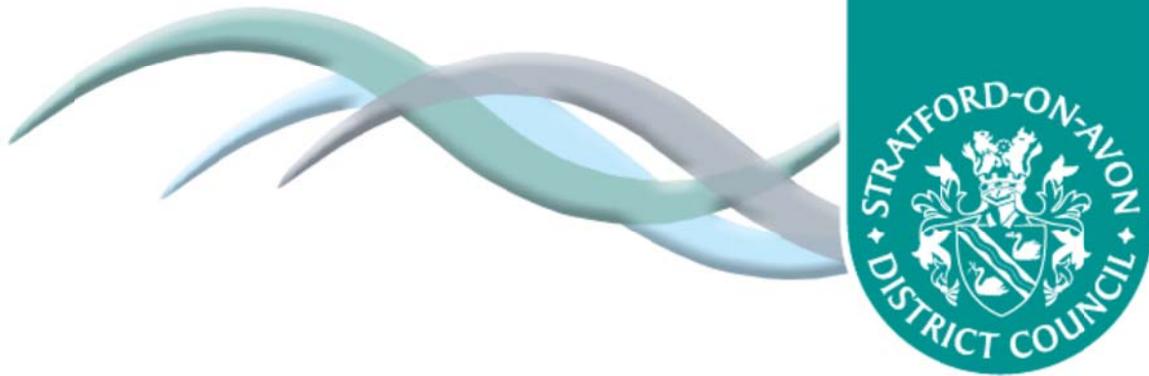


PC 1B



# Planning Obligations Position Statement

**May 2016**

## **CONTENT**

1. Background
2. Policy Context
3. Planning Obligations collected compared to proposed future CIL receipts
4. When Planning Obligations/Section 106 agreements will still be used
5. Implications of CIL on s106 agreements
6. Payments in Kind Policy Statement

## 1. Background

1.1 This statement has been produced to clarify how the Council intends to use planning obligations and Section 106 (S106) agreements after the adoption of the Community Infrastructure Levy (CIL).

1.2 It is imperative that there is no “double counting” between CIL and S106 (developers paying twice towards the same item of infrastructure) and that there is a clear and transparent system for identifying what infrastructure should be funded through CIL, and in what circumstances an item of infrastructure would be funded separately via a s106 planning obligation.

1.3 The National Planning Policy Framework (NPPF) states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects (paragraph 206, NPPF). Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition and where they meet the three tests:

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

1.4 In line with CIL regulations 122 and 123, since 6 April 2015 the Council has only be able to pool up to five S106 contributions towards the implementation of a specific item of infrastructure. This item of infrastructure must be clearly exempt from the Council’s Regulation 123 list. The Council has produced a draft Regulation 123 list, which is available to view on its website alongside the CIL submission charging schedule at:

<https://www.stratford.gov.uk/planning/cil-submission-charging-schedule.cfm>

The content of that draft list is further clarified by the separate document (May 2016) as now submitted.

1.5 The following sections set out the policy context illustrating how planning obligations will be used post adoption of CIL. Section 3 demonstrates that once CIL is implemented the average amount developers will pay under the new system will be £2,818 per dwelling less than that payable under the existing S106 regime. This is based on spreading the s106 contributions collected over the last 5 years over the total recorded completions and comparing it with the forecast CIL revenues per dwelling over the next 15 years. The Council acknowledges the limitations of this comparison given that a number of completions will have been recorded on sites where no obligations were payable and also given the variation in the proposed level of CIL for different scales of development. There is also no direct correlation between completions in any one year and contributions received in that year. Furthermore, the expectation is that the two new settlements will make a significant contribution via the respective s106 agreements for these developments. All this notwithstanding, the comparison suggests that the overall level of contribution arising from the totality of residential development in the district will not be dissimilar over the two regimes.

## 2. Policy Context

2.1 Currently the council does not have an adopted SPD that covers Planning Obligations for all types of infrastructure normally associated with the planning application process. However, Policy CS.26 of the emerging Core Strategy sets the context for the introduction of the Community Infrastructure Levy and flags the intention to prepare a Development Requirements Supplementary

Planning Document (SPD) which will identify the various calculations, standards and thresholds used to secure contributions towards infrastructure . The Development Requirements SPD will be used alongside the CIL Charging Schedule once adopted to inform how contributions will be made to mitigate the impact of development.

2.2 The most recent comprehensive planning obligations SPD produced by Stratford on Avon District Council was published in September 2005 and is now clearly out of date. It covered affordable housing, transportation (including sustainable transport modes), open space, education, local community facilities, elderly housing and habitat protection. This document was in part superseded by other SPD's, including the Developer Contributions towards Transport Schemes Supplementary Planning Document (April 2007), but these too need to be replaced.

