



AGENDA ITEM:

SUMMARY

Report for:	Strategic Planning and Environment Overview and Scrutiny
Date of meeting:	20 November 2018
Part:	1
If Part II, reason:	

Title of report:	Community Infrastructure Levy (CIL) and Section 106 Update
Contact:	<p>Cllr Graham Sutton, Portfolio Holder for Planning and Regeneration</p> <p>James Doe, Assistant Director (Planning, Development & Regeneration)</p> <p>Shalini Jayasinghe, Team Leader (Infrastructure & Economy)</p> <p>Emma Cooper, Strategic Planning and Regeneration Officer (Infrastructure & Economy)</p>
Purpose of report:	The report seeks to update members on the collection and governance of CIL and S106 receipts for the period April 2017 – March 2018.
Recommendations	That the report is noted.
Corporate Objectives:	<p><u>Affordable Housing</u></p> <p>Affordable Housing continues to be secured through use of planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended) and is not considered to be infrastructure under the CIL Regulations 2010 (as amended) and hence not subject to the pooling restrictions.</p> <p><u>Building Community Capacity</u></p> <p>A proportion of CIL funds received is allocated to parish and town Councils and neighbourhoods in non-parished areas. In particular, local communities should feel empowered to carry</p>

	<p>out improvements within their neighbourhood by the distribution of a proportion of this CIL funding to them under Regulation 59 of the CIL Regulations 2010 (as amended).</p> <p>Spending of other CIL revenues are not restricted by geography they can be targeted in areas where there are deficiencies and/or where needs are most acute and in particular on projects with a strategic impact.</p> <p>Similarly, S106 funds are sought to mitigate the impact of specific development on the area and will provide infrastructure that builds community capacity.</p> <p><u>Delivering an Efficient and Modern Council</u></p> <p>The funds secured from CIL and S106 will enable the provision of modern facilities for the enjoyment of those living and working in the Borough.</p> <p><u>Ensuring Economic Growth and Prosperity</u></p> <p>The development of the key employment area at Maylands and the Enterprise Zone is a corporate priority to which CIL funding may be allocated. It is anticipated, as per Cabinet Decision November 2016 that significant CIL funds will be committed to the development of supporting transport and other infrastructure to enable this area to thrive thereby increasing the prosperity of the area.</p> <p>Despite the majority of commercial developments not being liable to CIL payments in accordance with Dacorum Borough Council's CIL Charging Schedule developed through rigorous viability studies in accordance with CIL Regulations, public realm improvement works in Maylands are secured under S106 from those developments within the commercial areas to the east of Hemel Hempstead.</p> <p><u>A Safe, Clean and Enjoyable Environment</u></p> <p>CIL and S106 receipts may be allocated to the improvement of infrastructure which supports a safe, clean and enjoyable environment. Significant funds have been allocated from the S106 contributions towards the improvement of public open spaces and in support of the Council's programme of playground improvements.</p>
Implications:	<p><u>Financial</u></p> <p>The Council is on target to deliver a cost neutral CIL service from 2018/19. The costs of the long term delivery of CIL services will be funded from the allocation of administrative costs applied under Regulations 61 of the CIL Regulations 2010 (as amended) This allows the Charging Authority to use up to 5% of the total receipts to cover administrative expenses including staff, training, software and subscriptions. The ability</p>

