

# **Communities Overview & Scrutiny Committee**

## **S106 Developer Contributions Update**

12 February 2020

### **1. Recommendation(s)**

1. The Committee note the contents of the report and the current position relating to Section 106 and Developer Contributions

### **2. Executive Summary**

- 2.1 This report provides an update on the current processes supporting the collection of Developer Contributions through S106 agreements.
- 2.2 The report also explains the latest position regarding the implementation of the Community Infrastructure Levy (CIL) across the County.

### **3. Financial Implications**

- 3.1 The report itself is detailing existing practice and so there are no financial implications. However, the process of securing Developer Contributions brings both capital and revenue funding into the County Council. Where S106 is to be spent on capital further reports are brought to seek approval to add the funding to the capital programme and details of the scheme and the funding are included at that time.

### **4. Environmental Implications**

- 4.1 The environmental impact of all proposed development is considered as part of the planning process. The District and Borough Councils will collect contributions to help mitigate the potential adverse impact on air quality.
- 4.2 The Warwickshire, Coventry and Solihull sub-region was one of the 2012 to 2014 six national pilot areas to trial biodiversity offsetting. Following the success of this pilot all the Local Planning Authorities within the sub-region agreed to continue with offsetting on all minor and major applications.
- 4.3 Biodiversity offsetting is where conservation activities deliver biodiversity benefits in compensation for biodiversity loss, in a measurable way. It has the potential to deliver effective, widespread biodiversity gain for the natural environment in a way which is easy to use for developers. A defined methodology is used to calculate how many 'biodiversity units' need to be paid by a development to offset their biodiversity loss. Offset providers then offer for sale conservation projects that deliver biodiversity units which a developer can buy.

- 4.4 WCC Ecology will assess the biodiversity impact on all proposed development with financial or in-kind contributions requested as appropriate.

## **5. Section 106 Planning Obligations - Background**

- 5.1 Planning obligations are created under Section 106 of the Town and Country Planning Act 1990. They are legally binding obligations that are attached to a piece of land and are registered as local land charges against that piece of land. Planning obligations enable a council to secure contributions for services, infrastructure and amenities in order to support and facilitate a proposed development.
- 5.2 The requirements of a Section 106 obligation will vary according to the size, impact and nature of the proposed development. It would not be fair to expect a developer to contribute towards existing service deficiencies such as a shortage of school places or library facilities, or repairs to the highway, where no additional need would arise from the development. However, it would be fair to expect them to contribute to limiting the impact of their own development on the local area.
- 5.3 The Community Infrastructure Levy Regulations 2010 (Amended 2019) place three tests on the use of all planning obligations including S106. Obligations must meet all three tests as set out in CIL Regulation 122, these are that the obligation is:
- Necessary to make the development acceptable in planning terms
  - Directly related to the development; and
  - Fairly and reasonably related in scale and kind to the development

## **6. Community Infrastructure Levy - Background**

- 6.1 The Community Infrastructure Levy (CIL) attempts to make sure that almost all planning applications for new buildings or extensions, rather than just large applications contribute towards funding infrastructure needed to support development in that area. The CIL is in effect a development tax, to be determined set locally by the District and Borough Councils.
- 6.2 CIL may be levied on new residential and commercial development. Whilst the CIL rate will relate to the overall cost of identified infrastructure required in the area, CIL revenue may be spent on any infrastructure needed, not necessarily in the vicinity of a particular development.
- 6.3 Once implemented, CIL will be paid to the District and Borough Councils as the collection authorities.

- 6.4 It is important to note that a proportion of CIL income collected will be paid to Town and Parish Councils for them to spend. If a Neighbourhood Plan has been adopted up to 25% of the CIL income collected from development in that area will be forwarded. If a Neighbourhood Plan hasn't been adopted this amount is reduced to a maximum of 15% of the total of the contributions.
- 6.5 Currently only Warwick District Council and Stratford District Council have adopted CIL. Warwick District applies CIL and S106 to development in the area with Stratford District having adopted a higher CIL charge reducing the likelihood of securing S106 income on the major strategic sites only. The County Council has successfully secured CIL funding in support of three projects from Warwick District Council. Stratford District Council is now looking to identify possible CIL projects and has invited the County Council to bid for funds. Other councils within Warwickshire still apply s106 approaches to secure developer contributions.

