



To: Executive Councillor for City Centre and Public Places
(and Deputy Leader): Councillor Carina O'Reilly

Report by: Head of Planning Services

Relevant scrutiny committee: Community Services 19/3/2015
Scrutiny Committee

Wards affected: All wards

S106 FUNDING AND INTERIM ARRANGEMENTS AHEAD OF THE LOCAL INTRODUCTION OF THE COMMUNITY INFRASTRUCTURE LEVY

Key Decision

1. EXECUTIVE SUMMARY

- 1.1. Under national Community Infrastructure Levy (CIL) Regulations, new restrictions from 6 April 2015 will limit substantially the extent to which councils can enter into new S106 agreements with developers (and, therefore, significantly reduce the number and value of new S106 contributions from new developments). This is in addition to further constraints covered by a ministerial announcement in November 2014. Cambridge is particularly affected by the latest restrictions as the city council cannot introduce (or receive payments via) the Community Infrastructure Levy until after the examination of its draft Local Plan and CIL proposals has been concluded. See Section 3.
- 1.2. Officers are focussed on finding ways forward, working within the CIL Regulations to continue to be able to secure developer contributions – to mitigate the impact of development - prior to the local implementation of CIL. The development of these arrangements is ongoing and will need to be finalised after the Committee meeting date. See Section 4.
- 1.3. The new restrictions on the number of agreed contributions that can be collected for a particular purpose (often referred to as 'S106 pooling') do not affect developer contributions from existing S106 agreements that have already been received. This does not therefore impact directly on the fourth S106 priority-setting round scheduled for later this year. It is important to note, however, that new S106 agreements entered into after 6 April 2015 will have implications for S106 devolved decision-making in the longer term. See Section 5.

2. RECOMMENDATIONS

The Executive Councillor is recommended to:

- 2.1 delegate authority to the Head of Planning Services to finalise the city council's interim approach to seeking S106 contributions from 6 April 2015 until the local implementation of a Community Infrastructure Levy for Cambridge. The final details of this interim approach will be agreed in consultation with the Executive Councillors for City Centre & Public Places and Planning Policy & Transport, their Opposition Spokes and the Chairs of the Community Services and Environment Scrutiny Committees;
- 2.2 confirm that the scheduled fourth S106 priority-setting round (based on S106 developer contributions already received and available) will go ahead in 2015.

3. BACKGROUND

- 3.1 The Executive Councillor oversees the council's use of developer contributions and S106 devolved decision-making process – and this is why these issues are being reported to this Committee.
- 3.2 The city council has collected developer contributions (via Section 106 agreements), in line with its Planning Obligations Strategy SPD and the Community Infrastructure Levy Regulations 2010, to offset and mitigate the impact of development in Cambridge. This has helped to provide or improve a wide range of facilities across the city, including community centres, sports provision, parks & open spaces and play areas. For background information, please visit the council's Developer Contributions web page (see Section 7 for details).
- 3.3 This Committee has previously been briefed on the use of S106 contributions, notably in a S106 priority-setting report in October 2014. This has highlighted the Community Infrastructure Levy Regulations, which, for the last five years, have set three statutory tests to make sure that S106 contributions are:
 - a. necessary to make developments acceptable in planning terms;
 - b. directly related to the development; and
 - c. fairly and reasonably related in scale and kind to the development.
- 3.4 The October 2014 report also made this Committee aware of national policy changes through which the S106/planning obligations system would be replaced by the Community Infrastructure Levy (CIL) as the prime means by which councils secure payments from developers. Whilst there will still be S106 agreements in relation to affordable housing and on-site provision of facilities within developments, CIL will be the vehicle for general infrastructure contributions.

