

Birmingham City Council

Resources Overview and Scrutiny Committee

Date 30 March 2023



Subject: Guide to S106 and Community Infrastructure Levy – Consultation arrangements

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1 Purpose

- 1.1 The report provides an overview of the processes and procedures regarding planning obligations (Community Infrastructure Levy (CIL) and S106), as requested at a previous Committee.
- 1.2 This overview is outlined at Appendix 6.1

2 Recommendations

- 2.1 That members of the Resources Overview and Scrutiny Committee note the content of Appendix 6.1

3 Any Finance Implications

- 3.1 There are no finance implications as this report is for information. Any financial implications regarding CIL and S106 funds are assessed on a project by project basis.

4 Any Legal Implications

- 4.1 There are no legal implications as this report is for information. Any financial implications regarding CIL and S106 funds are assessed on a project by project basis.

5 Any Equalities Implications

- 5.1 There are no finance implications as this report is for information. Any financial implications regarding CIL and S106 funds are assessed on a project by project basis.

6 Appendices

- 6.1 Guide to S106 and Community Infrastructure Levy – Consultation Arrangements
- 6.2 CIL - Financial Summary
- 6.3 Planning Applications requiring S106 Agreements which can be approved under Delegated Powers.

CIL

CIL funds are separated into three categories; the monitoring and administration sum, the Strategic CIL contribution and the Local CIL contribution, according to the CIL Regulations 2010 (as amended).

- The monitoring and administration sum is 5% of CIL receipts and covers the administrative and associated costs associated with preparing and charging a CIL and therefore there is no opportunity to influence this spend.
- The Strategic CIL contribution is 80% of CIL contributions. The CIL Regulations require that Strategic CIL funds can only be spent on infrastructure needed to help deliver the Birmingham Development Plan (BDP). The City's population is expected to grow by 150,000 by 2031, and the BDP addresses this challenge by setting out a framework for future development, including where new homes will be built, where there will be opportunities for new employment areas, how we deliver an inclusive economy and how we address climate change. The local authority will decide what infrastructure is needed, with decisions based on the Infrastructure Delivery Plan (IDP) – a document which identifies the infrastructure required to deliver the BDP. Potential projects can be suggested and will be assessed by officers to determine if there are sufficient strategic CIL funds, and if that project will deliver necessary infrastructure as identified in the IDP. A new process is being designed for allocation and can be presented to this Committee when finalised in Summer.
- The Local CIL contribution is 15% of receipts from the area (Ward) in which development takes place and must be spent in that area. The City Council retains these receipts and should engage with the communities where development has taken place and agree with them how best to spend the funding. The use of neighbourhood funds should match priorities expressed by local communities. We currently have a successful pilot project with Spacehive, a crowdfunding platform, distributing the local CIL funds in 11 Wards, matching local pledges to CIL contributions. In Round One, 5 of the 7 projects have achieved their funding total (to date) and Round Two has launched. We are hoping this will be even more successful than Round One as momentum grows. The Neighbourhood Development Support Unit has also distributed a number of smaller grants to seed larger projects.

A report is produced annually outlining the City Council's CIL position, including funds received, funds carried over from previous financial years, and CIL funds spent.

S106

A Section 106 agreement is a legal agreement intended to make acceptable development which would otherwise be unacceptable in planning terms. These agreements derive from section 106 of the Town and Country Planning Act 1990. In

short, it requires either the developer (carrying out works themselves) or the local planning authority (as a result of a payment by the developer) to carry out works, or restricts what can be done with the land following the granting of planning permission.

Government legislation requires that planning obligations are only sought where they meet all of the following tests:

- Necessary to make the development acceptable in planning terms
- Directly related to the development
- Fairly and reasonably related to scale and kind to the development

Agreements can be used to secure several types of obligation to mitigate or compensate for the impact of the development, or to meet policy requirements. These include:

- Infrastructure (e.g. traffic calming measures, road improvements)
- Enhancement of the local environment (e.g. public realm improvements)
- Other measures to mitigate impact of development (e.g. replacement of local wildlife habitats)
- Provide facilities / services needed for the development (e.g. community / educational facilities)
- To provide off site provision of obligations when they cannot be achieved on site (e.g. new public open space)
- To help deliver other planning policies such as affordable housing.
- Other requirements related to development (e.g. local employment initiatives)

Section 106 Policy

The City's policy regarding S106 agreements is set out in the Birmingham Development Plan (BDP) (<http://www.birmingham.gov.uk/plan2031>). This states "the City Council will take all appropriate opportunities to negotiate planning obligations to enable development to proceed, and to secure the proper planning of the development and the area." In addition to the BDP, there are two adopted Supplementary Planning Documents (SPD) which refer to S106 requirements. These specify the levels of affordable housing and public open space necessary for new residential developments. The approved status of these SPDs ensures they are prioritised when negotiating planning contributions. However, additional planning policies (such as area based planning documents) can also be taken into account.

