



Report To: Scrutiny and Overview Committee
Lead Officer: Director of Planning and New Communities

30 April 2015

UPDATE ON SECTION 106 AGREEMENTS AND COMMUNITY INFRASTRUCTURE LEVY

Purpose

1. The purpose of this report is to explain the current situation as to;
 - (i) The current use of section 106 agreements and
 - (ii) The adoption of the Community Infrastructure Levy

Recommendations

2. Scrutiny and Overview Committee are recommended to note the report and consider how Elected Members may facilitate consideration of these issues with Parish Councils.

Background

3. Section 106 of the Town and Country Planning Act 1990 (amended) allows a local planning authority to enter into a planning obligation with a landowner to;
 - a) restrict the development or use of the land in any specified way;
 - b) require specified operations or activities to be carried out in, on, under or over the land;
 - c) require the land to be used in any specified way; or
 - d) require a sum or sums to be paid to the authority on a specified date or dates, or periodically.
4. The Office of the Deputy Prime Minister issued guidance as to the use of section 106 agreements in 2005 (often referred to as Planning Obligations Circular 05/05) and which provided 5 tests for local planning authorities to use when considering securing a planning obligation:
 - (i) relevant to planning;
 - (ii) necessary to make the proposed development acceptable in planning terms
 - (iii) directly relating to the proposed development;
 - (iv) fairly and reasonably related in scale and kind to the proposed development; and
 - (v) reasonable in all other respects.
5. The Circular, which also encouraged the use of tariff style planning policies, was later repealed by the National Planning Policy Framework in March 2012.
6. The Local Development Framework has a number of adopted policies that followed the advice of the Circular and has enabled the Council (and County Council) to collect contributions towards general infrastructure from single dwelling developments (notably public open space and village hall improvements for Parish Councils).

7. The Planning Act 2008 provided the way for the introduction of the Community Infrastructure Levy Regulations which were introduced as legislation on 6 April 2010.
8. The CIL Regulations have made the practice of securing developer contributions harder as it put into statute (rather than guidance) the requirement that 3 tests must be satisfied for a relevant planning obligation to be secured. These tests are that the planning obligation must be;
 - (i) necessary to make the development acceptable in planning terms;
 - (ii) directly related to the development; and
 - (iii) fairly and reasonably related in scale and kind to the development.
9. The Community Infrastructure Levy is a form of development tax and is intended to replace the use of section 106 agreements in terms of pooling money from many developments to pay towards a local or strategic piece of infrastructure. Section 106 agreements are to be scaled back (to their original purpose) to mitigate site specific impact only.
10. To encourage the adoption of a CIL charge, as of 6 April 2015 parts of CIL Regulation 123 came into force which means that the Council can no longer secure contributions towards a project or type of infrastructure, where the Council has entered into more than 5 s106 agreements since April 2010, and which contribute towards that same project or type of infrastructure.
11. South Cambridgeshire District Council has been committed to introduce CIL since July 2012 and, following a Cabinet decision on 10 April 2014 the Council submitted its CIL charging schedule to the Planning Inspectorate on 6th October 2014.
12. Although the Council was always aware of the impact of the 6 April deadline, it had taken action to ensure as many outstanding legal agreements were entered into ahead of that date. The Council had not anticipated or expected the Ministerial Statement issued in the House Commons on 28 November 2014 (and supplemented by an update to the Planning Practice Guidance) and which sought to restrict the Council from securing tariff style contributions (and affordable housing) from developments of 10 dwellings or less. The Ministerial Statement effectively brought forward by some 6 months the Council's ability to secure contributions from small developments.
13. Irrespective of the Ministerial Statement, Section 34 of the Planning and Compulsory Purchase Act 2004 requires decisions to be based upon development plan policies unless material planning considerations indicate otherwise. Neither the National Planning Policy Framework, a Ministerial Statement and nor the more recent Planning Practice Guidance changes the statutory status of the development plan as the starting point for decision making. Therefore, despite the recent changes in national policy, the Council is bound to continue to determine applications in line with its development plan (and which required the payment of section 106 contributions from single dwelling developments), unless material planning considerations indicate otherwise.
14. The Council issued a special urgent decision on 18 February 2015 and which confirmed that the Council would no longer secure tariff style contributions in accordance with the Ministerial Statement, but that affordable housing would continue to be secured by way of planning condition. This decision was supported at Planning Committee 4 March 2015.

