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## Report to the Environment, Transport and Locality Services Select Committee

<b>Title:</b>	Section 106 - Development Funding
<b>Committee date:</b>	6 November 2013
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<b>Report signed off by Cabinet Member:</b>	Janet Blake, Cabinet Member Planning & Transport
<b>Electoral divisions affected:</b>	All

### Purpose of Agenda Item

- For information to discuss and clarify the Section 106 process, roles responsibilities of the County and District Councils and summary of financial contributions.
- To consider recommended next steps regarding improvements to the Section 106 process.

### Background

#### **Section 106 explained**

- **Section 106** agreements are legally binding private agreements made between planning authorities and developers. They are termed planning obligations under Section 106 of the 1990 Town & Country Planning Act.
- They are used to make development acceptable in planning terms. The land itself, rather than the person or organisation that develops the land, is bound by a Section 106 Agreement – so this is something any future owners will need to take into



account. The obligations are registered as a local land charge against the piece of land.

- Planning obligations enable a council to secure financial contributions to services, infrastructure and amenities in order to support and facilitate a proposed development.
- S106 obligations must be evidence based and justified in planning terms. Supporting BCC Policies and adopted strategies are a material consideration, such as the Local Transport Plan.
- The Government's policy on the use of planning obligations is set out in Circular 05/05. Planning authorities must take this guidance into account in their decisions on planning applications and must have good reasons for departing from it.
- Planning obligations are used for three purposes:
  - Prescribe the nature of development (for example, requiring a given portion of housing is affordable),
  - Compensate for loss or damage created by a development (for example, loss of open space), or
  - Mitigate a development's impact (for example, through increased public transport provision).

### **Community Infrastructure Levy (CIL)**

- **CIL** – In April 2010 a number of measures within the Community Infrastructure Levy Regulations came into force. These reforms restricted the use of planning obligations and clarified the relationship between planning obligations and the Community Infrastructure Levy – the levy is a new local charge that local authorities in England and Wales can choose to charge on new developments in their area to fund infrastructure.
- The County Council is not a CIL collecting authority under the new scheme, since this role falls to District Council's in two-tier areas. Close collaboration is therefore essential between County and District Councils in order to ensure that the potential for Planning Obligations is utilised effectively.
- There are three key reforms that scale back the use of s106 planning obligations:
  1. CIL Regulation 122 – Planning obligations must meet three new statutory tests from 6 April 2010. These 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. Planning obligations cannot be used to double-charge developers for infrastructure. Once an authority has introduced the levy in its local area, it must not use obligations to fund infrastructure they intend to fund via the levy.

3. Planning obligations will no longer be the basis for a tariff. Once a local authority introduces the levy in their area, or if sooner after April 2014, it can no longer pool more than five contributions for infrastructure capable of being funded by the levy.

- However, planning obligations will continue to play an important role in making individual developments acceptable. Affordable housing will continue to be delivered through planning obligations rather than the levy. Local authorities can also continue to pool contributions for measures that cannot be funded through CIL.

### **Roles and Responsibilities – County / District**

- **District Councils** – Local Planning Authorities – planning decisions for housing, commercial, retail and other development. Responsible for leading and developing, local development plans, planning policy, neighbourhood planning, CIL. Responsible for determining planning applications and consulting relevant statutory consultees including the County Council as Highway and Education Authority.
- **Buckinghamshire County Council** – Statutory Highway Authority and Education Authority, Planning Authority for Waste & Minerals, Education and BCC Property. Work with District planning authorities, LEP, BBF in development and delivery of local plans, infrastructure planning, funding, phasing and delivery of Education facilities, highways and transport infrastructure and services. Providing advice and formal responses to District Planning Applications.
- **BCC Education** – Local Authorities (LA) have a statutory responsibility under Section 14 of Education Act 1996 to ensure sufficient school places. The increase in housing planned across Buckinghamshire is projected to put increased pressure on school places and in June 2010 Buckinghamshire County Council (BCC) adopted a policy to secure planning obligations under section 106 of the Town and Country Planning Act 1990 towards education provision. The aim of the policy is to secure a coherent and consistent approach to ensuring that developers provide or make appropriate contributions to meet the costs of additional education infrastructure requirements generated by new housing developments.
- **BCC Highways** – NPPF (National Planning Policy Framework) ‘duty to cooperate’ and responsibility to mitigate the impact of development on the highway and transport network. The District Planning Authority must consult the County Council regarding all planning applications affecting the highway.

### **S106 Process**

- **Basic Principles** – BCC Education and Highways assess the impact of development based on local plans and information submitted by the developer. Principle considerations are impact on services and infrastructure, access to the development, safety and sustainability.

