

Mayor & Cabinet		
Report Title	Response to referral by the Sustainable Development Select Committee on Collection and Use of S106 Planning Obligations and Community Infrastructure Levy funds.	
Key Decision	No	Item No.
Ward	All	
Contributors	Executive Director of Resources and Regeneration	
Class	Part 1	Date: 13 January 2016

1. Purpose

- 1.1 This report sets out the officers response to the referral from the Sustainable Development Select Committee on the collection and use of Planning Obligations (S106) funds and Community Infrastructure Levy (CIL) receipts.

2. Summary

- 2.1 The Sustainable Development Select Committee (SDSC) held a meeting on 22nd October 2015 and referred a report from that meeting to the Mayor on 11th November 2015. The select committee report made a number of recommendations for the Mayor to consider. This report provides the detail of how officers have responded to these recommendations.

3. Recommendation

- 3.1 The Mayor is recommended to:
- Approve the responses from the Executive Director for Resources and Regeneration to the Sustainable Development Select Committee.
 - Agree that this report should be forwarded to the Sustainable Development Select Committee.

4. Policy Context

- 4.1 The contents of this report are consistent with the Council's Sustainable Community Strategy policies 'Empowered and Responsible' and the 'Clean, Green and Liveable' policy. This is through considering Community Trusts, rolling out a pilot scheme that allows communities to have a greater influence in how some S106 /CIL monies could be spent and developing a policy statement for working with neighbourhood forums. The collection of S106 / CIL funds serve to support the Clean, Green and Liveable Sustainable Community Strategy policy.

5. Background

5.1 The SDSC held a meeting on 22nd October 2015 at which they considered a report on the collection and use of S106 funds and Community Infrastructure Levy (CIL) receipts. The report set out the detail of the collection and use of S106 funds for the financial year 2014/15, including:

- What agreements are in place
- How much money has been collected from S106
- How much money we are due to collect
- How much has been spent.

5.2 The SDSC report also set out details of receipts collected for the 2014/15 Financial Year for the Mayor of London CIL. Lewisham is the collecting authority for the Mayor of London CIL, and retains four (4%) percent of the fees for administration purposes. The Lewisham CIL came into effect on 1st April 2015 and as such no receipts were received for the financial year 2014-15.

6. Response from the Mayor

6.1 The referral report recommended at paragraph 3.3 that the Mayor be advised of a number of matters. These are set out below together with the officer response.

6.2 **SDSC recommendation** (a) Ask officers to investigate the possibility of setting up a Community Trust or similar body for CIL and Section 106 payments.

6.3 **Officer Response.** Community Trusts are community based organisations that are set up, owned and led by the local community usually for the purpose of economic, environmental and social regeneration. There is no set legal structure and they can be registered as a company limited by guarantee, a community interest company, a charity or an industrial and provident society. Planning Officers and Community Services colleagues will consider the potential of this approach in relation to CIL and S106 payments.

6.4 **SDSC recommendation** (b) Ask officers to develop a framework of consultation so communities can set their priorities for development if CIL or Section 106 payments become available.

6.6 **Officer Response.** Over the past two years Community Services Officers have worked with Planning Officers to identify unspent S106 monies and initiated a pilot programme of discussion and input from local residents via the local assemblies programme. To date, these have mainly been 'Community facilities' monies and have generated nine projects across four wards; for example accessibility and garden improvements in community centres. The Wards involved in this pilot were Evelyn, Sydenham, Telegraph Hill and Whitefoot.

- 6.7 It is important to appreciate that the bulk of CIL and S106 funding will need to continue to be allocated for strategic infrastructure projects to mitigate the impacts of development in the area where it occurs, such as a need for additional school places, health facilities and improved community parks and open spaces. However, there should be a parallel role for local assemblies in allowing residents to have the opportunity to influence the spend of some of the funding generated within their local area. The piloted approach will be rolled out across the borough, enhancing local democracy and will be considered for the use of CIL monies when these become available.
- 6.7 **SDSC recommendation** (c) Ask officers for further information on how the process of gathering priorities in communities for CIL and Section 106 payments will operate with both Neighbourhood Forums and Local Assemblies in operation.
- 6.8 **Officer Response.** The CIL regulations (Regulation 59) state that ‘a charging authority must apply CIL to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area’. They go on to set out that in areas with a Parish Council 15% of CIL receipts must be passed on to the Parish Council for development that was within their area and this increases to 25% in those areas which have adopted a neighbourhood plan.
- 6.9 In areas such as Lewisham where there are no parish councils the regulations set out that the charging authority, that is, the council will retain the levy receipts but should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding. The government does not prescribe a specific process for agreeing how the neighbourhood portion should be spent. However, Government Planning Practice Guidance does advise that the charging authority should work with any designated neighbourhood forums preparing neighbourhood plans.
- 6.10 It is considered good practice for the Council to set out clearly and transparently their approach to engaging with neighbourhoods on how the neighbourhood portion should be spent. Officers propose that a statement on the approach to the neighbourhood portion be prepared and consulted upon. This policy statement can develop and formalise the experience gained from the pilot work with the local assemblies mentioned in relation to response (b) above. There are 3 designated neighbourhood forums in Lewisham and applications for a further 3 have been received. The policy statement would also set out how the neighbourhood forums would be consulted.

7 Legal implications

- 7.1 Regulation 123 of the Community Infrastructure Regulations 2010 requires that where planning permission is being granted for development then:

1. a planning obligation may not constitute a reason for granting planning permission to the extent that the obligation provides for the funding or provision of a relevant infrastructure

2. a condition may not be imposed on the grant that requires a highway agreement for funding or provision of relevant infrastructure to be entered into or prevent or restrict the carrying out of development until a highway agreement has been entered into

3. a planning obligation may not constitute a reason for granting planning permission to the extent that the obligation provides for the funding or provision of an infrastructure project and five or more separate planning obligations for development within the area of the charging authority; and which provide for the funding or provision of that project have been entered into on or after 6th April 2010 .

7.2 In other words, planning obligations and or conditions are not to be used to secure the provision of relevant infrastructure. "Relevant infrastructure" means, in this context, where a charging authority has published on the Councils website a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL. This is the Regulation 123 list.

7.3 Planning obligations may however still be secured, where they are required to mitigate the impact of development, provided they do not relate to the provision of or providing funding for a relevant infrastructure **and**: (a) are 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. (Regulation 122)

8. Financial Implications

8.1 There are no specific financial implications arising from this report.

9 Crime and disorder implications

9.1 There are no specific crime and disorder implications arising from this report.

10 Equalities implications

10.1 Lewisham's Comprehensive Equalities Scheme (CES) 2012-16 describes the Council's commitment to equality for citizens, service users and employees. The CES is underpinned by a set of high level strategic objectives which incorporate the requirements of the Equality Act 2010 and the Public Sector Equality Duty:

- tackle victimisation, harassment and discrimination
- to improve access to services
- to close the gap in outcomes for citizens
- to increase understanding and mutual respect between communities

- to increase participation and engagement

11 Environmental implications

11.1 There are no specific environmental implications arising from this report.

12 Conclusion

12.1 The recommendations referred to the Mayor from the Sustainable Development Select Committee have been answered in section 6 of this report and it is proposed that this response is referred back to the committee.

Background documents

Report to Sustainable Development Select Committee 22nd October 2015.