S106 pooling constraints

- 3.5 The Government is incentivising the introduction of CIL. New S106 pooling constraints, which come into effect on 6 April 2015, will restrict the extent to which councils can enter into new S106 agreements.
- a. S106 pooling constraints mean that if councils have put in place more than five S106 contributions since 2010 for an infrastructure project or type of infrastructure, then from 6 April 2015, they will not be able to collect any more contributions for that purpose.
 - b. Local authorities will only be able to accept a maximum of five contributions towards infrastructure projects or types of infrastructure that could otherwise be funded from CIL. Any such contributions should meet the three statutory tests. The five contributions include any from unimplemented consents.
- 3.6 The council's Planning Obligations Strategy supplementary planning document has focussed on a tariff-based system, with a number of standard contribution types (e.g., community facilities, informal open space, play provision for children and teenagers, outdoor sports, indoor sports, public art, public realm). These have been included in S106 agreements (each more than five times in the last five years) along the lines "for the provision of, improvement of or better access to.....within the city of Cambridge". The council will no longer be able to use this tariff-based approach from April 2015 and its standard contribution types. (That said, paragraph 4.4 considers the potential scope for the use of different/more specific projects or types of infrastructure in future S106 agreements.)
- 3.7 The city council submitted its CIL proposals to the Planning Inspectorate in March 2014, anticipating that the examination of the draft Local Plan and CIL proposals would be completed by April 2015. The examination process for the Local Plan has taken longer than expected, however, and is still on-going. Officers await to hear the Inspector's timetable for next stages, and it is expected that the examination of the Local Plan could extend into the rest of 2015. This has had consequences for the planned roll-out of CIL and continued reliance on S106 agreements for longer than previously expected.
- 3.8 The city council is not alone. South Cambridgeshire District Council faces the same issues with the public examination of its draft Local Plan and CIL proposals. Cambridgeshire County Council's scope to enter into its S106 contribution types for new developments (e.g., for roads and schools) is also significantly affected. More widely, officers are in contact with local authorities in four other counties which face delays beyond April 2015 in being able to implement CIL. Given that the Department for Communities and Local Government has already

extended the date from which S106 pooling constraints will apply (from April 2014 to April 2015), the possibility of a further extension is considered unlikely.

3.9 In addition to the new restrictions from April 2015, please note that:

- a. in late November 2014, the Minister of State for Communities and Local Government announced that S106 contributions should not be sought for sites of 10 homes or less (which have a maximum combined gross floor space of 1,000 square metres) and all residential annexes and extensions;
- b. a High Court ruling last month last month means that local authorities can no longer seek new contributions towards the monitoring of planning obligations. In *Oxfordshire County Council v Secretary of State for Communities & Local Government and others* [2015] EWHC 186 (Admin), it was held that administrative and monitoring costs incurred by a local planning authority in ensuring that planning obligations were observed were not an obligation in their own right (but an everyday function) and not necessary to make the development acceptable in planning terms.

3.10 It is clear that the implications of the changes - in terms of potential contributions that the council may no longer be able to seek - could be significant. It is, however, difficult to put a precise figure on this because it remains to be seen:

- a. whether the run-up to the local introduction of CIL may have an impact on the number of planning applications submitted;
- b. which specific major planning applications may come forward and whether site-specific mitigation measures may be necessary;
- c. how far the council may be able to secure other payments from developers, consistent with the CIL Regulations;
- d. when it will be possible for CIL to be implemented locally (albeit that a 12-month interim period is currently anticipated).

3.11 As a broad indicator of the potential impact, the city council entered into S106 agreements for 17 major sites (i.e., 11 or more dwellings) between January – December 2014, with agreed city council contributions totalling £1.7 million. Those from the three largest agreements were more than those from the other 14 agreements combined. It is important to remember, however, that:

Total value	Agreements
< £25k	6
£25k-£50k	4
£50k-£100k	1
£100k-£150k	1
£150k-£200k	1
Over £200k	3

- a. the number and value of planning applications for major developments varies from year to year;
- b. the 2014 analysis includes some site-specific contributions which the council will continue to be able to collect after 6 April 2015;
- c. not all developments for which S106 agreements are made come to fruition – that is, not all agreed contributions become payable.