## **7. Management of Planning Obligations and Internal Audit Reviews**

- 7.1 In 2014/2015, Risk and Assurance Services undertook a study into S106 Agreements. This was the first time an audit had been undertaken that had reviewed S106 processes across the whole organisation. The opinion was that at the time the controls provided Limited Assurance that risks were being managed.
- 7.2 In 2017 and most recently in 2019 there have been follow up audits which have both given the opinion of Substantial Assurance.
- 7.3 The most recent report further stated that the work of the Infrastructure Delivery Team (IDT) with the Local Planning Authorities was exemplary. However, it did identify the need for further work to be undertaken to record spend. This is an area of work the IDT will continue to work on with colleagues across the County Council.

## **8. Updated Working Practice and Next Steps**

- 8.1 The Infrastructure Delivery Team within Communities was established to address the challenges that were presented by numerous and in some cases large and historic S106 agreements and balances. The core remit of the team is to coordinate, manage and monitor infrastructure needs, including S106 funds.
- 8.2 Strong and effective links have been developed with all of the Local Planning Authorities. This has seen the Infrastructure Delivery Manager now attending Warwick District Council's Overview and Scrutiny and Finance and Audit Committee as well as being involved in the delivery of WDC Member training.

- 8.3 Work is taking place with Sports and Leisure and Open Space teams at the District and Borough Councils to ensure opportunities for partnership working and shared facilities are considered in delivering growth, most notably with regards to proposed delivery of new education facilities in Nuneaton and Warwick District.
- 8.4 A master spreadsheet is maintained to record all S106 income and subsequent expenditure. This will continue to be developed to enable service areas to estimate when funds will be received from specific developments. Appendix 1 shows the summarised position of all live S106 agreements up to 31<sup>st</sup> December 2019.
- 8.5 The IDT has worked closely with Legal Services to introduce a mechanism for collecting monitoring fees within future S106 agreements. This should provide an income stream to support the on-going work of the team. This is yet to be fully embedded but should be fully operational from April 2020. We have trialled the process through the latter part of 2019/20 on larger applications. Most notably sums of £5,000 and £20,000 have been secured for Whitley South and Coventry Gateway.
- 8.6 WCC currently requests S106 contributions in support of service delivery across a number of areas including: Highways; Public Transport; Education; Libraries and Public Rights of Way. Most recently the IDT has been working with colleagues from Fire and Rescue to ensure that service needs are reflected in responses to consultations by the District and Borough Councils on their Local Plans and associated planned development. This has seen the inclusion of land and financial contributions to enable the delivery of a new facility highlighted in the adopted Rugby Local Plan.
- 8.7 Building on from the work with Fire and Rescue, the IDT will look to support Country Parks in developing a robust case to support future requests for Developer contributions.
- 8.8 Further work is required to ensure that the County Council has clear, robust definitions of requirements for land. A great deal of work has already taken place about site requirements for potential new schools but the IDT need to work more with colleagues in Strategic Assets to ensure requirements are specific enough to provide assurance that land transferred will be fit for purpose.

- 8.9 The Infrastructure Delivery Team has developed an electronic WCC Planning Obligations Guidance Document, accessible through the County Council's website. This will enable Developers to consider obligations the County Council seek should the development go ahead within the County. The area is already live with the option for WCC to add further pages as required. This further strengthens the evidence base for the County Council to continue to successfully secure contributions wherever possible. The County's success rate in securing requested contributions has been in excess of 95% over recent years with the shortfall usually attributed to successful viability claims by Developers or needs being met through planning condition rather than financial contribution.
- 8.10 Links with Exchequer Services have seen improved control measures over outstanding debt. The IDT now engages with Developers prior to invoices being raised to agree amounts and terms. This is helping to avoid the need for intervention over late payment or challenge about the level of obligation due.
- 8.11 The amended CIL Regulations require all Local Collection Authorities to produce an Annual infrastructure statement detailing all Developer Contributions collected within a given financial year. In addition the Statement must include information about spend. The First Statements must be produced by December 2020 and relate to the 2019/20 financial year. At appendix 2 Members will see further information.
- 8.12 It should be noted that all District and Borough Councils will also need to produce Annual Infrastructure Statements and so we will continue to work with them to share information as appropriate.

