



Report to Growth, infrastructure and Housing Select Committee

Date:	9 th December
Title:	Section 106/CIL Overview
Relevant councillor(s):	Councillor Gareth Williams
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Ward(s) affected:	All Wards
Recommendations:	It is recommended that the Committee note the report for information.

1. Executive summary

- 1.1 This report is prepared in order to provide an overview of the CIL and S106 function to the GIH select committee.

2. Content of report

S106 Agreements

- 2.1 Section 106 agreements are legal documents between the local authority and developers. These are linked to planning permissions and can also be know as planning obligations.
- 2.2 Section 106 agreements are drafted by officers when dealing with planning applications where it is considered that a development will have significant impacts on the local area that cannot be mitigated by the imposition of planning conditions. For example, a new residential development may create additional pressure on existing social, physical and economic infrastructure and a section 106 may require the developer to provide financial contribution to contribute towards Affordable housing, education, highways, parks etc.
- 2.3 Section 106 agreements will aim to balance the pressure created by the new development predominantly by securing financial developer contributions in order for the Council to provide improvements to the surrounding area to ensure that, where possible, the development makes a positive contribution to the local area and the community.

- 2.4 Section 106 agreements will vary in nature depending on the type of development and its impact on an area. The most common s106 agreements consider Public Open Space, Affordable Housing, Education, Highways, Health, Public Realm Improvements.
- 2.5 Most section 106 agreements have a 'clawback' clause to allow the developer to recover any paid financial contributions that have not been spent by the Council with the relevant period of time. In most cases, that period of time is 10 years.
- 2.6 Less commonly, section 106 agreements can be used to secure the prevention of activities so as to make an application acceptable in planning terms. An example of this could be preventing subsequent conversion of roof space into habitable floor area (perhaps for Green Belt reasons).
- 2.7 Buckinghamshire Council provide overview information on Section 106 agreements on the website at <https://www.buckscc.gov.uk/services/transport-and-roads/highway-development-management/legislation-policy-and-guidance/planning-obligations/>

Agreement Monitoring and clawback clauses

- 2.8 Once a Section 106 has been made and legally 'sealed', it forms part of the planning permission decision and a copy is sent to the monitoring team.
- 2.9 The relevant team monitors the compliance of agreements over the course of the relevant time periods. This includes any clawback clauses.
- 2.10 Once a quarter, as part of our overall monitoring practice, officers review all sections 106 agreements in order to track the expenditure/allocation of funds to their specific projects and to highlight any agreements that are within 1 year of their 'clawback' clause being able to be triggered.
- 2.11 During this review Officers will raise their concerns with the relevant officers and with officers of an appropriate seniority (HoS/Director) in regards to funding that has not been allocated to a project and are within 1 year of clawback. The officer will bring those agreements into focus and seek to unblock any blockages and to ultimately eradicate any risk of a clawback clause being used.
- 2.12 As set out above, in most cases the clawback clause can be triggered if funds are not spent within 10 years of receipt. It is considered that the existing process of highlighting those within 1 year of clawback is an insufficient time period. Officers propose to extend this period by an additional year in order to highlight these cases a year earlier (ie. bring into focus those with 2 years to go).
- 2.13 As part of the team restructuring officers intends to implement a new review procedure which will highlight all agreements within 2 years or their clawback clause.
- 2.14 In the meantime, it is important to note that to date Buckinghamshire Council has handed back no money to the developer through the clawback clause.

CIL – Community Infrastructure Levy

- 2.15 Community Infrastructure Levy (known as CIL) is a financial charge (or tax) on development to contribute towards the provision of local infrastructure.
- 2.16 The governance for CIL is set out in the Community Infrastructure Levy Regulations 2010.
- 2.17 CIL is charged on a £ per square metre basis and is calculated using the adopted charging schedules. These charging schedules include charges for residential and commercial/retail.
- 2.18 At present Buckinghamshire Council has CIL in place covering development in the West, East and South Planning Areas (although the charging schedules differ across those areas). There is no CIL in place for the North and Central Planning Areas.
- 2.19 It is important to note that CIL is only applicable to development that meet certain criteria, namely;
- Developments which involve the creation of new dwellings or,
 - Developments that create an additional internal floor area of 100m² or more.

Any development that does not meet that criteria is not liable to CIL payment.

Charging Schedules

- 2.20 The West Area charging schedule is as follows

Category	Price (per square metre)
Residential Zone A (High Wycombe, Lane End, Stokenchurch)	£185.83
Residential Zone B (rest of District)	£222.99
Large Scale Retail	£297.32
Small Scale Retail (and other chargeable development)	£185.83

All other development including B, C1, C2 and D uses are charged at £0 per square metre

- 2.21 The East and South Area charging schedules are identical and are as follows:

A1-A4	£149.55/sqm
B1, B2, B8	£34.90/sqm
C1, C21, C2A	£34.90/sqm
C3, C4	£149.55/sqm
D1, D2	£34.90/sqm
Sui Generis	£34.90/sqm

All development types unless stated otherwise in the table of the adopted
Charging Schedule
£34.90/sqm

Large sites of 400 homes or more (gross) or 10 hectares or more (gross) irrespective of land use** £0/sqm

**Large sites are defined as any site allocated in an emerging/adopted Local Plan with 400 homes or more (gross) or 10 hectares or more (gross), irrespective of land use and include any parcel within a Large Site irrespective of the size of the parcel.

*C3 includes all self-contained accommodation, including elderly and sheltered accommodation and self-contained student accommodation.