	<p>of the Council to maintain a cost neutral CIL service is dependent on increasing housing delivery and legislation.</p> <p>Further CIL and Section 106 financial information is provided within the report.</p> <p><u>Value for Money</u></p> <p>The Council is responsible for allocating CIL expenditure and thus has a responsibility to ensure that funding is used both appropriately and effectively in the delivery of infrastructure. Requests for CIL funding will be expected to demonstrate that the infrastructure project offers value for money with such matters being considered through the submission and scoring of projects. Infrastructure projects will be subject to procurement processes.</p> <p>The Infrastructure Delivery Plan takes an overview of infrastructure needs and provides prioritisation of infrastructure projects enabling us to maximise the benefits of CIL funding and other sources of infrastructure funds.</p> <p><u>Staff</u></p> <p>The Council employs one full time officer and one part-time officer to deal with the daily administration, governance and management of CIL, S106 and related infrastructure provision. These officers are responsible for the administration of CIL, monitoring of S106 financial obligations, the progression of the Infrastructure Delivery Plan, the evolution of the CIL Charging Schedule, supporting policies and strategies together with the wider infrastructure planning function of the Council.</p> <p>Other Council staff will be involved in individual projects relating to the spending of CIL funds as the need arises. Where possible such matters have been incorporated into existing work practices (for example: Resident Services are expected to work closely with Ward Councillors and community groups over the use of the Neighbourhood Proportion of CIL)</p> <p><u>Land</u></p> <p>The Council has an adopted Payment in Kind policy which allows for land to be transferred to the Council upon which they can deliver infrastructure necessary to support growth. No CIL payments have been received to date via this mechanism.</p>
<p>Risk Implications</p>	<p>Income through CIL is limited and therefore cannot fund in its entirety the delivery of all infrastructure requirements. However, it has the potential to be used to match fund and/or to leverage additional funding for strategic projects. Cabinet 29th November 2016 adopted the decision to allocate funds to the following priorities:</p>

- Infrastructure for East Hemel Hempstead – 50%
- Transport Infrastructure – 40%
- Other projects – 7%
- Contingency – 3%

This mitigates the risk of the limited funds being used up for projects that will not have a strategic impact in key priorities areas.

Dacorum Borough Council is currently in the process of preparing a new Local Plan for the area. The emerging Local Plan process including the Infrastructure Development Plan (IDP) will identify strategic sites, infrastructure requirements and infrastructure priorities. The emerging Local Plan will be key to identifying and prioritising the infrastructure requirements for Dacorum, particularly given the unprecedented high levels of growth that are likely. Therefore, it is crucial that the allocation of CIL funding aligns with the infrastructure requirements of the emerging Local Plan. DBC will also look at the need to review the CIL charging schedule in line with the emerging Local Plan.

Governance processes are in place in relation to CIL expenditure and the Council will, where possible, oversee the delivery of infrastructure projects to ensure that they are delivered on budget and in accordance with the timescales agreed by the Infrastructure Advisory Group. The Council may withhold CIL funds in the case of slippage in the delivery of infrastructure projects or require schemes to be funded in advance of CIL payments.

CIL was subject to an internal audit in March 2018 with two recommendations put forward;

- The Council should ensure that monitoring is undertaken against key performance indicators which have been put in place
- The Council should ensure that all overdue developers' payments are pursued in a timely manner

Whilst measures have recently been put in to place to address these at the time of the audit, the team now continue to implement measures robustly.

Similarly, Dacorum Borough Council continues to seek S106 funding where appropriate and lawful for infrastructure. However, due to the pooling restrictions in place for the collection of S106 funding and limitations caused by the Regulation 123 list, a list of those projects or types of infrastructure that the Charging Authority intends to fund, or may fund, through the Community Infrastructure Levy. the scope of collecting S106 funding is limited and carries significant risks to the ability of Councils to deliver required

