

INTERNAL AUDIT REVIEW



Community Infrastructure Levy (CIL) and S106 Contributions – Consultancy Support 2020/21

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CIL and S106 contributions – Consultancy Support 2020/21 EXECUTIVE SUMMARY

1. BACKGROUND AND OBJECTIVES

The Community Infrastructure Levy (the 'levy') is a charge which can be levied by the Council on new development in the local area. It helps the Council to deliver the infrastructure needed to support development in their area. The delivery of infrastructure also relies on the use of S106 contributions - it is therefore important that both elements are working effectively.

The Council has recently conducted a review of its S106 and CIL processes and, as such, it has been agreed that Internal Audit will provide some initial consultancy support to review the proposed changes in controls and to highlight any areas for further consideration before these are fully adopted and embedded in practice.

2. AUDIT APPROACH

A combination of discussions with key officers, detailed testing and review of documentation was used to determine the efficiency of the current process and controls. Audit review also provides guidance based on good practice and examples from elsewhere, as appropriate.

3. OVERALL CONCLUSION

A review of current processes in relation to CIL/S106 confirms that there are good controls in place. However, the detailed testing has identified some potential areas for improvement in the control environment. Testing confirmed that controls had been exercised to achieve and evidence the compliance with the current procedures in most cases, however areas for improvement were also identified. A CIL improvement plan has been prepared by the Officers to ensure CIL Process compliance with Council Policy and CIL legislation highlighting steps required to achieve the improved efficiency of the CIL process. Significant progress against the CIL improvement plan has already been made and improvements achieved in some areas, especially in relation to allocation of S106 monies for the expenditure. The progress made against the CIL improvement plan also provides assurance that some of the shortcomings identified during this audit review have already been addressed.

A summary of findings in relation to each of the key areas covered by the audit review is provided overleaf.

4. SUMMARY OF FINDINGS

Area 1 – Recording of CIL and S106 agreements

Planning applications are received and validated by the Planning Support team who, as part of their validation checks, determine if the planning application is potentially CIL liable. It is understood that CIL related training was provided to the Planning Support team in Autumn 2019.

If the Planning Support team determine the application to be CIL liable the indication is made on the planning system Uniform and a consultation letter is sent through to cil@rutland.gov.uk to make the Community Infrastructure and Planning Obligations Officer aware. Once the application is marked as CIL liable this also triggers the transfer of data from Uniform to CIL/S106 monitoring system Exacom.

The Planning Support team also provides a weekly validation list to the Community Infrastructure and Planning Obligations Officer who checks through all validated planning applications that may potentially be CIL liable and cross check these with the Exacom software. If an application has been missed they have the ability to update Uniform to mark the application as CIL liable and enable the Uniform data to transfer over to the Exacom software.

In addition, the Community Infrastructure and Planning Obligations Officer also run weekly reports in Exacom to check newly created cases - this is in case Planning Support team have forgotten to send a consultation letter.

S106 agreements are sent to the Land Charges team who redact the agreement and send both redacted and non-redacted copies to the Community Infrastructure and Planning Obligations Officer. The Planning Officer/Land Charges indicates in Uniform that there is a legal agreement, this triggers the transfer of data from Uniform to Exacom.

Although all newly created applications are on Exacom, new applications are also tracked and chasing of the relevant forms is undertaken through logging these on a daily log spreadsheet.

Community Infrastructure and Planning Obligations Officer oversees the monitoring of the CIL planning obligations. Currently, the Planning Obligations Officer has responsibility for monitoring S106 contributions and trigger points, going forward this will largely be monitored by the Community Infrastructure and Planning Obligations Officer with some additional support from the Planning Policy officers.

Area 2 – Monitoring trigger points

CIL trigger points are automatically set by the Exacom system when generating the CIL Notices or acknowledgments. Depending on the trigger point, the software will set a next target date or a date of 'ASAP'. When the date is reached it will appear at the top of the application page as a prompt to monitor what is happening with the development. Letters, notices and invoices are issued when CIL triggers have been met.

If the triggers have not been met the Community Infrastructure and Planning Obligations Officer can amend the trigger date accordingly and review again – on a monthly/quarterly basis depending on the trigger.

S106 trigger points are also monitored on Exacom, and are added to the system when the agreement is uploaded. A covenants trigger report is downloaded from the system every two weeks and shows covenant triggers which require reviewing for the next two weeks. When a S106 trigger point has almost been reached, the applicants are contacted via email or telephone to confirm that the trigger point has been reached and to discuss indexation if applicable.

