

**APPROACH TO THE AGREEMENT AND DISTRIBUTION OF COMMUNITY
INFRASTRUCTURE LEVY (CIL) AND SECTION 106 FUNDING**

To: **Economy and Environment Committee**

Meeting Date: **11th October 2018**

From: **Graham Hughes - Executive Director, Place and Economy**

Electoral division(s): **All**

Forward Plan ref: **N/A** *Key decision:* **No**

Purpose: **To outline the Council's approach to the agreement and distribution of CIL and Section 106 funding**

Recommendation: **The Committee is requested to note and comment on the contents of the report.**

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1. BACKGROUND

- 1.1 The General Purposes Committee that met on 24th July 2018 requested a report that outlines the County Council's approach to the collection and distribution of S106 and Community Infrastructure Levy (CIL) funding.
- 1.2 Negotiated S106 planning obligations and CIL make up the system of developer contributions used to secure funding towards mitigating the social and environmental effects of development. This report looks at the differences of the two funding mechanisms and gives a brief overview of adjoining counties.

2. S106

- 2.1 Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as s106 agreements, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focused on site specific mitigation of the impact of development. S106 agreements are often referred to as 'developer contributions' along with highway contributions.
- 2.2 The legal tests for when you can use an s106 agreement are set out in regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010 as amended. The tests are:
 - 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.
- 2.3 These tests are also repeated in the National Planning Policy Framework (NPPF).
- 2.4 S106 is usually used to fund infrastructure on the development site, it is legally binding and runs with the land, and therefore should the site be sold or transferred to another ownership the obligations will remain in place. Section 106 agreements are put in place to make it possible to approve a planning proposal that might not otherwise be acceptable in planning terms.
- 2.5 The County Council routinely seeks S106 contributions across the County service areas, including transport, education to include early years, primary, secondary, post 16 and special educational needs, waste, floods and water, libraries and lifelong learning, archaeology, public health and community support including adult support.

3. COMMUNITY INFRASTRUCTURE LEVY (CIL)

- 3.1 The Community Infrastructure Levy (CIL) is a planning charge, introduced by the Planning Act 2008 as a tool for local authorities to help deliver infrastructure to support new development in their area. It came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010. The CIL operates through a charging schedule at District level and is supported by a 'Regulation 123 List' which outlines the infrastructure types or projects which may benefit from CIL funding in a particular local authority area.

- 3.2 In summary, a charging schedule is prepared and adopted by the charging authority, in Cambridgeshire, the district authorities. Only two authorities have to date adopted a charging schedule, Huntingdonshire District Council and East Cambridgeshire District Council. Cambridge City and South Cambridgeshire submitted a CIL draft schedule with the Submission Draft Local Plan for consideration by the inspector. However because of the time elapsed this submission was withdrawn from consideration and will be reconsidered on the adoption of the local plan.
- 3.3 Fenland district council considered introducing a CIL schedule in 2014 but decided not to proceed because of development viability. The district has been clear that the decision would be revisited should there be a significant improvement in the economic climate.
- 3.4 CIL can be used to fund a broader range of projects (with the exception of affordable housing) to support general infrastructure to accommodate growth across an area.

4. COUNTY PROCESSES AND ADJOINING AUTHORITIES

- 4.1 The County Council seeks both CIL and S106.

S106

- 4.2 The Growth and Development team consult with service areas across the County Council for comment and appropriate mitigation in respect of development applications at both pre application stage and formal submission of applications. The responses are coordinated by the team and where necessary report to members and E&E committee the draft response. A draft heads of terms is prepared which details the mitigation package required to make the development acceptable in planning terms. This can be a monetary sum or schedule of works to be carried out by a named party.
- 4.3 In order for the mitigation to be lawful and compliant with the regulations a defined project needs to be in place for a S106 contribution to be requested. The contribution can only be spent on that specific project within the defined period of time, and if not, the money must be returned to the applicant.
- 4.4 The policy of the County Council is to seek full mitigation costs for all service areas, especially for education and transport capital projects. Generally this is achievable in the southern part of the county where viability is sufficient to support infrastructure costs. Areas of East Cambridgeshire and Fenland have a more challenging viability environment and concessions are more common to stimulate and accommodate development of infrastructure. Such concessions could reduce or delay payments.
- 4.6 The S106 is drafted incorporating all County Council legal costs and signed on the authorisation of the Assistant Director in accordance with the scheme of delegation.
- 4.7 S106 contributions are therefore site specific and evidenced by a specific mitigation project.
- 4.8 The County Council is particularly successful at negotiating S106 and since 2013 has secured £271.8m.

