

Section 106 Planning Obligations and an update on Crawley Community Infrastructure Levy

Report of the Head of Strategic Housing and Planning Services
SHAP/53

1. Purpose

- 1.1 The purpose of this report is to outline the process and management of the spending of Section 106 (s106) agreements in response to a request from the Overview and Scrutiny Commission. The report will also address how s106 will sit alongside Crawley's emerging Community Infrastructure Levy (CIL).

2. Recommendations

- 2.1 To the Overview and Scrutiny Commission:

- That the Commission notes the contents of the report in regard to the Council's s106 process and,
- Advises of any issues that they wish to be considered as part of the development of the Council's CIL governance proposals.

3. Reasons for the Recommendations

- 3.1 In response to specific queries raised by the Overview and Scrutiny Commission, a report has been prepared which outlines the council's current and agreed processes for the spending and management of s106 money collected from developments within Crawley.
- 3.2 As required by each of the s106 agreements, s106 money must only be used to mitigate against the adverse impacts generated by that specific new development, including the provision of additional or improved infrastructure and services to support the needs of new development. The spend and management of s106 monies are therefore tightly regulated. This report also provides the current position in regard to spend, commitments and current collected monies for s106.
- 3.3 As the Council is also looking to adopt its own Community Infrastructure Levy this report explains further the relationship between CIL and s106 under the new regulations and the role of both funds as the Council progresses with the adoption and governance opportunities for CIL, to be agreed later this year.

4. Current Management and Procedures for s106 Planning Obligations and Procedures

- 4.1 Each individual s106 agreement sets out how the funding must be used in mitigating against the adverse impacts generated by that specific new development. National policy changes have placed increased restrictions on how s106 funding can be used. One of these restrictions is that the council is no longer able to pool more than five planning obligations (s106 agreements) to pay for a single infrastructure project or type of infrastructure. This is now a key factor in allocating s106 agreements.
- 4.2 With the introduction of CIL, s106 agreements must become much more specific to the development they are required for, with much clearer justification behind why we ask for them and what the money will be used for. They will also be used to secure affordable housing and must solely be used to mitigate the direct impact of development.
- 4.3 The current process for spending s106 monies includes an assessment to make sure that the request for spend and allocation of funds meets the strict specifications that have been set out in the development's s106 legal agreement. The development's s106 legal agreement will provide details of any time constraints for use, specific projects/allocations that the money must be spent on, or in some cases a catchment area where the money can be spent.
- 4.4 The council's agreed democratic process for s106 spending is therefore as follows:
- i) Completion of a proforma covering project specifics, delivery and implementation, including the costs and location of schemes.
 - ii) An assessment to ensure that the request adheres to any potential s106 legal criteria within the agreements that the money must be used for i.e transport, open space etc.
 - iii) Consultation is undertaken with relevant ward members based on the location of the scheme for their views.
 - iv) Consultation is undertaken with the Portfolio Holder for Planning and Economic Development.
 - v) For schemes up to £100k a final report, incorporating any comments received, is then considered for sign-off under delegated powers by the Head of Strategic Housing and Planning Services in consultation with the Head of Finance, Revenues and Benefits.
 - vi) Cabinet approval is required for schemes over £100k.
 - vii) Once a scheme is agreed then funds are committed and ring-fenced for this project.
- 4.5 Historically, a large amount of transport money had been received from developments in the town. The Cabinet Member for Planning and Economic Development has taken a proactive role in working with officers from both the council and WSCC to identify and deliver transport related schemes suitable for s106 funding. Decision making is informed by the County Local Committees (CLCs) priorities list and WSCC's Integrated Works Programme together with other community and ward member feedback.
- 4.6 The officer group has evolved and is now involved in identifying further schemes that can utilise other s106 money received, as well as responding to ad hoc requests via the completed pro-forma. The Officer Working Group comprises officers from Economic Development, Forward Planning, Property, Finance, Community Services, and, most recently, the Environment Unit. The group meets monthly to review progress and resolve any potential issues regarding finance, design, delivery, allocation and the implementation of schemes.

