



**REPORT of
DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE**

**to
PLANNING AND LICENSING COMMITTEE
7 MARCH 2019**

SECTION 106 AGREEMENTS – SIX MONTHLY UPDATE

1. PURPOSE OF THE REPORT

- 1.1 This report provides an update on Section 106 Agreements (S106). It will primarily discuss the report submitted to the Overview and Scrutiny Committee on 27 February 2019.

2. RECOMMENDATION

Members are asked to give their views and comments on the information in this report.

3. SUMMARY OF KEY ISSUES

3.1 Community Infrastructure Levy (CIL) and S106 Policy Development

- 3.1.1 In 2015, the Government conducted an independent review into the CIL and its relationship with planning obligations (S106). The Review (A new approach to developer contributions) was published in February 2017. It concluded that developer contributions were not as fast, simple, certain or transparent as originally intended. The Government consulted on changes to CIL alongside the recent National Planning Policy Framework (NPPF) consultation (Minute No. 1011 (2018) refers).
- 3.1.2 In response to the review the Government proposed changes to make the system of developer contributions more transparent and accountable. The Government carried out consultation in March 2018 on reducing complexity and increasing certainty for local authorities, developers and communities; supporting swifter development; making CIL market responsive and introducing a strategic infrastructure tariff.
- 3.1.3 The Government is now consulting on draft regulations which will amend the CIL Regulations 2010 (as amended). The regulatory changes relate to:
- **Ensuring that consultations is proportionate** - To address the time it takes to introduce CIL or revise a charging schedule the Government propose to keep the consultation for a draft charging schedule but remove preliminary draft charging schedule consultation. This would mean that the Council may only have to undertake one round of consultation in the future. The

Government also removing the requirement to publish a statutory newspaper notice for a charging schedule.

- **Lifting Section 106 pooling restriction** - The Government proposes to remove pooling restriction in all areas and the regulation will allow the Council to use both CIL and Section 106 to fund the same item of infrastructure, consequently removing CIL Regulation 123 restrictions. However, the three planning obligation tests would still apply to Section 106 agreements meaning that contributions would need to be spent in the locality of the development. CIL could therefore be used to address District-wide infrastructure matters and/or help ‘top-up’ the pot for larger pieces of infrastructure where developer contributions are insufficient to deliver the project. Infrastructure Funding Statements for CIL and section 106 planning obligation are proposed (please see 3 October 2014 Overview and Scrutiny Committee report and related Appendix).
- **A more proportionate approach to administering exemptions** - The government proposes to introduce a small penalty for failure to submit a commencement notice. The Government will also clarify that a commencement notice is not required for an exemption for a residential extension which makes the process more straightforward for householder planning applications.
- **Extending abatement provisions to phased planning permission secured before the introduction of the Community Infrastructure Levy (‘balancing’)** - Negative CIL charges in one phase of transitional cases can act as a potential future credit against liability created in another phase of the development rather than reverting to zero.
- **Applying indexation where a planning permission is amended** - Current regulations charge more indexation to an amended planning permission even though the developer has already paid the charge on the original permission. The Government proposes that indexation should only be charged on additional floor-space.
- **Indexing Community Infrastructure Levy rates to more closely track the value of development** - The Government proposes to use House Price Index (HPI) for residential development and Consumer Price Index for non-residential. HPI would be based on the three years average house prices to avoid the volatility of House Price Index data whilst retaining close link with changes over time.
- **Section 106 Monitoring fee** - Planning authorities can seek a sum as part of a section 106 planning obligation for monitoring planning obligations. Any monitoring fee should be proportionate and reasonable, reflects the actual cost of monitoring.
- **Delivering Starter Homes** - Starter Homes will be exempt from the charge where the dwelling is sold to individuals whose total annual income is no more than £80,000 (£90,000 in Greater London). This may make delivering Starter Homes more attractive to develop in the District.
- **A Strategic Infrastructure Tariff** – The Government proposes to take forward Strategic Infrastructure Tariff similar to the Mayor of London CIL. It will allow combined authorities and joint planning committees to introduce a

Tariff under the existing powers through the Local Democracy, Economic Development and Construction Act 2009. This will support charging authorities to fund large-scale infrastructure projects that cross administrative boundaries. The Council can keep 4% of Tariff receipts as administration cost of collection.

- 3.1.4 The Government has already introduced changes to viability through the revised NPPF and associated national planning guidance (Minute No. 1011 (2018) refers). In future, the Local Plan will need to set out the contributions developers are expected to make for infrastructure and affordable housing, based on a standard approach to land value. This will ensure that infrastructure identified as necessary to deliver a Local Plan can be secured through viable development. It will also minimise the time spent negotiating viability issues through the development management process.