S106 Date	Agreements signed	Contribution amount agreed
2018/19 *	3	£3.5m
2017/18	31	£49.8m
2016/17	27	£80.3m
2015/16	34	£16.9m
2014/15	50	£89.9m
2013/14	48	£31.4m
Total	193	£271.8m

Community Infrastructure Levy (CIL)

East Cambridgeshire District Council (ECDC)

- 4.9 Allocation of CIL receipts to projects are considered by the Joint ECDC/CCC Member and Officer Steering Group for Planning and Transport. There is usually a 'Call for Projects' for consideration for inclusion on the Council's Regulation 123 List. Where there are proposals for consideration, the Steering Group will meet to discuss and assess the applications.
- 4.10 Currently the CIL Regulation 123 List includes Strategic and Major projects as listed.

Category	Project
Strategic	Littleport Schools
	District Leisure Centre
	Soham Railway Station
	Ely Southern Bypass
	Health Facilities Serving North Ely Development
Major	Childrens Centre Serving North Ely Development
	North Ely Country Park
	Staploe Medical Centre
	Ely Commuter Car Park
	Wicken-Soham-Ely Cycle Path
	Witchford Household Recycling Centre
	Burwell Parish Council Recreation Ground Improvement Project
	Ely Museum Redevelopment
	The Mill Project- Soham
	Sutton GP Surgery Extension
	Stretham GP Surgery

- 4.11 ECDC current allocation of CIL receipts is by the following categories:

Allocation Category		Allocated as at Sept 2017
Administration	5%	£213,504.82
Meaningful Proportion (to Parish or town councils) allocated <i>Pay out to councils in April and October</i>	15%	£640,514.46
Strategic Projects:	55%	£2,348,553.01
District Leisure Centre – 40% of Strategic Projects (no cap)		£1,081,421.20
Littleport School – 25% of Strategic Projects (capped at £5m)		£539,638.25
Ely Southern Bypass – 25% of Strategic Projects (capped at £1m)		£519,638.25
Other Strategic Projects – 10% (not yet allocated but there is an intention of up to £1m for Soham Railway Station)		£207,855.30
Major Projects:	25%	£1,067,524.10
Angel Drove Commuter Car Park allocated to be utilised in 2017/18		£500,000
Littleport Station Commuter Car Park allocated to be utilised in 2017/18		£400,000
Not yet allocated - There are other Major projects identified in the R123 List but formal requests for CIL funding have not been made.		£167,524.10
Total	100%	£4,270,096.38

Huntingdonshire District Council

- 4.12 Huntingdonshire District Council produced in 2011 A Developer Contributions Supplementary Planning Document (SPD). The SPD sets out Huntingdonshire District Council's policy for securing developer contributions from new developments that require planning permission. The SPD describes CIL as;

'The CIL will generate funding to deliver a range of District-wide and local infrastructure projects that support residential and economic growth, provide certainty for future development, and benefit local communities.'

- 4.13 The SPD (paragraph B6) also restricts the use of S106 agreements to those sites over 200 residential units. This significantly disadvantages the county in its ability to seek contributions, particularly for education on smaller sites, which generates considerable challenges to capacity at local schools.
- 4.14 The Huntingdonshire CIL Charging Schedule became effective on 1st May 2012, although it was recognised that there would be limited CIL receipts in the first few years of operation.

In view of this, it was agreed by Cabinet on 21 March 2013 that all future available CIL receipts would be made available for funding towards the Huntingdon West Link Road.

