

Sustainable Development Select Committee			
Title	Collection and use of S106 funds and Community Infrastructure Levy – 2015 update (Planning obligations/regulations – Update)	Item No	5
Contributors	Planning Service, Finance Service		
Class	Part 1	Date	22 nd October 2015

1. Purpose

1.1 The Sustainable Development Select Committee work programme includes a standard item for an annual update on the financial aspects of Section 106 Planning Obligations (S106). This report sets 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.

1.2 This current report also seeks to update the committee on the system of collecting money for infrastructure via the Community Infrastructure Levy (CIL) adopted by the Council with effect from 1st April 2015.

2. Recommendation

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 22nd October 2015.

3. Background

3.1. Planning obligations (often referred to as Section 106 obligations after the section 106 of the Town and Country Planning Act), are secured through 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 are used when there is a need to mitigate the impact of a development and the impact itself cannot be dealt with through a planning condition on the permission.

3.2 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.

3.3 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.

- 3.4 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.
- 3.5 CIL is intended to provide developers with 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. Reliefs and exemptions from paying the levy are available for some developments such as affordable housing, self build and developments of buildings by charities that are used for charitable purposes.
- 3.6 The CIL charges are set out in a formal document called a 'charging schedule' and charges are index linked. The Council adopted the CIL Charging Schedule with effect from 1st April 2015. Over time, the CIL will largely replace planning obligations as a way in which developments contribute towards providing the new infrastructure necessary to support new development. However, as a number of large schemes were approved prior to the introduction of CIL and will be built out in phases, it is anticipated that phased Section 106 payments will continue to be made for these schemes for at least the next 5 years. In addition, Section 106 payments will continue to be applied alongside CIL, albeit in relation to a more restricted range of issues. For example, the Kent Wharf, Creekside application approved by Strategic Planning Committee on 30th April will generate an anticipated £1.017m CIL payment and £218,000 in Section 106 for issues such as employment and training and local transport requirements.

4. Section 106 Receipts and Spend for Financial Year 2014/15

Overview

- 4.1 The balance of Section 106 monies held by the Council at the end of the 2014/15 financial year was approximately £23.1 million. The Section 106 income during this financial year, £7.6 million, has practically doubled since the previous financial year. This reflects the continuing increase in regeneration activity and, in particular, the commencement and progression of a significant number of large scale developments within the borough.

	08/09	09/10	10/11	11/12	12/13	13/14	14/15
Received	237,202	1,053,624	1,311,485	2,883,316	4,391,372	3,850,558	7,661,090
Spent	902,719	1,009,886	432,574	858,166	103,608	737,054	1,196,803

- 4.2 A total of 27 Section 106 agreements, unilateral agreements and deeds of variation were entered into or secured during 2014/15. The largest being Convoys Wharf and Marine Wharf East. The current financial year 2015/16 has seen almost £1.7 million received to date.

- 4.3 The Council has been successful in securing increasing levels of funding from Section 106 in recent years and this is set to continue, albeit through a combination of CIL and Section 106 payments since the introduction of a borough CIL in April this year. Given the significant and increasing restraints on the Council's funding it is essential that the most strategic use is made of the monies received. Because officers can never be certain when schemes will commence and monies paid, there has inevitably been a time lag between receipt of funds and the formulation, approval and delivery of resultant projects. At present the balance is very high but there has been a strong demand from the areas of housing, education, transport and health applying for Section 106 monies to support strategic projects. The 2015/16 financial year to date has allocated £2.6 million to various projects, particularly Hazelhurst Extra Care Scheme requiring £2.1 million and various sections of the Waterloo to Greenwich Quietway project securing a total of almost £500,000 of S106 monies. Over the next few years it is expected that the balance will continue to vary significantly as major schemes make large payments and these are then spent on associated major infrastructure initiatives.

