

SUSTAINABLE DEVELOPMENT SELECT COMMITTEE			
Title	Lewisham Community Trust - use of section 106 and CIL		
Key Decision	No	Item No.	4
Ward	ALL		
Contributors	Planning Service, Cultural and Community Development Service		
Class	Part 1	Date: 12 May 2016	

Reason for Lateness and Urgency

The report has not been available for 5 clear working days before the meeting and the Chair is asked to accept it as an urgent item. The report was not available for dispatch on Tuesday 3 May because of limited time since the issues arose at the Sustainable Development Select Committee meeting of 18 April 2016 and the subsequent coordination of input from a range of officers.

1. Purpose

- 1.1. This report is prepared to respond to matters raised by the Sustainable Development Select Committee (SDSC) at its meetings on 22nd October 2015 and 18 April 2016. The matters raised at these meetings were in respect of the development of a community trust and the collection and use of section 106 and Community Infrastructure Levy (CIL) funds and the details of the local participation in the allocation of contributions raised from new development towards infrastructure and services. In particular this report seeks to provide further information in relation to the following matters:

A) Clarity on the existing process for the allocation of section 106 and CIL funds.

B) The investigation that is underway in relation to setting up a Community Trust or similar body for CIL and section 106 payments.

C) Clarity on the process for public and Member engagement in the allocation of section 106 and CIL funds (including the Neighbourhood proportion)

2. Recommendations

- 2.1. The Select Committee is asked to note the content of the report and direct any questions to officers at the meeting on the 12 May 2016.

3. Policy context

- 3.1. 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.

- 3.2. The 22 October 2015 report to SDSC outlines the legislative and policy context in relation to section 106 and CIL.

4. Background

- 4.1. The Sustainable Development Select Committee held a meeting on 22 October 2015 at which they considered a report on the collection and use of section 106 and Community Infrastructure Levy funds. The views, comments and recommendations of the SDSC arising at that meeting were then reported to Mayor and Cabinet on 11 November 2015
- 4.2. A response to the 11 November 2015 SDSC referral was reported at Mayor and Cabinet on 13 January 2016.
- 4.3. The response was subsequently forwarded on to the SDSC for consideration at their meeting on 18 April 2016, and the Committee requested that the following points were addressed:
- *The response to the Committee's referral was quite general and did not specify in detail how decisions about the allocation of Section 106 and Community Infrastructure Levy (CIL) funds get made. The Committee felt greater clarity was needed about the process used to allocate Section 106 and CIL funds, and that this process needed to be effective and accountable for local communities.*
 - *The Committee's suggestion of setting up a Community Trust were aimed at avoiding the 2 year deadline for allocation Section 106 and CIL funds, and the Committee felt the response did not address this particular point.*
 - *The Committee requested more information about the allocation of funding to areas that have a neighbourhood forum but did not have a parish council.*
 - *The Committee also requested more information on how Councillors could be involved in the process of allocating Section 106 and CIL funds.*
 - *The Committee wondered how the decision was made which wards to include in the pilot scheme for allocating unspent Section 106 monies.*

5. Response

- 5.1 The points raised by the SDSC are grouped together and are considered under the three headings below.

Existing process for the allocation of section 106 and CIL funds.

- 5.2 The Council has a formal process in place for taking decisions on allocating section 106 and CIL funds. Whilst the funds are held by the Planning Service, the spend and projects that they fund are mostly delivered and developed through other services and directorates. These projects are developed through engagement with bodies such as the Section 106 Overview Group and the Regeneration and Capital Board and in addition, a specific Section 106 Health Group has been established to co-ordinate the development of relevant health related projects.

- 5.3 Section 106 contributions are secured for individual schemes to mitigate the impacts of development and capture benefits. These are negotiated as part of a planning application in accordance with legal tests and informed by planning policy and consultation responses received (explained in more detail below). Section 106 agreements are specific in terms of how they allocate money to different items whereas CIL payments are not allocated to individual infrastructure items, instead being available to fund infrastructure as defined by the Council's section 123 list, with a proportion allocated to be spent locally.
- 5.4 In relation to the spend of **section 106**, the allocation process involves regular (every 6 weeks) Section 106/CIL Overview Group meetings with core representatives from Legal, Finance and Planning. Other officers attend as and when necessary depending on the agenda and topics areas. This Group meet to review proposals to spend funds on particular projects put forward by different directorates and ensure that project proposals meet the legal requirements of the Section 106 Agreement. The projects themselves, dependent on their scale, can also be subject to consultation undertaken by the relevant lead service area.
- 5.5 Section 106 Agreements are negotiated on individual planning applications with those negotiations are undertaken in the context of the necessary legal tests and the Council's Corporate Priorities, including the delivery of the overall vision for the future of Lewisham and the agreed and adopted planning policy framework. Together this corporate policy position identifies what future infrastructure is needed to make Lewisham a sustainable borough and is used by planning officers as the basis for negotiations for individual schemes coming forward.
- 5.6 The corporate policy position described above is established through the local plan making process, involving both policy documents and supporting evidence base documents, for example, the Lewisham Core Strategy, the Planning Obligations SPD, the Community Infrastructure Levy and the Infrastructure Delivery Plan (IDP).
- 5.7 The formal plan making process, is both a legislative and a Lewisham constitutional requirement, and community and Member involvement at various stages is a key part of the process. Formal consultation on planning policy documents must last 6 weeks and the Lewisham constitution states that these documents must be reported to Mayor and Cabinet and Full Council at various stages of preparation as well as adoption. The plan making process is rigorous, culminating with an independent examination in public where legal conformity, including consultation arrangements, is assessed.
- 5.8 In particular, the adopted Planning Obligations SPD was subject to this formal plan making process and supports the overarching corporate policy position described above. The SPD provides detailed information about the type of contribution expected to ensure that the impact of development on infrastructure and services can be adequately mitigated. It also seeks to establish a transparent, fair and consistent process for negotiating, securing and monitoring planning obligations.
- 5.9 As described, section 106 contributions are secured for a number of different uses. Many categories, such as affordable housing, are required to be spent in line with the Council's relevant corporate priorities. Other section 106 contributions may be relevant for communities to be involved in the decision on how the funds are spent. Residents can get involved through their local assembly and a trial was undertaken with sums of money allocated to community projects delivered via ward assemblies in Evelyn, Sydenham, Telegraph Hill and Whitefoot. These were chosen as suitable funds were

available. It is intended that this is rolled out across the borough and will be considered for the use of CIL monies when these become available.

