



**Report Reference Number:** E/19/20

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**To:** Executive  
**Date:** 7 November 2019  
**Status:** Key Decision  
**Ward(s) Affected:** All Wards  
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**Lead Executive Member:** Cllr Richard Musgrave, Lead Councillor for Place Shaping  
**Lead Officer:** Dave Caulfield, Director of Economic Regeneration and Place

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**Title: An update on the Community Infrastructure Levy (CIL), S106 Obligations and recent changes to relevant legislation**

**Summary:**

The Council has had CIL in place since January 2016 and is now starting to build up a significant pot of money which will be used to fund new infrastructure which is necessary to support new development in the District. This report provides information on the CIL receipts currently being held and how S106 obligations are utilised. The report also provides information on changes to CIL which came into force on the 1<sup>st</sup> September.

**Recommendations:**

**That Members note the updates on CIL income, S106 obligations and the changes to CIL.**

**Reasons for recommendation**

The Report provides information on the current S106 and CIL receipts held by the Council and provides an updated on the new CIL Regulations came into force on 1<sup>st</sup> September 2019.

**1. Introduction and background**

1.1 CIL was formally adopted by Selby District Council on 1st January 2016, following public examination. The CIL has established 3 housing development charging zones of £10/£35/£50sqm with £110sqm for supermarkets and £60sqm for retail warehouses. The rates are based on a detailed analysis of up to date viability evidence.

- 1.2 Funds raised via the Levy can only be spent on ‘strategic infrastructure’ which includes transport, flood defences, schools, health and social care facilities, cultural and sport facilities as well as the maintenance and improvement of facilities affected by development.
- 1.3 Section 106 obligations are private agreements made between the local authority and developers to make development acceptable. Unlike CIL, S106 planning obligations must be directly relevant to the proposed development. Until recently there were restrictions, which meant that S106 obligations could not be “pooled” from more than 5 developments for one piece of infrastructure. This pooling restriction was lifted when the CIL Regulations come into force on the 1st September 2019.

## 2. CIL Income

- 2.1 Although a slow process to begin with CIL receipts are building up year on year with the total CIL receipts received as of 31<sup>st</sup> August 2019 as £1.9m – these funds are split as set out in the table below.

Table 1 CIL Receipts

CIL received to date	<b>80% Share (Strategic Infrastructure to be utilised by District Council)</b>	15% Meaningful Portion (for our Parish/Town Councils)	5% Administration Fee (covers cost of CIL/S106 Officer and software)
£1,945,843.13	<b>£1,556,674.50</b>	£291,876.47	£97,292.16

- 2.2 Under the current Regulations CIL receipts are reported annually every December and published on the Councils website. The CIL receipts are also fed into the Councils Authority Monitoring Report (AMR).
- 2.3 The Council monitors CIL using the ‘Exacom Monitoring System’ which was purchased for this purpose and has been live since July 2016. The Exacom system provides administration/monitoring workflow systems which calculate charges, surcharges, penalties and indexation as required by the CIL Regulations. It also produces the legal notices for applicants and is used widely by many CIL Local Authorities. The system can also be updated in accordance with any changes to the CIL Regulations which ensures that the Authority is applying the CIL charge accurately.
- 2.4 Along with a good working knowledge of the Exacom system and the CIL Regulations, the Monitoring Officer has developed useful working networks with other CIL Officers in other authorities as well as attending a Planning

Officer Society group which provides assistance, guidance and clarity of CIL issues on a national basis.

### **3. CIL Spending Priorities**

- 3.1 Until the new Regulations came into force spending of CIL receipts had to be in accordance with the published CIL 123 list. As it takes some time to build up the infrastructure funding pot Officers have yet to seek approval from Members on which infrastructure projects should be prioritised. A revised Infrastructure Delivery Plan was being drafted to inform the Site Allocations Local Plan, this included provisions to fund new schools and health facilities in Selby Town, Sherburn and Tadcaster.
- 3.2 CIL funding has also been sought through the NHS for the provision of a new health facility in Sherburn as a result of the large scale of housing development which has been approved in the area in recent years. However progress on this has stalled as we await further clarification from the CCG/NHS/GP practices on the financial business case for requiring CIL receipts.
- 3.3 At the Council's Executive meeting on the 3 August 2017 it was resolved to allocate those CIL receipts generated by the development of the LIDL store at Staynor Hall to support the proposed roundabout solution on Bawtry Road. The liability for this development totals £233,750. The County Council also confirmed that they would contribute the £51,960 paid for the construction of the roundabout as required by the original S106 legal agreement to the revised highway scheme. A Section 278 Agreement has been agreed between all parties in relation the construction of the roundabout.

### **4.0 Changes to CIL Regulations**

- 4.1 In late December 2018 MHCLG issued a consultation 'Reforming Developer Contributions', which followed from a previous consultation which took place in March 2018. New CIL Regulations were approved by the House of Commons on the 27 June and came into force on the 1<sup>st</sup> September 2019. There are no transitional arrangements for the new CIL Regulations.
- 4.2 The new Regulations remove the S106 pooling restrictions and allow local authorities to use both the Levy and S106 planning obligations to fund the same item of infrastructure. In addition the new Regulations remove the provisions relating to the 123 list and introduce a requirement for all local authorities (not just CIL charging ones) to publish an annual Infrastructure Statement. The first Annual Infrastructure Funding Statement will need to be published on the Council's website by 31<sup>st</sup> December 2020.

## **5. Impact of the new Regulations on Selby District Council**

5.1 NYCC Officers have previously raised concerns about the impact CIL has placed in its ability to secure funding for highways and education infrastructure. The removal of the Regulation 123 list means that CIL and S106 could be used to fund the same infrastructure, which will help to ensure that sufficient funds are being collected to support the provision of new infrastructure. However where S106 obligations are sought they must be the requirements set out in the CIL Regulations in that they are necessary to make the development acceptable in planning terms. 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.

