

REPORT TO THE ECONOMIC DEVELOPMENT AND ENTERPRISE SCRUTINY COMMITTEE

Wednesday 19 December 2012

Purpose of Report

To provide a briefing note on the Community Infrastructure Levy (CIL) and to update Members on the findings and recommendations of the Community Infrastructure Levy (CIL) Viability Study prior to submitting reports to Planning Committee 22 January, 2013 and Cabinet 6 February, 2012.

Introduction to CIL

In July 2011 Cabinet agreed to the Council taking the necessary steps to become a 'charging authority' under the Community Infrastructure Levy Regulations, 2011.

The Community Infrastructure Levy (CIL) is a charge which local authorities in England and Wales can apply to various forms of new development in their area based on the size, type and location of the development proposed. It is designed to be a predictable charge, levied on all development, which will not (except in exceptional circumstances) be subject to negotiation.

The CIL Regulations and Guidance have given local authorities flexibility in their approach to setting CIL. The Levy can be a fixed rate for development across the entire area, or can be set at a variable rate, e.g. different levy rates between the rural and urban areas where there is evidence of different levels of economic viability.

The money raised is intended to contribute to the infrastructure required to support new development as part of the Authority's development strategy. Relevant infrastructure might include:-

- Highways and Transport Improvements;
- Educational Facilities;
- Health Centres;
- Community Facilities & Libraries;
- Sports Facilities;
- Flood Defences; and
- Green Infrastructure

This is not a comprehensive list and it should be noted that there will not necessarily be sufficient funding from CIL to finance all infrastructure identified. Furthermore the infrastructure identified as being funded by CIL can be updated on an annual basis.

The levy cannot be used to remedy pre-existing deficiencies in infrastructure provision except where such deficiencies are aggravated by new development. The intention is to mitigate against the cumulative impacts of development rather than addressing the site specific impacts of a development.

Authorities wishing to charge CIL are required to produce a CIL charging schedule to set out the rates that will be applied to new development. This must be based on evidence of both the need for infrastructure and the impact of CIL on the economic viability of development.

Relationship between CIL and Section 106 Agreements

All new dwellings will be subject to CIL and any other development over 100 sq metres gross internal floor area (subject to some minor exceptions). Smaller developments (for example one new dwelling) which currently do not make developer contributions towards, open Space or education could therefore make a financial contribution under CIL. This is seen as a more equitable system than the current system of

negotiating developer contributions through section 106 agreements and ensures that smaller scale development makes a financial contribution to new infrastructure.

Once the Levy is in place it will still be possible to seek Section 106 contributions, if the three statutory tests, as set in Section 122 of the 2010 CIL Regulations, are met:

(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:

- (a) necessary to make the development acceptable in planning terms;*
- (b) directly related to the development; and*
- (c) fairly and reasonably related in scale and kind to the development.*

New affordable housing will continue to be delivered through Section 106 agreements negotiated on a site by site basis and there is no limit on the pooling of Section 106 contributions for affordable housing. However, from 6 April 2014, it will not be possible to pool more than 5 section 106 contributions to fund infrastructure; CIL is intended to be the main vehicle for the future collection of pooled infrastructure contributions.

For clarity over which infrastructure is funded by CIL and Section 106 contributions it will be necessary to publish on an annual basis a list of infrastructure items, or types of infrastructure, to be funded from CIL (Regulation 123). If this list is not published, all infrastructure is deemed to be funded by CIL, which would further restrict the scope of seeking developer contributions through section 106 agreements.

Implementation of CIL

A standard charge (set out in the charging schedule) will be placed on a site once planning permission has been granted or where planning permission was not required, when the development has been identified and this charge would normally need to be paid on commencement of the scheme.

The Borough Council will be required to publish an annual report on how much monies they have received from the levy in the preceding financial year, how much was unspent, how much was spent on administration (maximum of 5%) and provide a summary of what infrastructure the levy funded.

Introduction to the CIL Viability Study

The Borough Council and Stoke-on-Trent City Council have commissioned consultants to undertake a Community Infrastructure Levy Joint Viability Study with a view to preparing a Preliminary Draft Charging Schedule for consultation purposes. A draft report has been produced which provides an assessment of the viability of the principal categories of development in Newcastle under Lyme and Stoke on Trent and the financial contribution each type of development can make to new infrastructure through a Community Infrastructure Levy (CIL).

In basic terms the report assesses the costs and value of development and having made an allowance for a reasonable developers profit return, determines whether any additional margin is available for CIL contributions.

Land value benchmarks have been used to test the viability of various land uses on greenfield, brownfield and recycled land (i.e. development which emerges from regenerated land in the same use). The methodology does not include testing specific sites.

