

**TITLE OF REPORT:** Community Infrastructure Levy and Section 106 agreements/  
Planning Obligations and their use in planning

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### **Summary**

To inform Overview and Scrutiny Committee about Community Infrastructure Levy and Section 106 Agreements and how they are used in the planning process.

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### **Background**

#### **SECTION 106 PLANNING OBLICATIONS**

##### **What is a Planning Obligation/S106 Agreement?**

1. Planning obligations are also known as Section 106 agreements. They are:
  - legal agreements made between local authorities and developers.
  - They are linked to a planning permission to make acceptable development which would otherwise be unacceptable in planning terms.
  - The land itself, rather than the person or organisation that develops the land, is bound by a Section 106 Agreement, something any future owners will need to consider.
  - Both the Council and developer are bound by the terms of the s106 agreement.
  
2. A S106 obligation can:
  - restrict the development or use of the land in any specified way
  
  - require specified operations or activities to be carried out in, on, under or over the land
  - require the land to be used in any specified way
  - require a sum or sums to be paid to the authority on a specified date or dates or periodically
  
3. Planning obligations assist in mitigating the impact of unacceptable development. Planning obligations must meet the nationally prescribed tests. They must be:
  - necessary to make the development acceptable in planning terms.
  - directly related to the development; and
  - fairly and reasonably related in scale and kind to the development.

4. Common uses of planning obligations are to secure affordable housing as well as to secure financial contributions to provide infrastructure such as highways improvements linked to the site or ecology mitigation. They can also provide local employment and training opportunities.

### **When are S106 obligations required in Gateshead?**

5. S106 obligations are required when the following applies:
  - Policy requirement - National and Council Policy in Local Plan.
  - Obligations Supplementary Planning Document (SPD) (link in Appendix 1) – this outlines when a s106 will be sought and how we would calculate any financial contribution.
  - Negotiation – all obligations are open to negotiation as part of the planning consideration.
  - Viability - developers can provide evidence that the obligation would make a development unviable subject to nationally set criteria.

### **How are S106 funds spent?**

6. As both the Council and the Developer are party to a s106 agreement, both are bound by the terms of the agreement. These usually oblige the Council to spend any s106 financial contributions on the specific project or scheme that is outlined in the s106 agreement.
7. Funds are monitored and progress reported to Planning and Development Committee regularly.

## **COMMUNITY INFRASTRUCTURE LEVY**

### **What is Community Infrastructure Levy (CIL)?**

8. CIL is a tool to raise funds to help deliver strategic infrastructure to support the development of the Borough.
  - CIL funds from developments pay for the strategic infrastructure that is needed in the Borough as a result of development.
  - CIL takes the form of a tariff per square metre of net additional floor space created by the development.
  - The level of the tariff is set by the Council as Local Planning Authority balancing the desirability of funding the costs of necessary infrastructure and the possible effects of CIL on the viability of development.
  - The tariff has been subject to consultation and independent examination and was subsequently approved at Full Council.

- The Gateshead levy rates are set out in the Gateshead CIL Charging Schedule. Some areas of Gateshead are charged no CIL because of viability challenges.

### **How are CIL funds spent?**

9. When CIL monies are received, they are divided between 3 funds:

- 80% MAIN FUND – Strategic Infrastructure projects across the Borough. This is agreed annually at Cabinet
- 15% NEIGHBOURHOOD PORTION – allocated to community groups in/near the ward where the development occurs via a bid process administered by the Community Foundation. (Details in Appendix 2)
- 5% ADMINISTRATION COSTS (covering staff costs to monitor and oversee the collection and spending of monies)

### **INFRASTRUCTURE FUNDING STATEMENT**

10. Under the CIL Regulations, the Council are required to publish an Infrastructure Funding Statement annually. (Link in Appendix 1) The Statement includes information on income received through Section 106 Agreements and CIL and any expenditure of this income.

11. The IFS includes the CIL neighbourhood portion received and allocated. The IFS outlines the income projections and sets the spending priorities for the following year. This year's IFS will be going to Cabinet for approval in December.

12. In addition, a S106 update report is presented to Planning and Development Committee monthly. This lists information about new S106 agreements, income received and expenditure. (Link in Appendix 1)

### **FUTURE**

The Levelling Up and Regeneration Bill includes the suggestion of a new Infrastructure Levy to replace Community Infrastructure Levy. This will be a mandatory charge on all development designed to capture more of the value uplift in land value. Section 106 will be retained to cover affordable housing and infrastructure integral to the operation of the site.

### **Recommendation**

13. It is recommended that the Overview and Scrutiny Committee note this report for information.

**BACKGROUND INFORMATION**

[Planning obligations - GOV.UK \(www.gov.uk\)](#)

[Community Infrastructure Levy - GOV.UK \(www.gov.uk\)](#)

[Gateshead Council Obligations Supplementary Planning Document](#)

[CIL in Gateshead](#)

[Infrastructure Funding Statement - Gateshead Council](#)

CIL/S106 member training July 2021 [PowerPoint](#) recorded seminar available on request.

[Planning and Development Committee S016 update \(page 41\)](#)

### NEIGHBOURHOOD PORTION

1. In June 2017, Cabinet approved the governance of the 15% neighbourhood fund (outside of Lamesley Parish), and a legal agreement was subsequently signed with Community Foundation for Tyne and Wear and Northumberland (CFTWN) for them to administer the process.
2. The process was as follows:
  - CFTWN issue a call for applications (for between £5000 and £25,000) at the beginning of each financial year. This is firstly limited to the Wards where the CIL development is taking place.
  - If no bids are received or if there are still funds remaining, CFTWN open the call for applications to neighbouring wards.
  - Whilst CFTWN would initially determine bids, the three Members for the ward in which the bids have come from, along with the Portfolio Holder for Communities and Volunteering make the final decision whether to award the funds.
3. All applications were allocated and defrayed within the forthcoming financial year.
4. As part of the Cabinet approval, the governance of CIL was to be subject to a review once it had become established.
5. In October 2021 Cabinet considered the results of that review and approved changes to the governance of the CIL neighbourhood fund.
6. These changes included:
  - to adopt a rolling programme of funding.
  - Give a longer notice period for funds coming available (in advance of call for bids)
  - Greater flexibility in the value of funds that can be applied for.
  - Giving more publicity to the Neighbourhood Fund
  - Consideration of bids from groups outside the target ward where there is demonstrable benefit to the target ward.

Links to cabinet reports:

[Cabinet report October 2021](#)

[Cabinet report June 2017](#)