

Report of the Director of Environment, Transport and Planning

## **Section 106 Agreements and Community Infrastructure Levy**

### **Summary**

1. This report provides information on Planning Obligations (section 106 agreements), how they are negotiated and how the contributions are invested. There is a specific focus of the public open space element of the process due to this being requested by the Chair. There is also an update on Community Infrastructure Levy (CIL).

### **Background**

2. Planning obligations are legal obligations entered into to mitigate the impacts of a development proposal.
3. This is normally via a 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 Planning obligations run with the land, are legally binding and enforceable.
4. Planning obligations assist in 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.
5. 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.
6. These tests are set out as statutory tests in [regulation 122](#) (as amended by the 2011 and 2019 Regulations) and as policy tests in the National Planning Policy Framework.

7. There are specific limitations when the Local Planning Authority can seek to secure obligations in respect of affordable housing. Obligations for Affordable Housing can only be sought for residential developments that are major developments.
8. A major residential development is defined within the National Planning Policy Framework as a development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more. For non-residential development it means additional floorspace of 1,000 square metres or more, or a site of 1 hectare or more, or as otherwise provided in the Town and Country Planning (Development Management Procedure) (England) Order 2015.
9. Section 106 agreements can be used to secure a number of elements which can include but are not limited to:
  - On site affordable housing
  - Affordable housing contribution
  - Education contributions
  - On/Off site highway improvements
  - Highways sustainability measures
  - Open space and recreation contributions
  - Monitoring fees

### **Monetary and Non-monetary obligations**

10. Planning obligations can be usually categorised into two distinct types. Monetary and Non-monetary.
11. A monetary planning obligation is one where a developer pays an agreed sum of monies which the Council must then use to fund infrastructure elsewhere. An example of a monetary obligation would be a payment towards off-site affordable housing.
12. A Non-monetary planning obligation is one whereby the developer provides the required infrastructure; this is often on the site of the development. An example of a non-monetary obligation would be where the affordable housing requirement is built and delivered on site as part of a wider development.

13. The level of obligations secured from one year to the next can also vary. This variation is ultimately driven by the nature of the developments that come forward as proposals.

### **When are planning obligations paid or delivered?**

14. In all cases where planning obligations are secured via a Section 106 Agreement. The agreement will set out the specific points in time or trigger points at which both monetary and non-monetary obligations have to be delivered.
15. The most common triggers are linked to the commencement of a development, or on a larger development scheme when a specified amount or proportion of the development is completed or occupied.
16. In reality there can often be a time lag between the completing of an agreement and the granting of planning permission to the point at which obligations are delivered. These time lags can be for a range of reasons some of which will be outside the control the Council such as the developer securing the necessary financial backing to proceed with the development. The scale of development can also impact upon the rate at which contributions are delivered as it takes time for the development to reach the agreed trigger points.
17. In cases where financial obligations are secured the legal agreement will specify the amount of that obligation. It is common for such obligations to be index linked. Whilst the measure of indexation can vary from one agreement to another the overarching principle is that this seeks to protect the obligations secured against inflation. Therefore, once an obligation becomes payable the actual amount received often differs from that which is written in the associated legal agreement. In addition to this monies held by the Council are held in interest bearing accounts; this is often a stipulation of most Section 106 Agreements. This allows the monies held to accrue interest until such time they are drawn down for spending. This again provides a degree of protection to the Council from factors such as inflation and any other unforeseen cost increases.
18. Once a Section 106 agreement is secured it is registered against the land in question as a Land Charge and recorded in the Land Charges register. Section 106 agreements are binding on the land to which they

relate. This means that in the event of planning permission being granted and the land then been sold to another party the obligations secured via the Section 106 agreement would remain in place.