The housing viability was calculated on the assumption that developments provided the full affordable housing provision as set out in the Affordable Housing Supplementary Planning Document.

The report assumes that a funding gap will be found between the funding required to deliver the infrastructure which is needed to support the growth planned for in the adopted Core Strategy (as identified in the Infrastructure Delivery Plan¹) and the funding available to pay for that infrastructure.

Key Findings

Residential development

Following a comprehensive assessment of market values, the borough was split into four Charging Zones based on Ward boundaries so that different CIL rates could be charged for housing development in different parts of the Borough. A map showing these zones can be found at Appendix 1. Equal zones are used across Newcastle and Stoke, although no area of Stoke is covered by the highest value zone (zone 4).

The difference between the Affordable Housing Tenure requirements in Newcastle and Stoke resulted in slightly different levels of viability in each Authority. In Stoke where a higher proportion of Intermediate and Affordable Rent Housing is required viability was marginally better than in the equivalent zone in Newcastle. Nevertheless the viability report sets consistent CIL rates across both administrative areas.

In the very low value zone (zone 1), all residential development was shown to be unviable with no margin for CIL. In current market circumstances the development of apartments is not generally viable in either Authority other than in the highest value zone in Newcastle.

Commercial development

Commercial development covers a range of uses as set out below²:

- Food Retail (supermarket)
- General Retail (Use Classes A1, A2, A3, A4, A5)
- Industrial (Use Class B1, B, B1c, B2, B8)
- Hotels (Use Class C1)
- Institutional and Community (Use Class D1)
- Offices (Use Class B1a)
- Residential Institutions (Use Class C2)
- Leisure (Use Class D2)
- Agricultural
- Sui Generis (using a sample based on Stoke on Trent City Council & Newcastle under Lyme Borough Council recent planning histories)

The assessment of commercial land and property values indicated that one zone should cover the whole of Newcastle and Stoke for commercial development.

The viability appraisals illustrated that most forms of commercial development are not viable in current market circumstances in Newcastle or Stoke and this is reflected in the lack of activity in these sectors.

Food supermarket retail and general retail were the only types of commercial development assessed to be viable and capable of accommodating CIL across the study area. Retail development illustrated high viability with rates ranging from £262-£731 per sq m dependent on existing land use. However it should be noted that this range is based on a limited number of transactions due to the lack of activity in the sector and as specific retail projects emerge it is likely that landowners will expect significant premiums in order to

¹ The Infrastructure Delivery Plan (IDP) is currently being updated in partnership with stakeholders at Staffordshire County Council.

² A copy of the Use Class Order which provides further details about the Use Class codes listed can be found at appendix 2

release sites; this will reduce viability levels significantly and should be taken into consideration when setting the CIL rate.

The adoption of a separate CIL rate category for supermarkets is not recommended in the report; the differential between supermarket (food retail) and non food retail is being increasingly scrutinised in recent CIL examinations. Although in most cases supermarkets command higher values both in terms of land price and rate per square metre than other retail uses, a case can be made to counter this position. This is commonly done by analysing 'best case' non food retail floorspace values and contrasting with lower quality food retail floorspace values. It can therefore not be guaranteed that in each and every instance food retail floorspace always command higher values than non food retail floorspace.

For these reasons it has been recommended that a single retail rate to cover Use Classes A1-A5 is used to present an entirely robust position at CIL Examination. However this rate should allow for Section 106 contributions to be made for food retail development if required.

It should also be noted that for the same reasons it is not possible to create a disincentive to out-of-town retailing by charging a higher CIL rate than town centre development, although Section 106 contributions could still be requested.

Draft CIL Rates

The viability results show maximum potential CIL rates which could be applied without threatening the economic viability of development. However the appraisals are generic tests which do not make allowance for site specific abnormal costs or other planning obligation contributions. It is therefore recommended that CIL rates are set at a rate towards the lower end of the identified viability margins to take account of these unknown factors. The recommended rates covering both authorities have been set accordingly and are outlined in tables 1 and 2:

Residential Rates C3	
1. Very Low	£0sqm
2. Low	£20sqm
3. Medium	£50sqm
4. High	£80sqm

Table 1

Retail Rates (A1-A5)	
Districtwide	£100sqm

Table 2

Projected CIL Revenue

At this time there are no CIL revenue projections. In order to calculate the projected revenue we require the amount of floorspace and location of proposed development; it is not currently clear exactly which sites will be put forward to accommodate the Borough's future development. However once we have agreed a list of sites for the preferred options stage of the Site Allocations and Policies Local Plan we will be able to calculate a rough CIL revenue projection estimate based on those sites and the floorspace of, for example, an average size house.