- 4.7 This has resulted in the commitment to and delivery of s106 money to a variety of schemes, most recently open space, cycle paths and Manor Royal Public Realm improvements. As per Table One below, CBC currently holds s106 monies for a number of obligations. The council has successfully spent a total of £8,011,603 of s106 monies since 1993/4, providing important new infrastructure for Crawley such as part funding Fastway, school extensions and Crawley Library. Table One highlights how much has already been spent up to 31 December 2015, as well as the amounts currently committed to schemes and the amounts still available. Appendix One provides the detail of each of these committed schemes.

Table One: S106 spend, committed and available

S106 obligation	Money already spent up to 31/12/15	Money currently committed	Money Currently available
Transport	4,798,508	1,428,841	955,657
Education	1,033,926	323,968	46,471
Library	248,172	0	0
Open space	1,078,794	217,040	969,275
Fire	0	0	45,016
Manor Royal Public Realm	0	20,000	157,406
CCTV	105,267	0	55,771
Affordable Housing	732,392	0	0
Public Art	0	15,000	60,000
Other Public Realm	14,544	53,455	160,109
Town Centre Management	0	0	50,000
Maintenance	0	0	20,000
Totals:	8,011,603	2,058,304	2,519,705

- 4.10 As part of the assessment process, officers also regularly monitor the timeframes specified within current s106 allocations. These vary between agreements, with some specifying a date by which the money should be spent or it has to be returned to the developer, and others having no deadline. To ensure the assessment process is efficient and effective, officers currently consider those suitable s106 agreements that will expire first. To date no s106 agreements have been repaid back to a developer as funds have been either spent or committed.

5. Crawley's Community Infrastructure Levy

- 5.1 Crawley's Community Infrastructure Levy (CIL) will set a contribution rate for new residential and retail developments based on development viability. Following a commitment by the council in September 2015 to adopt and implement CIL in Crawley, procedures set out in the CIL Regulations 2010 (as amended) must be followed. CIL charges are based on a calculation related to £'s per m² of net additional floorspace and are payable on 'buildings that people normally go into'. The charge will apply to all new development of 100m² or more and the creation of a single dwelling, even if the floorspace is under 100m². There are a number of exemptions to this; including affordable housing, self-build housing and starter homes.

- 5.2. On December 21 2015, the Council submitted its CIL Charging Schedule to the Planning Inspectorate, following the adoption of the Crawley Borough Local Plan 2030. The Council now has to develop its own governance process, in line with CIL regulations, to ensure that a due process is set out when allocating CIL funds to infrastructure projects.
- 5.3 CIL regulations also affect what the Council can ask for under a s106 contribution, as CIL and s106 cannot fund the same piece of infrastructure. The Council is monitoring the current s106 position with regard to commitments and recent spend, in order that s106 and CIL processes can be aligned following the adoption of CIL later this year.