2.3 As part of the review of developer contributions and the relationship with CIL a comparison has been undertaken between the contributions required under the current development management process and those anticipated under the proposed CIL rates. It should be noted that these comparisons are based on residential development only.

### 3. Planning Obligations collected compared to proposed future CIL receipts

3.1 The CIL Guidance states that the charging authority should provide information on the amount of funding collected in recent years through section 106 agreements (paragraph 18, 'How do local authorities prepare their evidence to support a levy charge?') and evidence this using examples. Section 106 has raised significant sums for infrastructure provision over a number of years. Two examples of outline planning consents illustrating the financial obligation and type of infrastructure to be provided through s106 can be found below in Figure 1 and Figure 2.

3.2 Education, highways and health provision are historically the main benefactors of s106 contributions. Once CIL is adopted, the aforementioned items of infrastructure will primarily be funded by CIL receipts. The exceptions will be infrastructure provided on site that conforms with Reg 123 and meets the Reg 122 tests and thus can properly be secured through a s106 agreement.

Figure 1 – Outline consent (subject to s106 agreement) at Meon Vale

(14/01186/OUT) - Granted	
Proposal	Outline Planning Application (with means of access) for the development of up to 550 dwellings Use Class C3/C2 (Use Class C2 not to exceed 85 dwellings); a one-form entry Primary School (Use Class D1) with associated open space; a leisure village comprising up to 300 units of self-catering lodges and holiday homes (Use Classes C1/ C3), ancillary facilities building(s) to incorporate reception and administration facilities (Use Class B1a), entertainment areas (Use Classes D1 / D2) and retail uses (Use Classes A1 / A3/ A5), a touring caravan and camping site with up to 80 pitches and ancillary facilities building; the creation of landscaping, open space and ecological habitats; new accesses for vehicles, pedestrians and cycles; new internal highways; car and cycle parking; sustainable drainage measures, including storage ponds for surface water attenuation; provision of utilities infrastructure; earth works and all ancillary enabling works including demolition of buildings and structures and ground remediation.
Contributions secured through s106	<ol style="list-style-type: none"> <li>1. Education - up to £2,596,798</li> <li>2. Primary Healthcare (Local GP Practice) - £68,542</li> <li>3. Rights of Way - £23,075</li> <li>4. Libraries - £12,038</li> <li>5. Landscape and Environmental Management Plan and Monitoring costs.</li> </ol>

	<p>8. Worker Dwellings (5% of the C3 dwellings)</p> <p>9. Affordable Housing (35% by number of units)</p> <p>10. Occupation restrictions applying to holiday homes/lodges/caravans</p> <p>11. Bus Service Provision</p> <p>12. Sustainable Travel Packs - £75 per dwelling</p> <p>13. CCTV and maintenance costs - £70,000.00</p> <p>14. Off-site Highways works towards Clopton Bridge Scheme:</p> <ul style="list-style-type: none"> <li>• £381,028 on occupation of 550th dwelling and</li> <li>• £381,028 on occupation of 650th dwelling</li> </ul> <p>15. South Warwickshire NHS Foundation Trust - £583,909 subject to adjustment for the exact number and mix of homes provided and subject to the Head of Environment and Planning being satisfied that such a contribution would be CIL compliant.</p>
Total Contributions	£4,087,668

Figure 2 – Outline consent (subject to s106 agreement) West of Shottery

(09/02196/OUT) – Granted under APP/J3720/A/11/2163206/NWF	
Proposal	Construction of up to 800 dwellings, mixed use local centre to consist of residential development, retail/commercial floorspace (1,000 sqm. A1-A5) and D1 uses and primary school; laying out of green infrastructure consisting of open space, structural landscaping, and areas of equipped play and associated infrastructure; construction of new highway infrastructure between Alcester Road and Evesham Road and associated highway works and access connections; associated engineering and ground modelling works and drainage infrastructure; and demolition of nos. 3 and 4 Bordon Hill.
Contributions secured through s106	<p>1. Affordable Housing Provision (35% by number of units)</p> <p>2. Management/maintenance of on-site POS (including potential off-site payment for Adult/Youth Active Open Space)</p> <p>3. Education (initial contribution) of £200,000, primary school and transfer of school site land with early years provision, primary school and early years contribution (pupil yield multiplier of £14,559), primary special needs contribution (pupil yield multiplier of £13,079), secondary school contribution (pupil yield multiplier of £18,424), sixth form contribution (pupil yield multiplier of £19,609) and secondary and special needs contribution (pupil yield multiplier of £18,436).</p> <p>4. Libraries contribution of £85.34 (for one bedroom dwellings), £106.69 (for two bedroom dwellings), £170.69 (for three bedroom dwellings), £213.37 (for four bedroom dwellings) and £284.49 (for five bedroom dwellings)</p> <p>5. Transport (bus contribution) of £387,120 (parkway station contribution) of £40,000, construction of relief road, traffic management (contributions) no greater than £500,000 and £50 per dwelling for travel packs</p> <p>Also, given that the South Warwickshire NHS Foundation have sought a contribution it is appropriate to implement the interim policy that an additional S106 contribution be sought on every application for residential development approved subject to a S106 agreement. The consideration of the additional contribution is subject to the Head of Environment and Planning that it would be CIL compliant.</p>
Total Contributions	£1,167,120 (net of substantial education contributions and library contributions)