	<p>infrastructure. Government is currently proposing to lift the pooling restrictions as announced in the Autumn Budget Statement and once these restrictions are removed, S106 agreements will be crucial to the delivery of infrastructure to mitigate the impacts of larger site developments.</p>
Community Impact Assessment	<p>The process for the submission and allocation of CIL funds should be open, fair and equitable for all applicants. The application process has been designed to be inclusive and both the application form and guidance notes will be available via the website.</p>
Health And Safety Implications	<p>None arising from this report</p>
Consultees:	<p>The governance arrangements for CIL have been discussed in detail with members of the Infrastructure Advisory Group (IAG) and other key Council staff at both Hertfordshire County Council and Dacorum Borough Council including:</p> <ul style="list-style-type: none"> • Mark Brookes, Solicitor to the Council • Mark Gaynor, Director for Planning and Housing • James Doe, Assistant Director for Planning, Development and Regeneration • Chris Taylor – Group Manager, Strategic Planning and Regeneration • Nathalie Bateman – Team Leader, Strategic Planning and Regeneration (Strategic Sites) • Shalini Jayasinghe – Team Leader, Strategic Planning and Regeneration (Infrastructure & Economy) • Sarah McLaughlin – Principal Infrastructure Officer, Development Services, Herts County Council <p>The Infrastructure Advisory Group includes the Portfolio Holder for Planning and Regeneration and representatives of the Hertfordshire Local Enterprise Partnership (LEP).</p>
Background papers:	<ul style="list-style-type: none"> • Officer Decision Sheet titled “Timetable for CIL submissions 2018” dated 16 May 2018 (Appendix 1) • Cabinet Report titled “Community Infrastructure Levy Governance Update” – 27th June 2017 • Cabinet Report titled “Governance Arrangements of the Community Infrastructure Levy (CIL) – 29th November 2016 • Cabinet Report titled “Community Infrastructure Levy (CIL) – Adoption of Charging Schedule and associated documents” – 10th February 2015 • Cabinet Report titled “Governance Arrangements for the Community Infrastructure Levy (CIL)” – 25th November 2014 • CIL charging schedule, Regulation 123 list and policies, 2015 <p>These documents may be viewed at www.dacorum.gov.uk</p>

Glossary of acronyms and any other abbreviations used in this report:	CIL - Community Infrastructure Levy DBC – Dacorum Borough Council HCC – Hertfordshire County Council IAG – Infrastructure Advisory Group IBP – Infrastructure Business Plan IDP – Infrastructure Delivery Plan POS – Planning Officer Society S106 – Section 106 Agreement SPEOSC – Strategic Planning and Environment Overview and Scrutiny Committee.
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Background

1.0 Introduction

- 1.1 This report seeks to update members on the collection of financial contributions from developers towards infrastructure and how such contributions are being managed by the Strategic Planning and Regeneration team.
- 1.2 The Community Infrastructure Levy (CIL) is the primary mechanism for collecting financial contributions from new developments to help fund the provision of infrastructure required to support housing and commercial growth in the Borough.
- 1.3 The Council started charging CIL on all new developments receiving planning permission from the 1st July 2015. The extent of applicable charges by use and geography is set out within the Council's adopted Charging Schedule (www.dacorum.gov.uk/cil).
- 1.4 The charge is calculated in accordance with Regulation 40 of the CIL Regulations 2010 (as amended). Relief from the charge is available for affordable housing units, self-build homes, domestic annexes, house extensions and those developments carried out by charitable organisations.
- 1.5 In addition to CIL, the Council continues to secure affordable housing, site specific infrastructure items and undertakings which are not financial in nature (for example restrictions on use or management plans) and on occasion, some financial contributions (where not listed or listed as an exception in the Regulation 123 list through the use of legal agreements under Section 106 (S106) of the Town and Country Planning Act 1990 (as amended).
- 1.6 The Council is restricted in its pooling of financial contributions under S106 by Regulations 122 and 123 of the CIL Regulations 2010 (as amended) The Council has adopted a list of projects, 'The Regulation 123 List' for which it will not enter into a S106 agreement.

2.0 Legislative Changes

- 2.1 The Government consulted on proposed changes to legislation as a result of the report 'A new Approach to Development' put forward by the CIL review team. The consultation included but was not limited to;

- The lifting of S106 pooling restrictions for Local Authorities who meet certain criteria;
- Replacement of the Regulation 123 list with an Infrastructure Funding Statement;
- The introduction of a two-month grace period for developers to submit a commencement notice;
- Streamlining the process for local authorities to set and revise CIL charging schedules by aligning the requirements for evidence on infrastructure need and viability with the evidence required for local plan making;
- Replacing the current statutory formal consultation requirements with a requirement to publish a statement on how an authority sought an appropriate level of engagement.

