



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

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to  
**OVERVIEW AND SCRUTINY COMMITTEE  
28 AUGUST 2019**

**SECTION 106 AGREEMENTS – INTERIM UPDATE**

**1. PURPOSE OF THE REPORT**

- 1.1 This report puts forward a proposal to modify the existing timelines for periodic reporting to the various Committees. Also, it provides an interim update on the status of the current day to day operations of Section 106 (S106) and the Community Infrastructure Levy (CIL).
- 1.2 A more detailed update will be made available to the relevant Committees in September, covering the complete activities of S106. Also, the report to Committee in September will fully address the Committees' request for a CIL update, at the March Planning and Licencing Committee, and will provide further details on the potential for reviewing the existing CIL evidence base and for progressing a revised CIL Charging Schedule.

**2. RECOMMENDATIONS**

- (i) Members are asked to note the proposal to modify the Council's methodology for reporting on the financial and operational activities of S106 and the CIL, which will go to Planning and Licensing Committee for approval.
- (ii) That the progress towards S106 and the commencement of works (inhouse) to assess the potential for implementing a revised CIL Charging Schedule be noted.

**2.1 S106 and CIL Policy Context**

- 2.1.1 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 meant to make improvements to the workings of the existing S106/CIL regime and was published in February 2017.
- 2.1.2 More recently, several recommendations from the CIL Review Team, 2016, have been adopted. Some of the more notable changes, due to come into effect on 1 September 2019, are outlined below as follows:
- 2.1.3 Requirement for councils to publish annual infrastructure funding statements, (Schedule 2) setting how much CIL is collected, how much is spent and what it is

spent on, as well as making similar provision in relation to planning obligations, (Regulation 9).

- 2.1.4 Removal of the pooling restriction (Regulation 11), which restricted the number of agreements that a charging authority could ‘enter into’ in funding local infrastructure (resulting in the removal of CIL Regulation 123).
- 2.1.5 Addressing the time taken for local authorities to introduce or revise existing CIL charging schedules by reducing the consultation requirement from two rounds of consultation (before adoption) to one (Regulation 3).
- 2.1.6 Allowances for councils to seek S106 contributions towards the monitoring and reporting of planning obligations (Regulation 10).
- 2.1.7 Improving the administering of exemptions through the introduction of a small penalty for failure to submit a commencement notice (CIL form6); rather than loss of entitlement to CIL exemption (Regulation 6).

## 2.2 **Overview and Scrutiny Brief Update**

- 2.2.1 The Council has recently appointed two senior consultants to oversee a review into the workings of the current S106 and CIL. Over the next three months, this work will undertake an extensive review into the existing S106 policies, systems, processes and procedures.
- 2.2.2 In addition, the consultants will have the mandate to undertake an inhouse review of the existing CIL evidence base with the view to making recommendations on the potential for adopting a revised charging schedule to support a more robust S106/CIL regime.

## 2.3 **Findings and Update**

- 2.3.1 An initial assessment into the workings of S106 has determined that there are adequate measures in place to allow for the continuity of the Council’s day to day monitoring and collection of existing obligations.
- 2.3.2 However, the preliminary stages of the review have also revealed an urgent need to update the existing committee reporting methodology. Essentially, this will mean that periodic S106/CIL reports submitted to the relevant Committees, in the current period, should cover only financial and operational activities relating to the previous period.
- 2.3.3 For example, quarterly committee reports covering the first financial period (1 April - 30 June) will be submitted to Committees held in the second financial period (1 July - 30 September) and quarterly reports covering the third financial period (1 October 2019- 31 December) will be submitted to Committees held in the fourth financial period (1 January - 31 March, of the following year).
- 2.3.4 Similarly, biannual Committee reports covering the first financial period (1 April - 30 September) will be submitted to the relevant Committees held in the second financial period (1 October - 31 March).

- 2.3.5 The proposed changes to the current reporting methodology are necessary to facilitate the new government requirements for the Council to publish annual infrastructure funding statements.

### 3. CONCLUSION

- 3.1 The Maldon District Council (MDC) is well prepared in terms of monitoring S106s, forecasting S106 income and preparing Project Initiation Document (PID) for its existing 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 the Essex County Council to ensure that all relevant information on S106 income is provided as soon as possible.
- 3.2 The requirement for all charging authorities to keep their charging schedules under review is emphasised in para. 2.2.6.3 of the CIL Guidance, February 2014. Therefore, should the Council choose to implement its charging schedule, it will need to demonstrate that the 2014 “levy charges remain appropriate over time”.

### 4. IMPACT ON STRATEGIC THEMES

- 4.1 The use of S106 agreements to prescribe, compensate and mitigate the impacts of development enables the Council to enhance services to meet new local demands.

### 5. IMPLICATIONS

- (i) **Impact on Customers** – Plans to work in partnership with ECC and NHS England to ensure the delivery of key infrastructure within the MDC 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** – MDC 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, in a timely manner, to sustain the level of growth within the District.

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 allocate 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

insufficient funding to provide facilities in full. Therefore, the programme of works needs to be closely aligned to the receipt of the contributions. All the MDC's projects need to be delivered on time to minimise the Council's potential financial exposure.

- (iv) **Impact on Resources (financial)** – The negotiation of Section 106 agreements remains part of the planning services core budget. Also, 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 infrastructure and new S106/CIL regulations will introduce a monitoring fee. This new fee will provide an additional source of funding for monitoring more complex S106 applications. Particularly, where triggers for the obligations might be phased over long periods.

- (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:

None

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