



## Report to Finance & Resource Select Committee

<b>Date:</b>	26 November 2020
<b>Title:</b>	<b>Section 106 and CIL Report</b>
<b>Relevant councillor(s):</b>	Councillor Warren Whyte
<b>Author and/or contact officer:</b>	<b>Darran Eggleton</b>
<b>Ward(s) affected:</b>	All Wards
<b>Recommendations:</b>	<b>It is recommended that the Committee note the report for information.</b>

### **1. Executive summary**

- 1.1 This report is prepared in response to the request from the F&R select committee to review monies held by Buckinghamshire Council for S106 and CIL.
- 1.2 The report provides an overview so as to update Members of the Council's position in relation to financial contributions required by section 106 planning agreements and the Community Infrastructure Levy (CIL). The report sets out the current financial status of developer contributions currently held, and what systems are in place to assure that risk of contributions being returned is minimal.

### **2. Content of report**

Whilst Buckinghamshire Council is in its infancy, the different areas and their responsibilities for the collection and spending of s106 and CIL financial contributions remain the same.

- 2.1 There are only two areas in Buckinghamshire Council which have adopted the CIL, the Planning West Area which adopted the CIL in 2012 and Planning East and South Areas which adopted the CIL in January 2020. The collection of CIL funds can take time to accumulate and for East and South areas, as CIL is in the first year of operation a delay in income is anticipated. It should also be noted that CIL payments can take time to be collect. This is because CIL payment 'triggers' are subject to commencement as well as instalment policies.

- 2.2 In relation to CIL, Parishes receive 15% or 25% (depending whether they have an adopted Neighbourhood Plan) of the CIL collected for developments that takes place in the Parish area. The Parish Neighbourhood portion is passed to the Parishes twice annually (April and October) and must be spent within 5 years of receiving the payment. For the West area, the Parishes are aware of the time limit and that unspent monies will be recovered by the Council. As a result, there is no funds due back.
- 2.3 By comparison, the majority of s106 legal agreements have a clawback date which provides that monies that are not spent within a certain period (this can range from 5 to ten years) can be clawed back by the developer. However, unlike CIL payments, s106 agreements are specific on what the contributions are to be spent on. Bearing in mind that some projects can take longer to deliver, especially large projects such as highway/transport and education, the contributions on receipt are ring fenced and allocated to specific projects to minimise the risk of any contributions being returned.
- 2.4 While not all contributions received for the various infrastructures have been spent to date, this is to be expected due to the nature of the projects. There are a number of contributing factors to unspent sums. Significant projects may have mitigating factors and/or the need for additional funding from other S106 agreements. For Affordable Housing, it may be that the provision of affordable housing is to be funded from different s106 agreements which are at different stages of development and when the affordable housing contribution is to be received. As such, the sums received will not have been spent until the remaining sums are received, however they are committed to a project.
- 2.5 S106 contributions are specific on what it is to be spent on so there is no room for it to be spent other than what it's intended for. The only way this can be done is if the Developer agrees to it by means of a Deed of Variation or an agreement in writing. Clawbacks are normally 5 or 10 years where the money can be returned to the Developer and usually starts from the date the money is received. Where money has not been spent, they are ring fenced for a specific project in accordance with the S106 agreements.
- 2.6 Monies that are not allocated are not subject to clawback. For example, with education contributions, some projects take a number of years to deliver and are funded from multiple sources. The S106 Agreements allow for a ten-year period starting the date of receipt for the money to be confirmed as either spent against a project or committed to a project. The money is ring fenced and if not spent in a specific year for any reason it is not made available for any other project.

2.7 Financial obligations for East and South areas predominantly relate to affordable housing contributions and financial contributions. Other infrastructure such as education, highways and open space to name a few are rare. Where there have been financial contributions towards services which were outside of the previous district council's responsibilities such as education, highway improvements, they were paid directly to what was former Buckinghamshire County Council.

A summary in Table 1 and Table 2 below provides a breakdown of the financial standing from the various areas of Buckinghamshire Council.

The current money held equates to S106 monies totalling £66m and CIL monies totalling £5.79m.