- 5.10 In summary, section 106 contributions are taken to mitigate the impacts of development, capture benefits and support the delivery of infrastructure that is necessary to make Lewisham a sustainable borough. These priorities have been consulted on both with the public and with Members through the plan making process. The contributions are subsequently spent on the matters they were originally taken for, and this is formally regulated through the Section 106/CIL Overview Group and PID process.
- 5.11 In relation to the **Community Infrastructure Levy**, the CIL documents, including the CIL Infrastructure List (123 List), went through the formal plan preparation process, including consultation and independent examination. The CIL charging schedule was approved by Full Council on 25 February 2015 and has been applied by the Council since 1 April 2015.
- 5.12 The money collected through CIL can be used to fund a wide range of local and strategic infrastructure that is needed to support growth and development in the borough. The Council's section 123 List sets out the types of infrastructure that can be funded partly or in whole by CIL. This includes education and public health facilities, transport enhancements, open space, flood defences and leisure facilities, community facilities and emergency services.
- 5.13 It is currently envisaged that the Section 106/CIL Overview Group and PID process described in relation to section 106 above also provides a suitable forum for the allocation of CIL funds.

What investigation is underway in relation to setting up a Community Trust or similar body for CIL and section 106 payments.

- 5.14 Work has begun to look at existing models both within and outside of the Borough to develop a Lewisham Community Trust. This is currently being coordinated by a 'Lewisham Local' group convened by Cllr Millbank. It remains at an early stage but is being actively progressed and contact is currently being made with other organisations to learn from their experience.
- 5.15 In terms of deadlines for the allocation of Section 106 monies, these vary according to individual agreements. There is currently no deadline for the allocation of CIL funds within the CIL regulations.

The process for public and Member engagement in the allocation of section 106 and CIL funds (including the Neighbourhood proportion)

- 5.16 Officers are currently considering the process and options for further public and Member engagement in the allocation of section 106 and CIL funds and it is proposed that a statement on the approach to the neighbourhood portion be prepared and consulted upon.
- 5.17 As discussed above, some section 106 funds may also be available for local communities to be more directly involved in how the funds are spent. The projects that local assemblies can spend section 106 on is dependent upon the type of contribution and the wording in the agreement, which is legally binding.

- 5.18 National guidance in relation to spending CIL is set out in Planning Practice Guidance and states that it should be spent on infrastructure to support the development of the area. The guidance does not prescribe a specific process for spending the neighbourhood portion of 15% (or 25% where there is a neighbourhood plan in place), however it does state that the Council should work with existing groups and networks at the neighbourhood level. It does make clear that in areas with no parish council and no neighbourhood plan, a 15% local proportion is still available but is held by the Council who consult with the local community on its spend.
- 5.19 Lewisham has well established Local Assemblies for each of its 18 wards and these assemblies meet to discuss priorities for the ward, to develop an action plan to improve their area and to work in partnership with others to bring about positive change. The Assemblies offer an existing structure that could be adapted to advise officers on local priorities for spending the neighbourhood portion in those areas where there is no neighbourhood plan.
- 5.20 The Planning Service will continue to support those who want to bring forward a neighbourhood plan for their area and to ensure that 'neighbourhood' and 'strategic' infrastructure priorities are aligned as much as possible. It is recognised that neighbourhood plan areas may not neatly fit Ward/Local Assembly boundaries and there may also be a need to liaise with an Assembly or Assemblies where this is not the case.

6. Financial implications

- 6.1 There are no specific financial implications arising from this report.

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. Crime and disorder implications

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

9. Equalities implications

9.1 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

10. Environmental implications

10.1 There are no specific environmental implications arising from this report

11. Conclusion

11.1 The issues raised at the 18 April 2016 meeting of the Sustainable Development Select Committee have been addressed in section 5 of this report.

Background documents

NPPG – CIL

<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/>

Report to Sustainable Development Select Committee 22nd October 2015.

<http://councilmeetings.lewisham.gov.uk/ieListDocuments.aspx?CId=136&MId=3906>

Report to Mayor and Cabinet 13 January 2016.

<http://councilmeetings.lewisham.gov.uk/ieListDocuments.aspx?CId=139&MId=3864>

Planning Obligations SPD

<https://www.lewisham.gov.uk/myservices/planning/policy/LDF/SPDs/Pages/Planning-obligations.aspx>

Lewisham CIL page documents

<https://www.lewisham.gov.uk/myservices/planning/policy/LDF/CIL/Pages/default.aspx>

IDP and latest update

<https://www.lewisham.gov.uk/myservices/planning/policy/LDF/evidence-base/Pages/LDF-evidence-base-infrastructure.aspx>

Local Plan

<https://www.lewisham.gov.uk/myservices/planning/policy/Pages/default.aspx>

Corporate Priorities and Vision

<https://www.lewisham.gov.uk/mayorandcouncil/aboutthecouncil/access-to-information/freedom-of-information-act/publication%20scheme/Pages/What-our-priorities-are-and-how-we-are-doing.aspx>