

## Public Accounts Select Committee

|                     |  |                         |          |
|---------------------|--|-------------------------|----------|
| <b>Report Title</b> | Planning Obligations and the Community Infrastructure Levy (CIL) |                         |          |
| <b>Key Decision</b> | No   |                         | Item No. |
| <b>Ward</b>         | All  |                         |          |
| <b>Contributors</b> | Head of Planning   |                         |          |
| <b>Class</b>        | Part 1   | Date: 22 September 2014 |          |

### 1. Summary

- 1.1 This report sets out an introduction to planning obligations and the Community Infrastructure Levy (CIL) including how these two planning instruments will operate side by side. The report also includes key financial information in relation to the current Section 106 balances and the allocation and spend of monies received.

### 2. Purpose of the report

- 2.1 To advise Members of the Select Committee on the collection and usage of Section 106 funding and the Community Infrastructure Levy (CIL).

### 3. Recommendation

- 3.1 The Select Committee is asked to note the information within this report.

### 4. Background

#### What are Planning Obligations?

- 4.1 Planning obligations (often referred to as Section 106 obligations after the section of the Town and Country Planning Act they originate from), are Legal Agreements between local planning authorities and developers in the context of the grant of planning permission. They can be both financial and non-financial and they are used when there is a requirement to address the impact of a development and the impact itself cannot be dealt with through a planning condition on the permission.
- 4.2 Planning obligations can be used to prescribe the nature of development (e.g. by requiring that a given portion of housing is affordable); or to secure a contribution from a developer to compensate for loss or damage (e.g. to mitigate lost employment floorspace); or to mitigate a development's impact (e.g. through increased or improved local transport provision). The use of planning obligations is an effective tool through which the Council will seek to ensure that growth and development, whether individually or cumulatively, meets the objectives of sustainable development as promoted in local, regional and national policies.
- 4.3 The Community Infrastructure Levy Regulations (Regulation 122) set out that from 6th April 2010 it will be unlawful for a planning obligation to be taken into account

when determining a planning application for a development if the obligation does not meet the following tests:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

4.4 Used properly, planning obligations can significantly increase the quality of development. They can secure benefits capable of mitigating the adverse impacts of a development. However, they cannot be used to make a bad application good where, for example, a scheme does not comply with the development plan.

#### What is the Community Infrastructure Levy?

4.5 The Community Infrastructure Levy (CIL) came into force in April 2010. It allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their area. The money can be used to fund a wide range of local and strategic infrastructure that is needed to support growth and development in the borough. This includes transport facilities, flood defences, schools and other education facilities, medical facilities, sporting and recreational facilities and open spaces.

4.6 CIL is intended to provide developers more certainty up front about how much money they will be expected to contribute towards borough infrastructure needs. CIL takes the form of a charge per square metre of floorspace applied to most new developments that involve an increase of 100 square metres or more of gross internal floorspace or that involve the creation of a dwelling even where this is below 100 square meters. The CIL charges are based on the size and type of the new development. Some developments are exempt from paying the levy such as affordable housing, self build and developments of buildings by charities that are used for charitable purposes.

4.7 The CIL charges are set out in a formal document called a 'charging schedule' and charges are index linked and inflated over time.

#### Lewisham Community Infrastructure Levy

4.8 The Council has developed a CIL charging schedule that has been placed before Mayor and Cabinet and Full Council at each stage of it's development over the past 3 years. In January 2014 the charging schedule was approved without changes at an independent Examination in Public. The charging schedule will be put before Mayor and Cabinet and Full Council in October / November 2014 seeking approval to adopt CIL as of 1st April 2015.

*Table 1.1: CIL rates*

| Geographical zones | Category A | Category B | Category C |
|--------------------|------------|------------|------------|
| Zone 1             | £100 / sqm | £80 / sqm  | £0 / sqm   |
| Zone 2             | £70 / sqm  | £80 / sqm  | £0 / sqm   |

