

GLOUCESTERSHIRE COUNTY COUNCIL

ENVIRONMENT SCRUTINY COMMITTEE

Title:	Section 106 & Community Infrastructure Levy
Reporting to:	Environment Scrutiny Committee
Date:	14 July 2021
Chairman:	Cllr Dominic Morris
Presenting Officer:	Ben Watts – Outcome Manager – Economy, Environment & Infrastructure
Purpose of report:	To provide an overview of how Section 106 & Community Infrastructure Levy (CIL) operates in Gloucestershire
Background documents:	<p>The County Council's requirements for developer contributions are set out in Gloucestershire's Local Development Guide 2021 (LDG), which was recently adopted at Cabinet in March 2021.</p> <p>The LDG can be viewed at the below link: https://www.gloucestershire.gov.uk/media/14820/ldg-2021-final-adopted-version.pdf</p>
Summary:	<p>The County Council is an important infrastructure provider in Gloucestershire. The introduction of CIL across much of the county has resulted in a lessening of the County Council's ability to secure developer contributions due to two Developer Contribution systems being in place (S106 & CIL).</p> <p>Despite CIL being operational for several years, only one District Council has distributed any CIL payments to the County Council. No CIL payments, to date, have been made to the County Council for education / library infrastructure.</p>
Anticipated Outcomes:	The committee to note the report.

1. Background

- 1.1. Gloucestershire County Council (GCC) is responsible for delivering specific infrastructure and services – including highways, schools and libraries – and ensuring new developments do not adversely impact upon the capacity of existing services or the ability to deliver them. The provision of support for social and economic infrastructure is crucial in making a development acceptable in planning terms.
- 1.2. Many planning applications / permissions are therefore subject to developer contributions in the form of planning obligations. Planning obligations are legal obligations entered into to mitigate the impacts of a development proposal. These can be via a planning agreement entered into under Section 106 of the Town and Country Planning Act 1990 (known as S.106 Agreements) by a person with an interest in the land and the local planning authority (LPA); or via a Unilateral Undertaking entered into by a person with an interest in the land without the LPA. Planning obligations run with the land and are legally binding and enforceable.
- 1.3. These are often considered alongside highways contributions (often through Section 278 Agreements) and the Community Infrastructure Levy (CIL), which is further explained later in this report.
- 1.4. Planning obligations may only constitute a reason for granting permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They therefore 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.
- 1.5. These are statutory tests as set out in Regulation 122 of the CIL Regulations 2010 (as amended by the 2011 and 2019 Regulations) and as policy tests set out in the National Planning Policy Framework (NPPF). These tests apply whether or not there is a levy charging schedule for the area.
- 1.6. Developers may also contribute towards infrastructure by way of the CIL which is a fixed charge levied on new development to fund infrastructure. Where CIL is in place for an area, charging authorities should work proactively with developers to ensure they are clear about the authorities' infrastructure needs. Authorities can choose to pool funding from different routes to fund the same infrastructure, provided that authorities set out in Infrastructure Funding Statements (IFS) which infrastructure they expect to fund through the levy.
- 1.7. Policies for planning obligations should be set out in plans and examined in public. Such policies should be informed by evidence of infrastructure and affordable housing need, as well as a proportionate assessment of viability. This evidence of need can be standardised or formulaic.

2. How does this operate in Gloucestershire?

- 2.1. In two-tier local government arrangements such as in Gloucestershire, the LPAs for the vast majority of planning applications are the District Councils. (The County Council is the LPA responsible for determining some planning

applications relating to minerals and waste, as well as County Council developments, such as schools, libraries and some new roads, etc.).

- 2.2. This means that the District Councils are the LPAs for all planning applications for residential developments. The County Council, however, is a statutory consultee and will often submit representations to the LPAs, providing views on various issues of relevance to the County Council.
- 2.3. The County Council is responsible for the provision of a range of services to our existing residents and to those that move into new developments. Developer contributions are regularly sought from developments that would have an additional impact on service provision.
- 2.4. Representations to the LPAs could relate to various County Council roles and responsibilities such as highways, transport, education, libraries, flood risk, minerals, waste, archaeology, ecology, etc. These representations may include significant requests for developer contributions towards, for example, schools and libraries. It is for the LPAs to take into account all relevant material considerations when determining planning applications – either at officer level and/or at their Planning Committees. There is no requirement for the LPAs to agree with and/or adhere to the representations / requests made by County Council’s officers.
- 2.5. The County Council’s requirements for developer contributions are set out in Gloucestershire’s Local Development Guide 2021 (LDG), which was recently adopted at Cabinet in March 2021. The LDG can be viewed at the below link:

<https://www.gloucestershire.gov.uk/media/14820/ldg-2021-final-adopted-version.pdf>
- 2.6. The purpose of the LDG is to provide information to LPAs, developers and all stakeholders on the types of infrastructure which the County Council is responsible for and may seek funding towards; and where S106 contributions and/or CIL payments may be necessary to mitigate the impacts of a development, and make it acceptable in planning terms.
- 2.7. The LDG is not prescriptive, as each development proposal will be considered on its merits, and any obligations sought will need to meet the relevant tests. However, it is intended to aid and improve transparency and consistency in decision-making; and to provide guidelines to inform the preparation of development plans and other planning documents, as well as assisting in the LPAs’ determination of planning applications.

3. Community Infrastructure Levy (CIL)

- 3.1. CIL allows LPAs (i.e. the District Councils – known for this purpose as ‘Charging Authorities’) to secure support from chargeable development to help deliver new or improved infrastructure and services. CIL is applied on a formulaic basis to generate a pot of money which is spent on infrastructure across the CIL Charging Area. This is in contrast to S106 contributions which are site-specific and, as stated above, required to directly mitigate the impacts of development and therefore make it acceptable in planning terms.

- 3.2. CIL should, theoretically, ensure that developments make a reasonable and proportionate contribution towards the cost of infrastructure across the area. Although not an exhaustive list, such infrastructure may include flood defence, open space, recreation and sport, roads and transport facilities, libraries, education and health facilities.
- 3.3. Charging Authorities are responsible for setting CIL rates and are also the Collecting Authority. CIL is charged per square metre on chargeable development and is index linked in accordance with the CIL Regulations 2010 (as amended). When deciding the CIL rates, an appropriate balance must be struck between additional investment to support development and the potential effect on viability. Achieving the right balance is central to the charge-setting process.
- 3.4. A key purpose of CIL is to help meet envisaged gaps in funding for new infrastructure after other sources have been exhausted. Understanding funding gaps is an essential part of the local plan-making process, particularly in demonstrating how a development plan will be delivered. Consequently, CIL can only be introduced by an LPA once an up-to-date plan has been prepared, or is sufficiently advanced, to properly understand the infrastructure requirements needed to support growth.
- 3.5. Five of the six LPAs in Gloucestershire have adopted a CIL Charging Schedule. These are:
- Gloucester City Council (in operation since 1st January 2019);
 - Cheltenham Borough Council (in operation since 1st January 2019);
 - Tewkesbury Borough Council (in operation since 1st January 2019);
 - Stroud District Council (in operation since 1st April 2017); and
 - Cotswold District Council (in operation since 1st June 2019).
 - (Forest of Dean District Council has not implemented CIL in their District).
- 3.6. As the County Council is responsible for a significant proportion of strategic infrastructure provision, officers have positively engaged with all five of the LPAs regarding CIL.
- 3.7. In many cases, even where there is a CIL charge in place, developer contributions through S106 planning obligations will also remain important to mitigate the direct impacts on local infrastructure; as well as where the infrastructure is to be provided on-site and is directly related to the development. In such cases and where appropriate, contributions from several geographically located developments may be pooled to provide the required infrastructure, or contributions secured from developers towards recovering the cost of large scale infrastructure, where appropriate. While CIL can run alongside S106 planning obligations, there should be no situation where a developer is paying twice – through CIL and S106 – for the same specific element of infrastructure in relation to the same development. This is known as ‘double-dipping’.
- 3.8. Allowances also need to be made for up to 25% of CIL receipts to be spent on schemes supported by the local community through adopted Neighbourhood Plans. These payments are made to the relevant Town / Parish Council(s), as set out in national guidance. Also 5% of CIL receipts

are retained by the Charging Authorities for administration purposes. These reductions significantly reduce the CIL monies remaining to be distributed.