3.2 Overview and Scrutiny Report 27 February 2019

- 3.2.1 Attached at **APPENDIX 1** is the Section 106 update report for the Overview and Scrutiny Committee to consider at its meeting on 27 February 2019. This report contains details on the delivery of Maldon District Council's S106 projects, the NHS England's health care projects and the Plume School academy expansion by Essex County Council.
- 3.2.2 The Overview and Scrutiny Committee report provides an update on Maldon District Council's potential allotment, youth facilities, LEAP (Locally Equipped Areas of Play) and NEAP (Neighbourhood Equipped Areas of Play) projects, the ecology project for Blue House Farm and the use of commuted sums for affordable housing. It also identifies forthcoming NHS England's S106 projects and also projects from its business plan for the District.
- 3.2.3 Officers are working with the NHS England and Essex County Council to co-ordinate and share information on all S106 projects within the District. Regular meetings are taking place to keep all partners up-to-date with the S106 income, anticipated payments and the purpose of the contribution. Officers are providing information to include all health care projects within the District through NHS Sustainability Transformation Partnership.
- 3.2.4 Maldon District Council has released sums for the Trinity Medical Practice in Mayland through the established process. The Council has received the Project Initiation Document from NHS and completed S106 Funding Form to obtain the fund for the project. This includes the breakdown cost of the project, how it's going to improve the practice, how it's delivered and what improvements it will make for the Southminster GP Catchment area.

4. CONCLUSION

- 4.1 Maldon District Council (MDC) is well prepared in terms of a monitoring S106 system, forecasting S106 income and preparing PID (Project Initiation Document) for all of its projects. Regular meetings and communication are in place with all MDC service managers to share the latest information on S106 income and discuss possible funding for identified projects. The Council has set up a communication channel to

the NHS England and Essex County Council to ensure that all relevant information on S106 income is provided as soon as possible.

- 4.2 Officers are also insisting that Essex County Council (ECC) set up an infrastructure delivery programme for education and highways for the District. It is important that the Council keeps encouraging and participating in regular meetings with external stakeholders to make sure that the District's key infrastructure are included and programmed for delivery as soon as the funds become available.

5. IMPACT ON CORPORATE GOALS

- 5.1 The use of section 106 agreements to prescribe, compensate and mitigate the impacts of development enables the Council to enhance services to meet new local demands.

6. IMPLICATIONS

- (i) **Impact on Customers** – Plans to work in partnership with ECC and NHS England to ensure the delivery of key infrastructure within the Maldon District Council for the benefit of residents.
- (ii) **Impact on Equalities** – S106 projects are delivered to all sectors of the community in the District. All projects will go through the consultation of the local community and will be subject to an Equality Impact Assessment.
- (iii) **Impact on Risk** – The Maldon District Council needs to ensure that all contributions from S106 agreements are spent as per the specification in the legal agreement. It is important that the Council delivers key infrastructure to sustain the level of growth within the District. It should be clear that the project risks have been minimised and delivered professionally.

Most S106 agreements are time limited by the developer in terms of allocating and spending the contribution. If a developer pays a contribution and the Council fails to provide the facilities within the time period specified, the Council runs the risk that the developer might seek to clawback the contribution. The nearest clawback periods run until 2021 and programming has started to ensure that the risk of clawback is minimised.

Delays in getting projects underway as soon as possible after the contributions are received lead to additional risks. Once the S106 contributions have been received they are not protected against cost inflation which can result in to insufficient funding to provide facilities in full. Therefore, the programme of works needs to be closely aligned to the receipt of the contributions. All Maldon District Council's projects need to be delivered on time to minimise the Council's potential financial exposure.

- (iv) **Impact on Resources (financial and human)** – The negotiations of Section 106 agreements is part of the planning services core budget. The developer pays for the Council's costs in drafting and completing the agreements.

Regular monitoring of S106 is essential to enable the delivery of infrastructures.

- (v) **Impact on the Environment** – Agreements can seek to compensate and mitigate for the impacts of development on the local environment. Infrastructure design and concept should respect the future social, environment and economic aspects of sustainable development. Infrastructure Delivery Programme will enable the Council to endorse sustainable development and safeguard the local environment.

Background Papers:

3 October 2014 Overview and Scrutiny Committee report and related Appendix (**APPENDIX 1** to this report)

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