



Report to GIH Scrutiny Committee

Date:	15 February
Title:	Governance of S106 and CIL spending
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Recommendations:	For Information only

1. Background

1.1 The requirement for new infrastructure is often driven by the need to mitigate development and developer contributions are an important source of funding for the Council to provide that infrastructure. Developer contributions are secured through:

- A Planning Obligation - a legal agreement entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development proposal. They are typically between the local authority and land owners/developers, to make developments acceptable that would otherwise be unacceptable in planning terms, and where these impacts cannot be addressed through a planning condition. Planning obligations need not only relate to contributions but can also, for example, require the provision of affordable housing or other infrastructure required as a result of the development; and
- Community Infrastructure Levy (CIL) – a fixed charge levied on new development at a £ rate per square metre, in areas where a CIL Charging Schedule has been adopted, to fund infrastructure that supports the development of the area.

1.2 Local Planning authorities can use a combination of both CIL and Section 106 contributions from specific developments to fund infrastructure, however the Council may be called upon by a developer to demonstrate that the need for s106 contributions is additional to any CIL paid in respect of a development. A summary of the key features of s106 contributions and CIL is included at Appendix 1.

- 1.3 CIL charging schedules apply to the East, South and West areas of the Council. Following a decision of Cabinet on 11 July 2023, the scope to introduce CIL in the North and Central areas, or alternatively for a new Buckinghamshire charging schedule - is being investigated at present. An important factor will be the timing of the Local Plan.
- 1.4 The CIL liability of a proposed development is assessed following the grant of planning permission.
- 1.5 The need for s106 contributions is assessed when planning applications are considered, taking into account national planning guidance (see Legal and Financial Implication) as well as relevant Local Plan policies, any supplementary planning guidance and consultee feedback. Planning decisions are taken either by Planning Committee or delegated to officers in appropriate cases, following appropriate consultation and consideration of comments received.
- 1.6 Information on how s106 and CIL funds have been, and may be, used is provided in the annual Infrastructure Funding Statement, the latest of which has recently been published and is attached as Appendix 2. This includes information for the period 2022-23 on funds collected, spending and projects delivered.
- 1.7 In 2022-23 Buckinghamshire Council:
- Secured £14,319,045 of s106 contributions from new development.
 - Secured £6,414,023 in CIL.
 - Passed £727,098 of 22/23 CIL receipts (the local allocation) to town and parish councils, with a further £335,763 secured for the unparished area of High Wycombe.
- 1.8 The Council spent £17,462,345 of s106 funds on infrastructure to mitigate development impacts and £4,624,377 of CIL on infrastructure to support the development of the area. 499 affordable homes were handed to registered providers across Buckinghamshire.

2. How decisions are taken on the use of s106 and CIL

S106

- 2.1 The way in which s106 contributions may be used is set out in the relevant s106 agreement that is agreed before planning permission is granted. There may or may not be flexibility in how contributions may be used but they are required to be linked to a specific spending area such as providing school places or transport improvements, as Regulations mean they can only be required where they are necessary to make a particular development acceptable in planning terms, and usually a specific objective, e.g. traffic calming in a particular area, or public transport improvements.

- 2.2 The process to approve the allocation and/or release of s106 contributions has tended to vary by service area with different factors affecting particular services (e.g. the roles of s106 in service funding and the extent to which contributions are used directly by the service or passed to a third party such as a parish council).
- 2.3 A new process is being put in place by the Transport Strategy Funding team which will be a step toward consolidating the decision making and contributions monitoring process across services. This will capture input from relevant services and cabinet members before recommendations are reported to the Corporate Capital Investment Group. Larger services, notably Education and Housing, may continue to integrate decisions on s106 into their funding programmes.

CIL

- 2.4 Decisions on Council spending priorities and the use of CIL are integrated into the Council's Medium Term Financial Plan. The Infrastructure Funding Statement elaborates on how CIL is to be used – see section on Legal and Financial Implications for more information.
- 2.5 Following consultation with the Cabinet Members for Planning and Transport and Resources the Infrastructure Funding Statement 2022-23 includes text that provides further detail on how CIL is to be used.

