

## **Community Infrastructure Levy (CIL)/Section 106 (S106)**

### **Key Messages**

Forum members are asked to:

- Note the following information around how CIL/S106 works.

### **1. Introduction/background**

- 1.1. At the September Schools Forum, it was requested that a paper be provided to give information on how CIL/S106 works: how it's calculated; who holds the money; how funding is allocated to schemes; and governance arrangements around decision-making/allocation.

### **2. CIL**

- 2.1. The Council began charging the Community Infrastructure Levy (CIL) on 15 July 2015. CIL is a tariff-based charge on the development of new floorspace (per square metre plus indexation). The money can be used to fund a wide range of infrastructure (e.g. education, transport, open space, and public realm) that is needed to meet the future growth needs of the City.
- 2.2. The national CIL legislation requires 15% of the CIL collected to be retained to support local communities (this becomes 25% in areas where there is an adopted Neighbourhood Plan). This is referred to in national CIL Guidance as the 'neighbourhood CIL'. Where there are local councils such as town and parish councils, this 15% will be paid over directly to the local councils to spend on their infrastructure priorities. As most of the city is unparished, the Council has chosen to allocate all the remaining neighbourhood CIL to individual wards (this is calculated using Indices of Multiple Deprivation). Our Local Area Committees determine how this is spent following consultation with their local communities. Up to 5% of CIL receipts can be used by the collecting authority to cover administrative expenses. The remaining amount is the main CIL 'pot' that is available for spending on the Council's priority strategic infrastructure projects.
- 2.3. The amount of CIL payable depends on where the development is located within the city and the type of development (ranging from £0, £30, £40, £50, £60, and £80 per square metre). The Sheffield CIL Charging Schedule and map of the charging zones are available to view on the Council's website at <https://www.sheffield.gov.uk/cil>. Unlike S106, the rate of CIL payable is both

mandatory and non-negotiable (the only exception being where relief or exemptions are applied for).

- 2.4. The CIL Regulations require that an infrastructure funding statement (IFS) is produced each year. This Statement sets out how strategic infrastructure projects across the city have benefited from the allocation of funds received in relation to strategic CIL. CIL Planning Practice Guidance states that “local authorities must spend the levy on infrastructure needed to support the development of their area”. These future spending priorities should be in line with up-to-date or emerging plan policies.
- 2.5. The new draft Local Plan will identify locations and sites for development, which will enable us to identify suitable strategic infrastructure projects required to deliver specific levels and types of growth.
- 2.6. In the meantime, it would be helpful to provide some clarity on the anticipated general approach to infrastructure provision. This can identify the types of infrastructure likely to be prioritised, largely based on the Council’s Capital Strategy. This ‘Interim Infrastructure List’ helps to provide guidance for the Council in making infrastructure spending decisions involving CIL.
- 2.7. The list below sets out the types of infrastructure the Council intends will, or may be, wholly or partly funded by CIL - provision, improvement, replacement, operation or maintenance of:
  - Education facilities.
  - Health care facilities.
  - Public open space and playgrounds.
  - Active travel measures (including public transport, walking, cycling and highway improvements) and other highway improvements.
  - Flood defences or other flood resilience measures.
  - Sport and/or leisure facilities.
  - Community or cultural facilities.
  - Other infrastructure projects which facilitate economic development and growth infrastructure projects or investment pipeline opportunities which have been approved by the Council’s Co-Operative Executive (or equivalent decision-making body) and which fall under the definition of strategic infrastructure.
- 2.8. Decisions around the spending of the Neighbourhood element of CIL are reserved to Local Area Committees.
- 2.9. The main portion of CIL forms part of the Council’s Corporate Investment Fund. Subject to schemes meeting the criteria Interim Infrastructure list, decisions on the utilisation of this would be made by members in line with their corporate priorities through the Finance Sub-Committee. Individual projects funded from CIL would then be brought through the usual approval routes.

### **3. Section 106**

- 3.1. Section 106 Agreements (also known as Planning Obligations) are legal agreements which can be attached to a planning permission to mitigate the impact of development.
- 3.2. Section 106 legal agreements can only be sought where they meet the three tests that are required in order to grant planning permission. The tests are:
  - Necessary to make the development acceptable in planning terms;
  - directly related to the development; and
  - fairly and reasonable related in scale and kind to the development.
- 3.3. These tests are set out in the CIL Regulation 122 and the National Planning Policy Framework (paragraph 57).
- 3.4. Previously, the Council sought a Section 106 Planning Obligation in parts of the city where there were capacity issues arising from new housing development. Since the implementation of the CIL, contributions towards providing additional school accommodation, either through an extension or the commissioning of a new school will now normally be funded through CIL.
- 3.5. However, there may be circumstances where a Section 106 Planning Obligation is required, for example where a major residential development is proposed, and subsequently the capacity of a local school will have to be increased, either through an extension or the commissioning of a new school, within the local area.
- 3.6. Where a Section 106 Planning Obligation is required, the NPPF in paragraph 204 requires contributions to be related in scale to the development. The level of contribution from a developer towards School Infrastructure Provision will be calculated from: (a) the number of school-age children expected to come from the development; (b) the cost of providing the additional capacity required to accommodate these children. These factors will allow costs to be worked out in relation to the direct impact on education facilities of each application. School Infrastructure Provision covers primary, secondary and sixth form school classrooms and associated facilities.
- 3.7. The current thresholds for requiring a Section 106 agreement to make major residential developments sustainable are: -
  - Type of Development: All types and sectors of housing, with the exception of houses and flats with only one-bedroom, purpose-built student accommodation and dwellings formally designed as retirement properties, which are unlikely to yield school age children.
  - Primary Provision – Development of 500+ dwellings are sufficient to require a whole classroom; therefore, a physical extension to an existing school within the local area is required. Developments of 1000 + dwellings are sufficient to trigger a new individual primary school within

the Local Area or physical extension; to meet the needs of the development.

- Secondary and Sixth Form Provision – developments of 1000+ dwellings are sufficient to require a whole classroom; therefore, a physical extension to an existing school within the Local Area is required. Developments of 5000+ dwellings are sufficient to trigger a new individual secondary, possibly including a sixth form, within the Local Area; or multiple physical extensions; to meet the needs of the development.

3.8. However, the covenant of each Section 106 agreement needs to be reviewed individually to identify the purposes and location of any expenditure that can lawfully be funded from it. Decisions on the utilisation of any Section 106 legal agreements are made by the Schools Growth Team in line with priorities for expansion.

#### **4. Recommendations**

Forum members are asked to:

- Note the update provided and, if required, pose any further questions to be addressed/discussed at the February meeting of the Forum.