

***Decision Session – Executive
Member for Economy and Strategic
Planning***

26nd November 2020

*Report of the Corporate Director Economy and Place
(Portfolio of the Executive Member for Economy and Strategic
Planning)*

Infrastructure Funding Statements (IFS).

Summary

1. The Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019 requires a contribution receiving authority to publish an annual Infrastructure Funding Statement (IFS) no later than the 31st December 2020.
2. An IFS, amongst other things is intended to act as a statement of the monetary or non-monetary contributions received by a Local Authority.
3. The first statement must cover the previous financial year (1st April 2019 to 31st March 2020). Thereafter Infrastructure Funding Statements need to be published annually, as a minimum.
4. The purpose of Infrastructure Funding Statements is to help local communities and developers see how contributions have been spent and understand what future funds will be spent, ensuring a transparent and accountable system. They can also assist with demonstrating the tangible items of infrastructure that have or will be delivered as a result of developer contributions.

Recommendation

5. The Executive Member is asked to note the contents of this report and delegate to the Corporate Director of Economy and Place responsibility to publish the IFS on the Council's web site in

accordance with annual deadlines and in consultation with the Executive Member for Economy and Strategic Planning.

Background

6. The Community Infrastructure Levy (CIL) is a planning charge, first introduced via the Planning Act 2008 as a tool for local authorities in England and Wales to help deliver infrastructure; it came into force in April 2010 through the Community Infrastructure Regulations 2010.
7. Subsequent amendments made under The Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019 have introduced the requirement for contribution collecting authorities to produce Infrastructure Funding Statements to report on the delivery of types of infrastructure and infrastructure projects which have been funded as a result of contributions.
8. In preparing the annual IFS the legislation sets out what information is required to be reported. The annual IFS must comprise of:
 - a. A statement of the infrastructure projects or types of infrastructure which the charging authority intends will be, or may be, wholly or partly funded by CIL.
 - b. A report about CIL, in relation to the previous financial year.
 - c. A report about planning obligations in relation to the reported year.
9. Within the context of the CIL regulations the Council does not currently constitute a 'Charging Authority' as it does not have an adopted CIL Charging Schedule. As a result of this the published IFS needs only to comprise of a report about planning obligations in relation to the reported year.

What are Planning Obligations?

10. Planning obligations are legal obligations entered into to mitigate the impacts of a development proposal.

This can be via planning agreement entered into under Section 106 of the Town and Country Planning Act 1990 by a person with an interest in the land and the local planning authority; or via a unilateral undertaking entered into by a person with an interest in the land without the local planning authority.

Planning obligations run with the land, are legally binding and enforceable. A unilateral undertaking cannot bind the local planning authority because they are not party to it.

11. When a Section 106 Agreement is made the agreement will in the majority of cases set out any financial contributions that are payable under the agreement. It will also include the trigger point at which these payments should be made by the developer. Agreements can also include non-monetary contributions, such as on-site affordable housing units.
12. It is common for financial contributions to be time limited. This usually means that there is a defined time period within which the contributions must be spent or be allocated for spending on their intended projects, or items of infrastructure. If they are not spent in accordance with the agreement the Council can be obliged to refund them to the person(s) who originally paid the contribution, along with any interest accrued during the period in which the monies were held by the Council.
13. Monies secured by way of planning obligations can only be used for the purposes that are set out within the Section 106 Agreement by which they are secured. As such when the monies are received to the Local Authority they are in effect already earmarked for a particular project or type of infrastructure provision. They can also be geographically restricted either to an area in close proximity to the associated development or a particular Ward area.

When can planning obligations be sought by the Local Planning Authority?

14. Planning obligations assist with mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:
 - a. *Necessary to make the development acceptable in planning terms;*
 - b. *Directly related to the development; and*
 - c. *Fairly and reasonably related in scale and kind to the development.*

15. These tests are set out as statutory tests in regulation 122 (as amended by the 2011 and 2019 CIL Regulations and as policy tests in the National Planning Policy Framework. These tests apply whether or not there is a levy charging schedule for the area.

Matters to be included in the annual Infrastructure Funding Statement

16. In the absence of an adopted CIL Charging Schedule which would allow the Council to collect CIL from liable developments the published IFS only needs to comprise of the Section 106 element.

17. The Section 106 element of the IFS is required to include:

- a. The total amount of money to be provided under any planning obligations entered into during the reported year;
- b. The total amount of money under any planning obligations which was received during the reported year;
- c. The total amount of money under any planning obligations which was received before the reported year which has not been allocated by the authority;
- d. Summary details of any non-monetary contributions to be provided under planning obligations which were entered into during the reported year, including details of-
 - i. In the relation to affordable housing, the total number of units which will be provided;
 - ii. In relation to educational facilities, the number of school places for pupils which will be provided, and the category of school at which they will be provided;
- e. The total amount of money (received under any planning obligations) which was allocated but not spent during the reported year for funding infrastructure;
- f. The total amount of money (received under any planning obligations) which was spent by the authority (including transferring it to another person to spend);

- g. In relation to money (received under planning obligations) which was allocated by the authority but not spent during the reported year, summary details of the items of infrastructure on which the money has been allocated, and the amount of money allocated to each item;
- h. In relation to money (received under planning obligations) which was spent by the authority during the reported year (including transferring it to another person to spend), summary details of:
 - i. The items of infrastructure on which that money (received under planning obligations) was spent, and the amount spent on each item;
 - ii. The amount of money (received under planning obligations) spent on repaying money borrowed, including any interest, with details of the items of infrastructure which that money was used to provide (wholly or in part);
 - iii. The amount of money (received under planning obligations) spent in respect of monitoring (including reporting under regulation 121A) in relation to the delivery of planning obligations;
- i. The total amount of money (received under any planning obligations) during any reported year which was retained at the end of the reported year, and where any of the retained money has been allocated for the purposes of longer term maintenance (“commuted sums”), also identify separately the total amount of commuted sums held.