## Appendices

1. Appendix 1 - Summary Financial Position December 2019
2. Appendix 2 - Example Infrastructure Funding Statement

## Background Papers

There are no background papers

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## APPENDIX 1

### Live Section 106 Agreements updated balances – December 31<sup>st</sup> 2019

#### 1. Overview by Districts/Boroughs

Planning Authority	Agreement Totals	Funds Received	Funds spent and committed	Balance Received and uncommitted	Funds to be Received
Stratford	£67,662,601.50	24,167,584.72	8,587,436.62	15,702,508.07	45,485,583.98
Rugby	£119,147,169.58	26,178,809.80	11,863,515.34	14,526,215.56	94,235,495.91
NBBC	£38,077,336.56	13,386,721.74	3,317,157.10	10,545,164.64	25,370,565.80
NWBC	£3,102,320.10	1,607,971	905,149.79	702,821.21	1,549,273.34
Warwick	£76,267,441.83	39,958,238.67	30,770,629.79	15,502,522.38	40,393,291.51
<b>WCC Total</b>	<b>304,256,869.57</b>	<b>105,299,325.93</b>	<b>55,443,888.64</b>	<b>56,979,231.86</b>	<b>207,034,210.54</b>

#### 2. Overview by Service Area

Service Area	Agreement Totals	Funds Received	Funds spent and committed	Balance Received and uncommitted	Funds to be Received
Ecology	5,213,138.78	2,091,118.73	719,386.69	1,371,732.04	3,121,381.12
Education	210,559,762.36	67,666,132.64	42,742,010.66	31,936,992.46	149,490,475.99
Libraries	910,192.66	585,792.31	236,292	349,500.31	324,832.71
Public Health	337,425.50	55,790.25	55,790.16	0.09	283,257.50
Infrastructure	69,996.09	51,008.67	9,357.65	42,273.24	28,600
Regen Projects	225,000	225,000	178,096.87	46,903.13	0
PROW	1,131,422.18	527,257.61	41,832.61	485,425	631,778.87

Rural Service	1,790.99	1,790.99	1,790.99	0	0
Travel Packs	1,989,312.14	935,083.14	129,206.63	805,876.51	1,075,237.87
TCIS	5,217,516.08	2,638,056.68	680,604.95	1,957,451.73	2,791,790
Traffic Projects	1,090,667.72	1,217,609.63	441,702.86	775,906.77	95,060
Schools Trans	1,880,476.06	973,761.25	0	973,761.25	1,023,687.24
Public Trans	29,535,171	8,821,724.01	3,697,224.04	5,234,801.63	21,194,010
Bus Stops	966,172.09	608,968.64	227,609.49	381,359.15	381,880
Flood Risk	26,157.40	30,737.02	30,737.02	0	0
Transport Planning	33,066,464.51	15,670,457.61	5,060,263.68	10,610,193.93	17,698,846.86
Cycle Ways	5,773,143.62	1,957,468.79	535,497.50	1,421,971.29	3,854,933
Highways	4,244,253.39	207,522.89	120,200.84	87,322.05	4,037,439.38
Housing (linked to extra care development)	260,000	0	0	0	260,000
Traffic and Road Safety	1,758,807	1,034,045.07	536,284	497,761.28	741,000
<b>WCC Total</b>	<b>304,256,869.57</b>	<b>105,299,325.93</b>	<b>55,443,888.64</b>	<b>56,979,231.86</b>	<b>207,034,210.54</b>



## **APPENDIX 2**

### **1. Annual Infrastructure Statement Context.**

- 1.1 Schedule 2 of The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019, details matters to be included in the annual infrastructure statement.
- 1.2 This document gives further details of content requirement and possible issues to be further considered prior to the production of the first statement later in the year. Needs to be produced by December 2020 for information relating to the 2019/20 financial year