Sites that are developed using planning permission granted prior to the adoption of the CIL Charging Schedule (which sets out the CIL rates) are not liable to pay CIL. However following the adoption of the Charging Schedule, CIL will be payable on small 'windfall' developments which are currently not subject to planning obligations including individual new dwellings, some changes of use and large house extensions.

For example the levy for a single dwelling with a floor area of 100 square metres would be £2000 in zone 2, £5000 in zone 3 and £8000 in zone 4. Currently a single dwelling does not make any developer contributions

The report does not make recommendations on how any revenue is spent or on how the CIL will be administered; we will need to determine that ourselves.

Example of CIL revenue compared to Section 106 contributions

Most recent residential applications have either not made the full affordable housing contribution, made no Section 106 contributions or are located in a zone which has been recommended to have a zero CIL rate due to viability issues.

At the time of writing the recent application (ref. 12/00512/FUL) at Thistleberry House, Keele Road for the erection of 37 dwellings is pending approval subject to the agreement of the Section 106 agreement. However this example has been used as the full Affordable Housing contribution is being provided and it is therefore possible to make a direct comparison between the Section 106 contributions being made and the CIL revenue that would be charged based on the recommended CIL rates.

Section 106 Contributions:

- 9 dwellings as affordable housing
- A financial contribution of £26,224 towards the Newcastle (urban) Transport and Development Strategy (NTADS).
- A financial contribution of £108,891 towards public open space improvement.
- A financial contribution of £88,248 towards the provision of education facilities.

Total Section 106 contribution = £223,363

CIL payable on non-affordable units for equivalent scheme (at £50 sq m in zone 3) including garages = £142,445

In this case the amount of revenue from CIL would be less than the equivalent payments from Section 106 contributions. However, it is important to note that CIL is payable on small-scale developments which currently do not make any contributions. Furthermore the CIL charges have been calculated so that they will be viable in all cases including when affordable housing is provided; CIL payments will only be negotiated in very rare circumstances.

With large retail developments such as the proposed Marks and Spencer store at Wolstanton there are often site specific issues which need to be resolved through a Section 106 agreement.

It is considered that the only Section 106 Contribution agreed that would be covered by CIL is the contribution of £94,331 towards the Newcastle (urban) Transport and Development Strategy (NTADS). The other Section 106 payments are site specific, necessary to make the development acceptable and would not have been listed on the Regulation 123 list (see page 2) so could not be funded through CIL.

If the recommended CIL rate for retail development of £100 per sq m had been in place the CIL charge for Marks and Spencer, Wolstanton would have been:

£1,128,200 (for each additional sq m of retail floorspace over the existing retail floorspace)

Clearly this would represent a very large CIL payment, although the Section 106 payments offered are likely to have been less lower if we were looking to charge £1,128,200 in CIL.