- **Approach** – infrastructure is identified through development of the District Councils emerging local development plans and adopted core strategies. Holistic approach to Aylesbury and Wycombe Town centres. In the absence of regional and local development frameworks, some previous sites have been assessed on an individual basis, where possible taking account of neighbouring committed development.
- **S106 Negotiations** – Take place between qualified professionals (typically officers and applicant's consultants) since principle disagreements could result in recommendation to refuse a planning application and having to prepare evidence and cross examination at Public Inquiry.
- **S106 Agreements** – can be between BCC and developer or include Districts LPA's and other parties. Cost of legal agreement preparation met by the developer.
- **Triggers and payments** – S106 agreements include schedules of payments and triggers at stages of development when payments have to be made. These are monitored by the County Council and invoices raised when payments are due.
- **S106 Commissioning and delivery** – S106 schemes are reported to Business Investment Group for contributions to be released and fed into annual delivery programmes. Transport schemes are being coordinated through TfB Capital programme.
- Refer to flow diagram, Appendix 1.

### **Status update on S106**

- All S106 agreements are being logged in central area and financial contributions transferred and held by corporate finance to give Business Investment Group visibility of contribution amounts and overview alongside Capital Programme.
- S106 payment triggers are currently being monitored by Education resource for both education and transport. Triggers prompt invoice to developers from Education and Transport respectively.
- Historic S106 contributions are being transferred to the new balance reserve set up by Corporate Finance to bring all S106 together.
- At risk S106 contributions are being prioritised for delivery 2013/14 and 14/15.
- **WTS (Wycombe Transport Strategy) & ALUTS (Aylesbury Land Use Transport Strategy) S106 Contributions** – prior to introduction of CIL, AVDC and WDC adopted their own local S106 Transport levies for development. These contributions are held separately by both Authorities and the County Council makes annual bids to fund capital transport schemes using these funds.

### **Member role/consultation – Members and public**

- This is recognised as an area for improvement; to ensure local issues and concerns are being considered during the pre-planning and planning process.

- For reasons set out above it may not be possible to negotiate and secure infrastructure and services that meet local expectations. However future availability of CIL funds directed to neighbourhood forums may be used to address local aspirations.

## Summary

- S106 is a key consideration for the County Council in ensuring that appropriate levels of funding are secured from development to mitigate the additional impact on service provision.

## Resource implications

- Loss of resources in Planning and Finance through successive reorganisation and transformation has resulted in need for redesign of systems to ensure that S106 is effectively managed. This involves legal, finance, education and transport services.

Up until June 2012 BCC employed a S106 Officer who worked with services, legal and finance as well as planning policy and development control to coordinate S106 negotiations. In the absence of that post it has become apparent that S106 agreements are not negotiated holistically, but rather on a service by service basis. Similarly, the commencement of development or other triggers for payments is not monitored by BCC and so we are essentially reliant on developers to submit s106 payments on time, or to rely on information from districts.

- **S106 Education Summary of Account**

Total S106 allocated towards education provision in signed agreements	Amount Received to date (Oct 2013)	Amount Spent/Allocated to schemes (Oct 2013)	Balance remaining to be committed to school expansion projects	S106 funding yet to be received
c.£47m	c.£25m	c.£21m	c.£4m	£22m

- **S106 Transport Summary of Account**

Total S106 allocated towards Transport provision in signed agreements	Amount Received to date (Oct 2013)	Amount Spent/Allocated to schemes (Oct 2013)	Balance remaining to be committed to Transport projects	S106 funding yet to be received
C£6.8m	c.£4.8m	c.£3m	c.£2m	£1.9m

- **CIL Estimate** – The only district so far with an adopted CIL is Wycombe. Using Wycombe CIL charging rates and estimated planned housing figures the range of CIL potentially collectable by each district if all districts had CIL (at the WDC level) and this applied to all new housing is as follows:

	Average numbers of Planned New Homes (per year)	CIL Range (£m/ pa)	15% Local Allocation & (25% Neighbourhood Plan Allocation) (£m/ pa)
Aylesbury Vale	720	8.6 to 10.4	1.4 (2.4)
Chiltern	210	2.5 to 3.0	0.4 (0.7)
South Bucks	120	1.4 to 5.8	0.2 (0.4)
Wycombe	400	4.8 to 5.8	0.8 (1.3)
Bucks total	1450	17.3 to 20.9	2.8 (4.8)

However, it should be noted that CIL is subject to viability, and hence, land values. As such the levels adopted for CIL in Wycombe are likely to be higher than elsewhere in the county. Thus the table above should be seen within this significant caveat on the estimates.

### Next steps

- To complete the redesign of S106 process taking account of organisational change and loss of resources to ensure S106 agreements are effectively monitored and that S106 contributions are paid and committed to scheme delivery in line with BCC Capital programme.
- To consider the creation of a new S106 Coordinator role within the Place Service, funded through the S106 monitoring fees, including a review of S106 monitoring fees and the brokering of internal agreements when viability constrains funding available (at present this is escalated to Service or Strategic Director level).
- To develop a more effective communication strategy during the Pre Application, Planning and S106 negotiation process to consult Local Members and ensure that local concerns and ideas are being considered as part of the process.

Appendix 1 – S106 Process (Transport)