**Table 1 Summary of S106 Financial contributions (table with notes are added as background paper)**

Area	Obligations/Infrastructure	Amount currently held
North & Central	Affordable Housing	£2.057m
	ALUTS (transport schemes in/around Aylesbury)	£1.094m
	Leisure	£15.539m
	Other	£2.121m
Former BCC	Education	£26.620m
	Highways/Transport	£14.934m
East	Affordable Housing	£2.300m
	Affordable Housing confirmed committed	£1.922m
	Affordable housing not uncommitted	£0.378m
South	Affordable Housing	£2.079m
	Affordable Housing confirmed committed	£1.235m

	Affordable Housing uncommitted	£0.843m
West	Overall	£4.9m (based on calculation from June 2020 report)
<b>TOTAL</b>		<b>£76,024,153.30</b>

Table 2: Summary of CIL funds currently held

Area	CIL Strategic (main CIL pot)	Neighbourhood Portion (Parishes)
West	£4.952m (retained at the end of 2018/2019 financial year)	£847,063
East and South	£0	£0
<b>TOTAL</b>	<b>£4,952,079</b>	<b>£847,063</b>

- 2.8 There are some schemes where repayment would arise within one year for Aylesbury, with a total sum of £563,804. These are listed in Appendix 1. There may be risks of unspent monies being returned. This can be rendered less likely by ring-fencing the monies to the specific projects.

### 3. Legal and financial implications

#### 3.1 Financial Implications

S106: The finance aspects are covered in the main body of the report, however members should be aware that should contributions not be spent within the period of time as set out in the legal agreements, developers have the option to clawback the fund.

- 3.2 Financial contributions received from s106 agreements and CIL are used to support the delivery of a range of environmental and physical infrastructure as well as affordable housing. It is important to have a strong monitoring system in place to ensure the availability of capital, that contributions are collected and spent

effectively for their intended purpose in timely manner and are tied to a project to ensure there is no threat of the monies having to be returned.

- 3.3 Unlike s106 financial contributions, CIL funds do not have a time restriction on their spending, except the Parishes neighbourhood portion which must be spent within 5 years of receiving it.
- 3.4 The current operation of S106 is dependent upon monitoring, reporting and allocation procedures being carried out in a timely manner and functions to enable this cut across Council services.

### **Legal Implications**

- 3.3 The legislation governing the development, adoption, and administration of a Community Infrastructure Levy (CIL) is contained within the Planning Act (2008) and the Community Infrastructure Levy Regulations 2010 (as amended) and reforms to the CIL Regulation (2019). The associated government National Planning Policy Guidance is also important in guiding this process. There are other areas of law which should be considered when assessing certain developments for CIL liability and determining the appropriate sum due. These include matters relating to social housing, procurement, charitable institutions and state aid.
- 3.4 Section 106 of the Town and Country Planning Act 1990 enables a local planning authority to enter a legally binding planning obligation with a developer called a Section 106 agreement. The City Council can, through these agreements, secure financial support for projects that benefit the people of the borough.
- 3.5 Whilst there are legal implications around the legislative and legal framework of CIL and S106, there are no direct legal implications in relation to the content of this report.

## **4. Corporate implications**

- 4.1 Whilst there are corporate implications in relation to the collection, allocation and spending of CIL and Section 106 monies, there are no direct corporate implications in relation to the content of this report.

## **5. Consultation with local councillors & community boards**

- 5.1 This report is for information only and whilst the relevant cabinet members are aware of the content of the report, no formal consultation has taken place with local councillors or community boards.

## **6. Communication, engagement & further consultation**

- 6.1 No further consultation or engagement has been carried.

## **7. Next steps and review**

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

## **8. Background papers**

- 8.1 Detailed CIL Summary report with notes.

## **9. Your questions and views (for key decisions)**

- 9.1 If you have any questions about the matters contained in this report please get in touch with the author of this report. If you have any views that you would like the cabinet member to consider please inform the democratic services team. This can be done by telephone email [darran.eggleton@buckinghamshire.gov.uk](mailto:darran.eggleton@buckinghamshire.gov.uk)