2.2 A formal response to the consultation on changes to CIL and the approach to securing developer contributions was submitted by the Council. The outcome was announced by MHCLG recently following the Autumn Budget statement:

“The reforms to developer contributions build on improvements made to viability assessment earlier this year through the National Planning Policy Framework (NPPF) and accompanying guidance. They ensure that developers know what contributions they are expected to make, that local communities are clear about the infrastructure and affordable housing they will get, and that local authorities can hold them to account. The reforms include:

- *Introducing a new tariff (Strategic Infrastructure Tariff) that will allow combined authorities to collect funds from developers towards strategic infrastructure that benefits multiple areas.*
- *Removing restrictions on how planning obligations can be used, so that local authorities have greater flexibility to secure the funds they need to deliver infrastructure. These pooling restrictions will be lifted across all areas.*
- *Measures to make Community Infrastructure Levy (CIL) rates more responsive to changes in the value of development. We will consult on indexation proposals.*
- *Increasing transparency, by requiring authorities to publish more details on what has been collected and spent, so that local communities can see the value of developer contributions secured.*
- *Increasing certainty for developers on the contributions that they are required to make, by clarifying regulations.*
- *Legislation will be required to implement the changes set out in the consultation document. The ministry is planning to consult on draft regulations later this year.*

3.0 CIL Collection

- 3.1 A summary of CIL income and expenditure from the adoption of CIL by DBC to the end of March 2018 is set out in Table 2 below. Members should note that these figures differ from those held for accounting purposes, as they do not include sums for which a Demand Notice has been raised and for which there is currently an outstanding debt or instalment. This shows that from the total CIL monies received, the Borough Council effectively holds £1,275,168.19 towards the provision of new infrastructure once its administration costs and neighbourhood CIL – paid to town and parish councils and neighbourhood plan areas (Regulation 59 payments) have been made.

Table 2 – Summary of CIL Income and Expenditure

	<i>Financial Year</i>			
	<i>2015/16</i>	<i>2016/17</i>	<i>2017/18</i>	<i>Total</i>
	<i>Income</i>			
CIL Receipts	£65,119.38	£498,673.39	£1,020,632.72	£1,584,425.49
	<i>Expenditure</i>			
Administration (5%)	£3,255.97	£24,933.67	£51,031.64	£79,221.27
Neighbourhood CIL (15%)	£9,767.91	£72,087.78	£148,180.32	£230,036.01
<i>Balance</i>	<i>£52,095.50</i>	<i>£401,651.94</i>	<i>£821,420.76</i>	<i>£1,275,168.19</i>

- 3.2 The CIL regulations allow for a number of situations where relief can be applied for. In 2017/18 a total of £2,716,514.61 of relief was granted. This is broken down as follows;
- Annexe Relief £11,822.83
 - Extensions Relief £299,760.24
 - Self-build Relief £1,388,774.07
 - Social Housing Relief £1,016,157.47
- 3.3 In addition surcharges can be added where there are failures to follow due process and £17,376.65 of surcharges were added to liabilities in 2017/18.
- 3.4 These receipts, whilst providing a useful source of infrastructure funding, still falls significantly short of that required to fund the infrastructure requirement (as set out in Dacorum's Infrastructure Funding Gap assessment). CIL was never intended to fully plug the infrastructure funding gap (calculated at £60.8m for the CIL examination in 2014, so this figure will rise as future growth requirements set out in the Local Plan review become clear) but a contribution of 10%-20% towards the shortfall in infrastructure funding from CIL receipts is anticipated.

4.0 CIL Expenditure

Core CIL Funds

- 4.1 The Council has not currently spent any of its core CIL funds directly on the provision of infrastructure and there is currently no intention to do so before April 2019 due to the reasons outlined in The Officer Decision Sheet titled "Timetable for CIL submissions 2018" dated 16 May 2018 (Appendix 1).

Administration

- 4.2 The Council sets aside 5% of its CIL income to cover the administrative costs associated with the charging of CIL as is permissible under the CIL Regulations 2010 (as amended)
- 4.3 The main costs associated with CIL are those covering staffing, and related service expenses (such as software).

Neighbourhood Proportion

- 4.4 In accordance with Regulation 59 of the CIL Regulations 2010 (as amended) the Borough Council is required to pass on 15% (25% in areas that have a valid Neighbourhood Plan) of its CIL funds to the Town and Parish Councils (and Neighbourhood area in unparished areas) for use by the local community. The sums that have already been transferred are identified in Table 2 above and are broken down in more detail in Appendix 2. The Council did not report any CIL expenditure by Town and Parish Councils for 2016/17 and is not aware of expenditure by Town and Parish Councils covering the last financial year. Such information should be reported by the end of the calendar year (see Regulation 62 statement at www.dacorum.gov.uk/cil) either directly by the Town/Parish Council or via the Charging Authorities website.

