

Supplementary Papers

Joint Scrutiny Committee

held in the Meeting Room 1, 135 Eastern Avenue, Milton Park, Milton OX14
4SB

on Tuesday, 4 December 2018 at 6.30 pm

Open to the public including the press

6. **S106 negotiation, CIL charges and management of spend** (Pages 2 - 6)

To consider the joint report of the head of planning and head of development and regeneration (attached).

SCRUTINY Committee



Report of Heads of Planning / Development and Regeneration

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Wards affected: All

Cabinet members responsible:

Cllr Roger Cox & Cllr Mike Murray (Vale)

Cllr Felix Bloomfield & Cllr Paul Harrison (South)

DATE: 4 December 2018

S106 negotiation, CIL charges and management of spend

Recommendation

To note the contents of this report and to provide any comments to the Cabinet Members for Planning and Development and Regeneration.

Purpose of Report

1. To advise members on the policies and procedures in respect of infrastructure, namely S106 planning obligations and Community Infrastructure Levy (CIL).

Strategic Objectives

2. The purpose of S106 and CIL is to fund infrastructure needs arising from new development. The respective mechanisms are governed by the CIL Regulations (2010 as amended) and in respect of S106 only also the 1990 Town and Country Planning Act. However, the policies and procedures differ in respect of both mechanisms. In addition, Oxfordshire County Council secure highway infrastructure works and maintenance through legal agreements under S278 of the Highway Act 1980.

Policy Background

3. Both Councils have adopted a Community Infrastructure Levy and Supplementary Planning Guidance in respect of S106 Planning Obligations which identify the circumstances in which the respective CIL and S106 mechanisms will be used to secure funding for infrastructure. This report provides a summary of the mechanisms and the attached Appendix 1 provides weblinks to our web sites regarding S106 and CIL information referred to in this report.
4. The Community Infrastructure Levy is a tariff placed on the floorspace of certain new development. The Councils' require CIL on all new residential dwellings. There are several exemptions prescribed by national regulations, which impact on some forms of development. These are in the main self-build and affordable housing, however there remains an administrative burden on the Councils to process these exemptions. District wide viability appraisals were carried out to inform the CIL charges. The Councils' publish a live CIL Register on our websites providing information on the CIL receipts (demands and receipts) and the transfer of monies to town and parish councils.
5. A S106 planning obligation is a legal agreement made between interested parties, e.g. developer, landowners, the district council and Oxfordshire County Council. However, it can also be in the form of a unilateral undertaking where the developer makes an unconditional legal promise to provide, for example, a facility or contributions. S106 agreements are usually only sought on developments of 10 or more dwellings and cover matters such as affordable housing, recycling, street naming and public art. Allocated strategic sites are generally locally exempt (agreed through the Charging Schedule) from CIL and these sites therefore secure all infrastructure, on and off site through S106 planning obligations. The reason these large sites are exempt is because they usually generate a significant amount of on site infrastructure e.g. schools, transport, leisure facilities and providing these facilities plus CIL payments would make the development unviable.
6. The S106 agreements are available to see on the public S106 Register. The Councils also publish on their websites town and parish reports detailing S106 contributions coming to the district councils and whether they are allocated or spent, together with remaining balances.
7. Prior to the introduction of CIL the Councils sought all infrastructure through S106 agreements. Currently it is only the sites that are exempt from CIL or where the development is sufficiently large to generate on site infrastructure, where S106 obligations are sought. The need for infrastructure is assessed within the context of planning policy guidance and standards. Importantly, needs are also considered on a site-by-site basis taking into account features of the site, the nature of the development and the accessibility and capacity of other provision within the locality. For instance, Sport England standards supported by planning policy may generate a quantum for football pitches and a changing facility, yet the Council's Leisure Strategy might identify that there is existing capacity to serve the development. In this instance such provision cannot be justified and it would not be sought.
8. Towns and Parishes are consulted specifically on S106 contributions when the development is considered to warrant community infrastructure in the context of the policy and site area assessment. Similarly, the health and police authorities are

consulted in such cases. Under the CIL Regulations S106 monies should be identified for a specific project (to manage pooling issues referred to below), whereas older obligations may be more ambiguous on what the monies can be spent on, newer obligations generally identify the project.

9. We annually publish the monitoring reports on S106 and CIL, the latter is a statutory requirement. The information provided on the CIL Registers and the S106 town and parish reports is a service the Councils have elected to do to provide an enhanced service to local communities.