Section 106 Balances for 2014/15

- 4.4 The Section 106 funds that are currently held by the Council relate to a number of different heads/policy areas. Funds held as at the end of the 2014/15 financial year are as shown in the following table:

DEPARTMENT	SPEND CATEGORY	S106 BALANCE TO END OF 2014/15 FINANCIAL YR (£)	TOTAL RECEIVED 2014/15 (£)	TOTAL SPENT 2014/15 (£)
Community	Community Facilities	1,188,081.92	484,761.15	28,321.28
Economic Development	Employment & Training	1,320,705.37	262,924.68	139,573.24
	Town Centre Management	255,177.94	95,370.91	40,112.93
Education	Education Facilities/ Programmes	4,412,599.54	2,037,355.79	487,747.61
Environment	Environmental Improvements, Open Space, Playspace, CCTV	4,189,633.17	1,884,987.23	88,477.55
Health	Health facilities	1,522,763.62	905,068.25	0
Housing	Affordable Housing	4,008,749.91	0	249,900
	Wheelchair Housing	140,000.00	25,000	0
Monitoring	Monitoring and professional fees	308,034.37	104,894.32	86,406.09
Transport	Sustainable Transport, Highways, CPZ	5,488,851.88	1,742,168.81	76,263.91
Other	Miscellaneous	265,099.47	118,558.52	0
TOTAL		23,099,697.19	7,661,089.66	1,196,802.61

- 4.5 A significant proportion of the money identified in the table above has been allocated to specific approved projects and a further proportion 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. 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. A more detailed explanation of the approach being taken and potential projects is set out below.

- 4.6 The miscellaneous category relates to specific projects detailed within legal agreements that don't fit within the other categories. For example, approximately £100,000 is the remaining balance of the relocation funds relating to the Faircharm development. This money is ring fenced for business rate relief for returning tenants upon completion of the development.

Housing

- 4.7 In relation to affordable housing, the Strategic Housing Team would normally prefer to see on-site provision of affordable housing than have payments in lieu. There are occasions where payments in lieu are justified. It is also useful from a strategic housing commissioning perspective to maintain a reasonable level of available funding for two purposes. The first of those is to fund the development of plans for complex sites on which the Council might bring forward affordable housing in due course, and where the up-front costs of scheme development might otherwise be prohibitive given that there is no certainty at the start that a workable scheme can be developed. The second, and much more prominent is to use the available funding to enable complex schemes from emerging providers, which provide policy benefits for the Council but which are also very difficult to fund from mainstream sources. Two current projects exemplify this approach. The first is the 60 unit extra care scheme that Phoenix Community Housing is developing on behalf of the Council at Hazelhurst Court. Extra care housing fits well with both the Council's housing and adult social care strategies, but is very expensive to build and fit out to the required standards. The units are larger than standard and are suitable for easy adaptation as care needs change. As such it is difficult to develop schemes of this nature using existing funding sources, and close to impossible to do so at social rent levels as Phoenix will do at Hazelhurst Court as a result of the £2.1m investment, from S106 funds, that the Council will make in the scheme. The other example, which has the same principles but this time applies to single homeless residents with complex additional needs, is the 22 home hostel and support unit that the Council is supporting Deptford Reach – a local and longstanding homelessness charity – to develop at its current day centre with the help of nearly £1m of S106 funding.

Transport

- 4.8 In relation to transport, nearly £2m of contributions have been received from the Former Bell Green Gas Works development. Previous work was undertaken as part of a bid to TfL for funding to improve junctions and pedestrian crossing facilities around the site but officers are now assessing the opportunity for a much wider approach which includes improved linkages to Lower Sydenham station and Home Park. The 2015/16 LIP programme includes a feasibility study into pedestrian route improvements around Lower Sydenham Station. The study will consider routes to the station from Sydenham Road, through Home Park and Bell Green. Studies for Whitefoot Lane, Southend Lane and Lower Sydenham are ongoing, and any recommendations will be considered for future LIP submissions. However, if future funds are limited, there are a number of opportunities to deliver some of the key outcomes, including the Bell Green Improvements, future implementation of the Home Park Masterplan, and TfL's recently proposed Quietway which will cross Southend Lane at the Waterlink Way.