5.0 Changes to the CIL Submission Programme

- 5.1 The emerging Local Plan will be key to identifying and prioritising the infrastructure requirements for Dacorum, particularly given the unprecedented high levels of growth that are likely. In addition, the Southwest Herts authorities (Dacorum, Watford, Three Rivers, St Albans and Hertsmere) are working towards a Strategic Joint Plan for the area.
- 5.2 Both the new Local Plan and the Strategic Joint Plan will identify key infrastructure requirements for the area. Therefore, it is prudent to defer allocation of CIL funds until these key documents have been drafted and up to date infrastructure requirements identified.
- 5.3 An Officer Decision to approve the revised timetable for CIL submissions and defer the spending of CIL monies for a further year was agreed in May 2018 (Appendix 1).
- 5.4 With confirmed changes to CIL yet to be announced it is unclear what form annual reports will take, it is anticipated that an Infrastructure Funding Statement will be introduced in which the Council will report on all developer contributions received over the previous financial year.

- 5.5 It is expected that the Council will need to state their priorities for which developer contributions will be allocated to within this Infrastructure Funding Statement.
- 5.6 It has been previously noted that an Infrastructure Business Plan (IBP) will be prepared to identify priorities and allocation of developer contributions including CIL. Whilst the preparation of an IBP has been started it has been put on hold whilst we await government decision on the Infrastructure Funding Statement as depending on the requirements, this could possibly replace the function of an IBP.

6.0 Section 106

- 6.1 The Council continues to receive a relatively high level of income from S106 agreements as set out in Table 3 below

Table 3 – Summary of Annual Section 106 Income

Financial Year	Sums received by DBC
2017/18	£251,316
2016/17	£1,158,264
2015/16	£1,641,138
2014/15	£628,487
2013/14	£444,840

- 6.2 The decline in the number of S106 agreements being entered into reflects the gradual restriction on the use of S106 following the introduction of the CIL Regulations 2010 and annual amendments thereto, the Ministerial Statement from November 2014 and introduction of CIL on the 1st July 2015. The CIL regime has not completely replaced S106 and the hybrid approach is likely to continue. However, if the pooling restriction on S106 obligations is lifted as proposed, the number of S106 agreements could potentially increase once more.
- 6.3 The S106 Balance at 31st March extend to £3,184,712 which is broken down by responsible officer/theme in Table 4 below.

Table 4 – Section 106 Balances at 31st March 2018.

Responsible Officer	Purposes	Amount
David Barrett (Group Manager, Strategic Housing)	Affordable Housing	£1,587,046
Chris Taylor (Group Manager, Strategic Planning and Regeneration)	Cycle Contributions and Regeneration Works	£479,056
Craig Thorpe (Group Manager, Environmental Services)	Open Space and Environment	£27,872
Matt Rawdon (Group Manager,	Playing Pitches, Playgrounds and	£839,886

People and Performance)	Community Development	
Richard Rice (Group Manager, Commercial Assets and Property)	Allotments, Open Space and Playing Pitches	£250,852
Total		£3,184,712

- 6.4 The following expenditure has occurred or is included in the capital programme.

Table 5 – Section 106 Expenditure

	Capital Expenditure		
	2016/17	2017/18	2018/19
Amount	£247,640	£971,500	£1,845,500

- 6.5 The majority of capital allocation within the year has been on the provision of Affordable Housing (£586,000) and play facilities within the Borough as part of the wider Playground Improvement Scheme (£204,739). S106 funding has also been released during the year for works within Maylands as part of the Maylands Urban Realm Improvements (MURI) and works at Heath Park with over £1,500,000 being allocated towards affordable housing projects in the borough for the following year.

- 6.6 A summary of the current S106 balances can be found in Appendix 3.