Spending

10. Upon receipt of S106 monies for internal services the corresponding service is advised, so a budget can be made for the monies. If allocated for a specific Council project the S106 town and parish report identify the monies as allocated. Third parties including parishes are also informed about the receipt of monies for health, police, leisure, public art, community facilities, etc. Details of available S106 monies are published together with information on the 'spend by date' in the town & parish reports. The website provides information on how third parties can apply for the monies and the information that needs to be submitted to support the application. The Councils need to be confident that the S106 monies are spent robustly hence the need for comprehensive information and safeguards on spending are incorporated e.g. larger projects may necessitate phased payments and a legal agreement.
11. The CIL regulations place a limit on the amount of S106 obligations that can be collected. In summary these comprise:
 - i. Pre April 2010 – these do NOT count towards pooling
 - ii. Post April 2010 and Pre 6 April 2015 - contributions can be pooled into two categories – an infrastructure type and / or a specific project. There is no upper limit on the number in each category provided these categories do not have additional contributions post April 2015 and the total number exceeds 5.
 - iii. Post April 2015 the limit is 5 per infrastructure type and 5 per project (contributions post April 2010 are included)
12. Following a Government consultation on the future of S106 and CIL infrastructure mechanisms the Government has committed to remove pooling restrictions, however a timescale for implementation is not known.
13. A proportion of CIL monies to spend on infrastructure is passed to parish councils twice yearly in accordance with the CIL regulations. Under the regulations the Councils need to check that town and parishes wish to receive the money or whether they would like the district council to hold it. There is no interest payable on held monies. Most town & parishes elect to receive CIL monies and these will be either 15 per cent or 25 per cent of the revenues dependent on whether the parish has a made a neighbourhood plan.
14. The remainder of the CIL monies are retained for administration (up to 5 per cent) and the rest for infrastructure. South Oxfordshire District Council has recently approved a CIL Spending Strategy and work is beginning on a Spending Strategy for Vale of White Horse District Council.

Management of infrastructure responsibilities

15. The Councils have begun to implement a new staff structure and the roles and responsibilities are changing for infrastructure policy, monitoring and collection and spending (and monitoring of spend). The Planning Service retains the responsibility of preparing CIL and S106 policy and these will be reviewed shortly to align with the review of Development Plans – South Oxfordshire Local Plan 2033 and Vale of White Horse Local Part 2. Planning officers will continue to negotiate S106 agreements alongside the processing of planning applications. Planning will also retain responsibility for the monitoring and collection of S106 and CIL monies.
16. Development and Regeneration has begun to assume responsibility for spending S106 and CIL monies and the implementation on non-financial S106 obligations e.g. on site community facilities, and monitoring of spend including the annual reports. The team has prioritised drafting individual CIL spending strategies for both councils. South approved their strategy on 9 November 2018 and the Vale spending strategy will be considered by scrutiny committee on 29 November 2018 and cabinet in February 2019.

Financial Implications

17. There are no specific financial implications arising from this report.

Legal Implications

18. There are no specific legal implications arising from this report.

Risks

19. There are no identified risks arising from this report.

Other Implications

20. A period of transition is underway between planning and the development and regeneration team on the roles and responsibilities for the management of S106 and CIL infrastructure. The new staff structure will ensure the right resources are in place to ensure a smooth transition of responsibilities and to continue to effect and improve a robust service to infrastructure stakeholders, local communities and particularly parish councils. The new community liaison officers in the community enablement team will also offer an element of additional support by working closely with the development and regeneration team.

Conclusion

21. This report sets out the regulatory and policy framework upon which Councils can secure monies for infrastructure. It also provides the policy context in which decisions on S106 and CIL spending are made and an update on staff management in respect of these roles and responsibilities.

Appendix 1

Links to documents referred to in the report:

South Oxfordshire S106 Planning Obligations SPD:

<http://www.southoxon.gov.uk/sites/default/files/S%20106%20Planning%20Obligations%20SPD%20April%202016.pdf>

Vale of White Horse S106 Planning Obligations SPD:

<http://www.whitehorsedc.gov.uk/services-and-advice/planning-and-building/planning-policy/delivering-infrastructure/section-106-plan>

S106 Register – South

<http://www.southoxon.gov.uk/ccm/support/Main.jsp?MODULE=Section106List>

S106 Register – Vale:

<http://www.whitehorsedc.gov.uk/java/support/Main.jsp?MODULE=Section106List>

CIL Register- South:

<http://www.southoxon.gov.uk/ccm/support/Main.jsp?MODULE=CILList>

CIL Register Vale

<http://www.whitehorsedc.gov.uk/java/support/Main.jsp?MODULE=CILList>

South Oxfordshire CIL Spending Strategy

<http://democratic.southoxon.gov.uk/ieDecisionDetails.aspx?Id=568>

How to apply for S106 monies and Town/Parish reports – South:

<http://www.southoxon.gov.uk/services-and-advice/planning-and-building/planning-policy/delivering-infrastructure/section-106/se-0>

How to apply for S106 monies and Town/Parish reports – Vale:

<http://www.whitehorsedc.gov.uk/services-and-advice/planning-and-building/planning-policy/delivering-infrastructure/section-106-pl-0>