- 4.15 The payments for this infrastructure are now almost complete and meetings have been taking place to set a new Regulation 123 priority list. County Council officers and members are part of this discussion. However the CIL receipts are estimated to be low, in the region of £3m over the next 3 years.
- 4.16 The policy is also planned to be reviewed towards the end of this year and County Council officers are also working with the district council to discuss potential changes that will better reflect infrastructure funding needs.
- 4.17 Huntingdonshire allocation of CIL receipts is detailed below;

Allocation Category		
Administration	5%	£344,937.59
Meaningful Proportion paid to Parish or town councils	15% / 25%	£970,264.87
Allocated & spent Huntingdon West Link Road		£2,969,760.00
Unallocated/unspent		£2,613,788.51
Total CIL receipts		£6,898,750.97

Viability and Plan Making

- 4.18 Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure).
- 4.19 Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.
- 4.20 Where a viability assessment is submitted to accompany a planning application this should be based upon and refer back to the viability assessment that informed the plan; and the applicant should provide evidence of what has changed since then.
- 4.21 Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return.
- 4.22 National Planning Guidance sets out the government's recommended approach to viability assessment for planning.
- 4.23 In practice when the policy position for affordable housing plus the full infrastructure requirements and mitigation are not able to be fully met or funded, the local planning authority will request a viability appraisal. The county council is usually party to such information and studies if our requirements are not able to be fully funded. The viability

work is usually coordinated through the district authorities and where a funding shortfall is identified a discussion and negotiation takes place to understand the priorities for that particular site. County costs including education and transport are considered for cost cutting as well as district responsibilities such as affordable housing, open space and community provision.

Education funding

- 4.24 It is county practice to seek full mitigation for education costs for housing growth in Cambridgeshire. The county council has a considerable challenge in meeting the number of school places needed to mitigate current and future development and are a relatively poorly funded authority from central government. It is therefore important that we continue to seek through CIL and S106 for education mitigation, particularly bearing in mind the extreme pressure on County Council budgets.
- 4.25 The County Council is therefore duly conscious of the considerable demands for infrastructure when planning for new development and whilst it is able to enter into negotiations on S106 funding, the starting position is always to seek full project costs associated with the mitigations deemed necessary to make developments acceptable in planning terms.

5. ALIGNMENT WITH CORPORATE PRIORITIES

5.1 Developing the local economy for the benefit of all

Use of CIL and S106 enables the County Council and partners to improve education and skill levels for the benefit of the local economy and all.

5.2 Helping people live healthy and independent lives

The use of S106 enable people to live healthy independent lives through the new communities and public health services.

5.3 Supporting and protecting vulnerable people

Contributions towards community health and development workers are being sought to help support vulnerable people whilst the new community is being established.

6. SIGNIFICANT IMPLICATIONS

6.1 Resource Implications

In the vast majority of cases the education costs arising from developments are not fully funded from S106 and CIL and the County Council has to borrow to make up the funding.

6.2 Procurement/Contractual/Council Contract Procedure Rules Implications

There are no significant implications within this category.

6.3 Statutory, Legal and Risk Implications

There are no significant implications within this category other than the need to settle the terms of an agreement under S106 of the Town and Country Planning Act 1990 with developers and the local planning authority

6.4 Equality and Diversity Implications

There are no significant implications within this category.

6.5 Engagement and Communications Implications

There are no significant implications within this category.

6.6 Localism and Local Member Involvement

There are no significant implications within this category.

6.7 Public Health Implications

There are no significant implications within this category.

Implications	Officer Clearance
Have the resource implications been cleared by Finance?	Yes or No Name of Financial Officer: Sarah Heywood
Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by Finance?	Yes or No Name of Financial Officer: Paul White
Has the impact on statutory, legal and risk implications been cleared by LGSS Law?	Yes or No Name of Legal Officer: Fiona McMillan
Have the equality and diversity implications been cleared by your Service Contact?	Yes or No Name of Officer: Tamar Oviatt-Ham
Have any engagement and communication implications been cleared by Communications?	Yes or No Name of Officer: Joanna Shilton
Have any localism and Local Member involvement issues been cleared by your Service Contact?	Yes or No Name of Officer: Tamar Oviatt-Ham
Have any Public Health implications been cleared by Public Health	Yes or No Name of Officer: Iain Green

Source Documents	Location