Category A = Residential

Category B = Everything else apart from Categories A and C

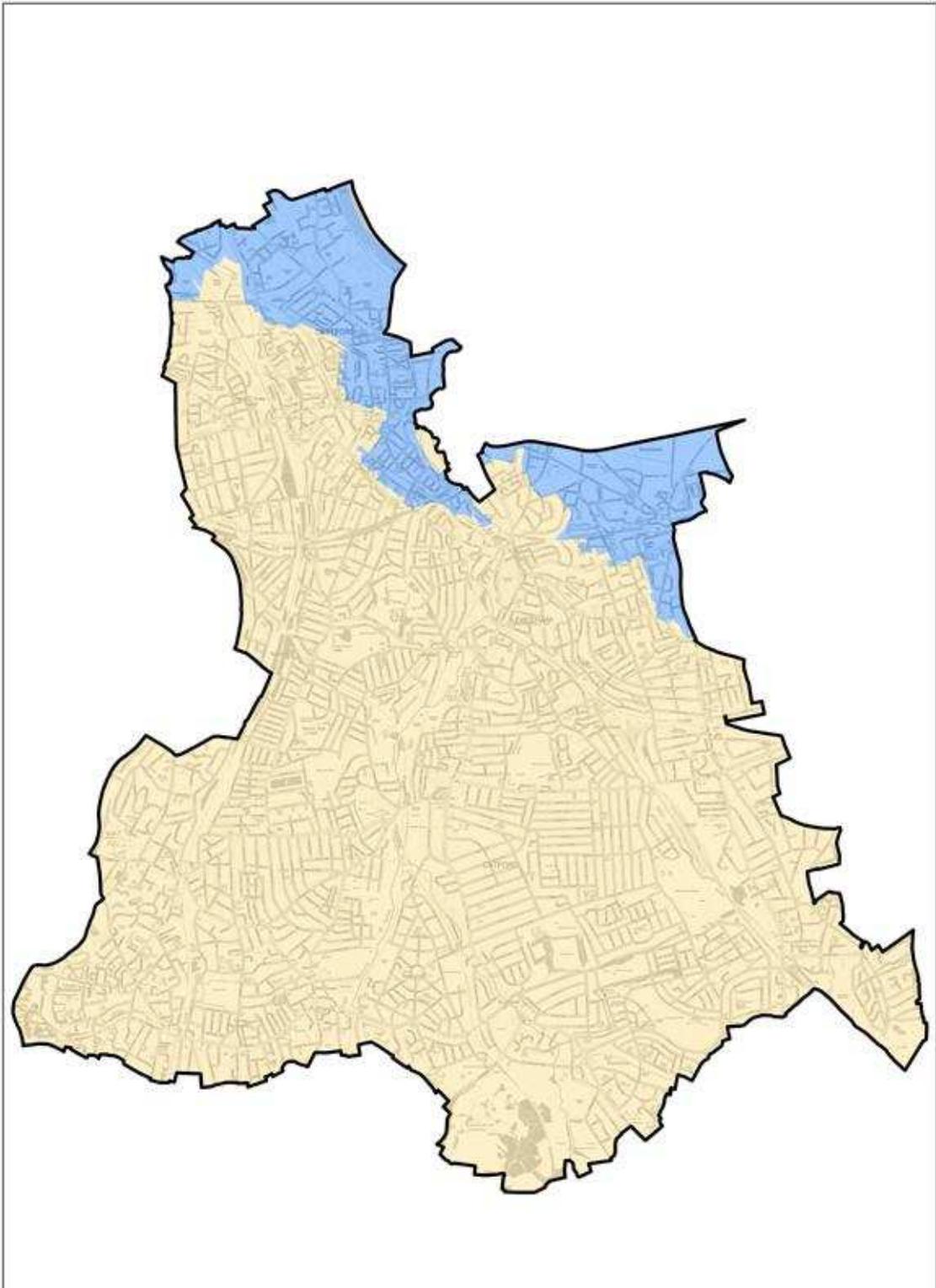
Category C = Business (offices, industrial, storage and distribution)

4.9 The two CIL payment zones have been created using current postcode boundaries in order to make use of an existing system of geographical division that is already utilised within the development industry. *Table 1.2* contains the list of postcodes that are subject to the payment of CIL grouped into the two previously arranged zones and *Map 1.1* illustrates the table.

*Table 1.2: CIL payment zones (postcodes)*

|               |  |
|---------------|--|
| <b>Zone 1</b> | SE3, SE8, SE10 & SE16  |
| <b>Zone 2</b> | BR1, BR3, SE4, SE6, SE9, SE12, SE13, SE14, SE15, SE23 & SE26 |

*Map 1.1: CIL payment zones*



- 4.10 The Lewisham CIL will provide funding to help deliver a wide range of infrastructure projects to support new housing and economic growth and benefit local communities. It allows Lewisham to work with infrastructure providers and communities to set priorities for what the funds collected under the levy should be spent on and provides a funding stream so that the delivery of infrastructure projects can be planned more effectively.
- 4.11 The list of projects to be funded by CIL is set out in the Council's Regulation 123 list and the Council will allocate funds to projects to be supported through CIL as part of its capital programme.