5.2 MHCLG have confirmed to Officers that any formula based infrastructure requirements such as those used to calculate education or open space provision must be sought through the CIL mechanism.

5.3 On 17 September, Council approved the preparation of a new Local Plan for the District. A new Infrastructure Delivery Plan will be developed alongside the new Local Plan which will determine the infrastructure provision which is required to support new development. The Local Plan will also need to consider the total impact of planning obligations on its deliverability. The CIL tariff will also be reviewed alongside the preparation of a new Local Plan. This will enable the Council to prioritise future infrastructure spending requirements.

5.4 In advance of the preparation of the Infrastructure Delivery Plan it is envisioned that CIL funds will continue to be sought for infrastructure requirements as set out below:

- Improvement/upgrade of Flood Defences
- Primary and Secondary School Education
- Capacity increases in GP surgeries and dentist's offices
- Strategic Road Network improvements.

5.5 In all cases the use of CIL funds will only be supported where a genuine funding gap can be demonstrated and will be prioritised to the areas directly impacted by development. The exact nature of infrastructure improvements will emerge as work progresses on the new Local Plan.

## **6. Update on S106 Obligations**

6.1 Since the adoption of CIL, the level of S106 agreements has reduced significantly. All S106 agreements are monitored by the CIL/S106 Monitoring Officer and S106 receipts received as and when trigger points are met. S106

obligations are sought for a variety of uses including the provision of affordable housing contributions, highways improvements, recreational open space and waste/recycling.

- 6.2 We currently have 137 'live' agreements. Funds due to be spent by Selby District Council are currently held in a suspense account and will be either passed on to Parish Councils or the relevant infrastructure provider e.g. the NHS and NYCC. At present all payments received for Education, Health or Highways have been passed on to the relevant authority. One outstanding contribution towards provision of car parking at Selby Station to the value of £97,000 is still being held by the Council.
- 6.3 We have received £837,791.69 of which £551,227.67 has been paid to the Parish Councils for them to spend on appropriate projects. The remaining balance of £322,564.02 is held in S106 holding accounts for Parish Councils – as the S106 agreements state that sums for ROS are used within the parish in which the developments are in.
- 6.4 In addition we have received a total of £7,288,741 for off-site affordable housing contributions of which £1,828,116 has already been committed. Schemes delivered to date include those in Tadcaster, Eggborough, Riccal and Byram Park Road, which have delivered a total of 50 new dwellings. A full breakdown of the monies received, spent and committed will be reported on annual basis as part of the Infrastructure Funding Statement.
- 6.5 The Monitoring Officer also works closely with Parish and Town Councils to ensure they receive any appropriate funds and liaises with both Groundworks and the Communities team to assist them in using S106 funds collected for recreations open space and community uses to their full potential. However use of S106 funds can only be used to fund the items identified in the legal agreement as they were specifically required as a result of the new development.
- 6.6 S106 payments are usually paid in instalments and once the final payment is received we have 5 years in which to spend the funds or they will need to be returned to the developer. At present we have no funds which will be required to be paid back to the developers.

## **7. Infrastructure Funding Statement**

- 7.1 Like CIL the Exacom system has a S106 monitoring facility which, whilst currently we do not use, will be actioned this year so that we can fulfil new requirements in the new CIL Regulations which require Local Planning Authorities to provide public facing data on S106 receipts.
- 7.2 We will be introducing a Public Facing Module for the Exacom system, similar to the Public Access site for Planning Applications as this is required by

changes to the Regulations. This will be for both CIL and S106 applications and will be a user friendly interface showing the monitoring details. The CIL element will be easy to implement as the system provider will provide assistance in getting the software integrated into our current system.

- 7.3 The Exacom system will be used to inform the Infrastructure Funding Statement which must be published no earlier than 2<sup>nd</sup> December and no later than 31<sup>st</sup> December each year, with the first statement to be published in 2020. In addition to the requirement for the Charging Authority to published information, Parish Councils and the County Council will also be required to report details on CIL income and spend. These requirements will help to provide transparency in how CIL and S106 obligations are being used to support the provision of new infrastructure.

## **6. Alternative Options Considered**

There are no alternatives as the new CIL Regulations came into force on 1<sup>st</sup> September and there are no transitional arrangements in place.

## **7. Implications**

### **7.1 Legal Implications**

CIL must be operated in line with the new CIL Regulations which came into force on 1<sup>st</sup> September 2019.

### **7.2 Financial Implications**

The ability to seek both CIL and S106 contributions should increase the income generated to provide infrastructure across the District.

### **7.3 Policy and Risk Implications**

### **7.4 Corporate Plan Implications**

CIL and S106 contributions help the Council to deliver its Corporate Plan objectives to make Selby a great place to do business and to enjoy life.

### **7.5 Resource Implications**

The application of CIL and monitoring of CIL/S106 income will continue to be managed by the CIL/S106 monitoring Officer, which is funded through the 5% element of CIL income.

### **7.6 Other Implications**

None

## **7.7 Equalities Impact Assessment**

None

## **8. Conclusion**

- 8.1** The Removal of the Regulation 123 list means that the Council can seek both CIL and S106 contributions for the same piece of infrastructure, however formula based requirements such as education provision must still be sought through CIL. From December 2020 the Council will be required to set out how it intends to spend CIL income through the publication of an Infrastructure Funding Statement. A further report will be presented to Executive to seek approval for the Infrastructure Funding Statement next year.

## **9. Background Documents**

None

## **10. Appendices**

None

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