4. APPROACH TO INTERIM ARRANGEMENTS

- 4.1 Whilst working within the CIL Regulations, the city council (working closely with county council and South Cambridgeshire District Council) is actively seeking an interim solution prior to the implementation of CIL, in order to minimise the impact of these changes. This involves:
 - a. putting in place sensible measures that can already be taken;
 - b. anticipating which major planning applications may come forward;
 - c. seeking expert advice to interpret the application of the regulations.
- 4.2 The measures already being put in place include:
 - a. getting S106 agreements finalised before 6 April 2015 for planning applications that have already been determined;
 - b. briefing relevant staff on what action is being taken to apply the recent changes and what they need to do in particular;
 - c. taking forward, as site-specific mitigation measures (as appropriate), those projects/works that the CIL report to the Development Plan Scrutiny Committee in March 2014 envisaged for future S106 agreements, for example
 - site-specific transport infrastructure
 - informal open space and play provision
 - household waste and recycling receptacles
 - on-site public art, as part of design considerations, and
 - on-site natural environment mitigation measures;
 - d. focusing contribution requests for monitoring activity on sites/issues necessary to make developments acceptable in planning terms (including monitoring of air quality and contaminated land).
- 4.3 The need to anticipate which major planning applications may come forward during the interim period (prior to the implementation of CIL) is particularly important given the national, standard 13-week target for determining major planning applications (once submitted). Officers need as much preparation time as possible to identify and negotiate specific mitigation measures that are necessary.

- a. The preparations being made include:
 - i. checking Annual Monitoring Report research and requests for pre-application advice as an indicator of which applications may be submitted (officers do not currently anticipate applications for any strategic sites in the next 12 months);
 - ii. consulting other council services about the potential impact of proposed developments, supporting evidence (e.g., from service strategies and needs assessments) and the need for mitigation measures;
 - iii. sharing information about anticipated major planning applications with county council colleagues, as appropriate.
- b. The council may need to focus its efforts, during the interim period before CIL implementation, on securing S106 agreements from larger sites, bearing in mind:
 - i. the amount of contributions that could be secured from individual sites (which need to be “fairly and reasonably related in scale and kind to the development”),
 - ii. the cost of mitigation measures and
 - iii. the constraint that no more than five contributions can be pooled towards a specific mitigation project (see paragraph 3.5b).

4.4 Reflecting on the S106 pooling constraints in the CIL Regulations, the latest advice note from the Planning Officers Society (February 2015) states that, “There has been debate about the exact meaning of ‘infrastructure projects or types of infrastructure’ and legal advice has been sought by some authorities. There are, as yet, no case law or appeal decisions which give guidance on the subject.” In this context, and in conjunction with the county council and South Cambridgeshire District Council, the city council will be seeking Counsel’s informal opinion on a range of questions to interpret how the CIL regulations may be applied and what actions the councils may need to consider.

5. S106 PRIORITY-SETTING

5.1 Overall, the council has around £5.2 million of unallocated off-site developer contributions available, including around £2 million (excluding on-site contributions for the major growth sites) received in 2014. A top-level analysis of the S106 funding available to each area committee and strategic/city-wide programme – by contribution type – will be provided ahead of the Scrutiny Committee meeting and posted on the council’s website. This will show that the availability of developer contributions is not evenly spread across the city or across contribution types. For example, there are higher levels of S106 contributions available from South Area and for outdoor sports

facilities and lower levels from the North and West/Central areas and for the play provision, public art & public realm contribution types.

- 5.2 The new S106 contributions agreed from 6 April 2015 will need to be site-specific and/or related to particular projects. It is unlikely that these will provide the same scope – as there has been in the past – for area committees (for local projects) and Executive Councillors (for strategic/city-wide projects) to decide subsequently how these should be used. S106 devolved decision-making and priority-setting will therefore be confined to those S106 contributions agreed prior to 6 April 2015.
- 5.3 Throughout the third S106 priority-setting round in late 2014/early 2015, this Committee and the area committees have been advised that S106 contributions will soon taper off and run down. This is reinforced by the implications of the S106 pooling constraints and the November 2014 ministerial announcement. These restrictions do not affect developer contributions from existing S106 agreements that have already been received, however.
- 5.4 Following the S106 priority-setting report to this Committee in October 2014, the Executive Councillor agreed the arrangements for the next (fourth) S106 priority-setting round later in 2015. This is based on:
 - a. inviting local residents and community groups to identify needs for new or improved facilities (not repairs or like-for-like replacements) in Cambridge to help address the impact of development in the city;
 - b. project proposals relating to the following contribution types: community facilities; informal open space; play provision for children and teenagers; indoor sports; outdoor sports; public art and public realm;
 - c. a public consultation and grant application process is scheduled to take place from early summer 2015, which would invite both:
 - i. proposals for projects on council land/property that would involve council project management and delivery and
 - ii. grant applications from community groups looking to improve their facilities, making them accessible to the wider community;
 - d. priority-setting reports to area and scrutiny committees, as appropriate (for local and strategic/city-wide projects respectively) in autumn 2015.
- 5.5 Although the S106 pooling constraints will have longer-term implications for S106 devolved decision-making and priority setting, it will still be possible for the fourth round to go ahead. Recommendation 2.2 invites the Executive Councillor to confirm this approach.