Local Employment & Training

- 4.9 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. This funding supports the Council's Local Labour and Business Manager (LLBM) who manages and develops the Local Labour and Business Scheme (LLBS).

- 4.10 Through section 106 agreements and close working with planning case officers and developers the Local Labour and Business Scheme (LLBS) aims to secure construction and post-construction opportunities for borough residents and businesses through new development. The LLBS works closely with internal partners to increase local employment, skills and business opportunities through Council procurement.
- 4.11 In 2014-15 the LLBS achieved a range of outputs including:
- 19 new apprenticeships and the continuation of 10,
 - 92 jobs secured
 - 258 training places offered,
 - A job fair which attracted over 1300 attendees and 25 recruiting employers from a variety of sectors along with employment and training partners.
 - over £4 million worth of contracts secured by Lewisham businesses.
- 4.12 The Council also runs an outsourced Business Advisory Service (BAS), with the purpose of assisting new businesses start up and existing businesses to be sustained and grow. In 2014/15 the BAS achieved:
- 6 residents helped to start up businesses
 - 97 Businesses received in- depth support form the business advisory service
 - 67 businesses supported to be fit to supply
 - Eight businesses were helped to secure new contracts worth £3,263,680.
- 4.13 To ensure that more residents and businesses benefit fully from the increasing current and future developments the local labour scheme team has been expanded in 2015, using Section 106 funding, to include two Local Labour and Business Scheme officers. One post is focusing on employment opportunities and the other is focussing on business opportunities. An expanded bespoke training offer is also in development to ensure residents skills match the opportunities coming forward.

Education

- 4.14 Over recent years Children and Young People (CYP) officers have been able to make full use of the opportunities arising from the education facilities balance to enlarge or improve primary schools in the borough.

Health

- 4.15 The current balance of funding for health initiatives is largely made up of relatively small contributions from developments that are individually not of a sufficient size to deliver health projects on their own. As the cumulative total has begun to grow it has been factored into proposals being developed by Lewisham Clinical Commissioning Group (CCG), Lewisham and Greenwich Trust (LGT) and the Council to support an area based approach to health. These include the renovation of neighbourhood bases and offices and necessary ICT and pump priming for service redesign and

transformation in line with the Health and Well Being Strategy, the CCG Strategy, the Children and Young People's Plan and the Adult Integrated Care Programme.

Environment & Open Space

- 4.16 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. Funding will continue to be allocated for a combination of large strategic projects and smaller, more local initiatives, such as the park and allotment improvements and air quality monitoring examples set out in tables 1 and 2. An example of a strategic project is the new £2m 30 metre wide linear park being delivered as part of the North Lewisham Links Programme, to encourage walking and cycling, along the route of the former Surrey Canal between Plough Way and Oxestalls Road. This is funded by the Marine Wharf West and Cannon Wharf developments currently being undertaken by Berkeley Homes and Barratt Homes respectively.

Section 106 monies allocated for spend in 2014/15

- 4.17 During the 2014/15 financial year approximately £1.4 million S106 monies were allocated for spend on various projects. Table 1 identifies the projects that the S106 Overview Group have given approval for the spend of S106 monies in line with the planning obligations for various legal agreements. The 2015/16 financial year to date has allocated £2.6 million to various projects, particularly Hazelhurst Extra Care Scheme requiring £2.1 million and various sections of the Waterloo to Greenwich Quietway project securing a total of almost £500,000 of S106 monies.

Section 106 monies drawn down in 2014/15

- 4.18 Approximately £1.2 million of S106 monies were spent and drawn down during the 2014/15 financial year. Table 2 identifies the approved projects that had spend within the 2014/15 financial year.

