

Name of meeting: Huddersfield Area Planning Committee
Date: 16th January 2015

Title of report: Future Changes to Section 106 Planning Obligations

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	The proposal will have an effect on all Wards
Is it in the Council's Forward Plan ?	N/A
Is it eligible for "call in" by Scrutiny ?	No
Date signed off by <u>Director</u> & name	Jacqui Gedman– 7 th January 2015
Is it signed off by the Director of Resources?	N/A
Is it signed off by the Assistant Director - Legal & Governance?	Yes – 6 th January 2015
Cabinet member portfolio	Councillor Peter McBride Councillor Steve Hall

Electoral [wards](#) affected: All
Ward councillors consulted: None

Public or private: Public

1. Purpose of report

For information. The report highlights two significant changes to the way in which S106 contributions can be secured in the future.

2. Background

The way in which we secure contributions to infrastructure through the planning process has been changing for a number of years. We are currently experiencing a transition from traditional Section 106 agreements to the Community Infrastructure Levy (CIL).

CIL is a planning charge, introduced by the Planning Act 2008 as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. It came into force on 6th April 2010 through the Community Infrastructure Levy Regulations 2010.

Development may be liable for a charge under the Community Infrastructure Levy (CIL) if a local planning authority has chosen to set a charge in its area.

Section 106 agreements are still valid tools to secure these improvements but a series of changes put forward recently mean that this will be a less effective way of securing long term infrastructure contributions. Any S106 agreements that are sought must continue to meet the 3 tests set out in regulation 122.

3. Key points

Latest Changes

On 28th November 2014 the Government issued new advice within the National Planning Practice Guidance (NPPG) on Section 106 Planning Obligations which states that contributions for affordable housing and 'tariff style' planning contributions should not be sought from developments of 10 units or less, and which have a maximum combined gross floor space of no more than 1,000 square metres. Other thresholds are identified for designated rural areas and rural exception sites.

Tariff style contributions are defined as those which are collected towards 'pooled funding pots' intended to provide common types of infrastructure for the wider area.

The guidance must be taken into account as a material consideration in decisions on planning applications from 28th November 2014 onwards.

In addition to this, from 6th April 2015, the CIL Regulations, impose restrictions on pooling S106 contributions for developments of all sizes. This effectively prevents the pooling of contributions of more than five S106 contributions for a single project or type of infrastructure that is capable of being funded by CIL. This will be back dated to 2010.

How will this Affect Planning Decisions in Kirklees?

Kirklees does not have a CIL charge in place as CIL cannot be established until there is an up to date development plan. Until that time the Local Planning Authority will continue to rely on Section 106 agreements to secure our infrastructure and policy requirements.

However, these latest changes will have consequences for the way in which we collect contributions or payments for infrastructure and other community assets in the future. Ultimately it means that we may not be able to fulfil some of the policy requirements of the UDP and its associated Supplementary Planning Document's (SPD's).

4. Implications for the Council

Which Policy areas are likely to be affected?

In terms of the immediate changes; affordable housing still needs to be secured by S106 agreements, but this will be affected by the new advice within the National Planning Practice Guidance (NPPG).

This means that SPD2 – 'Affordable Housing ' will be restricted to sites above the thresholds outlined in section 3 above. The Council's current approach applies generally to sites at 5 or more although on sites with a capacity of 2 to

4 dwellings, the Council will negotiate a financial contribution in lieu of the provision of affordable housing.

The forthcoming changes to the CIL Regulations, in April 2015, means that, whilst we can still secure education contributions, public open space provision and highways contributions, great care needs to be exercised to avoid pooling.

What does this mean in practice?

It is not possible to quantify what this means in monetary terms. However, by using past information, it is possible to give an indication of the numbers of applications that will be affected. It should also be noted that viability appraisals have been a particular feature in reducing the contributions being made since the introduction of NPPF.

Affordable Housing

From an affordable housing perspective we will no longer be able to seek contributions from those developments between 5 and 10 dwellings as we had before. During 2014 we determined 40 applications of this size. These made up about 10% of all applications for new residential applications determined.

Education Contributions

From an education perspective the policy threshold is 25 units or more so this will not be affected by the recent threshold change. It will however be important that contributions made to specific projects ensure no more than 5 contributions are pooled to a specific project.

During 2014 43 applications were determined that were eligible for education contributions.

Public Open Space Contributions

On-site public open space can still be secured for individual applications through S106 agreements. For any improvements that are not on-site, they would have to be agreed for specific projects, as long as 5 pooled contributions had not yet been agreed since 2010.

Highway Contributions

Payments to facilitate highway works that relate to the impact of an individual development can still be secured through Section 106 agreements – this will include: specific identified junction improvements, travel plan measures and monitoring and public transport improvements. It will however be important that contributions made to specific projects ensure no more than 5 contributions are pooled to a specific project.

The administration of SPD1 – ‘Negotiating Financial Contributions for Transport Improvements’ - which relates to the highway improvements in the Kirklees Strategic Economic Zone, will prove at odds with the latest guidance. Officers will need to consider how best to address this issue.

The number of applications that were determined in 2014 and eligible for such a contribution was 2. This generated potential contributions of approximately £210,000 should the development commence.

Consultees and their Opinions

None.

5. Next steps

In the longer term the Local Plan, which will be our most up to date plan, will be accompanied by robust infrastructure planning to assure the Planning Inspector that the growth it brings will be supported by adequate infrastructure. This evidence is used in the CIL process to identify where infrastructure 'funding gaps' are, and to justify a CIL charge to help fill those gaps. An Infrastructure Delivery Plan will be progressed alongside the Local Plan and will be supported by CIL in the future.

In the short term our policy position to seek affordable housing contributions on sites between 5 and 10 units has become weaker. In addition to this we will need to establish priorities for spending S106 money related to developments that come forward when S106 pooling restrictions come into place (6th April 2015).

To facilitate this latter element we are currently working to understand the developments that may come forward and how best to ensure that infrastructure can be secured.

6. Officer recommendations and reasons

Members are requested to note the contents of this report.

7. Cabinet portfolio holder recommendation

Both Cllr McBride and Cllr Hall have been made aware of the changes and have been briefed on this report.

8. Contact officer and Relevant Papers

Simon Taylor – Head of Development Management - 01484 221000

Kevin Walton – senior Planner (Enforcement) – 01484 221000

Thomas Fish - Planner – 01484 221000

1. The Community Infrastructure Levy Regulations 2010
2. Negotiating Financial Contributions for Transport Improvements (SPD1)
3. Affordable Housing (SPD2)
4. Planning Contributions (Section106 planning obligations) Government response to consultation - November 2014
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/381349/Planning_Contributions_Section106_planning_obligations_.pdf

9. Assistant Director Responsible

Paul Kemp – Assistant Director Investment and regeneration (Acting)