

AGENDA ITEM:
SUMMARY

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| Report for: | Strategic Planning and Environment Overview and Scrutiny |
| Date of meeting: | 20 January 2021 |
| Part: | 1 |
| If Part II, reason: | |

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| 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>Pennie Rayner, Assistant Team Leader (Infrastructure & Economy)</p> <p>Emma Cooper, Strategic Planning and Regeneration Officer (Infrastructure & Economy)</p> <p>Elisabeth Griffiths, Strategic Planning and Regeneration Officer (Infrastructure and 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 2019 – March 2020. |
| 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).</p> <p><u>Building Community Capacity</u></p> <p>A proportion of CIL funds received are allocated to neighbourhoods. In particular, local communities should feel</p> |

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| | <p>empowered to carry 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 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><u>CIL and S106 is needed to assist with the funding the vital infrastructure needed to support the New Local Plan.</u></p> <p>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> |
| <p>Implications:</p> | <p><u>Financial</u></p> <p>The Council continues to deliver a cost neutral CIL service.. The costs of the long term delivery of CIL services are 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,</p> |

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| | <p>training, software and subscriptions. The ability of the Council to maintain a cost neutral CIL service is dependent on increasing housing delivery and legislation.</p> <p>From April 2020 the Council will be charging fees for the monitoring and collection of S106.</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 three full time officers and contributes a percentage towards other management costs to deal with the daily administration, governance and management of CIL, S106 and related infrastructure. 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.</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</p> |

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| | <p>to leverage additional funding for strategic projects. Cabinet 29th November 2016 adopted the decision to allocate funds to the following priorities:</p> <ul style="list-style-type: none"> • Infrastructure for East Hemel Hempstead – 50% • Transport Infrastructure – 40% • Other projects – 7% • Contingency – 3% <p>This mitigates the risk of the limited funds being used up for projects that will not have a strategic impact in key priorities areas.</p> <p>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.</p> <p>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.</p> <p>Similarly, Dacorum Borough Council continues to seek S106 funding where appropriate and lawful for infrastructure.</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 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, |

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| | <p>Development and Regeneration</p> <ul style="list-style-type: none"> • Chris Taylor – Group Manager, Strategic Planning and Regeneration • 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> |
| <p>Background papers:</p> | <ul style="list-style-type: none"> • 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 and policies, 2015 • Cabinet Report titled “Annual Infrastructure Funding Statement” – 20th October 2020 • Draft Dacorum Infrastructure Delivery Plan – November 2020 <p>These documents may be viewed at www.dacorum.gov.uk</p> |
| <p>Glossary of acronyms and any other abbreviations used in this report:</p> | <p>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.</p> |

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.
- 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 (see below) through the use of legal agreements under Section 106 (S106) of the Town and Country Planning Act 1990 (as amended).

2.0 CIL Collection

- 2.1 A summary of CIL income and expenditure from the adoption of CIL by DBC to the end of March 2020 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 £5,395,928.78 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>2018/19</i> | <i>2019/20</i> | <i>Total</i> |
| | <i>Income</i> | | | | | |
| CIL Receipts | £65,119.38 | £498,673.39 | £1,032,542.17 | £2,112,508.43 | £2,980,772.26 | £6,689,615.63 |
| | <i>Expenditure</i> | | | | | |
| Administration (5%) | £3,255.97 | £24,933.67 | £51,627.11 | £105,625.42 | £147,238.61 | £332,680.78 |
| Neighbourhood CIL (15%) | £9,767.91 | £72,087.78 | £149,966.74 | £292,418.56 | £436,765.07 | £961,006.78 |
| <i>Balance</i> | <i>£52,095.50</i> | <i>£401,651.94</i> | <i>£830,948.32</i> | <i>£1,714,464.45</i> | <i>£2,396,768.58</i> | <i>£5,395,928.78</i> |

2.2 The CIL regulations allow for a number of situations where relief can be applied for. In 2019/20 a total of £2,716,514.61 of relief was granted. This is broken down as follows;

- Annexe Relief £72,974.49
- Extensions Relief £544,794.49
- Self-build Relief £2,169,045.49
- Social Housing Relief £3,941,072.15

2.3 In addition, surcharges can be added where there are failures to follow due process and £46,307.30 of surcharges were added to liabilities in 2019/20.

2.4 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 significantly 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.

3.0 CIL Expenditure

3.1 Core CIL Funds

The Council has not currently spent any of its core CIL funds (that is, funds remaining after allocations are made to Town and Parish Councils etc and Ward Members in unparished areas, and administration) directly on the provision of infrastructure and there is currently no intention to recommend to Members to do so before the new Infrastructure Delivery Plan has been approved alongside the new Local Plan. The Infrastructure Delivery Plan will identify infrastructure priorities and inform where developer contributions should be directed.

Administration

3.2 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)

3.3 The main costs associated with CIL are those covering staffing, and related service expenses (such as software). This is essential to ensure the effective management of the funds.

Neighbourhood Proportion

3.4 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 – in Dacorum the only area is Grovehill in Hemel Hempstead) 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.

