bodies outside their area to deliver infrastructure which will benefit the development of their area, such as the Environment Agency for flood defence or, in two tier areas such as East Sussex, the County Council, for education and transport infrastructure. Charging authorities will also be able to collaborate and pool their revenue from their respective levies to support the delivery of 'sub-regional infrastructure' and would be part of the Duty to Cooperate obligation.