Public Consultation

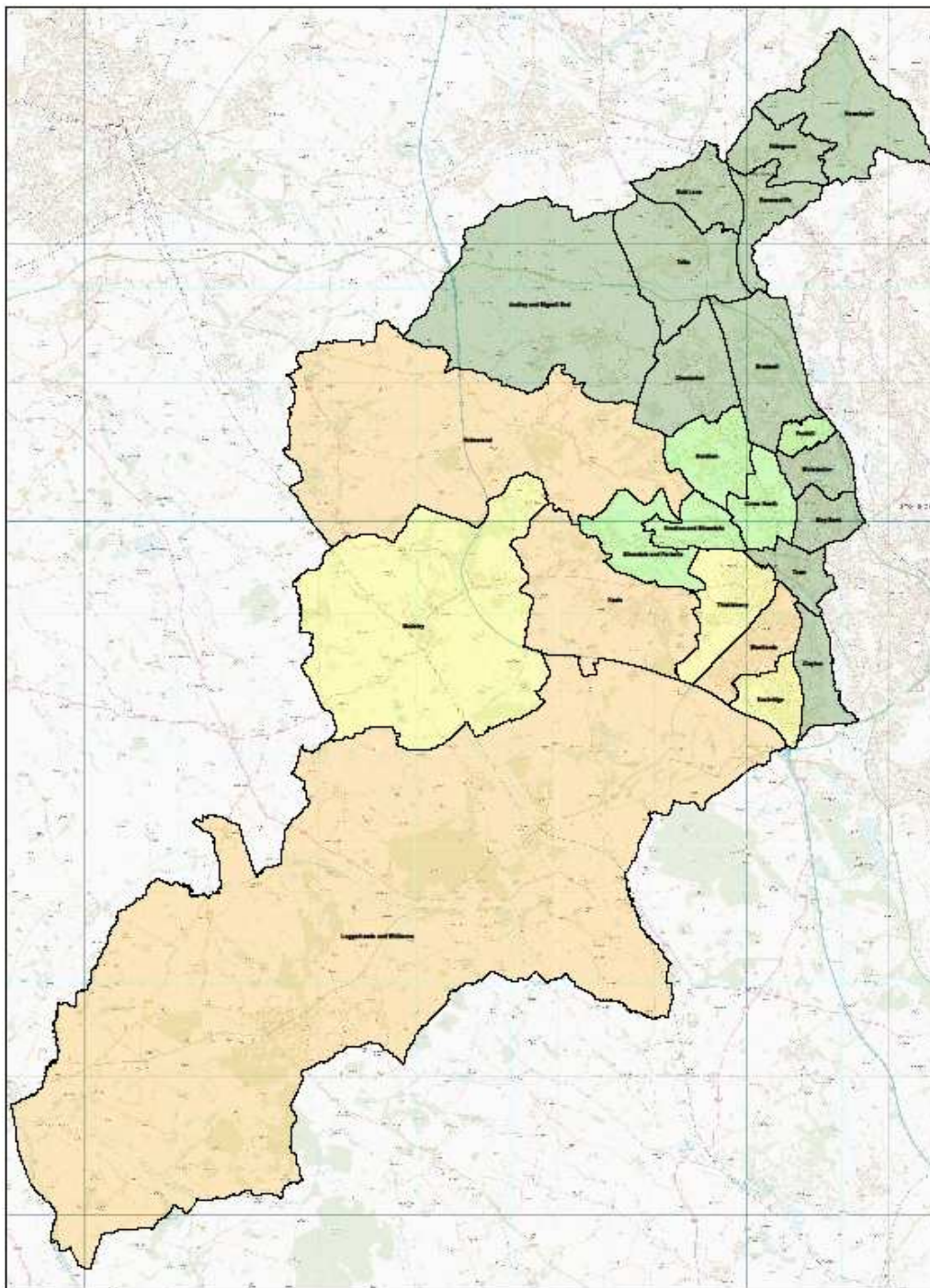
Once the draft CIL rates have been agreed a Preliminary draft charging schedule will be prepared for consultation purposes.

It is intended to undertake a joint consultation of the Preliminary draft charging schedule with Stoke in March 2013 for 6 weeks. These arrangements have yet to be finalised although it is expected that the consultation will be largely targeted at key stakeholders such as developers and agents. However, in the Borough it is also proposed to consult parish and town councils.

The Planning Policy Business Unit is satisfied that the viability assessment has been undertaken satisfactorily and that the recommended rates should be put forward for consultation.