### **How are planning obligations spent?**

19. When planning obligations are secured the Section 106 Agreement will specify what the secured obligation must be used for. The exact specificity on the spending of each obligation will vary case by case. Typically spending will be restricted to infrastructure that is closely related or in close proximity, such as the same Ward area, to the development against which the obligation was secured.
20. An example of this is a Traffic Regulation Order (TRO) which could be used in the vicinity of the site to reduce the speed limit. Other examples of a TRO further away from the site would be to introduce residents parking permits if it was considered necessary to mitigate the impact of the development.
21. The general exception to restrictions is off site contributions for affordable housing which normally allows for use across the administrative area of the Council.
22. In contrast to this, monies collected under a Community Infrastructure Levy (CIL) regime would have a far greater degree of flexibility in terms of what and where they are spent. This is due to CIL spending adopting a more strategic authority wide approach. CIL is covered in more detail in the section below.

### **Community Infrastructure Levy (CIL)**

23. The CIL is a locally set charge on new development that authorities can choose to introduce across their area. It is based on the size and type of development and, once set, is mandatory to pay and non-negotiable. CIL differs from S106 agreements in that it collects contributions from a wider range of developments and allows greater flexibility on where the contributions are spent. S106 agreements will continue to be used for site specific infrastructure.

24. Following viability work, which built on the Local Plan evidence base, a draft CIL charging schedule was approved at Executive in January 2023 for public consultation. That consultation finished in March 2023 and the results were reviewed. During the Autumn 2023 further sensitivity testing was undertaken in response to the comments received during the initial consultation, and to consider the impacts of market fluctuations on viability. This resulted in a revised draft charging schedule which is currently out to consultation, finishing 31 January 2024.
25. Following further work to assess the results of the current consultation, it is hoped that an independent examination of the draft Charging Schedule will take place in the summer with adoption, and implementation, in the autumn.
26. Once the CIL Charging Schedule takes effect, payment of CIL becomes due from commencement of the development. The CIL monies collected can then be applied to fund a wide range of infrastructure. This can include transport infrastructure, flood defences, schools, hospitals, and other health and social care facilities, open spaces, cultural and sports facilities, district heating schemes and other community safety facilities.
27. A proportion of the CIL monies is paid directly to the communities where development has taken place to be used to mitigate for that development. In communities where there is an adopted neighbourhood plan, 25% of the CIL monies collected in that area are payable to the community each year. Where no neighbourhood plan is in place this falls to 15% of the CIL monies (capped at £100 per dwelling). In areas without a parish council, the local authority would consult with the community to agree how best to spend the money. 5% of the CIL receipt can also be kept by the charging authority for administration of the levy.
28. CIL differs from S106 in that it is non-negotiable and more strategic while S106 monies are required to be spent as detailed in the legal agreement. The Council would decide on its spending priorities for CIL and would need to wait for the CIL to accumulate to a sufficient level.

## **Consultation**

29. Consultation on a CIL draft Charging Schedule must be undertaken in accordance with the CIL Regulations 2010. These require a charging

authority to invite representation from people who live, work or operate a business in the area, and from consultation bodies, which include adjoining authorities, parish councils and neighbourhood forums. A minimum consultation period of 4 weeks is suggested.

30. The Council undertook consultation on the draft Charging Schedule for 6 weeks in Spring 2023, alongside a consultation on main modifications to the Local Plan. Consultation bodies (as detailed above) were directly contacted regarding the consultation, and wider publicity was enabled via the Council's social media channels and in conjunction with the Local Plan consultation.
31. In relation to the current consultation on the revised draft Charging Schedule, and as there are no statutory requirements for such re-consultations, direct contact has been made only with those who previously responded to the CIL consultation and expressed an interest in continuing contact, although responses will be accepted from any interested parties. Responses are invited by email only and solely in relation to the revised material, which has been published on the Council's website. The consultation began on 18 December 2023 and ends on 31 January 2024.

### **Infrastructure Funding Statement (IFS)**

32. The Infrastructure Funding Statement (IFS) is an annual report which provides a summary of all financial and non-financial developer contributions relating to Section 106 Legal Agreements (S106) within the City of York for the reported year.
33. The requirement to publish an IFS is contained within The Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019.
34. 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 Levy Regulations 2010.
35. In preparing an annual IFS the legislation sets out what information is required to be reported within an IFS. 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.
36. Within the context of the CIL regulations the Council does not constitute a 'Charging Authority' as it does not have an adopted CIL Charging Schedule, nor do we collect CIL contributions on behalf of other authorities. As a result, the Council's IFS needs only to comprise of those matters contained in c) concerning planning obligations. The IFS is attached in appendix 1.