...Over the period 2023/24-2027/28, until a new Local Plan and Infrastructure Delivery Plan are in place or until otherwise reviewed, [the Council will] focus CIL on schemes in the West, South and East areas for which s106 contributions or other external funding are not available and which support: the protection of priority areas at risk from flooding; the cost of providing education places; updating and integrating Council systems e.g. CCTV, to achieve long term savings and resilience; traffic calming in Castlefield; essential highways asset maintenance, with a focus on bridges, classified roads and locally significant routes; the replacement and improvement of larger play and recreation areas; and new Electric Vehicle Charging Points as part of the Council's climate change strategy.

- 2.6 Including this text will increase transparency and reduce the scope for developers to argue that s106 contributions should be discounted on account of the possibility that CIL contributions might possibly fund the same infrastructure. For this reason general areas of spend on which the council may be seeking s106 contributions have not been included. This will help to maximise the income available to the Council.

3. Legal and financial implications

S106

- 3.1 Planning obligations are set out either within bilateral agreements or within unilateral undertakings. These are legal obligations between the local authority and developers that can be attached to a planning permission, to make developments that would otherwise be unacceptable in planning terms acceptable.
- 3.2 Under section 106 of the Town and Country Planning Act 1990 as amended, planning obligations are capable of:
- (a) restricting the development or use of the land in any specified way
 - (b) requiring specified operations or activities to be carried out in, on, under or over the land
 - (c) requiring the land to be used in any specified way
 - (d) requiring a sum or sums to be paid to the authority

Therefore, planning obligations can:

- Prescribe the nature of development (for example, requiring a given portion of housing as affordable).
 - Compensate for loss or damage created by a development (for example, loss of open space).
 - Mitigate a development's impact (for example, through increased public transport provision).
- 3.3 Regulation 122 of the CIL regulations states that a planning obligation may only constitute a reason for granting planning permission if it 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.
- 3.4 Where financial contributions are required by a planning obligation within a section 106 agreement or a unilateral undertaking these are often referred to as section 106 or simply s106 contributions.

CIL

- 3.5 The Community Infrastructure Levy (CIL) is a charge which can be levied by local authorities on new development in their area after it has gone through a process of assessing the evidence base in public prior to the adoption of the levy.

- 3.6 This process takes account of the cost of infrastructure, the viability of development, other sources of funding for infrastructure and the administrative expenses in connection with the levy. The levy rates are published in the charging schedule for each area on the Council’s website. This information can be found [here](#).
- 3.7 According to section 59 (1) of the CIL regulations (as amended):
A charging authority must apply CIL to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area.
- 3.8 Government guidance on CIL was published June 2014 and was last updated January 2023¹. This says that:
- 3.9 *Local authorities must spend the levy on infrastructure needed to support the development of their area, and they will decide what infrastructure is needed. The levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support development.*
- 3.10 Article 121A of the CIL regulations says that each calendar year a contribution receiving authority must publish an annual infrastructure funding statement which includes:
a statement of the infrastructure projects or types of infrastructure which the charging authority intends will be, or may be, wholly or partly funded by CIL (“the infrastructure list”).
- 3.11 The 2023 government guidance on CIL goes further. It says:
The infrastructure funding statement should identify infrastructure needs, the total cost of this infrastructure, anticipated funding from developer contributions, and other possible sources of funding as well as the choices the authority has made about how these contributions will be used.
- 3.12 The Medium Term Financial Plan (MTFP) includes an expectation that the Council will receive at least £4m a year and that this will be available to fund corporate spending priorities while also complying with the criteria set out in the Infrastructure Funding Statement – extracts are included below.
- 3.13 Section 4 of the Infrastructure Funding Statement is titled ‘The infrastructure projects or types of infrastructure the authority intends to be funded at least in part by CIL’ - see text below. It includes reference to the Council’s Capital Investment Strategy that

¹ [Community Infrastructure Levy - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

sets the Council's investment priorities and the types of infrastructure to be funded by CIL – see extract below.