Table 1: Projects allocated Section 106 monies for spend in 2014/15

Project Title	Project Description	Department	Total cost of Project (£)	Total S106 Funding allocated (£)
Pedestrian, Cycle Routes & Public Realm in the Vicinity of Plough Way Strategic Site - Deptford	To identify and ensure key pedestrian, cycle routes and public open spaces are delivered in this part of the borough.	Planning	£10,000.00	£10,000.00
Bell Green CCTV	The installation of CCTV surveillance equipment for the public highway, bus stops and part of the public areas of the Bell Green (gas works) site.	CCTV	£66,005.00	£66,005.00
SEA of the Planning Obligations Supplementary Planning Guidance Document	Commissioning of a Sustainability Appraisal/Strategic Environmental Assessment for the Planning Obligations Supplementary Planning Document 2014 update.	Planning	£1,450.00	£1,450.00
Outdoor Gym at Deptford Park	The installation of outdoor gym equipment at Deptford Park and Mayow Park to encourage residents of the borough to be more active	Environment	£50,000.00	£28,321.28
Deptford Town Centre OLF Legacy Initiatives Phase One	To help establish a monthly food market in Deptford Town Centre	TCM	£29,919.00	£29,919.00
Surrey Canal - North Lewisham Links	To create the best possible connections between the Marine Wharf development site heading east towards Grove Square to ensure integration between existing and new developments in the area	Planning	£56,052.00	£56,052.00
Sydenham Park Allotment Improvement Project	Bring back the disused land back into use for allotment plots and improve the site entrance for health and safety purposes	Environment	£1,177.00	£1,177.00
Heathside and Lethbridge Estate Bus Stop Accessibility	Improve the bus stop opposite Heathside & Lethbridge Estate and at least one of the bus stops in Lewisham Road by Blackheath Rise to meet accessibility requirements.	Environment	£24,021.30	£24,021.30

Project Title	Project Description	Department	Total cost of Project (£)	Total S106 Funding allocated (£)
Connington Road (land to the south of Venson site) Bus Stop Accessibility	Upgrade of 2 bus stops in Lewisham Road close to Morden Hill so that they are fully accessible; remove the guard rail at the pelican crossing by Morden Hill and introduce bollards to provide greater safety for pedestrians and cyclists at the crossing.	Transport	£21,890.78	£21,890.78
9 Staplehurst Road Footpath Improvements	To contribute towards footpath improvements in the Hither Green Neighbourhood including: replacing the existing black tarmac with small element Tegular blocks and drop some of the kerbs for better mobility and cycle access. These works will refresh & brighten the footpath and enhance the accessibility and visual appearance of the gateway to the Station.	Transport	£8,000.00	£8,000.00
Waterloo to Greenwich Cycle Quietway (Masterplan Design)	To produce a masterplan concept design for the Lewisham section of the Waterloo to Greenwich Cycle Quietway	Transport	£25,000.00	£25,000.00
Seager Distillery CPZ Contribution	This project forms part of a controlled parking zone (CPZ) consultation known as "Deptford South".	Transport	£134,897.00	£60,000.00
Improvements at Hilly Fields	To improve the condition of the footpaths and community facilities within Hilly Fields	Environment	£21,509.00	£21,509.00
Folkstone Gardens Improvements	Improvements to Folkestone Gardens skate area and play space including re-landscaping to integrate with the whole park and Quietway Cycle route 2	Environment	£275,063.69	£225,063.69
Thurston Road Industrial Estate	To improve pedestrian facilities in the 'Thurston Road Industrial Estate' area including: improvements to the footways, resurfacing of the highway and relocation and improvements to the local bus stops to make them accessible by people with mobility problems.	Transport	£223,010.68	£223,010.68
Clyde Terrace CPZ Contribution	This project forms part of a controlled parking zone (CPZ) feasibility study in the area designated as "Forest Hill South".	Transport	£135,619.00	£50,000.00

