Report to Planning Scrutiny Panel

Date of meeting: 9 December 2014

Portfolio: Planning

Subject: Community Infrastructure Levy

Officer contact for further information: Kassandra Polyzoides – (4119) or Nigel Richardson – (4110)

Committee Secretary: Mark Jenkins (4607)

Recommendations/Decisions Required:

1. That the progress on the Community Infrastructure Levy and the future of Section 106 Agreements from 6 April 2015 be noted.

Report:

Background: Section 106 Agreements

Planning obligations are legal contracts made under Section 106 of the 1990 Town and Country Planning Act. They are used as a legal agreement between councils and landowners/developer, although a landowner/developer may also offer a unilateral, "one-sided", Section 106 obligation (S106).

Planning obligations are linked to a planning application decision, made by the local planning authority. The planning obligation relates to the land within the planning application, rather than the person or organisation that develops the land. It is, therefore, recorded as a land charge, and the obligations under it run with the land ownership until they are fully complied with, often indefinitely.

Planning obligations are used for three purposes to:

- prescribe the nature of development to comply with policy (for example, requiring a given portion of housing to be affordable).
- compensate for loss or damage created by a development (for example, loss of open space).
- mitigate a development's impact (for example, through contributions to mitigate against increase demand on education need).

They were first introduced in 1971 (then known as Section 52 Agreements) and designed to fund the direct impacts of developments, e.g. they are a major contributor to affordable housing delivery. The Barker Review (2004) concluded that S106 could not deliver strategic infrastructure and that a Community Infrastructure Levy (CIL) was conceived as a way of capturing an element of land value uplift to fund strategic infrastructure investment.

Background: Community Infrastructure Levy

The CIL was introduced nationally in 2010. Councils can choose to charge landowners and developers the CIL for new developments in their area (charged by square metre of floorspace). These CIL funds can be collected together to fund infrastructure, such as flood

defence, education and health facilities to support development in the area. Rates can vary by geography and use and is payable to the Council when the development starts.

New legislation introduced in April 2010, introduced a number of measures affecting planning obligations. These reforms ensure that planning obligations and the CIL operate in a complementary way.

The new regulations limit the use of planning obligations in three ways:

1. Planning obligations entered into from 6 April 2010 must meet three new legal tests. For developments that are capable of being charged the CIL, planning obligations must be:

- necessary to make the development acceptable in planning terms
- directly related to the development
- fairly and reasonably related in scale and kind to the development

These are also set out as policy tests in paragraph 204 of the National Planning Policy Framework (NPPF).

2. To ensure that the use of planning obligations and the CIL does not overlap. Planning obligations cannot be used to fund infrastructure that the Council has included in its CIL infrastructure funding list (known as the 123 list). Developers cannot therefore be asked to pay twice for the same item of infrastructure.

3. From 6 April 2015, or sooner if a council introduces the CIL (it is not mandatory) in their area before this date, councils may not use planning obligations as a tariff. This is because from that date councils cannot pool more than five planning obligation contributions (counted back from April 2010) for specific infrastructure. Affordable Housing is not bound by this restriction.

Planning obligations will still play an important role in making individual developments acceptable through site-specific infrastructure such as highways improvements. Affordable housing though will also continue to be delivered through planning obligations rather than the CIL.

Post 6 April 2015

The Council is still to decide whether to adopt a CIL which cannot be introduced without an up to date adopted Local Plan. The Council has appointed consultants to undertake work on the viability of the Local Plan and they will be advising on the potential for the introduction of CIL in the District, the appropriate levy charge and the balance to be struck in relation to the Council's aspirations for the delivery of affordable housing.

In the meantime, the Council can only use Section 106 agreements for specific infrastructure projects by pooling together no more than 5 obligations. Education contributions have been the most common form of Section 106 agreements, and more than 5 have been signed since April 2010. There is much discussion about the definition of a planning obligation with respect to the pooling restrictions. For example, if an authority has already entered into more than 5 obligations for education (such as this Council) can it then enter into another obligation for a specific school? DCLG have clarified their view that this was within the rules and that the regulations were designed to stop double charging rather than restrict a Council's ability to deliver the infrastructure that is needed.

Further advice is awaited from Essex County Council but it implies that 5 education contributions for a specific school would be acceptable. If that is the position the continued collection of an education contribution is acceptable, until the Council has decided whether to adopt a CIL and produce its own Regulation 123 List.

It is worth noting, that as at November 2014, only 12% of council's (less than 50) have a CIL in place. The extract below from the Planning Advisory Service (PAS) website is a neat summary of the requirements to undertake the adoption of a CIL.

Advice from Planning Advisory Service:

Setting a CIL:

- Using evidence from your Infrastructure Delivery Plan (IDP) which supports your plan and growth strategy, identify your aggregate infrastructure funding gap. This is the difference between the infrastructure that you have identified that you need to support your growth and the funding that you have identified is available from other sources. If you have a funding gap you can justify having a CIL.

- You need to determine what rate is viable to charge?
    - Check out the consequence of the rate on key uses
    - Make sure that the rate is backed by evidence
    - Consultation required

- Independent examination is required to test the evidence.

What do you need to set a CIL:

- Up to date development plan
- Evidence on infrastructure funding gap – aggregate gap
- Evidence on viability
- All evidence is 'appropriate available evidence'
- Rates should be consistent with viability evidence across the area – to avoid accusations of state aid.

Reason for decision:

The Panel has requested an update on CIL

Options considered and rejected:

None

Consultation undertaken:

None

Resource implications:

Budget provision: Nil
Personnel: N/A
Land: N/A

Community Plan/BVPP reference: N/A

Relevant statutory powers: The Community Infrastructure Levy is a planning charge, introduced by the Planning Act 2008

Background papers: Community Infrastructure Levy Regulations 2010

Environmental/Human Rights Act/Crime and Disorder Act Implications: None specific
Key Decision reference: (if required) N/A