4. CIL in Gloucestershire

- 4.1. Despite CIL being in operation in 5 of the 6 Districts as set out above, to date, only one District Council has distributed any CIL payments (except for payments associated with the above paragraph). Stroud District Council (SDC) has set up a 'bidding' system whereby infrastructure providers can submit bids and/or expressions of interest to SDC for them to consider.
- 4.2. This has resulted in some of the County Council's bids being successful, including highway schemes such as Cam & Dursley Greenway (design phase), Cam & Dursley rail station enhancements, Stroud to Nailsworth cycle track upgrade, etc.
- 4.3. However, none of the other District Councils (Gloucester City Council, Cheltenham Borough Council, Tewkesbury Borough Council and Cotswold District Council) have distributed any CIL payments (again, with the exception of those percentage payments made to themselves and Town/Parish Councils).
- 4.4. The JCS authorities (Gloucester City Council, Cheltenham Borough Council and Tewkesbury Borough Council) are in the process in reviewing their CIL, which is anticipated to be completed in summer 2022. This is welcomed by the County Council, on the assumption that it will result in the removal of education / library contributions from the JCS CIL regime.
- 4.5. All of the District Councils (and the County Council) now have a statutory requirement to produce annual Infrastructure Funding Statements (IFSs). These need to be produced no later than 31st December each year – starting from December 2020. These statements should detail all monies received by S.106 and/or CIL in the previous financial year and also detail what funds have been passed to other bodies, what funds remain unallocated / unspent and how it is intended to spend future funds. All 7 IFSs for 2019/20 are able to be viewed on the respective councils' websites.

5. Contributions for Education

- 5.1. The situation we currently find ourselves in, in Gloucestershire, is of particular concern in relation to the County Council's function as Education Authority. Government provides funding to local authorities for the provision of new school places, based on forecast shortfalls in school capacity. This funding is reduced, however, to take account of developer contributions, to avoid double funding of new school places. Government funding and delivery programmes do not replace the requirement for developer contributions in principle. Plan makers and local authorities for education should therefore agree the most appropriate developer funding mechanism for education, assessing the extent to which developments should be required to mitigate their direct impacts.
- 5.2. This should include the efficient and timely creation, expansion and alteration of high quality schools. Contributions for education should be based on pupil yields and nearby school place planning area capacity. The

Department for Education has published guidance for LPAs on securing developer contributions for education.

- 5.3. To date, no CIL monies have been allocated by any of the District Councils to GCC Education (nor libraries). This is of concern.
- 5.4. This situation has been worsened by the fact that there have been many recent examples where both developers and the LPAs have either significantly reduced or completely declined the County Council's requests for developer contributions via S.106 towards education (and libraries). This has resulted in the County Council failing to secure several million pounds worth of requested education and library contributions this year alone.
- 5.5. The County Council's approach towards requesting education (not library) contributions was criticised at a recent Planning Inquiry at Coombe Hill in Tewkesbury Borough. Given the content of the Inspector's report, County Council officers immediately started to review the approach taken. An interim GCC Education Position Statement outlines the revised approach that will be used with immediate effect for future calculations. Officers will also review both current and recent planning applications to apply the same methodology. The documentation will be placed on the County Council's website. There will then follow a more detailed review of the methodology used and the data / assumptions that are made. This is expected in 2022. All of the District Councils will be kept informed of this ongoing process.

6. Conclusions

- 6.1. The County Council is an important infrastructure provider in Gloucestershire. The introduction of CIL across much of the county has resulted in a lessening of the County Council's ability to secure developer contributions due to two Developer Contribution systems being in place (S106 & CIL). Despite clear rules governing the use and application of both systems to help mitigate the impacts of new development, this dual approach is often cited by developers as 'double dipping' with contribution values challenged and development viability used as an argument with District Councils as LPAs to reduce or remove any financial contributions towards County Council services.
- 6.2. The County Council has failed to secure several millions of pounds of requested S.106 developer contributions towards education and library infrastructure due to decisions made by District Councils as LPAs.
- 6.3. Despite CIL being operational for several years, only one District Council has distributed any CIL payments to the County Council. No CIL payments, to date, have been made to the County Council for education / library infrastructure.
- 6.4. In response to the Planning Inspector's findings at the recent Coombe Hill Planning Inquiry the County Council is in the process of reviewing the data used to calculate education contributions through the S106 process. As this revised data set is available all District Councils will be kept informed and consulted before any formal changes are made. By maintaining ongoing dialogue through this process it will help raise increased awareness and understanding of the justification for seeking development contributions.