- 4.1 *The Council has ambitious plans in the face of significant infrastructure challenges and requirements in an area where development is constrained by designations such as green belt and Area of Outstanding Natural Beauty (AONB). As a large unitary authority Buckinghamshire Council has extensive responsibilities for infrastructure. Over the last 12 months continued inflationary pressures have added to the delivery challenge. The Council has been working with contractors to reduce the cost of projects as much as possible and to seek alternative or additional funds to enable project delivery.*
- 4.2 *Infrastructure challenges and requirements will be considered further as part of the work that is underway on [The Local Plan for Buckinghamshire | Buckinghamshire Council](#). This is scheduled to be in place by 2028.*
- 4.3 *This will include work to clarify what infrastructure will be expected to be provided directly by development, or directly funded by development through s106 contributions and s278 works, and what funding gaps remain.*
- 4.4 *Where development gives rise to the need for infrastructure directly, the Council aims to secure contributions through planning obligations, in compliance with the 'Regulation 122' tests (see paragraph 2.3) and in preference to using CIL.*
- 4.5 *Section 4 of the Council's Capital & Investment Strategy 2022 to 2023 covering this period was published on 1 February 2022 and is available [here](#)¹³. It sets out key areas where one might expect to see investment directed, taking account of capital investment objectives and corporate priorities. This includes infrastructure that supports the development of the area and which may be funded by CIL:*
 - *Investments that facilitate growth, economic development and regeneration, such as Wycombe area regeneration, and Princes Risborough growth areas.*
 - *New infrastructure such as roads and schools to support the growth in housing.*
 - *Meeting the statutory requirement to provide school places.*
- 4.6 *New and emerging priorities will become clear as work on the Local Plan for Buckinghamshire, the Local Transport Plan 5, and other Council strategies and projects progresses.*
- 4.7 *In this context the CIL collected by the Council is only one relatively small funding source, but one that offers flexibility in how it may be used, provided this is for infrastructure that supports the development of the area.*

Decision Making

- 4.8 *The Council has integrated CIL into the capital budget setting process as a corporate resource, with the capital budget included in the Medium Term Financial Plan (MTFP) which is reviewed annually. (The approved Buckinghamshire Council Capital Programme 2022/23 to 2025/26 is available [here](#).)*
- 4.9 *The Capital and Investment Strategy sets out guidance on prioritisation of bids. In addition, in relation to CIL the Council will:*
- Be conscious of the broad relationship between schemes and development that generate CIL while recognising the impacts of development.*
 - Only use CIL to fund infrastructure that supports the development of the area.*
 - In view of the extensive range of infrastructure requirements identified to support the development of the area, not apply CIL to fund off site infrastructure specifically required to enable new developments (i.e. where contributions to that infrastructure would be R122 compliant and development would be viable). In those cases developer contributions are to be secured by way of planning obligations in order to provide infrastructure necessary to make the development acceptable in planning terms.*
 - Over the period 2023/24-2027/28, until a new Local Plan and Infrastructure Delivery Plan are in place or until otherwise reviewed, focus CIL on schemes in the West, South and East areas for which s106 contributions or other external funding are not available and which support: the protection of priority areas at risk from flooding; the cost of providing education places; updating and integrating Council systems e.g. CCTV, to achieve long term savings and resilience; traffic calming in Castlefield; essential highways asset maintenance, with a focus on bridges, classified roads and locally significant routes; the replacement and improvement of larger play and recreation areas; and new Electric Vehicle Charging Points as part of the Council's climate change strategy.*
- 4.10 *Each year the Capital Programme will be developed as part of the MTFP, culminating in approval by full Council in February of each year. This follows the process set out in the Capital Investment Strategy 2022 to 2023. The Council's resources (capital and revenue) are unfortunately very constrained, hence there are essential infrastructure requirements for which CIL is needed to support new development in Buckinghamshire. The Council therefore needs to be guided by its overall priorities as set out in the Capital and Investment Strategy, and as enlarged upon above.*
- 3.14 It is likely that CIL receipts will exceed the £4m a year budgeted for, based on the projection of development; this budget is a prudent budget given the economic uncertainty particularly being faced by developers at this time. Should additional

receipts materialise, they will be allocated via future MTFPs in accordance with the CIL regulations and the Infrastructure Funding Statement. Officers monitor and report on CIL receipts projections quarterly in Cabinet.

4. Next steps and review

- 4.1 Comments from the Scrutiny Committee will be shared with the relevant Cabinet Member.