#### Mayor of London Community Infrastructure Levy

- 4.12 In addition to the Lewisham CIL, the Greater London Authority is also a charging authority and the Mayor can charge a CIL to help ensure the delivery of local and sub-regional large scale infrastructure. As of 1 April 2012, the Mayor charges CIL to fund strategic transport which is currently the Crossrail project.
- 4.13 The Mayor's levy is £35 per square metre of new development in Lewisham. There is a nil charge for education and health uses.

#### How will the Community Infrastructure Levy and Planning Obligations work together?

- 4.14 The CIL will largely replace planning obligations as the way in which developments contribute towards providing the new infrastructure necessary to support new development. Once a Local CIL has been adopted or by April 2015 (whichever is the sooner) the Council will not be able to pool more than five separate planning obligations to pay for one item of infrastructure.
- 4.15 When the Lewisham CIL has been adopted the key principle of our approach will be that planning obligations will be used to address site specific impacts of developments such as local access road or public realm improvements near the site. They may also be used in situations where a developer does not meet planning policy requirements to provide infrastructure on the development site. Planning obligations will be negotiated where items sought are clearly linked to the development site and are needed to make that particular development acceptable. CIL on the other hand will be used to fund local and strategic infrastructure required to support growth across the borough.
- 4.16 To help clarify this we will publish a list of those infrastructure types for which we will not seek to negotiate planning obligations after Lewisham's CIL has been adopted. This is called a Regulation 123 list and it will contain projects which may be funded partly or wholly by CIL. The list will be based upon the infrastructure projects set out in the boroughs infrastructure plan which are required to support growth over the Core Strategy period (2011-2016). It will be kept up to date to take into account any changes in circumstances and/or infrastructure needs identified in future. The draft CIL Regulation 123 list is as follows:
- State education facilities
  - Public health care facilities
  - Strategic transport enhancements (excluding site-specific, highways and public transport matters needed to make developments acceptable in planning terms, which may include matters on site, regarding access to the site or off

site where the need for such works is identified in a transport assessment or travel plan)

- Publicly accessible open space, allotments and biodiversity
- Strategic flood management infrastructure
- Publicly owned leisure facilities
- Local community facilities (including (but not limited to) community centres and halls and libraries, but excluding places of worship).

4.17 In order to clarify those matters that will continue to be dealt with through planning obligations, the Council is producing a Planning Obligations Supplementary Planning Document (SPD) that will form part of the Council's Planning Policy Framework. A draft SPD has been produced and is to go to Full Council for approval to go out to public consultation in September 2014. The SPD details examples of matters that will remain as planning obligations following the adoption of CIL and includes:

- Affordable housing
- Non-strategic transport
- Public realm
- Environmental protection
- Local labour and business
- Employment floorspace
- Carbon offsetting
- Flood alleviation
- Professional, legal and monitoring fees

## 5. Section 106 Receipts and Spend

### Overview

5.1 The total level of Section 106 monies currently held by the Council is approximately £16.5 million. This is a significantly higher balance than the Council has held in recent years. It should however, be considered in the light of the figures in the following table.

|                 | 08/09   | 09/10     | 10/11     | 11/12     | 12/13     | 13/14     |
|-----------------|---------|-----------|-----------|-----------|-----------|-----------|
| <b>Received</b> | 237,202 | 1,053,624 | 1,311,485 | 2,883,316 | 4,391,372 | 3,850,558 |
| <b>Spent</b>    | 902,719 | 1,009,886 | 432,574   | 858,166   | 103,608   | 737,054   |

5.2 In the past two years the Council have received over £7m in Section 106 financial contributions. This is a considerable increase compared to previous years and relates to the high number of developments being progressed in the Borough. It is also influenced by several large individual developments that have commenced during this period in Lewisham, Deptford and Bell Green. Projects to spend the money received from these major developments are being formulated and progressed, which will reduce the available balance. Over the next few years, it is expected that the balance will continue to vary significantly as major schemes make large payments, that are then spent on associated major infrastructure initiatives. As an example, the Section 106 financial contributions associated with the development at Surrey Canal Triangle amount to over £22m. Therefore commencement of this scheme alone could cause significant changes in the Section 106 balance as money is received and spent.