6. IMPLICATIONS

- 6.1 **Financial implications:** This report has highlighted the likelihood of significant reductions in S106 contributions that can be agreed from 6 April 2015. Please note also that contributions are payable only when triggers for payment are met (e.g., when development commences).
- 6.2 Paragraph 3.9 has also highlighted that councils can no longer seek new contributions towards the monitoring of planning obligations. These have previously helped to meet the costs of planning obligations monitoring. The implications of this will be addressed as part of the wider review of the council's S106 and CIL service in the coming year.
- 6.3 **Staffing implications:** It remains to be seen what effect the S106 pooling constraints and the run-up to the introduction of the CIL will have on the volume of planning applications received by the city council – and what this means for the workloads of planning officers and staff in other services (e.g., in compiling evidence to demonstrate the need for site-specific mitigation measures).
- 6.4 Whilst there may be fewer S106 applications to process and monitor, staff involved in overseeing and monitoring developer contributions will be fully engaged in the on-going preparations for the local implementation of CIL and the arrangements for the S106 fourth priority-setting round (assuming recommendation 2.2 is approved).
- 6.5 **Equality and poverty implications:** S106 contributions are focussed on mitigating the impact of development. The likely significant reduction in the overall value of new S106 contributions that can be agreed from 6 April 2015 (particularly prior to the local implementation of CIL) will reduce the developer contributions available to mitigate the impact of development, not least in those parts of the city facing social and economic disadvantages.
- 6.6 Assuming that recommendation 2.2 is approved, officers will contact local equalities groups ahead of the consultation stage of the fourth S106 priority-setting in order to encourage proposals from people who have tended to be under-represented in previous S106 consultations. This is in line with actions identified in the Equality Impact Assessment, which was reported to this Committee in October 2014.
- 6.7 **Environmental implications:** There are no specific implications arising from this report beyond the general recognition that fewer new developer contributions agreed during the interim period prior to the local implementation of CIL will reduce the council's ability to mitigate the environmental impact of development in Cambridge.

- 6.8 **Procurement implications:** None arising from this report.
- 6.9 **Consultation and communication:** The council's Developer Contributions web page has mentioned the broad arrangements for the fourth S106 priority-setting round since last autumn and these have also been highlighted in area committee reports. Assuming that recommendation 2.2 is agreed, the consultation/grant application stage in early summer 2015 will be publicised via the website, social media, news releases and emails to local groups (not least those which have made enquiries in the last 12 months about the availability of S106 funding).
- 6.10 **Community Safety implications:** None arising from this report.

7. BACKGROUND PAPERS

These background papers were used in the preparation of this report:

- Community Infrastructure Regulations (<https://www.gov.uk/government/policies/giving-communities-more-power-in-planning-local-development/supporting-pages/community-infrastructure-levy>);
- Planning Officers' Society advice note on "Section 106 Obligations and the Community Infrastructure Levy", February 2015 (<http://www.planningofficers.org.uk/downloads/pdf/POS%20Advice%20Note%20S106%20and%20CIL%20February%202015.pdf>);
- Written statement to Parliament by Minister of State for Communities and Local Government (28/11/14): <https://www.gov.uk/government/speeches/small-scale-developers>
- Developer Contributions web page (www.cambridge.gov.uk/s106);
- Community Infrastructure Levy web page (www.cambridge.gov.uk/community-infrastructure-levy);
- S106 grants reports to Community Services Scrutiny Committee, 15/01/2015;
- "S106 priority-setting and devolved decision-making" report to Community Services Scrutiny Committee, 16/10/2014;
- "Draft Planning Obligations Strategy SPD" report to Development Plan Scrutiny Sub-Committee, 25/3/2014.

8. INSPECTION OF PAPERS

To inspect the background papers or if you have a query on the report please contact:

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