The Development Monitoring Inspector (DMI) monitors housing commencements and completions. Every week the DMI checks the approved planning application and building control weekly lists and updates his visiting spreadsheet. The DMI also checks Exacom for any extra applications. Site visits are undertaken on a three monthly cycle and for Oakham and Uppingham the visits take place every six weeks.

The DMI will email cil@rutland.gov.uk with information on completion/commencement/triggers. Also Community Infrastructure and Planning Officer email the DMI to inform of commencement when commencement notice is received to enable them to monitor for completion.

Area 3 - Recovering monies due

The collecting authority, the Council, issues a liability notice to the applicant, the developer and whoever has assumed CIL liability – which sets out the charge due and details of the payment procedure. A commencement notice must then be submitted to the Council setting out when the development is going to start. It must be submitted no later than the day before development commences. The Council must send an acknowledgment of receipt of the commencement notice to the person who submitted it. The Council then should serve a demand notice on each person liable to pay an amount of CIL (Regulation 69) setting out the payment periods (Regulation 70) and instalment policies (Regulation 69B).

There is an approved CIL instalment policy in place. The instalment policy does not specifically state what happens when instalment dates are not met. However, this is contained in the demand notice sent to the applicant informing that surcharges and late payment interest may be applied.

It is understood that due to the outbreak of Coronavirus the government has indicated that the Council must be pragmatic during this period. The government are intending to change the CIL regulations to be more flexible and to provide support to SME's. Senior managers have therefore agreed to look at payments on a case by case basis.

Currently any enforcement step would have to be discussed with Senior Management including Finance, Legal and Director of Places. There does not appear to be any agreed procedures setting out possible consequences of failing to follow the CIL payment procedure. The current CIL improvement plan identifies a need for improvement in this area and incorporates an action of producing an Enforcement Policy.

Audit suggestion 1: Possible consequences of failing to follow the CIL payment procedures, such as failure to assume liability before commencement, failure to send in the commencement notice, missing the instalment due date, etc. should be agreed and documented. (Examples of such procedures can be provided by Internal Audit).

The Exacom system automatically sets the next instalment date as a target date. Payment triggers are easily identifiable on Exacom via the application page, generating an Exacom report or through the

daily log spreadsheet. Demand notices are issued on the receipt of the commencement notice and an invoice is raised by the Community Infrastructure and Planning Obligations Officer for applications that require a payment. The Community Infrastructure and Planning Obligations Officer checks the finance system to confirm if payment has been received and will contact Finance to obtain the actual payment made date. Once payment is received it is logged on Exacom and a receipt of payment is issued to the applicant.

A detailed sample testing of CIL cases was conducted to establish if the current controls are being consistently implemented, the review consistently demonstrated the following:

- evidence of CIL/S106 Obligations Officer checking Agresso for payment and liaising with Finance to confirm the receipt and date of the receipt;
- regular site visits undertaken by the Development Monitoring Inspector and records of site visits maintained;
- where applicants did not notify of the commencement and the subsequent site visit revealed that the development had commenced the demand notice was promptly generated, meaning that communication lines between the Development Monitoring Inspector and the CIL/S106 Obligations Officer is effective. Regular site visits are essential since as the testing shown in 3/10 cases the applicants fail to send in a commencement notice after which the demand for payment is sent out by the Council; and
- In cases where commencement notice was received from the applicant the evidence of decision notice being issued promptly was evident.

However, the following shortcomings were noted:

- A delay in issuing liability notice was noted in 5/10 cases reviewed. The liability notice should be issued as soon as practicable after the day on which a planning permission first permits development. All of these applications were prior to the current S106/CIL Obligations Officer starting their role in mid-September 2019, at which time *'there were a lot of applications that had not been actioned and we had to gradually work their way through whilst trying to manage the new ones coming in.'*;
- in 3/10 cases no commencement notice had been received from the applicant. The Officers should consider implementing the enforcement measures such as surcharge and/or interest that may be applied in the event of not following the CIL payment procedure (*as per audit suggestion 1*);
- in a couple of cases a delay in issuing the demand notice was noted. This again was prior to the current S106/CIL Obligations Officer starting their role. The Officer confirmed that the demand notice is now issued at the same time the commencement notice is acknowledged. This was evident in the more recent cases reviewed as part of the sample testing; and
- in two cases the instalments were received after the due date. No payment reminder letter or late payment request was sent out. The S106/CIL Obligations Officer explained that payment reminders are now sent with an invoice approx. 30 days prior to the payment date. Again Officers should consider the enforcement measures for late payments as per audit suggestion 1.