### Current Section 106 Balance

- 5.3 The Section 106 funds that are currently held by the Council relate to a number of different heads/policy areas. Funds held as of the end of the 2013/14 financial year are as shown in the following table:

| <b>Project / Project Heads</b>                      | <b>Allocation (£)</b> |
|---|-----------------------|
| Affordable housing initiatives                      | £4,240,688            |
| Community facilities                                | £466,192              |
| Education facilities                                | £2,884,411            |
| Employment and training                             | £1,007,138            |
| Environmental and children's play space initiatives | £1,649,819            |
| Health initiatives and facilities                   | £755,923              |
| Town centre management                              | £206,051              |
| Transport and highways initiatives                  | £3,552,109            |
| Other balances*                                     | £1,809,320            |
|   | <b>£16,571,651</b>    |

\* Including CCTV, Wheelchair housing, Renewable energy and urban design / conservation projects.

- 5.4 A proportion of the money identified in the table above has been allocated to specific approved projects. With the addition of a recent approval of a large extra-care affordable housing project, this proportion is now at approximately £6.7m or 41% of held funds. It is anticipated that much of this approved funding will be spent in the next year.
- 5.5 A further £5.6m or 34% of held funds is committed to specific projects that are at design and inception stage. For example, almost £2m of the funds secured for transport and highways initiatives is earmarked for further road, cycling and pedestrian improvements around the Bell Green development. Of this, £1m has already been approved. The Council would like make the best strategic use of this opportunity and is seeking to attract match funding from TfL through the LiP process, if possible, before further funds are allocated.
- 5.6 The remainder of the money identified in the table above has not been approved for early delivery and relates to recently received monies and funds that are being held until further funding is secured to enable the delivery of more strategic projects.
- 5.7 Further explanation of allocated/spent funds and potential projects follows below.

### Affordable Housing Initiatives

- 5.8 The vast majority of affordable housing funds were received from the Deals Gateway development and the Trundleys Road development with the residual being linked to a small scheme at Hindsley's Place. In the case of Trundleys Road, there were significant enforcement issues in relation to the delivery of the scheme as a whole and it became clear that it would not be possible or appropriate to deliver the required level of affordable housing on site. The Council therefore took action to ensure that a financial contribution of £1.5m was secured to allow the Council to provide affordable housing elsewhere in the borough. Most developments meet their affordable housing requirements on site and therefore off-site affordable housing contributions are rarely secured.

- 5.9 The Strategic Housing Team is continuing to develop a programme of Council led new build housing as part of the Housing Matters programme. This has targeted at least 250 new homes in the next five years as well as improvements to the Council's provision of specialised older people's housing. Section 106 funds are being used to support this programme in a variety of ways. At present, plans include the allocation of over £2m of Section 106 funds to enable the build, by Phoenix Community Housing, of a specialised older people's affordable housing scheme in Bellingham. This scheme has also been awarded GLA funding to support the delivery of affordable housing. In addition Section 106 funds have been approved to obtain planning consultancy to support the Housing Matters team to continue to develop plans for progressing sites to support new self-build homes.

#### Transport Initiatives

- 5.10 Nearly £2m of the transport contributions have been received from the Former Bell Green Gas Works development. This funding is part allocated and part awaiting allocation as it is at the design and inception stage. The project will support the improvement of pedestrian and cycling facilities at the Bell Green gyratory. The gyratory has a poor environment and traffic queues along with inadequate pedestrian access. These concerns prompted Lewisham to secure funding and appoint consultants to develop an outline design and detailed signal modelling that will provide a basis from which a future, high quality scheme can be further developed and implemented.
- 5.11 Highway works in the region of £450,000 have been completed at the junction of Bell Green/Perry Rise, including the widening of the carriageway from the signals south towards the Southend Lane junction and making pedestrian improvements at the junction. Outline proposals for further work to change the signals in the gyratory have been developed and are currently with Transport for London ("TfL") for approval.
- 5.12 Other recent projects delivered with funding secured through Section 106 agreements include a car club to support the Plassy Road development in Catford Town Centre, improvements to traffic signals in Bromley Road in conjunction with TfL and enhancements to Ladywell Road, Deptford High Street and Forest Hill Subway.