Project Title	Project Description	Department	Total cost of Project (£)	Total S106 Funding allocated (£)
CIL & S106 Administration Software	Secure a software solution to improve administrative, monitoring and report efficiencies and transparency relating to both S106 agreements and the Community Infrastructure Levy	Planning	£58,850.00	£26,050.00
Creekside Education Trust	Creekside Education Trust (CET) is committed to the long-term management of Deptford Creek for people and wildlife, this Section 106 contribution will support the running costs of the centre and be used to match fund the delivery of external grants in line with the stated objectives of the charity.	Environment	£36,477.05	£36,477.05
Brookmill Children's Playspace	To install a new piece of equipment within the empty pad at Brookmill Park and replace 2/3 pieces of existing equipment with modern accessible play.	Environment	£11,638.00	£11,638.00
Loampit Vale Bus Shelter Improvements TfL	Transfer the s.106 monies to TfL to deliver the upgrade of two bus shelters beneath the railway bridge on Loampit Vale	Transport	£18,000.00	£15,000.00
Electronic Update Service Boards (eSUB) Elverson Road Station TfL	Transfer of s.106 monies to Transport for London to allow the installation of an electronic passenger real time information board (eSUB) at Elverson Road Docklands Light Railway Station.	Transport	£20,000.00	£20,000.00
TfL Junction Feasibility Study for the A2 Deptford Broadway Junction	Transfer of s.106 contribution for a junction feasibility study and works to improve the junction at the A2 Deptford Bridge, Brookmill Road/ Deptford Church Street. This feasibility study was undertaken in 2010/11 by Transport for London (TfL) with a view to delivery in 2015/16.	Transport	£300,000.00	£55,602.84
Docklands Light Railway (DLR) Capacity Enhancement - Deptford Bridge TfL	Retrospective PID to transfer s.106 monies held by the Council for Station Platform and Canopy extensions at Deptford Bridge DLR station following the completion of £6,000,000 capacity enhancement programme in 2010/11.	Transport	£6,000,000.00	£133,446.79

Project Title	Project Description	Department	Total cost of Project (£)	Total S106 Funding allocated (£)
Local Labour and Business Scheme 2015-2016	Seeking to secure additional Local Labour and Business (LLBS) staff resources to ensure that the Council successfully engages with developers and contractors over the next 7 years where it is forecast that the development of major strategic sites will create 134,000 sq m of new space for businesses creating up to 3,000 new jobs.	Employment	£277,662.00	£241,898.00
TOTAL			£18,838,304.93	£1,391,532.41

TABLE 2: Detailing Section 106 monies drawn down in the 2014/15 financial year

Project Title	Project Description	Total S106 Funding allocated (£)	Total S106 Funding Spent (£) 2014/15	Amount remaining (£)
John Stainer School Enlargement	To expand provision at John Stainer primary school by 1 form of entry through the addition of a new wing including classrooms and infrastructure to enable the school to expand over time to 2 forms of entry.	£487,747.61	£487,747.61	£0
Green Chain Walk (Woodland Walk) Improvements	Improvements to the Downham Woodland Walk including: new bins, pathway resurfacing; improvements to entrances and eradication of invasive species	£22,537.80	£22,537.80	£0
Mayow Park - Grow Mayow Improvements	To expand and improve the Grow Mayow Community Garden	£3,236.95	£3,236.95	£0
2-36 Plassy Road Car Club	To provide free car club membership for each of the units within the development at 2-36 Plassy Road (as per the S.106 agreement)	£5,800.00	£5,800.00	£0
Sydenham Park Allotment Improvement Project	Bring back the disused land back into use for allotment plots and improve the site entrance for health and safety purposes	£1,177.08	£1,177.08	£0
Affordable Housing at 335-337 Bromley Road	Provision of an additional 41 affordable housing units at £12,193 per unit of S106 funds - 27 Affordable Rent units (3x3bed; 17x2bed; 7x1bed) and 14 Intermediate Units (14x2bed)	£499,900.00	£249,900.00	£0
Waterloo to Greenwich Cycle Quietway (Masterplan Design)	To produce a Masterplan concept design for the Lewisham section of the Waterloo to Greenwich Cycle Quietway	£25,000.00	£25,000.00	£0
Deptford Town Centre OLF Legacy Initiatives Phase One	To help establish a monthly food market in Deptford Town Centre	£29,919.00	£27,312.43	£2,606.57
Environmental Protection Lewisham Town Centre Amendment	To produce detailed monitoring and baseline data gathering of air quality, noise and contaminated land monitoring relating to the Loampit Vale development	£50,000	£4,018.73	£21,924.27

