

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S
REPORT TO**

Cabinet
03 February 2021

Report Title: Planning Agreements and Community Infrastructure Level (CIL)

Submitted by: Shawn Fleet: Head of Planning & Development

Portfolios: Planning & Development

Ward(s) affected: All

Purpose of the Report

To provide clarity on how contributions from S106 agreements are used.

Recommendation

That Cabinet

1. Review the use of S106 and CIL in light of the findings of the Planning White Paper review and the emerging Borough Local Plan.
2. Agree to a review of the Developer Contributions SPD adopted 2007 with particular focus on the role contributions have on supporting local communities and especially those with an adopted Neighbourhood Plan in place.

Reasons

The recent White Paper on Planning indicated there may be changes with the operation of CIL, it is not clear at the present time if the current arrangements will continue after the review.

1. **Background**

- 1.1 The Government has long held that it is appropriate for Local Planning Authorities to address the impact that a development may have on a local community through the use of conditions and legal agreements.
- 1.2 Conditions are primarily of use in dealing with matters on site e.g. the materials to be used whereas legal agreements in the form of Section 106 (S106) agreements have greater capacity to secure mitigation especially where third parties are involved. This is in part because such agreements are a contract and as such can be enforced through the courts if there is a breach.
- 1.3 The Community Infrastructure Levy (CIL) was introduced in 2008 and has steadily become an alternative charging mechanism for Councils to simplify the securing of developer contributions compared to S160 agreements as the levy is calculated as a flat fee across the whole borough and not on an application by application basis as is the case for S106's.

- 1.4 CIL though has not been universally adopted across the country as the initial set up stages where the fee points are calculated is resource intensive and for some parts of the UK where development viability is borderline, the costs of creating a CIL charging regime can impact on the funds received from future development.
- 1.5 One significant aspect of CIL through compared to S106 agreements is that where there is a neighbourhood plan in place that has been accepted in a referendum, communities (such as town or parish councils) will be given 25% of the levy when planning permission for a development is approved. This money will be available to spend on infrastructure from an approved list, including improvements such as re-roofing a village hall, refurbish a municipal pool or improving a local play area. Where there is no neighbourhood plan in place, communities will receive 15% of the levy, although this is capped at £100 per household per year.

2. **Issues**

- 2.1 With the increase in Neighbourhood Plans within the Borough with two adopted plans now in place and another four in progress, there is an increasing value in terms of having a CIL agreement in place to secure funding to local communities. Under the present arrangements, contributions are secured via a S106 agreement and communities need to engage with the process to identify projects which might benefit from funding. This requires Parish Councils and community groups to enter into negotiations on each planning application which can be a time consuming process and places a burden on local groups to secure technical knowledge to ensure their interests are best represented.
- 2.2 Should a CIL package be adopted, this will ensure contributions are automatically delivered to communities without the need for them to engage on a case by case basis. This will ensure more of the money they receive is directed to local projects rather than resources being spent on securing the contribution in the first place.
- 2.3 In August this year, the Government released the Planning White Paper: Planning for the Future. One of the proposals in this document relates to a review of the CIL and S106 process. To quote:

The Community Infrastructure Levy and the current system of planning obligations will be reformed as a nationally set, value-based flat rate charge (the 'Infrastructure Levy'). A single rate or varied rates could be set. We will aim for the new Levy to raise more revenue than under the current system of developer contributions, and deliver at least as much – if not more – on-site affordable housing as at present. This reform will enable us to sweep away months of negotiation of Section 106 agreements and the need to consider site viability. We will deliver more of the infrastructure existing and new communities require by capturing a greater share of the uplift in land value that comes with development.

- 2.4 Whilst it is not certain that the White Paper will be adopted in full, it is recognised that the CIL process has been subject to review on a number of occasions. A comprehensive review has been anticipated for the past two years and it is expected this aspect of the review will be carried forward in 2021.
- 2.5 In January this year, Cabinet resolved to cease work on the Joint Local Plan with Stoke on Trent City Council and commence work on a Borough Local Plan (BLP).
- 2.6 Creation of the BLP will entail officers revising the evidence base that was prepared in partnership with the city council and as part of this, officer will be updating the Infrastructure Delivery Plan (IDP).