Consultation on Section 106 contributions

The Local Planning Authority seeks views on proposed S106 clauses during the consultation stage of the any application that may give rise to an agreement (predominantly large scale schemes)..

All new applications are published on the Councils Weekly List. The Weekly List is available on line at www.birmingham.gov.uk/planningweeklylists and lists all planning applications submitted on a Ward basis. Comments can be forwarded to the Planning Department (using this link - https://www.birmingham.gov.uk/info/20160/planning_applications/22/planning_online) on any applications, and these can include potential suggestions for a S106 agreement. Comments can also be submitted through local councillors.

There is finite sum available for S106 contributions, and it may not be possible to fund all requests, or even achieve policy compliant contributions.

The recommended Heads of Terms in any Section 106 agreement are formulated by the Strategic Director of Inclusive Growth, taking into account consultation responses that meet the S106 tests outlined above. However, the final Heads of Terms of the Section 106 agreement are usually agreed by Planning Committee, and once agreed, cannot be altered, except through due legal process (please see Appendix 6.3 for further details of S106 agreements which are not presented to Planning Committee).

S106 monies are received at agreed points during the development. There may be some sums within an agreement with an element of discretion in the precise location of spend. This will be the subject of local consultation by the service responsible for delivering the works (e.g. Landscape Practice Group for public open space works. This information is included in the six monthly reports to Members) in conjunction with the relevant constituency officers and Members. Once S106 funds are received, the S106 Team will also send an email to all relevant Members detailing the amount of funding, expiry date, any geographic or other spend restrictions, and details of officers to contact to discuss potential projects.

Appendix 6.2 CIL Financial Summary

CIL Income to date.

CIL category	Total Value CIL Owed	Total Value CIL Received
Monitoring and Administration Fee	1,235,267.15	1,085,863.01
City Wide - Strategic	19,764,277.87	17,460,695.88
Ladywood	1,837,881.10	1,655,072.71
Harborne	129,328.11	129,328.11
Bournville & Cotteridge	57,824.47	57,824.47
Weoley & Selly Oak	139,758.45	139,758.45
Edgbaston	55,899.62	55,899.62
Newtown	478,937.01	457,944.06
Bournbrook & Selly Park	249,475.81	164,726.15
North Edgbaston	20,323.09	10,461.02
Stirchley	193,413.55	159,327.04
Soho & Jewellery Qtr	251,117.74	161,141.33
Kings Norton North	6,062.20	6,062.20
Bordesley & Highgate	173,154.55	173,154.55
Nechells	97,447.82	97,447.82
Sutton Coldfield Town Council	£126,172.16	£119,999.40
TOTAL	24,690,168.54	21,814,706.42

There will be discrepancies between the amount of CIL due and the amount received. This is because there is an approved payment instalment policy (required under the CIL Regulations) and therefore not all payments are due upon commencement of development. The instalment policy allows up to two years to pay CIL in full.

As Sutton Coldfield is a Town Council, under the CIL Regulations, we are required to pay the CIL receipts directly to the Town Council, and they are able to determine their spend priorities.

CIL Spend to date.

£10,000,000 Commonwealth Games legacy projects (to include Perry Barr Railway Station improvements and highway improvements (£8,750,000 in 2021/22 and £1,250,000 on 2022/23))

£76,414.96 for the refurbishment of the Dolphin Centre in Ward End Park, providing education, training, employment, health and wellbeing support for women in the local community

£90,000 to Spacehive to provide support for the crowdfunding pilot for the local CIL element over three years. In Round One, five of the seven projects have achieved their funding total (with time remaining on Round One for the last two projects). Round Two will commence imminently with projects able to submit potential projects to Spacehive and officers.

There are a number of other projects which have a CIL commitment but these are awaiting decisions through the relevant delegations.

Appendix 6.3 Planning Applications requiring S106 Agreements which can be approved under Delegated Powers.

With regard to full planning permission:

- as a result of a section 73 application;
- applications for up to 40 residential units which are either policy compliant or are justified by an independent viability assessment
- renewal or resubmission of a planning application where the principle has been established by a previously approved application; and
- where the proposed development is substantially the same as that previously considered and approved.
- where an off-site bio-diversity net gain contribution is required.

With regard to Deeds of Variation:

Agree extensions of time for the completion of S106 Agreements and prepare Deeds of Variation to allow residual balances of up to £100,000 to be used in a manner to be agreed with the relevant spending department, and other Deeds of Variation where the value is similar or to increase the spend period for S106 sums, or following a section 73 application