Project Title	Project Description	Total S106 Funding allocated (£)	Total S106 Funding Spent (£) 2014/15	Amount remaining (£)
Air Quality Monitoring	Carry out air quality monitoring in the New Cross area and ensure that it is carried out to relevant QA/QC standards	£16,840.82	£4,630.63	£4,760.60
Lewisham Local Labour and Business Scheme (LLBS) 2013-2016	LLBS uses planning agreements to provide training and employment opportunities for unemployed residents as well as assistance for local businesses to access business opportunities through the various construction developments taking place in the borough	£571,959.18	£139,573.24	£322,822.46
Bell Green Gyratory Accessibility Works	Carry out a development study and develop a project in the Bell Green gyratory that will improve pedestrian access, traffic flow and the public realm	£1,064,000.00	£1,109.40	£1,062,890.60
Folkstone Gardens Improvements	Improvements to Folkestone Gardens skate area and play space including re-landscaping to integrate with the whole park and Quietway Cycle route 2	£225,063.69	£4,445.35	
Cornmill Gardens S106 Improvements 2013	Improvements to Cornmill Gardens and the Secret Garden Project following the Loampit Vale development	£109,031.42	£11,790.68	£18,366.47
Home Park Frontage Improvements	Commissioning of a landscape architect to produce RIBA stage C design for the frontage of Home Park where it bounds onto Sydenham Road	£37,054.70	£27,941.80	£9,112.90
Outdoor Gym at Deptford Park	The installation of outdoor gym equipment at Deptford Park and Mayow Park to encourage residents of the borough to be more active	£28,321.28	£28,321.28	£0
Surrey Canal - North Lewisham Links	Creation of connections between the Marine Wharf development site heading east towards Grove Square to ensure integration between existing and new developments in the area	£56,052.00	£55,537.04	£514.96
Portas Pilot	This project aimed to create, support and embed a Town Team to pilot innovative ways to transform Forest Hill, Sydenham and Kirkdale	£122,308.00	£12,800.50	£26,241.22
TOTAL		£1,112,880.52		

5. Community Infrastructure levy

- 5.1 For the 2014/15 Financial Year the Mayoral CIL was operating. LB Lewisham is the collecting authority for Mayoral CIL, and retains four (4%) percent of the fees for administration purposes. For the 2014/15 financial year, £400,547 was collected and transferred to Transport for London. The following table details the monies collected on behalf of the Mayor and transferred quarterly to Transport for London:

FINANCIAL QUARTER	MAYORAL CIL TRANSFERRED TO TRANSPORT FOR LONDON	LB LEWISHAM 4% ADMIN FEE RETAINED
1	£7,056.00	£294.00
2	£77,142.70	£3,214.28
3	£195,673.33	£8,153.06
4	£120,675.22	£5,028.13
TOTAL	£400,547.25	£16,689.47

6. Financial Implications

- 6.1 This report concerns financial information in relation to planning obligations and CIL, however there are no direct financial implications in noting these. The balance of Section 106 monies held by the Council at the end of the 2014/15 financial year was approximately £23.1m. The current financial year 2015/16 has seen almost £1.7m received to date. These monies will be used to deliver projects in accordance with the relevant planning agreements.
- 6.2 Lewisham collects the Community Infrastructure Levy (CIL) on behalf of the Mayor of London, and from 1 April 2015 has also commenced collection of the Lewisham CIL. 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. 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.

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)