18. In some circumstances it will be necessary for some contributions, both monetary and non-monetary to be estimated. The most common instance where an estimation would need to be used would in cases where Outline planning permission has been granted.

19. Typically the granting of Outline planning permission allows for the principle of development to be established along with a set of specified maximum parameters. In these cases the associated Section 106 agreement will then set out the mechanisms and frameworks by which the value or amount of contributions can then be calculated. Final figures will not normally become known until the granting the necessary Reserved Matters applications.

Example

20. Outline planning permission is granted for a development of up to 100.no new dwellings; 20% of which will be affordable, which is secured via the Section 106 Agreement. This would equate to 20.no affordable units.
21. However as the Outline permission allows for up to 100 dwellings, the 20 affordable units would be the best case scenario. The true amount delivered on site will not be known until the follow up Reserved Matters application is determined and the final total amount of dwellings to be built is known; the developer may decide to pursue a scheme for 95.no dwellings; resulting in 19.no affordable units being required.
22. In scenarios such as this it would be proposed that the figures reported within the IFS are the best case based on the known facts and parameters of the case in the question at the time of writing. This approach would be in line with guidance published in the National Planning Practice Guidance.
23. There will also be cases where the actual amount of money received differs from the figure directly stated in a completed legal agreement. This variation is usually due to contributions being index linked. Therefore as time passes between the point at which the legal agreement is completed and the trigger point of a particular payment, the amount of contribution due can be adjusted to account for inflation.
24. In addition to the matters which must be reported in the Section 106 IFS. There is also an option to include other matters, namely:
 - a. Summary details of any funding or provision of infrastructure which is to be provided through a highway agreement under Section 278 of the Highways Act 1980 which was entered into during the reported year,
 - b. Summary details of any funding or provision of infrastructure under a highway agreement which was provided during the reported year.

25. In preparing the first IFS it is not proposed to include details of matters secured under Section 278 of the Highways Act 1980. This is because these items are optional under the current regulations. It will also provide an opportunity for focusing on the reporting of Section 106 matters which we are obliged to publish.
26. The omission of Section 278 Agreements could be reviewed for future IFS publications.

Format of the IFS

27. Published national guidance provides a high level overview as to a suggested overview of the data format and publication process. The suggested format comprises of three separate CSV (Comma-separated values) files – a tabulated format of data which can be used by most spreadsheet software.
28. Compiling the data into the three separate CSV files would allow for the data within them to be interrogated using spreadsheet software. However the resources required to compile these files would be quite intensive given how the data contained with the various legal agreements is currently stored. Presenting the data in this format may also not be particularly reader friendly.
29. Instead a written report which follows a question and answer type format is considered to be a more appropriate approach to presenting the IFS. This would provide greater opportunity for the document to be readily readable.

Future Reporting

30. It is envisaged that following the publication of the first IFS this will create a baseline from which future statements can be prepared from.
31. The regulations require that an IFS be published annually, as a minimum. There is no specific restriction preventing an IFS being published more regularly. However given the nature of the items that are to be reported it is considered that an annual reporting cycle would be the most appropriate. This would allow the financial year that is to form the subject of the IFS to be closed, thus allowing a greater degree of accuracy and clarity in terms of what is reported.

32. Over time and with enhancements to the monitoring process it may be possible to produce future IFS statements in a less resource intensive manner in alternative or multiple formats through the introduction of more automated practices. Development Services are undertaking work examining the suitability of a dedicated IT system designed specifically for the recording, monitoring and tracking of planning obligations.

Conclusion

33. The requirement to produce an IFS should be a positive move towards enhancing the accountability and traceability of the planning obligations process. It is an opportunity to enhance the transparency of this element of the planning system. It should allow for communities to gain a clearer understanding of what the planning process can secure in terms of new infrastructure as a result of new development.

34. Enhancing accountability and traceability is not without risk and this is something that as a Council we should be mindful of as we move towards publishing the IFS.

Consultation

No formal consultation has taken place.

Council Plan

The following Council priorities are relevant:

- Good health and wellbeing
- A greener and cleaner city
- An open and effective council

Implications

- **Financial** There are no immediate financial implications. However failure to spend planning obligation monies within the agreed time periods may result in the Council being liable to refund monies received.

- **Human Resources (HR)** The requirement to produce an IFS will result in the need to divert resources into the task from pre-existing work.
- **Equalities** There are no equalities implications
- **Legal** There are no legal implications
- **Crime and Disorder** There are no crime and disorder implications
- **Information Technology (IT)** There are no IT implications
- **Property** There are no property implications
- **Other** There are no other implications

Risk Management

There are no known risks

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**Report
Approved**



Date 12/11/2020

Becky Eades
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Wards Affected:

All

For further information please contact the author of the report

Background Papers: None