APPENDIX 1

Newcastle-under-Lyme Residential Zones

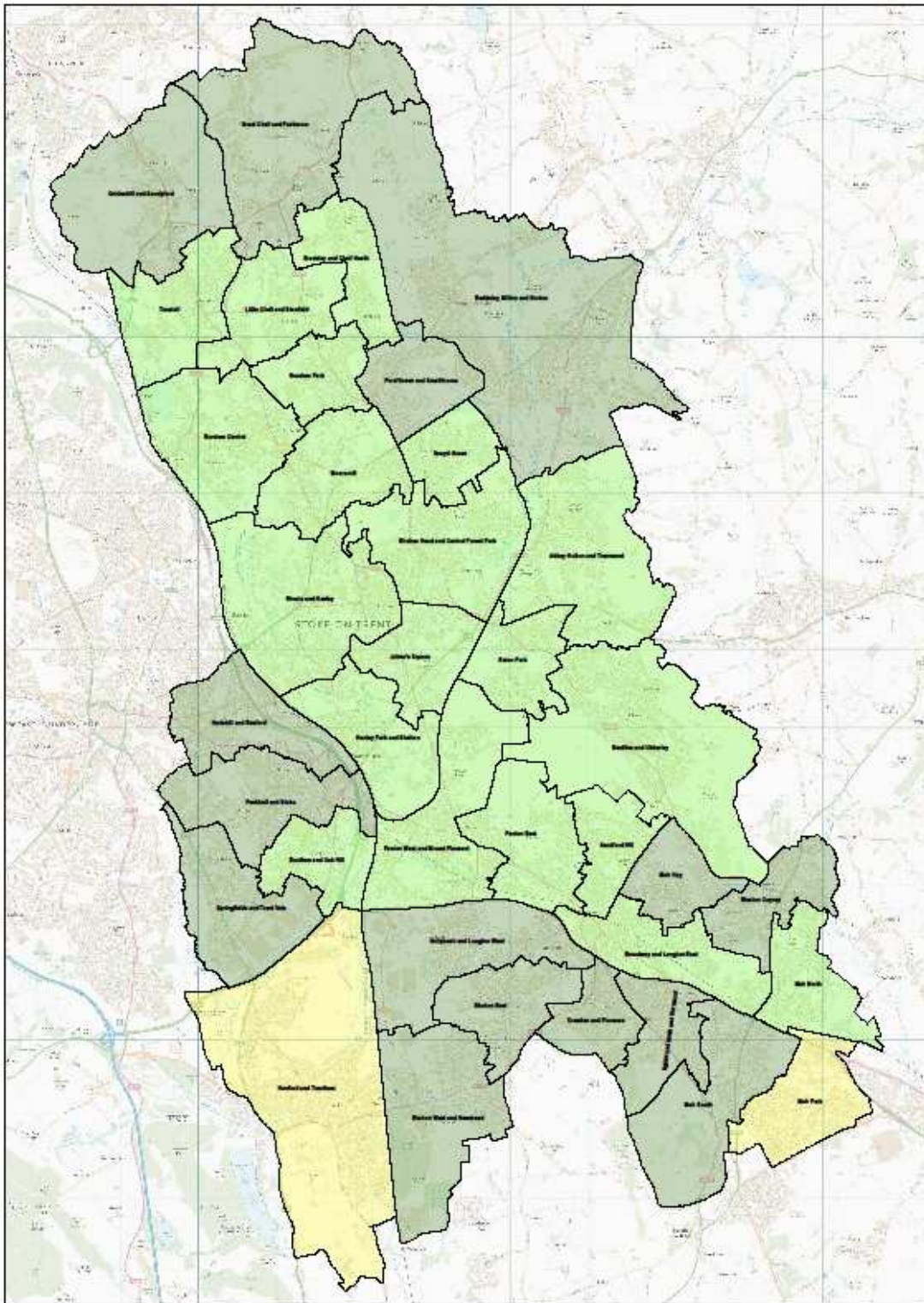


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Four differential value zones were identified in Newcastle-under-Lyme whilst only three were identified in Stoke-on-Trent.

Stoke-on-Trent Residential Zones



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APPENDIX 2

The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010

Use Classes (Amendment) Order 2005	Description	General Permitted Development (Amendment) Order 2005
A1 Shops	The retail sale of good to the public, including shops, retail warehouses, hairdressers, undertakers, travel agencies, post offices, dry cleaners, internet cafes etc Pet Shops, Sandwich Bars Showrooms, domestic hire shops, funeral directors.	No Permitted Changes
A2 Financial and Professional Services	Banks, building societies, estate and employment agencies Professional and financial services, betting offices	Permitted Change to A1 Where a ground floor display window exists
A3 Restaurants and Cafes	Restaurants, snack bars, cafes	Permitted change to A1 or A2
A4 Drinking Establishments	Pubs and bars	Permitted change to A1, A2 or A3
A5 Hot food take-aways	Take-Aways	Permitted change to A1, A2 or A3
Sui Generis	Shops selling and/or displaying motor vehicles, retail warehouse clubs, laundrettes, taxi or vehicle hire businesses, amusement centres, petrol filling stations	No permitted change

B1 Business	(a) Offices, not within A2. (b) Research and development, studios, laboratories, high tech. (c) Light industry.	Permitted change to B8 Where no more than 235m=
B2 General industry	General industry	Permitted change to B1 or B8 B8 limited to no more than 235m=
B8 Storage or distribution	Wholesale warehouse, distribution centres, repositories	Permitted change to B1 Where no more than 235m=

C2 Residential Institutions	Residential schools and colleges Hospitals and convalescent/nursing homes	No permitted change
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C3 Dwelling houses	Use as a dwellinghouse (whether or not as a sole or main residence) by— (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4). Interpretation of Class C3 For the purposes of Class C3(a) “single household” shall be construed in accordance with section 258 of the Housing Act 2004(3).”	Permitted change to C4
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D1 None residential institutions	Places of worship, church halls Clinics, health centres, crèches, day nurseries, consulting room Museums, public halls, libraries, art galleries, exhibition halls, law courts Non – residential education and training centres	No permitted change
D2 Assembly and leisure	Cinemas, music and concert halls Dance, sports halls, swimming baths, skating rinks, gymnasium Other indoor and outdoor sports and leisure users, bingo halls	No permitted change