### **2. The matters to be included in the CIL report**

- 2.1 Although the County Council is not a CIL collecting authority, it is likely that we will receive CIL funding following successful bids to the Local Planning Authorities (LPAs) who are collecting authorities.
- 2.2 The County Council will have to provide information in support of the production of the Annual Infrastructure Statements of any LPAs who have allocated CIL money to us. We will also have to report on collection and subsequent spend within our own Infrastructure Statement.
- 2.3 Collecting Authorities will need to be able to report on -
  - the total value of CIL set out in all demand notices issued in the reported year;
  - the total amount of CIL receipts for the reported year;
  - the total amount of CIL receipts, collected by the authority, or by another person on its behalf, before the reported year but which have not been allocated;
  - the total amount of CIL receipts, collected by the authority, or by another person on its behalf, before the reported year and which have been allocated in the reported year;
  - the total amount of CIL expenditure for the reported year;
  - the total amount of CIL receipts, whenever collected, which were allocated but not spent during the reported year; relation to CIL expenditure for the reported year, summary details of—
    - the items of infrastructure on which CIL (including land payments) has been spent, and the amount of CIL spent on each item;
    - the amount of CIL spent on repaying money borrowed, including any interest, with details of the items of infrastructure which that money was used to provide (wholly or in part);
    - the amount of CIL spent on administrative expenses pursuant to regulation 61, and that amount expressed as a percentage of CIL collected in that year in accordance with that regulation;

- in relation to CIL receipts, whenever collected, which were allocated but not spent during the reported year, summary details of the items of infrastructure on which CIL (including land payments) has been allocated, and the amount of CIL allocated to each item;

### **3. The matters to be included in the S106 report**

3.1 Warwickshire County Council will need to report on S106 annually. The matters to be included in the report are

- the total amount of money to be provided under any planning obligations which were entered into during the reported year;
- the total amount of money under any planning obligations which was received during the reported year
- the total amount of money under any planning obligations which was received before the reported year which has not been allocated by the authority
- summary details of any non-monetary contributions to be provided under planning obligations which were entered into during the reported year, including details of
  - in relation to affordable housing, the total number of units which will be provided
  - in relation to educational facilities, the number of school places for pupils which will be provided, and the category of school at which they will be provided
- the total amount of money (received under any planning obligations) which was allocated but not spent during the reported year for funding infrastructure
- the total amount of money (received under any planning obligations) which was spent by the authority (including transferring it to another person to spend)
- in relation to money (received under planning obligations) which was allocated by the authority but not spent during the reported year, summary details of the items of infrastructure on which the money has been allocated, and the amount of money allocated to each item
- in relation to money (received under planning obligations) which was spent by the authority during the reported year (including transferring it to another person to spend), summary details of
  - the items of infrastructure on which that money (received under planning obligations) was spent, and the amount spent on each item
  - the amount of money (received under planning obligations) spent on repaying money borrowed, including any interest, with details of the items of infrastructure which that money was used to provide (wholly or in part)
- the amount of money (received under planning obligations) spent in respect of monitoring (including reporting under regulation 121A) in relation to the delivery of planning obligations

- the total amount of money (received under any planning obligations) during any year which was retained at the end of the reported year, and where any of the retained money has been allocated for the purposes of longer term maintenance (“commuted sums”), *also identify separately the total amount of commuted sums held.*
- the matters *which may be* included in the section 106 report for each reported year are
  - summary details of any funding or provision of infrastructure which is to be provided through a highway agreement under section 278 of the Highways Act 1980 which was entered into during the reported year
  - summary details of any funding or provision of infrastructure under a highway agreement which was provided during the reported year
  - where the amount of money to be provided under any planning obligations is not known, an authority must provide an estimate
  - a non-monetary contribution includes any land or item of infrastructure provided pursuant to a planning obligation
  - where the amount of money spent in respect of monitoring in relation to delivery of planning obligations is not known, an authority must provide an estimate.”