Audit suggestion 2: If Officers are to implement the enforcement procedures for non-compliance with the CIL payment procedures, they need to ensure that the liability notice, demand notice, payment requests, late payment notice etc. are also promptly and timely issued.

The CIL improvement plan provides assurance that above findings and the audit suggestion are being address and improvements have already been made in some areas.

For S106 obligations once the demand notice and accompanying invoice has been sent out the payment process is monitored by the Planning Obligations Officer and Finance. Missed or late payments are picked up by the Finance team through unpaid sales order and their normal financial procedure would be used for any unpaid debt.

Officers initially explained that no monitoring of S106 obligations was undertaken for two years since 2016. More recently officers have been working on updating the Exacom system with the S106 data and Exacom now stores all of this information and will be utilised going forward.

A review of S106 data was conducted. A download report of S106 Balance Sheet from the Exacom system revealed that some of the S106 monies have not been spent within deadlines of which 97% have not yet been allocated for the expenditure. The Developer Contributions Officer explained that they aware of this and that previous years' projects have recently been identified and agreed by Cabinet and that expenditure will now have an allocation. Finance will be amending the records and Exacom accordingly. Further assurance was provided that this is being addressed through the Places Director and the spend is being prioritised. This will be demonstrated in the first of the Infrastructure Funding statements that the Council will be publishing in December 2020.

Also the review noted that some expiry dates on Exacom have not been updated. Officer has since arranged for the dates to be updated meaning some of the contributions were not yet due for the expenditure.

Audit suggestion 3: Officers need to ensure the S106 contributions are promptly allocated and spent by the expiry dates to avoid any claw backs from the developers. This could be achieved by holding meetings on regular basis to consider the projects against which the S106 income can be used and whether the proposals are in accordance with the Council's priorities and objectives, and the actual agreement and what consultations are necessary (e.g. local Members, interested Portfolio Holders and Town and Parish Councils) and whether it is necessary to schedule any additional meetings to follow up and progress particular schemes.

Area 4 - Monitoring of spend

The income received from CIL/S106 is recorded on the Exacom software. Finance also keep financial records of CIL income and spend, but the master data for CIL and S106 is the Exacom system. Exacom has recently been updated with all spend deadlines, and a report can be downloaded from Exacom detailing contribution expiry dates.

Town and Parish Council Reports on CIL receipts and expenditure are made available every year on the Council's website. Parish Councils currently have five years to spend CIL income. The first payment to Parish Councils was made in 2017. The 2019/20 CIL parish annual returns have been received are now published on the RCC website. The Community Infrastructure and Planning Obligations Officer updates the entries on Exacom with the spend from the parish annual returns and this will show the available amount and enables to monitor spend following receipt of CIL annual return.

Audit Suggestion 4: Since Parishes have five years to spend CIL income, Officers need to ensure that the current monitoring mechanism is effective in monitoring if income is used within this period of time. The appropriate officers should regularly monitor CIL spending and be aware of non-compliance and clawback position and assist in promotion of spend and reporting compliance and timeliness of spend.

In response to the above audit suggestion, Officers confirmed that effective monitoring can now be done through Exacom system following a recent upgrade.

Officers explained that project spend is recorded on the Exacom, however it is difficult to establish exactly where money has been spent. This is something that officers were looking to improve going forward by requesting more detailed information from project officers when money is allocated. Developers can claw back any S106 sums (including interest) that are unspent and unallocated for expenditure by the agreed spend deadlines, also If Council does not know or are unable to provide the details of where and how the monies were spent.

It is understood that no S106 funding have been clawed back by developers, however Officers confirmed that there was a recent request from a developer to confirm where their contributions had been spent and it was very difficult to obtain this information as it was quite historic spend.

Audit suggestion 5: The officer responsible for the S106/CIL Obligations should liaise with the responsible service area/project officer to confirm if infrastructure had been implemented and whether it was in accordance with the agreed obligations. This is essential for the preparation of the infrastructure funding statement which needs to provide details of how the contributions were spent. Also Regulation 121A of the CIL Regulations requires a Charging Authority to prepare a report for any financial year including a summary details of CIL expenditure.