#### Environmental Improvements and Open Space Initiatives

- 5.13 Major contributions towards environmental and open space initiatives have been made by several schemes in Deptford, Lewisham and New Cross as well as other smaller development sites around the borough. In the past year funding has been allocated to support a large number of projects including air quality monitoring in New Cross and open space improvements at Batavia Road Pocket Park and Folkestone Gardens in Deptford, Cornmill Gardens in Lewisham, and across the borough at Northbrook Park, Mountsfield Park, Home Park, Mayow Park, Sydenham Wells Park, Downham Woodland Walk and St Mary's Churchyard.
- 5.14 Work is ongoing to ensure that as funding for environmental and open space matters is received, it is allocated as soon as possible to projects that will continue to improve Lewisham's parks, rivers and public spaces over the next few years.

### Community Initiatives

- 5.15 Approximately £450k remains in the Section 106 account that has been ring-fenced for community and leisure facilities. The Planning Team have been working alongside the Councils Culture and Community Development Service to allocate this funding opportunity to projects that will improve community facilities. A long term venture is underway liaising with local residents through the local assemblies, providing them with the opportunity to influence how these earmarked community and leisure Section 106 monies are spent. There may be further opportunities to use this process for some of the funding secured for health initiatives and town centre management purposes. It is anticipated that in the next year, many projects will be allocated funding through this co-operative process and delivered to improve community, leisure, health and town centre facilities in those areas that have experienced recent development.

### Education Facilities

- 5.16 Over recent years the education facilities balance has been reduced substantially, despite incoming contributions exceeding £2.8m. In recent months, it has been agreed that Section 106 funding will be used to support the proposed enlargement of John Stainer and Rushey Green primary schools. The approval of these schemes means that currently all funding available has been allocated to a specific project to enlarge or improve primary schools in the borough.

### Health Initiatives

- 5.17 Funding for health initiatives is secured from almost every major development. The current balance of over £750k is made up of a large number of relatively small contributions from small developments, that are not of a sufficient size to deliver health projects on their own. As the cumulative total has begun to grow, the Section 106 Overview Group have commenced working alongside health colleagues in the NHS Clinical Commissioning Group to research suitable projects that can improve those facilities affected by new development.

### Employment and Training Initiatives

- 5.18 The Council actively seeks contributions for employment and training initiatives. During the past 12 months, the Council has negotiated employment and training contributions from a number of schemes including large sites in Deptford and New Cross.
- 5.19 This funding supports the Council's Local Labour and Business Coordinator (LLBC) who manages and develops the Local Labour and Business Scheme (LLBS) to identify and deliver local labour and procurement opportunities for the benefit of Lewisham residents and businesses. The LLBS project was created to use planning agreements to provide training and employment opportunities for unemployed residents as well as assistance for local businesses to access business opportunities through and as a result of the various construction developments taking place in the borough.
- 5.20 As one example of the many initiatives undertaken through the LLBS, the LLBC was very active in securing local job opportunities in the retail premises at Bell Green resulting in excess of 111 jobs for local people.

## Other Initiatives

- 5.21 Section 106 financial contributions are secured for a wide range of purposes and on occasions, for matters that are particular to a specific development. These items do not fit neatly into the categories discussed in this paper and have hence been grouped as 'Other balances'. Examples include funds for the provision of CCTV on the Former Bell Green Gas Works development, wheelchair housing, renewable energy projects and urban design and conservation studies.

## **6. Future Finances through Section 106 and CIL**

- 6.1 As previously described, the Section 106 and CIL processes will need to work concurrently from April 2015 when the Local CIL is adopted in April 2015. Applications that receive planning permission and have a signed Section 106 agreement prior to this date will continue under this process throughout the construction of this development and will not be subject to the Local CIL. As a result the Council will continue to receive phased payments via Section 106 obligations for a number of years. It is anticipated that this will amount to approximately £16m\* in the period April 2015 – April 2019.

\*£16m does not include any Section 106 receipts from Convoys Wharf. The Section 106 agreement is being negotiated and the amount and due dates of obligations are not yet known.