3.3 The Council has reviewed the complete range of S106 contributions collected over the 5 year period April 2010-March 2015. Over this period, which in large part covers a phase of unusually low market activity, a total of approximately £10.3 million has been received in S106 payments, which averages £2.07 million per year. A further £5.2 million is outstanding from signed S106 agreements within this 5-year period, with payments yet to be received. Table 1 below illustrates the breakdown of s106 receipts over the 5-year period. Based on this table an average of £11,066 has been collected through s106 contributions per completed open market dwelling.

Table 1 - Funding received from s106 agreements. April 2010-March 2015

Year	Open Market Dwelling Completions	S106 received by SDC*	S106 received by WCC**	Total S106 receipts***
2010/11	26	1,305,000	3,295,000	4,600,000
2011/12	27	361,000	1,696,000	2,057,000
2012/13	194	1,011,000	479,000	1,490,000
2013/14	197	218,000	1,087,000	1,305,000
2014/15	493	97,000	820,000	917,000

\* Capital schemes only excludes s106 payments as commuted sums for maintenance

\*\* Figures exclude payments made under s278 of the Highway Act

\*\*\* These receipts don't necessarily relate to the developments completed in the same year

3.4 Table 2 below table illustrates the estimated CIL receipt based on the number of dwellings to be delivered in the Core Strategy plan period. For the remaining 15 years of the plan period approximately £28.02 million could be generated through CIL which equates to approximately to £1.87 million per year. All windfall calculations have been based on the emerging Core Strategy Housing Trajectory Table and are conservative estimates of the likely level of delivery on small (up to 10 unit) sites. Based on the below table an average of £8,248 will be collected through CIL receipts per open market dwelling.

Table 2 - Estimated CIL receipt based on residential delivery over remaining Core Strategy Plan to 2031

Value Area	Dwellings	Dwellings minus Affordable Housing	CIL rate	CIL receipt £m
Gaydon/Lighthorne Heath*	2,300	1,495 (35%)	£110	£14.80
Long Marston Airfield**	1,700	1,105 (35%)	£75	£7.46
Canal Quarter	570	427 (25%)	£85	£3.27
SUA Windfall***	50	50	£75	£0.34
MRC Windfall***	100	100	£75	£0.67
LSV Windfall***	100	100	£75	£0.67
Rural Windfall***	120	120	£75	£0.81
<b>TOTAL</b>	<b>4,940</b>	<b>3,397</b>		<b>£28.02m</b>

\* Assumes planning applications 15/00976/OUT and 15/04200/OUT, with related s106 agreements, will not be determined prior to CIL adoption and thus the 2,300 units to 2031 will be CIL liable.

\*\* Given the grant of permission 14/03579/OUT for 400 units, assumes the balance of 1700 proposed units at Long Marston Airfield (to 2031) will not obtain a planning consent prior to CIL adoption and thus will be CIL liable.

\*\*\*Windfall sites are based on the emerging Core Strategy Housing Trajectory Table and assumed to be small scale developments of less than 10 units, therefore no affordable housing provision

#### **4. When Planning Obligations/Section 106 agreements will still be used**

4.1 CIL payments will be sought in line with the Council's adopted CIL Charging Schedule and Regulation 123 infrastructure list. In addition, s106 agreements will still be negotiated with developers in respect of any specific infrastructure requirements excluded from the Reg 123 list in order to mitigate any impact that arises directly in relation to these aspects of a development; such negotiations to be conducted fully in accordance with the three Reg 122 tests. Although the number of planning obligations will be scaled back, they will still be sought in the following circumstances:

- a. On affordable housing (as this falls outside of the scope of CIL)
- b. Infrastructure which is required as a result of specific development (and which is excluded in the CIL Regulation 123 list) and which satisfies the tests set in Regulation 122 CIL regulations 2010 (as amended)
- c. Commuted sums for the maintenance of facilities/infrastructure that the developer would like another body to adopt

4.2 As would be expected, given that it applies to all residential developments, the combined S.106 and CIL income has the potential to exceed past S.106 income; it will capture the potential for infrastructure funding more commensurate with the impact of the development.