4.0 Changes to the CIL Submission Programme

- 4.1 The emerging Local Plan and associated Infrastructure Delivery 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 Joint Strategic Plan for the area.
- 4.2 Both the new Dacorum Local Plan and the SW Herts Joint Strategic 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.

5.0 Section 106

- 5.1 The total payments received by the Council from Section 106 can vary considerably per year depending on the number, size and nature of developments coming forward. S106 funding received over the past three financial years is shown in Table 3 below:

Table 3 – Summary of Annual Section 106 Income

| Financial Year | Sums received by DBC |
|----------------|----------------------|
| 2019/20 | £351,732 |
| 2018/19 | £2,308,347 |
| 2017/18 | £857,126 |

- 5.2 Overall, there has been a decline in the number of S106 agreements being entered into following the introduction of CIL on 1st July 2015. The CIL regime has not completely replaced S106 and a hybrid approach is likely to continue. The 2019 amendments to the regulations removed the previous restriction on pooling more than five planning obligations towards a single piece of infrastructure.
- 5.3 The S106 balance at 7th January 2021 is £1,323,735. This total is sub-divided by theme in Table 4 below:

Table 4 – Section 106 Balances at 7th January 2021

| Purposes | Amount |
|--|-------------|
| Affordable Housing | £152,963.22 |
| Cycle Contributions and Regeneration Works | £378,018.39 |
| Open Space, Environment and Allotments | £536,065.17 |
| Playing Pitches, Playgrounds and Community Development | £249,637.81 |

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| Other | £7,050.40 |
| TOTAL | £1,323,734.99 |

- 5.4 The allocations and capital expenditure in financial year 2019/20 are shown in Table 5:

Table 5 – Section 106 Allocations and Expenditure

| | Allocations | Expenditure |
|----------------|--------------------|--------------------|
| 2019/20 | £1,826,428 | £1,396,882 |

- 5.5 The majority of capital expenditure within the year was on the provision of Affordable Housing (just under £1.2 million). Table 6 shows a breakdown of the projects funded or part-funded by S106 contributions in financial year 2019/20.

Table 6 – Section 106 Expenditure by Project

| Infrastructure | S106 Expenditure |
|---|-------------------------|
| Maylands Public Urban Realm - Phase 1 Heart of Maylands | £25,844.15 |
| Nash Mills Village Hall refurbishment | £49,010.00 |
| Northend and Westerdale affordable housing | £1,088,646.67 |
| Creation of temporary accommodation units | £105,000.00 |
| Other affordable housing funding | £4,385.72 |
| Play equipment for toddlers in Gadebridge Park | £9,357.67 |
| Dog waste bin improvements at public open spaces | £2,863.63 |
| Nickey Line improvements | £36,656.25 |
| Perennial wildflower sustainable planting | £23,826.52 |
| Provision of trees | £1,474.92 |
| Allotment improvements | £12,374.01 |
| Sport facilities and playing pitches improvements | £26,126.93 |
| Miscellaneous e.g. transfers to HCC, small balance write-offs | £11,316.00 |
| TOTAL | £1,396,882.47 |

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

6.0 S106 Constraints

- 6.1 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, which would not otherwise be acceptable. Planning obligations may only constitute a reason for granting planning permission if they meet the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development;
- fairly and reasonably related in scale and kind to the development

6.2 S106 agreements should seek to mitigate site specific impacts on infrastructure and often have restrictive covenants within the agreement.

6.3 The previous restriction on pooling more than 5 planning obligations towards a single piece of infrastructure was removed by the 2019 amendments to the regulations. This means that, subject to meeting the 3 tests listed above as set out in CIL regulation 122, charging authorities can use funds from both CIL and Section 106 planning obligations to pay for the same piece of infrastructure regardless of how many planning obligations have already contributed towards an item of infrastructure.

7.0 Changes to the Infrastructure Delivery Plan (IDP)

7.1 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.

7.2 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.

7.3 A new draft IDP has been prepared to support the new Local Plan and is currently being consulted on. [The Draft IDP](#) sets 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.

8.0 CIL Policies

8.1 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.

8.2 The Governance structure for CIL sets out that these policies will be formally reviewed by the Infrastructure Advisory Group, but the following should also be noted.

Exceptional Circumstances

8.3 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

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

Payments in Kind (Land)

- 8.5 The Council has received a parcel of land adjacent to Okeford Close in Tring in lieu of CIL payment; Members may recall this planning application involved the granting of permission for a small residential development with the transfer of open land to the Council to complement existing open space in its ownership close to the site

Regulation 123

- 8.6 Changes to the CIL regulations in September 2019 removed the need for a Regulation 123 list, this has been replaced with the requirement to publish an Infrastructure Funding Statement which outlines receipts and spend of CIL and S106 and what the Council intends to spend developer contributions on in the coming year.

9.0 Next Steps

- 9.1 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.
- 9.2 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.
- 9.3 Officers will continue to monitor the success of CIL and the associated policies with the IAG and report on CIL through the Annual Monitoring Report.
- 9.4 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.