7.0 S106 Constraints

- 7.1 Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended) are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focussed on site specific mitigation of the impact of development.

- 7.2 The Regulation 123 of the Community Infrastructure Regulations 2010 states under section 3b *A planning obligation ("obligation A") may not constitute a reason for granting planning permission to the extent that five or more separate planning obligations that –*

- (i) relate to planning permissions granted for development within the area of the charging authority; and
- (ii) Which provide for the funding or provision of that project, or type of infrastructure, have been entered into before the date obligation A was entered into.

- 7.3 This places a restriction on the Council's ability to fund a single project or type of infrastructure from obligations collected from more than five S106 agreements. This restriction does not apply to Affordable Housing contributions.

- 7.4 S106 should be sought to mitigate site specific impacts on infrastructure and may have restrictive covenants within the agreement.

8.0 Changes to the Infrastructure Delivery Plan (IDP)

- 8.1 The Council has an IDP, which provides a technical assessment of the infrastructure required to support the existing and proposed levels of housing and employment growth within the Borough up to 2031. This assessment is based on growth identified within the Core Strategy and incorporates the strategies and key infrastructure priorities of external infrastructure providers.
- 8.2 A number of projects within the IDP are of a long term nature. Because of their reliance on external funding sources, some may be delayed and may be unlikely to materialise within the lifetime of the Core Strategy.
- 8.3 A new settlement based version of this document – focusing on the needs of Hemel Hempstead, Berkhamsted and Tring in particular – was published in July 2017. This illustrates the infrastructure requirements for each place, those in the process of being delivered and those funded by CIL or other Council funds. It also includes a prioritised schedule of all infrastructure requirements per settlement.
- 8.4 A new IDP will be prepared to support the new Local Plan and work on this document is expected to commence at the end of 2018.. The new IDP will set out the infrastructure needs to support growth identified in the new Local Plan. This IDP will also review the funding requirements for delivering the infrastructure including the use of developer contributions.

9.0 CIL Policies

- 9.1 The Council has a number of supporting policies sitting behind its CIL Charging Schedule and covering such matters as Discretionary Charitable Relief, Exceptional Circumstances, Instalments and Payments in Kind (Land). These policies were introduced at the discretion of the Council with a view to facilitating the viability of schemes coming forward through the planning process and to assist in the timely delivery of infrastructure.
- 9.2 The Council has also set out its intentions regards to funding infrastructure through the publication of a Regulation 123 list.
- 9.3 The Governance structure for CIL sets out that these policies will be formally reviewed by the IAG, but the following should also be noted.

Exceptional Circumstances

- 9.4 The Council has not had any requests to use its Exceptional Circumstances policy and to date has not experienced any significant claims for a reduction in affordable housing below the policy requirements set out in CS19 – Affordable Housing. This would indicate that despite a significant rise in indexation the charges within the Charging Schedule are having a negligible impact overall on scheme viability.

Instalments

- 9.5 The Council has an instalment policy in place. This instalment policy supports the receipt of CIL payments.

Payments in Kind (Land)

- 9.6 There has been an offer of land in lieu of CIL payment, which to date, has not been finalised.

Regulation 123

- 9.7 Another anticipated outcome of the CIL review is the abolition of the Regulation 123 list, anticipated to be replaced with an Infrastructure Funding Statement in which infrastructure funding priorities will be listed.

10.0 Next Steps

- 10.1 As outlined above, the receipts, prioritisation and allocation of developer contribution both CIL and S106 will be reviewed in line with the emerging new Local Plan to ensure that it supports the delivery of the required infrastructure.
- 10.2 A review of the CIL Charging schedule may be undertaken alongside the progression of the new Local Plan utilising the same evidence and studies where possible.
- 10.3 Officers will continue to monitor the success of CIL and the associated policies with the IAG and report on CIL through the Authority Monitoring Report.
- 10.4 Following recent success in CIL training undertaken for both Members and officers, we will continue to identify and run, where appropriate, training sessions on developer contributions.
- 10.5 With the progression of the emerging Local Plan and ahead of the anticipated growth for Dacorum we are working with Group Managers to identify current needs and where possible allocate S106 funds towards projects.