6. CIL and s106: New Opportunities

- 6.1 The introduction of CIL will allow the council to obtain an income more easily from residential and retail development, that will help fund and deliver the borough wide infrastructure required to mitigate the cumulative impacts of development and growth set out in the Crawley Borough Local Plan. CIL will make a small contribution to bridging the infrastructure funding gap, but other funding sources will still be necessary, including the LEP, WSCC, CBC and private infrastructure providers (Network Rail etc.) Nationally, it is accepted that CIL will not fund all the infrastructure required; in Crawley, CIL may be able to provide £9 million income over the next 15 years, based on the level of development identified in the Local Plan to 2030. However, the CIL fund will take some years to build up. The total requirement for infrastructure to support new development has been estimated at £138 million and there is therefore a critical need to continue to work with infrastructure providers to confirm other funding sources.
- 6.2 Whilst s106 will still have a role alongside CIL, it must legally be much more limited to site specific infrastructure requirements and affordable housing contributions. In accordance with the Regulation 122 of the CIL regulations 2010 (as amended), planning obligations should only be used where they are **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.
- 6.3 To ensure that both s106 and CIL are complementary to one another and to avoid any potential for double charging developers, the council has to publish a Regulation 123 List which sets out the types of infrastructure it intends to fund through CIL money. This means that s106 will not be used to fund the infrastructure identified in the Regulation 123 list for CIL. This is statutory requirement to be considered as part of the CIL examination and will require any future s106 funds to be even more specific in how and when they can be used. More generic contributions to e.g “Open Space” will no longer be possible. To make it clear how CIL and s106 will be applied in Crawley a guidance document will also be prepared and adopted later this year, which will provide further amplification on how CIL and s106 agreements will work together in practice. This will replace the current Planning Obligations SPD (2008).
- 6.4 CBC will continue to act as the designated “Charging Authority” and will be responsible for CIL collection and spending. CIL money collected in the borough will be held by the council, but close working will be required with WSCC and other infrastructure providers in order to deliver the infrastructure that is required. As much of the critical infrastructure required, such as transport improvements and education facilities, are the responsibility of WSCC, it will be very important that clear governance arrangements are in place for WSCC to receive CIL monies in order to help deliver priority infrastructure in Crawley. Of the total requirements for infrastructure provision in Crawley, 48% of the total number of projects and 81% (£112.6 million) of the total costs are for schemes that are required to be delivered

by WSCC. A further £9.4 million of schemes have been identified to be provided by other infrastructure providers, with a potential requirement for CBC to contribute up to £16.4 million for CBC schemes. This is mainly due to infrastructure such as open space and environmental projects, however, these are worst case projections.

- 6.5 CIL has a number of advantages over the current system of s106 agreements, including more transparency to developers regarding costs, the ability for the Local Authority to set its own governance structure, and the requirement for 15% of CIL receipts (or 25% where there is a neighbourhood plan) to be available to the local community to mitigate the impacts of the development by providing local infrastructure. As Crawley has no Parish Councils, CBC will retain all of the levy receipts, but it should engage with the local community and agree on how best to spend their 15%.
- 6.6 In order to ensure that CIL and s106 monies are used most effectively to deliver the necessary infrastructure for Crawley, officers are developing ideas regarding CIL governance. This will enable the process to become more transparent and to make the process as accessible as possible, enhancing the engagement of local members and residents in the process. An all members' seminar is proposed to take place in March to discuss emerging ideas for governance to manage the mandatory 15% "meaningful proportion" for local communities whilst addressing the remaining 85% for strategic infrastructure delivery, and to start to identify infrastructure priorities.

7. Next Steps

- 7.1 Should CIL be adopted by the Council, following the CIL examination and endorsement by the Inspector, the Council is legally required to have a start date for requesting funds and this should be supported by a governance structure.
- 7.2 The aim would be to have the governance structure agreed alongside the adoption of CIL at the June Cabinet. Given the importance of involving all members and the public as part of the governance structure, it is intended that work will start with members and forums at the end of February, allowing sufficient lead in to meet deadlines for the June Cabinet. It is essential that CIL monies are allowed to be legally sought and therefore officers are recommending that the governance process is adopted separately to decisions on what the money will be used for. The development and adoption of an Infrastructure Business Plan that sets out an annual programme for expenditure for both strategic projects and at a local level is proposed. The table below sets out a potential programme for the development of governance arrangements.

