



Carlisle City Council

Report to Place Panel

Report details

Meeting Date: 29 March 2022
Portfolio: Economy, Enterprise and Housing
Key Decision: No
Policy and Budget Framework: Yes/No
Public / Private: Public

Title: Update on Section 106 Activity 2022/23
Report of: Corporate Director of Economic Development
Report Number: ED11/23

Purpose / Summary:

At the request of the Place Panel, this report provides information on the type and value of financial contributions secured and spent under Section 106 of the Town and Country Planning Act 1990 over the monitoring period April 2022 to January 2023.

Recommendations:

The Place Panel is asked to note the Report.

Tracking

Executive:	
Scrutiny:	
Council:	

1. Background

1.1. Planning obligations (or “Section 106 Agreements”) are legally binding agreements negotiated between the Council and developer. They are secured during the consideration of planning applications to mitigate the impact of development and to meet planning policy objectives that enable the granting of planning permission.

1.2. Planning obligations can secure contributions either directly on site or as a financial commuted sum paid either to the Council, as the Local Planning Authority or to the County Council depending on the nature of the contribution. The most common contributions relate to: affordable housing, education, highways, public open space and recreation provision.

1.3. The Community Infrastructure Levy Regulations 2010, strictly requires that that contributions sought must be: necessary to make the development acceptable in planning terms; directly related to the development; relevant to planning; and fairly and reasonably related in scale and kind to the development.

2. How Section 106 Payments are Secured

2.1 The wording within a Section 106 Agreement will determine when and how contributions are required to be delivered. Triggers and clauses specify at what point in the development process the contribution has to occur and where it can be spent. Triggers are agreed through negotiation and can include: pre-commencement of the development; the occupation of a percentage of the units within the approved scheme; and completion of the development. Sums owed for larger developments can be spread across two or more trigger points.

3. Monitoring Section 106 Agreement Payments

3.1 The Council monitors all Section 106 payments to ensure they are secured and spent in a timely manner, otherwise, the Council is invariably covenanted to return any unspent sums to developers after a specific time, usually 5 years. Below is a summary breakdown of the type and amount of the financial contributions ‘secured’ and spent through the granting planning permissions over the reporting period.

	Received	Spent	Balance Remaining
Children's Play Areas & Facilities.	£122,260	£221,495	£288,802
Provision & Maintenance of public open spaces.	£272,615	£1,828	£471,338
Affordable Housing Contributions		£0.00	£636,217
Cycleway & Public Realm (held in interest bearing a/c)		£19,471	(£6,814)
Transport & Pedestrianisation (to CuCC)		£0.00	£68,530
Highways etc. [funds to/from CuCC]:		£191,126	£35,214
Habitat Schemes		£40,000	£20,000
Sports provision	£81,630	£82,849	£157,746
Total		£556,772	£1,714,369

4. The Future of Section 106 Agreements

4.1 It was previously anticipated the Council would scale back the use of Section 106 Agreements through the introduction of a Community Infrastructure Levy. This would levy new development based on a £/sqm charge on additional floorspace and each additional residential unit. This was because local planning authorities were previously unable to “pool” more than five separate 106 Agreements to fund a single piece of infrastructure (which would have meant that larger infrastructure projects could not be funded through Section 106 Agreements). However, with the removal of this bar in 2019, it is considered that it is no longer necessary to progress with a Community Infrastructure Levy.

4.2 That said, the Levelling Up and Regeneration Bill is now proposing a simple, non-negotiable, locally set infrastructure levy to pay towards the infrastructure that new developments require. This would replace the existing Section 106 and the Community Infrastructure Levy regime.

4.3 The proposed new levy would be calculated on the gross development value of the property rather than based on floorspace. It would then be payable when the property is sold and could only be applied above an as-yet undefined minimum threshold. Authorities would be able to set and collect different levy rates within their area depending on local circumstances around development viability.

4.4 Locally produced ‘infrastructure delivery strategies’ would detail where and how infrastructure spending is allocated.

4.5 A consultation on the detail of the proposals is awaited. This will include proposals for regulations which will give local authorities an ability to say what portion of the levy they should receive ‘in-kind’ as onsite affordable homes,

through a new 'right to require' although no further detail is given to what that actually entails.

4.6 Section 106 Agreements would continue in a more "*narrowly targeted*" way, such as requiring developers to deliver integral operational infrastructure such as an internal play area or flood risk mitigation. They would also support delivery of the largest projects via 'in-kind and negotiated contributions, with the guarantee that the payments will be no lower than would be paid through the new infrastructure levy.

5. Risks

5.1 The risk associated with not monitoring legal obligations relating to planning applications is that the Council could be criticised for not operating a transparent and comprehensive framework for monitoring such obligations. Without adequate co-ordination, commuted sums could be spent on inappropriate schemes and not on priorities identified within the Council's various plans and strategies.

5.2 Without an adequate and co-ordinated system for monitoring Section 106 Agreements and any subsequent commuted sums, it is possible that should deadlines expire, commuted sums would have to be returned (plus interest) to the developers and required community facilities / affordable housing would not be provided.

6. Consultation

6.1 Community consultation has not been carried out directly in respect of this report. However, securing Section 106 contributions is in accordance with adopted planning policy and priorities within the Carlisle District Local Plan 2015-30 following extensive consultation. In addition, direct consultation on all planning applications received is carried out in accordance with the Council's Statement of Community Involvement which are available to view on the Council website.

7. Conclusion and reasons for recommendations

7.1 Section 106 Agreements are an important part of the planning process to delivering supporting infrastructure to new development. The robust monitoring processes the Council employs ensures the monies due are secured and spent effectively and efficiently in accordance with requirements of each agreement.

8. Contribution to the Carlisle Plan Priorities

8.1 Delivering on those major economic sites at the heart of the Carlisle Plan 2021-23 which has the vision "*To enable Carlisle to grow and prosper as the regional capital, benefiting the health and wellbeing of the people of Carlisle. We will work in partnership so that all can enjoy the benefits of new opportunities and choices, whilst rising to the challenges of a changing climate*"

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Appendices attached to report:

Note: in compliance with section 100d of the Local Government Act 1972 the report has been prepared in part from the following papers:

- None

Corporate Implications:

Legal – The process takes into consideration relevant legislation (namely the Town & Country Planning Act 1990, The Community Infrastructure Levy Regulations 2010 & the National Planning Policy Framework).

Property Services – No known property implications.

Finance – No known finance implications.

Equality – No known quality implications.

Information Governance- No known information governance implications.