### **Open Space**

37. Under Draft Local Plan Policy G16 there is a requirement for open space provision for both recreation and amenity. The policy encourages on site provision where possible but where there is a need for offsite provision it outlines the circumstances where it would be considered acceptable.
38. Where an offsite contribution to open space is required, this is secured through the section 106 process. In terms of defining the catchments for where the section 106 contributions are spent the Council's Operation Manager for Open Spaces makes an assessment in line with the City of York Council Local Plan Evidence Base: Open Space and Green Infrastructure September 2014 and Open Space and Green Infrastructure Update September 2017.
39. The 2017 update considered the new ward boundaries and updated the data from 2014, the 2014 report has the methodology and typology standards.
40. As part of the assessment as to the suitability of areas for payments the Operations Manager considers the following when considering allocating contributions:
- a) there is a suitable site within the catchment i.e., an existing CYC, or local council play area,
  - b) there is space or opportunity within the existing play area,

- c) the total amount of money available is such that a meaningful expansion or improvement can be made. In such instances money is held until it can “pooled” with other payments from the catchment, and,
- d) where there is opportunity to create a larger expansion or improvement linking 106 payments to other funds such as Council capital programme or money raised by the local community e.g., lottery.

41. The assessment also considers if existing facilities can be upgraded or if there is the requirement for new facilities to be provided. The section 106 agreement will in most instances name the area or the facilities where the contribution is to be spent in line with the assessment which has been made on the evidence base as outlined above.

### **Sport and Recreation**

- 42. As part of the above process for over 10 dwellings the Councils community sports team are consulted in order to provide advice as to if the proposal will result in an implications that will require mitigation as part of the proposals.
- 43. The team assess each application based on the information provided within the plans and supporting documentation. Consideration is given to the provision of open space within the development and the recreation capabilities/capacity of this.
- 44. When considering applications, the team rely on an evidence base for their comments. This includes the Local Plan Evidence Base, Open Space and Green Infrastructure Update and the Playing Pitch Strategy and Built Facilities Plan.
- 45. The team also work with Sport England and The National Governing Bodies of Sport on the production of the above documents and work with them on the delivery of suitable places and schemes to deliver works through the contributions made. The criteria the team use include and are consistent with is that the beneficiaries of the contributions are the closest voluntary/community sports clubs or site of sports space and equipment and within/as close to the guidelines as set out below in the table for outdoor sport facilities.



The open space standard typologies and standards are therefore as follows:

|                           | Recommended standard / 1000 population | Recommended Accessibility Standard  | Other guidance/ 1000 population                                |
|---------------------------|--|---|--|
| Parks and Gardens         | 0.18ha/1,000 population;               | 20 minute walk (960m) (City Park); 15 minute walk (720m) (Local Park)                                   |  |
| Natural / Semi Natural    | 2.13ha/1,000 population;               | 15 minute walk (720m)   | 2.0ha (ANGSt)  |
| Amenity:                  | 1.45ha/1,000 population;               | 5 minute walk (240m)  |  |
| Children's playspace*     | 0.48ha/1,000 population                | 10 minute walk (480m)   | 0.25ha/1,000 pop (FIT for Equipped playspaces (LAP/LEAP/NEAP)) |
| Teenager's playspace*     | 0.21ha/1,000 population                | 15 minute walk (720m)   |  |
| Outdoor sports facilities | 1.78ha/1,000 population                | 15 minute walk (720m) for pitches/ tennis/ bowls; 20 minute public transport for synthetic turf pitches | 1.6ha (FIT) of which 1.15ha for pitch sports                   |
| Allotments                | 0.29ha/1,000 population                | 15 minutes walk (720m)  | 0.22ha (NSALG)   |

\*incorporated into amenity open space

Acronyms:

- ANGSt – Accessible Natural Greenspace Standard
- NEAP – neighbourhood equipped area for play. A minimum area of 1,000m2 with at least eight activities and should be located 1,000 metres
- or 15 minutes walking time along pedestrian routes (600 metres in a straight line)
- LEAP – local equipped area for play. A minimum area of 400m2 with at least five activities and should be located 400 metres or 5 minutes
- walking time along pedestrian routes (240 metres in a straight line)
- LAP – local area for play. Formally designated area for play to be at least 100m2 in size with up to three activities and should be located
- 100m or 1 min walk along pedestrian routes (60m in a straight line)
- FIT – Fields in Trust
- NSALG – National Society of Allotment Gardeners

46. When allocating funds, the team take into account the following:
- Being one of the closest community sports clubs to the development.
  - Identified in playing pitch strategy.
  - Identified as a priority by the sport's national governing body.
  - Have the ability to cater for the residents of the new development.
  - Club has engaged with the council / sport and active leisure team and has good governance etc.
  - Evidence of wider partnership working.
  - Whether they are council facilities or community voluntary sports club.
  - The scheme is deliverable (in terms of time frame, additional partnership funding etc.)

## Post Planning Application Process

47. Once the application has been approved and the section 106 has been signed it is logged onto an administration IT system. The system allows for the following:
- prompt an administrator at key stages of the S106 agreement
  - A categorised document management system to allow for the storage of category relevant documentation with the ability to link to an external DMS via URL
  - The ability to store multiple contacts such as “Interested Party” and agent management of covenants and clauses
  - Full financial section to monitor incoming and outgoing expenditure
  - Project module allocations to calculate or to view a breakdown of sums received per application
  - Payment policy management as per the legal agreement
  - Planning application linkage from Outline to Reserved Matters, and between Full and application variations
  - Decision monitoring including alerts
  - Logging of land charges information
  - Finance monitoring
  - Event logging for audit purposes.
  - Administer and monitor various individual projects, including calculations of funding, spending and returned sums against initial project estimations
  - Allocate spending to projects based on allocations of above funding
48. Once the contributions secured by the section 106 have been received by Finance they notify the Planning Department of the amount, who paid the contribution and which scheme it relates to.

49. The Planning department then send a pro-forma to the relevant department within the Council to inform them of the contribution that has been received along with what the contribution was allocated for. The department must fill in the proforma and return it to the Planning Department to confirm what the contribution will be used for before the relevant contribution will be released to the depart for spending.
50. Once the contributions have been spent the relevant department must also report back to the service via proforma as to what contribution has been spent on. This includes dates and specifics of the spending for recording purposes.
51. The proforma process allows for all received contributions to be captured and recorded along with a clear audit trail.

### **Options**

52. This section is not applicable to this covering report as there are no options being presented to the Scrutiny meeting.

### **Analysis**

53. This section is not applicable to this covering report as there are no options presented.

### **Council Plan**

54. The “One City, for all” 2023-27 Council Plan sets out clear priorities.

Equalities and Human Rights  
Affordability  
Climate  
Health

55. A robust and clear section 106 process will assist with achieving all of the above priorities.

### **Implications**

56. There are no implications from this report as the above is for information purposes.

### **Risk Management**

57. This is an update report to Scrutiny only, with no decisions required.

### Recommendations

56. That Corporate Services, Climate Change and Scrutiny Management Committee notes the content of this briefing report and considers further activity for scrutiny if required.

Reason: To ensure that the Section 106 process is robust and in line with planning policy requirements.

### Contact Details

**Author:**

Becky Eades  
Head Of Planning and  
Development Services  
[Becky.eades@york.gov.uk](mailto:Becky.eades@york.gov.uk)

**Chief Officer Responsible for the**

**report:** James Gilchrist  
Director of Transport, Environment and  
Planning

**Report  
Approved**



**Date** 17.01.2024

### Specialist Implications Officer(s)

**Wards Affected:**

All

**For further information please contact the author of the report**

### Annexes

Annex 1

**City of York Council Infrastructure Funding Statement**  
Infrastructure Funding Statement for the reported year 1st  
April 2022 to 31st March 2023