In regards to S106 contributions the evidence of spend can be requested by developers to ascertain that the contributions were spent in line with the agreement, then the Council need to be able to produce documents i.e. the documents from the finance system (orders/invoices) evidencing the spend. Appropriate controls should be in place to ensure that contributions are spent in line with the relevant S106 agreement to mitigate the risk of clawbacks from developers.

Area 5 – Governance and cross service working and communications

The Council's web pages have recently been improved and now include much more information and guidance for parish councils, applicants, agents and developers.

Clear lines of communication between all key officers involved in monitoring the CIL liable applications are in place. Also the Community Infrastructure and Planning Obligations Officer has access to planning and building control information which assists in the CIL process.

There is a process for S106 agreements being sent to Planning Policy from the Land charges team. However, there is no clear process to confirm that contributions have been received, the Community Infrastructure and Planning Obligations Officer usually chases Finance to confirm receipt of contributions.

Improvements are needed in communication lines for S106 contributions and the strategic spend of CIL and S106 (*covered in audit suggestion 5*). It is understood that options are currently being discussed by Senior Management.

Audit suggestion 6: Once S106 monies are received finance should notify the Community Infrastructure and Planning Obligations Officer to ensure the Exacom is updated and monies can promptly be allocated for the implementation of the infrastructure.

Meetings take place to ensure the S106 data is up to date and being spent effectively, however there are no regular meetings to monitor S106 spend. It is understood that this has been raised with Senior Management.

Senior management have been provided with reports of current financial S106 contributions and a summary is currently being produced for members, however there is no a regular report provided to management. In regards to CIL income, Senior Management are aware of CIL income, however no regular monitoring reports in respect of CIL are currently produced or requested.

Audit suggestion 7: Quarterly reports to the Senior Management of balances held should be introduced. This would help ensure all services areas are aware of balances held and appropriate use is made of the funds. The report should include clear reference to sums received, date received, expiry dates and the intended purpose of the spend. Where contributions are outstanding an anticipated date of receipt should be recorded. The regular reports will assist in ensuring that relevant officers note any balances close to expiry date and to encourage the officers to take appropriate action.

Area 5 - Record keeping for both CIL and S106 to meet the requirements of reporting from December 2020.

To ensure that CIL is open and transparent, Regulation 62 of the CIL Regulations (2010) (Regulation 62 now superseded by 121A) requires a Charging Authority to prepare and publish a report annually of CIL receipts and spending on the website by 31st December each year for the previous financial year.

Rutland County Council, as the Local Planning Authority, is both the Charging Authority and also the Collecting Authority. The Council's CIL charges came into force on 1 March 2016. The Council's annual reports for each financial year 1 April to 31 March are published on the website. Review of the monitoring reports revealed that no details of the items of infrastructure to which CIL has been applied is provided. Officers explained that no items of infrastructure is detailed as no spend committed.

Audit Suggestion 8: In accordance with Reg 62 (4)(c)(i) future monitoring reports need to include the details of the items of infrastructure to which CIL has been applied.

Officers explained that they are preparing to publish a funding infrastructure statement to comply with regulation 121A of the CIL Legislation. Parish Councils have been advised of the requirements under Reg 121B (previously reg 62B) to publish CIL annual financial reports. The 2019/20 Parish reports are all available on the RCC website.

The Community Infrastructure Levy (CIL) regulations and National Planning Policy Framework require all local planning authorities to publish their developer contributions data on a regular basis and in an agreed format. Developer contributions can include section 106 planning obligations, CIL, section 278

agreements and any agreements that either secure funding towards new development, or provide infrastructure as part of any new development. It is understood that officers are preparing to publish the S106 data at the end of this year.

Audit Suggestion 9: Using data on planning obligations, the government recommends that local authorities prepare an infrastructure funding statement in an open data format that sets out infrastructure requirements, and section 106 planning obligations, anticipated funding from developer contributions, and the choices local authorities have made about how these contributions will be used. The first annual infrastructure funding statement must be published by 31st December 2020. Infrastructure funding statements should include information on, but not limited to, contributions made towards and delivery of affordable housing, education, health, transport, green and digital infrastructure and should be published annually online.

5. LIMITATIONS TO THE SCOPE OF THE REVIEW

This is a consultancy review and will not result in an assurance opinion.