- 2.22 More information on the relevant charging schedules can be found on the Council's website at <https://www.buckinghamshire.gov.uk/planning-and-building-control/planning-services-and-fees/>

Payments

- 2.23 It is important to note that following the grant of a CIL liable planning permission, the payment of CIL is due to paid within 60 days of the commencement of the development.
- 2.24 These payments are monitored by the CIL monitoring officers and when appropriate issue out invoices/demand notices for payment to be made. There are cost implications in terms of a fine and late payment interest should the developer fail to make the payment.

Exemptions

- 2.25 Part of the Community Infrastructure Levy Regulations 2010 sets out that a number of exemptions and relief from paying CIL. These are relatively narrow but include:

Exemption for minor development (ie. under 100m²),

Exemptions for Charities,

Relief for Self Build,

Relief for Charity development,

Relief for Social Housing

Discretionary relief for exceptional circumstances.

Expenditure of CIL

- 2.26 The CIL regulations set out that the CIL financial contributions collected by the Council must be spent on “funding infrastructure to support the development of its area”.
- 2.27 Upon receipt, the contributions are split up internally in the following way:

Table 1 – CIL funding split

% of CIL	Funding location
5%	Admin fee for the administration of CIL.
15%/25%	Town and Parish Council Share
70%/80%	Capital Program Projects

Town and Parish Council (Meaningful proportion)

- 2.28 The CIL regulations require the Council to pass a proportion of CIL funds raised to the relevant Town or Parish Council/s. The figure is 15%, subject to an annual cap. The cap is equivalent to £100 per dwelling in the parish. When development is built in an area covered by a neighbourhood plan, the parish council will receive a higher CIL proportion of 25%, uncapped.
- 2.29 At present the Council notify the Town and Parish Council once the relevant CIL funds have been received. Please note that we do not notify Town and Parish Council’s upon the grant on planning permission because the CIL payment is not due until 60 days **after** the development has commenced. There is a plethora of reasons as to why a development may not be implemented (duplicated application, funding, alternative permission etc) and therefore we notify upon receipt of the funds.
- 2.30 Whilst the Council notify the Town and Parish Council’s upon receipt of the CIL funds, this fund is collected by the Council and passed on to the relevant Town or Parish Council every 6 months, normally in October and April.

Town and Parish Council Expenditure

- 2.31 The Parish Council can spend their CIL on *“providing, improving, replacing, operating or maintaining infrastructure that supports the development of the Local Council area or anything else concerned with addressing the demands that development places on the area.”*
- 2.32 You will note that this is a wider definition compare to what Buckinghamshire Council can use CIL funds for. These wider spending powers allow the local community to decide what they need to help mitigate the impacts of development.
- 2.33 If a parish council has failed to spend CIL funds passed to it within 5 years of receipt (or has applied the funds not in accordance with the Regulations) then Buckinghamshire Council can serve a notice on the parish council requiring it to repay some or all of the receipts passed. The District Council will be required to spend any recovered funds in the parish council’s area.

Infrastructure Funding Statement

- 2.34 The Infrastructure Funding Statement (“IFS”) is a document that the Council are required to produce and publish by the 31st December each year. The IFS is a backward looking document which reviews and documents the income and expenditure of developer financial contributions.
- 2.35 Buckinghamshire Council produced a IFS for 2019/20 looking back at the legacy authorities’ infrastructure funding. The document for 2020/21 is in its final draft and will be published on the Council’s website ahead of the 31st December 2021 deadline.

3. Team Structure

- 3.1 At present, following the Unitary merge, the monitoring and enforcement of Section 106 and CIL is spilt across 2 Directorates, namely Planning and Environment (“P&E”) and Strategic Transport and Infrastructure (“ST&I”).
- 3.2 As part of the P&E service review the S106 and CIL monitoring and Enforcement officers were placed into the Policy and Compliance service. The STI service review has recently commenced and is due to be completed in Q1 22/23.
- 3.3 At present the officers across those Directorates are seeking to amalgamate those teams into one, so that the Officers responsible for the Monitoring and Enforcement of CIL and S106 sit in a single team under one Manager and one Head of Service.
- 3.4 As yet it has not been agreed as to the final location of that team or and the allocated resource.

4. Audit

- 4.1 On the 23rd November the Council commenced an internal audit of the S106 and CIL function. This Audit will take place over a period of 12 days with a final report propose in January 2021.
- 4.2 The Audit will look at:
- Policies Procedures and Strategy
 - External Policy Guidance
 - Development of S106 Agreements
 - Determining CIL Contributions
 - Receipt of Income
 - Utilisation of Monitoring of Expenditure
 - Infrastructure Funding Statement

5. Planning White Paper (CIL & S106 VS NIL)

- 5.1 As you will be aware, in August 2020 the government consulted on proposed changes to the Planning System. One of those proposals was in relation to bringing in a National Infrastructure Levy (NIL) to replace the way that Councils collect developer contributions, including the potential abolition of section 106 agreements.
- 5.2 The government's response to the public consultation of their Planning system proposals was expected to be published in late 2020. However, following the government's cabinet reshuffle and Michael Gove's announced intention to overhaul the planning proposal, we still await that response as to what the government intend to do in relation of developer contributions.
- 5.3 At this stage, we are led to believe that we will hear more in this winter.

6. Allocation of funds and bidding process.

- 6.1 This reports seeks to provide an overview of the CIL and S106 monitoring function and therefore as a result does not provide overview or detail on how monies collected through CIL or Section 106 are spent.

7. Next steps and review

- 7.1 This paper is for information and therefore recommends that the committee note its content.