Key target dates for preparing the governance structure and the potential business plan are therefore proposed for consideration:-

Table Two: Key stages in CIL governance preparation

Action/next step	Target Dates (2016)
Stage One: Input into CIL Governance Structure :	
Initial Portfolio Holders Meeting	February
All Members Seminar	Early March
Forum Chairs Meeting	Early March
Joint Officer Liaison Group Meeting	Monthly
Joint Member Liaison Group	Quarterly
Community Engagement Workshop with all Neighbourhood Forums Representatives	April
Stage two: Input into drafting the Infrastructure Business Plan	
Discussions with Joint Officer Liaison Group and Joint Member Liaison Group	End April
Stage Three: Initial Consultation on Draft Infrastructure Business Plan	
Member and public drop in workshop	End May
4 weeks public consultation including web and press during which a Joint Officer & Joint Member Liaison Group meetings will be held. Circulation to members, infrastructure providers and local residents.	May-June
Stage Four : CIL and Governance Structure Adoption	
Adoption of CIL charges and proposals for CIL governance structure (Cabinet)	29 th June
Stage Five: Finalise Infrastructure Business Plan	
Discussions with Joint Officer Liaison Group and Joint Member Liaison Group.	September
Stage Six: Full consultation on Final Infrastructure Business Plan	
4 weeks public consultation including web and press during which a Joint Officer & Joint Member Liaison Group meeting to be held. Circulation to members, infrastructure providers and local residents.	September-October
Stage Seven: Adoption of Infrastructure Business Plan	
Cabinet approval of Infrastructure Business Plan.	November

8. Background Papers

- OSC and Cabinet report PS/0364 -Allocation of section 106 monies February 2009
- OSC and Cabinet report September 2015 SHAPS/50- Community infrastructure Levy Draft Charging Schedule

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Appendix One: Current S106 spend committed

S106 Committed as at 31st Dec 2015

S106 category	Amount committed	Details of commitment	Further Officer notes
Transport	57,976	Bike It	For Officer Post Funding 2015/16 and 2016/17
	104,675	Bus Shelters	Bus Shelter approved cabinet 02/2009 report PS0364.
	334,124	Cycle Related	Delegated Reports 100K Boulevard Cycle Way 15K Sussex House Cycle Path Toucan Lights 75K London Road Cycle Scheme Earmarked 100K Worth Park Avenue Cycle Path 44K committed to cycle related projects
	88,565	Crossings	43K Downland Drive currently delayed by WSCC Delegated Reports:- 28K Southgate Avenue 18K Hazelwick Avenue Puffin Crossing
	397,811	Three Bridges Station	Specified in S106. Committed in SHAP/43
	90,000	LEP/SEP	All for Manor Royal as part of Local Enterprise Partnership Strategic Economic Plan 60k Real Time Information (Bus Shelters) 30K Signage and Wayfaring
	50,500	Various Projects	Transport projects such as; School Safety Zones, Drop Kerb and Traffic Calming
	150,000	Strategic	Committed as strategic transport monies to match fund projects in line with 80/20 split (Nov 2007)
	38,040	WSCC Earmarked for Signal Crossing	At Buckswood Drive
	107,850	S106 Specific – Pegler Way	Has to be kept for 12 years from 2013/14 to be used on a specific highway alterations at Pegler Way if required
	9,300	Bewbush School Cycle Pods	Agreed awaiting, invoice from School
Total Transport	1,428,841		
S106	Amount	Details of commitment	Further Officer notes

category	committed		
Education	323,968	Additional School places at Three Bridges Primary School and Waterfield Primary School	Cabinet Report SHAP 39 2 nd July 2014 Awaiting WSCC to invoice
Open Space	217,040	Various Schemes identified within the Play Strategy	Awaiting final details for delegated reports to be circulated
Manor Royal – Public Realm	20,000	Manor Royal Gateway 3 match funding for LEP	As agreed by delegated reports by Head of SHAPS
Public Art	15,000	Crawley Museum Development	As per Cabinet Report July 2013
Public Realm	28,455	Sussex House Cycle Way	As agreed by delegated reports by Head of SHAPS
	25,000	Crawley Museum Development	As per Cabinet Report July 2013
Total Other	629,463		
Total Committed	2,058,304		