Section 106 agreements

15. As discussed above, the introduction of CIL Regulation 123 does not of itself necessarily preclude the Council from continuing to use section 106 agreements to secure money from some new forms of development. There has been debate about the exact meaning of 'infrastructure projects or types of infrastructure' and Cambridge City Council and Cambridgeshire County Council have sought legal advice confirming that they can no longer rely on policies that secure generic offsite contributions towards such matters as public open space or indoor community space.
16. This issue affects all service providers not least Cambridgeshire County Council who have policies requiring pooled contributions towards the household recycling centre network (for example).
17. In simple terms all section 106 agreements entered into from 6 April 2015 must contain specific projects that have not previously been the subject of pooling but also that themselves are required to make acceptable what would otherwise be unacceptable (i.e. still satisfy the 3 CIL tests as set out above).
18. Some contributions may still be considered defensible when applied to larger developments of say 30 dwellings upwards (and where a clear project exists), but the majority of development will no longer contribute towards infrastructure. By way of example a developer may be required to pay for a new play area to support a particular development even if 5 contributions had already been secured towards 'offsite play'.
19. The District Council is reliant on Parish Councils to identify these projects, and officers have been meeting with some Parishes to discuss proposals and options. It is a challenge to engage with some Parishes when they are opposed to new development, and the input of Local Members will be vital to assisting this process.

Community Infrastructure Levy

20. When the Council started out the process of adopting a CIL charge it had considered doing so under the existing Core Strategy, however it later decided to introduce CIL under the emerging Local Plan in line with Cambridge City.
21. On 28 March 2014, the Local Plan and its supporting documents were submitted for independent examination to the Secretary of State for Communities and Local Government via the Planning Inspectorate.
22. The Local Plan hearings are continuing to be held and as a result the Council has been unable to implement CIL therefore not generate revenue from some types of new development that would previously have paid section 106 contributions, and would be liable for CIL were it in place. It is anticipated that CIL would generate in the region of £10,000 per liable house.
23. An assessment has been carried out as to how CIL may be introduced earlier, and a possible solution has been identified whereby rather than refer to strategic sites by reference to a zone, the Council can now define it by reference to the intended number of dwellings or units to be constructed or provided under a planning permission.

24. This approach was used successfully by Peterborough City Council in the recent approval of their charging schedule and where Peterborough had sought to exempt CIL from development for their largest developments sites comprising 500 dwellings or more.
25. It is considered that the same principle (i.e. changing the charge from reference to maps to reference to scale of development) could apply to South Cambridgeshire, which would overcome the first issue.
26. Expert legal advice is being sought to understand implications and assurances that any action would not be detrimental to the Local Plan examination.
27. If the Council wishes to hold a CIL examination while the Local Plan hearings are taking place then changes to the draft charging schedule would need to be made by publishing a 'statement of modification' with a 4 week consultation.
28. Any decision to change the strategy (which was approved by Cabinet on 10 April 2014) and to consult on the changes will require Member approval. If it is considered necessary to take this action ahead of when meetings resume (following the General Election) then it will be achieved by a special urgency decision.

Implications

Financial

29. Delays in introducing CIL mean that the Council is not receiving money from development which would otherwise be contributing towards local and strategic infrastructure.
30. Officers are using best endeavours to ensure that development may contribute towards infrastructure (through section 106 agreements) where it is lawful to do so.

Legal

31. The Council is experiencing challenge from some developers and agents as to the lawfulness of some financial requests which might have previously been accepted.
32. The Council is benefitting from external specialist legal advice on possible approaches in bringing CIL forward.

Staffing

33. There are no staffing implications other than the undertaking of additional work that was not previously considered necessary (i.e. further consultation etc).

Risk Management

34. There may be risks associated with progressing a CIL examination ahead of the adoption of the Local Plan, and these will be carefully considered as options are assessed.

Equality and Diversity

35. No implications have been identified.

Climate Change

36. No consultation has been taken on this report.

Consultation responses (including from the Youth Council)

37. No consultation has been taken on this report.

Effect on Strategic Aims

38. AIM: We will listen to and engage with residents, parishes and businesses to ensure we deliver first class services and value for money
39. A7. Ensure the South Cambridgeshire Local Plan and Community Infrastructure framework are based on effective engagement
40. AIM: We will work with partners to create opportunities for employment, enterprise, education and world-leading innovation
41. APPROACH: Planning for timely infrastructure to support developments
42. APPROACH: Maximising benefits to the community from new developments

Background Papers

Where [the Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#) require documents to be open to inspection by members of the public, they must be available for inspection: - (a) at all reasonable hours at the offices of South Cambridgeshire District Council; (b) on the Council's website; and (c) in the case of documents to be available for inspection pursuant to regulation 15, on payment of a reasonable fee required by the Council by the person seeking to inspect the documents at the offices of South Cambridgeshire District Council.

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