4.3 CIL is expected to result in a significant reduction in the average level of S.106 payments; given that the viability assumptions have used current levels, this represents a cautious approach to viability and the recommended CIL rates.

4.4 Once CIL is adopted, an audit of outstanding S.106 Agreements will be carried out to produce a schedule of developments that are still expected to trigger a future Section 106 payment, with a record of the infrastructure they are expected to deliver.

4.5 Collection of CIL is expected to be easier to achieve than S.106, as it will be done under legislation and guidance that is common across all charging authorities, which enables more automation of procedures.

4.6 Table 2 shows that there are large sums involved in these developer contributions and they have the potential to make significant contributions to infrastructure provision. The Infrastructure Delivery Plan work and the Regulation 123 List have taken careful account of this potential.

4.7 The CIL Guidance also states that the charging authority should assess the extent to which affordable housing targets have been met in recent years (paragraph 18, 'How do local authorities prepare their evidence to support a levy charge?'). Over the period 2010-2015 the proportion of affordable housing completions was well in excess of the target of 35% on eligible sites. This figure is however skewed by the results for 2010-2012, when open market completions were severely impacted by the economic conditions. In more recent years the overall level of housing delivery has recovered and affordable housing delivery aligns with expectations.

4.8 Over the plan period as a whole, by significantly boosting the delivery of new homes the Council expects to secure on average around 250 new affordable homes per annum. This represents an average of 35% of the 730dpa overall provision required to meet objectively assessed need. A substantial pipeline of supply already exists as a result of planning permissions granted by the Council, sufficient to show that within the next 5 years the relatively low level of provision over past

years should have been rectified. There is no apparent viability barrier to the delivery of these developments. On the basis of the evidence provided via the PBA studies, the Council believes that the introduction of the CIL Charging Schedule will not impact on the ongoing viability of housing developments in the district.

## **5. Implications of CIL on s106 agreements**

5.1 As previously identified, education, health and highway schemes have accounted for a large proportion of S.106 income in Stratford on Avon over the years. The Draft Regulation 123 List shows that non site specific infrastructure is expected to be delivered through CIL; Section 106 income will reduce as a result of CIL implementation. This would potentially be the case anyway without CIL, given the restriction on pooling of Section 106 that has applied from 6 April 2015. A Development Requirement SPD will be produced to identify items of infrastructure such as site specific open space that will continue to be sought through the S.106 process. To ensure there is no breach of the pooling restrictions, the various infrastructure providers are already ensuring that specific costed projects are being identified in lieu of the previous practice of requesting contributions into a generic funding pot (such as 'Educational provision').

## **6. Payments in Kind and Infrastructure Payments**

6.1 The CIL Regulations 2010 (as amended), allow the Council to accept full or part payment of a CIL liability by way of the transfer of land to the Council. The Council may also enter into agreements to receive infrastructure as payment. The infrastructure to be provided must be related to the provision of those projects listed in the Council's Regulation 123 list. An infrastructure payment cannot be made unless it relates to the provision of infrastructure that is not necessary to make a development acceptable in planning terms.

6.2 The Council acknowledges that payment in kind in accordance with Regulation 73 may in some circumstances be appropriate where it is evident that it involves the acquisition and use of land for a relevant purpose. A 'relevant purpose' is one involving the provision of infrastructure to support the development of Stratford-on-Avon District.

6.3 It is Regulation 73A that provides for the introduction of infrastructure payments. These involve the provision of infrastructure by a person who would otherwise be liable to pay CIL. Given the restriction on its use as referenced in 6.1 above, the Council has not to date identified any circumstances within the District under which an infrastructure payment may be deemed appropriate. As such the Council is not currently proposing to issue the document (as required under section 73B) that would need to be in place in advance of any consideration of an infrastructure payment being accepted. This position will be subject to periodic review.

6.4 Any agreement relating to an in kind payment must be made before the chargeable development commences. The land must be valued by a suitably qualified independent valuer who will ascertain its 'open market value'. This will determine how much liability the 'in-kind' payment will off-set. The Council will require the valuation costs to be demonstrated at the developer's expense. It is not obliged to accept any offer of payment in kind, but when an offer is agreed the payments in kind must be provided to the same timescales as cash payments, or otherwise on an agreed basis, subject to the provisions in the regulations and any other State Aid Considerations. Payments in kind may only be made with the agreement of the liable party, Stratford on Avon District Council, and any other relevant authority that will need to assume a responsibility for the land.