2.7 The IDP identifies existing deficiencies and surpluses and answers the following questions:

- What is required for the future?
- When will it be needed?
- Who is responsible for providing it?
- How will it be funded?
- Are there any funding gaps and if so, how will they be bridged?

2.8 CIL is likely to have a significant role in answering these questions particularly around funding.

2.9 Once the Council is aware of the costs involved in delivering the requisite infrastructure to support the borough together with the scale of development envisaged in the plan, the charging levels to be defined in the plan can be prescribed.

2.10 Given the White Paper review has the potential to comprehensively re-write the guidance on CIL and S106 procedures, there is a risk that any review work undertaken at the present time may need to be restarted if the national guidance changes.

2.11 By not proceeding with CIL at present, there is the potential that areas with Neighbourhood Plans in place will not see the benefits from development the CIL might have been able to provide. At present, there are only two adopted Neighbourhood Plans in place but work is ongoing with five others.

2.12 To counter this, an interim approach would be to examine the operation of the current S106 arrangements.

2.13 The Council has in place a Supplementary Planning Document (SPD) on Developer Contributions. This was adopted by Cabinet on 17 October 2007. As an interim measure to preparing a CIL policy, the Developer Contributions SPD can be reviewed with consideration given as to whether some of the contributions arising from commercially viable development is used to support local communities.

2.14 It should be noted however that should any monies be directed to neighbourhood planning areas, this may necessitate reductions in other contributions normally focused on areas like open space and play provision.

2.15 Should Cabinet wish to implement a review of the Developer Contribution SPD this work can be implemented independently of the Planning White Paper as contributions arising from development are calculated based on policy requirements as set in local and national policies and the financial viability of the development to meet those requirements.

3. **Proposal**

3.1 Given the significant potential for a comprehensive redrafting of the current legislation, it is recommended that a review of the use of S106 and CIL is undertaken in light of the findings of the Planning White Paper consultation and any new legislation arising from that process. The timing of any CIL work for the borough should also take account of the IDP work.

3.2 It is further recommended that work commence on a review of the 2007 Developer Contributions SPD with a focus on the interrelationship of developer contributions and how these may be utilised to meet the needs of local communities and especially those with an adopted Neighbourhood Plan in place.

4. **Reasons for Proposed Solution**

4.1 By deferring a review of CIL and S106 arrangements till the outcome of the White Paper and the IDP, unnecessary abortive works can be avoided.

5. **Options Considered**

5.1 Consideration has been given to commencing a review of the current arrangements to secure contributions. This has the potential to put in place arrangements to secure contributions for the local communities at the earliest opportunity.

5.2 This approach though carries the risk that the work undertaken is overtaken by the White Paper review. As there is no current indication of how the current provisions may be amended or replaced, it is not possible to quantify how significant any changes may be and what impact this may have on the work of the Planning Policy team and the delivery of the BLP.

6. **Legal and Statutory Implications**

6.1 There is no obligation on the Council to adopt CIL. As the present S106 system allows for contributions to be secured for Neighbourhood Plan groups

7. **Equality Impact Assessment**

7.1 There are no equality issues arising by deferring consideration of a review to commence with CIL.

8. **Financial and Resource Implications**

8.1 As the S106 system allows for contributions to be secured, community groups can receive contributions from development. Accordingly, the decision not to proceed with a CIL review at this time but instead commence a review of the Developer Contributions SPD should not result in any significant detriment to local communities over current arrangements.

9. **Major Risks**

9.1 The current S106 process has proven to be sufficiently robust through challenges at planning appeals to secure contributions. By deferring a review of a CIL charging mechanism till the outcome of the White Paper review minimises the risk of abortive works being undertaken.

10. **Sustainability and Climate Change Implications**

10.1 There are no sustainability or climate change implications

11. **Key Decision Information**

11.1 This is not considered to be a key item..

12. **Earlier Cabinet/Committee Resolutions**

12.1 None

13. **List of Appendices**

13.1 None

14. **Background Papers**

14.1 None