- 6.2 Many of the borough's major development sites are in possession of a planning permission and are expected to commence or continue with implementation of those permissions in the period April 2015 – April 2019. This includes Lewisham Gateway, Surrey Canal Triangle, many of the sites in the Plough Way strategic site area, Oxestalls Road, Catford Green and the Excalibur Estate. Additionally, it is anticipated that Convoys Wharf will progress with a Section 106 agreement in place.
- 6.3 Those applications receiving planning permission after 31<sup>st</sup> March 2015 will be subject to the Local CIL. It is estimated that in the period April 2015 – April 2019 this will generate income for infrastructure delivery of approximately £13m. Development forecast to commence in this period under the Local CIL includes a number of medium sized sites in Deptford, New Cross and Lewisham.
- 6.4 A scheme receiving planning permission from April 2015 and hence being subject to the Local CIL, will not be required to pay CIL immediately. Payment is required on commencement of the development and in the case of major development with a large CIL liability, will be phased. The Council therefore do not anticipate that large CIL payments will be received during the immediate period following the introduction of CIL.
- 6.5 As previously described, the Council will continue to use Section 106 agreements to secure those matters not covered by CIL. The Council's policy on affordable housing is to secure it on-site wherever possible. On the rare occasions where it is not possible the Council will seek an off-site payment in lieu. Additionally, payments may be received regarding other matters such as local transport needs, local labour and business and public realm. These matters are not included in the £16m estimated receipt from current Section 106 agreements. It is not possible to accurately estimate future income from these matters as they are dependent on the site specific circumstances associated with future potential developments.

## **7. Spending Received Section 106 Funds**

- 7.1 The Council has an existing approach to the governance of spending secured Section 106 funds that has been approved by Mayor and Cabinet. In brief, a panel of Council officers on the Section 106 Overview Group review proposed infrastructure delivery projects that are submitted from Council departments in accordance with the Council's priorities. The group includes representatives from a wide range of departments including planning, finance, legal, education, green scene, housing and community services. Projects are assessed and where appropriate recommended for approval to spend Section 106 funding. A decision is then taken by the Head of Planning whether to approve or refuse funding.
- 7.2 It is intended that this established process remains in place to govern the spend of Section 106 funding anticipated to be received in the period April 2015 – April 2019. Over this period there will also be a considerable receipt of funding via the Local CIL. In order to ensure a consistent and co-ordinated approach to infrastructure delivery, it is proposed that the spending of CIL funds should take a similar approach to that in place for Section 106 funding. Those best placed to ensure that proposed infrastructure projects are necessary, efficiently and effectively delivered, and value for money are those officers responsible for infrastructure delivery.
- 7.3 Some additional governance will need to be put in place to allow the administration of funding received from CIL and Section 106 to integrate with the Council's corporate priorities and capital programme. The Planning Service are currently working with corporate colleagues to explore options and establish an approach to combined Section 106 and CIL spending. This work will continue through 2014, in preparation for the anticipated receipt of CIL funding in mid to late 2015.

## **8. Financial Implications**

- 8.1 This report concerns financial information in relation to planning obligations and CIL, however, there are no direct financial implications in noting these.

## **9. Legal Implications**

- 9.1 The Council must act prudently in relation to the stewardship of Section 106 monies in accordance with the relevant legislation (Town and Country Planning Act 1990, as amended and CIL Regulations 2010, as amended) and the requirements set out within individual Section 106 agreements. Similarly the Council must act prudently in relation to the stewardship of CIL in accordance with the CIL regulations (2010) (as amended).

## **10. Crime and Disorder Implications**

- 10.1 There are no crime and disorder implications directly relevant to this report, however, crime and disorder implications are a central concern of spatial planning and the design of new buildings and places. The use of planning obligations and the community infrastructure levy will help transform the borough into a more cohesive, pedestrian friendly and high quality environment which will improve safety and reduce the fear of crime.

## **11. Equalities Implications**

11.1 There are no equalities implications directly relevant to this report, however, monies or in-kind measures secured through planning obligations and CIL will improve the general accessibility of the public realm, facilitate the provision of new residential and commercial units which are fully accessible to people with disabilities, while the regeneration opportunities generally will provide scope to implement equal opportunities policies.

## **12. Environmental Implications**

12.1 There are no environmental implications directly relevant to this report, however, environmental issues are at the heart of planning obligations and CIL and there are significant positive environmental impacts arising from monies or in-kind measures secured through planning obligations and CIL including enhancing the urban environment, provision of new and/or improved infrastructure, consideration of community renewable energy schemes and biodiversity mitigation measures and preserving and maintaining the green elements of the built environment.

If you have any queries on this report, please contact John Miller, Head of Planning, Ext. 48706.