

Report of the Assistant Director (Planning, Transportation and Highways) to the meeting of Regulatory and Appeals Committee to be held on 5th December 2019

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Subject:

Annual Section 106 Agreement and Community Infrastructure Levy (CIL) report.

Summary statement:

Annual report to inform Members of progress with Section 106 Agreements and the Community Infrastructure Levy since its adoption and implementation on 1st July 2017 to the end of the financial year 2018/2019.

Julian Jackson
Assistant Director (Planning,
Transportation and Highways)

Portfolio:

Change Programme, Housing, Planning and Transport

Report Contact: Andrew Marshall
Planning and Transport Strategy
Manager
Phone: (01274) 434050
E-mail: Andrew.marshall@bradford.gov.uk

Overview & Scrutiny Area:

Regeneration and Economy

1. SUMMARY

Bradford Council became a Community Infrastructure Levy (CIL) charging authority on 1st July 2017.

The Community Infrastructure Levy (CIL) is intended as a means of contributing to the funding of infrastructure required to support the delivery of the Local Plan, including the adopted Core Strategy and other Development Plan Documents. It replaces part of the system of Planning Obligations (S106 Agreements), the scope of which has been restricted since 6 April 2015.

This report will summarise the allocation of the CIL monies received by Executive Committee and will provide an overview of the total number of CIL liable applications and Section 106 Agreements entered into since 1st July 2017.

2. BACKGROUND

The District CIL was adopted by Full Council on 21 March 2017, and the charges were implemented from 1st July 2017. The process for the collection, spending and reporting of CIL monies must be transparent and undertaken in line with the requirements set out in the CIL Regulations.

The collection and spending arrangements for funding secured through Section 106 Agreements has not altered and is still in line with previously agreed procedures.

3. OTHER CONSIDERATIONS

None

4. FINANCIAL & RESOURCE APPRAISAL

The Community Infrastructure Levy Regulations 2010 (as amended) require the Council to prepare a report for any financial year in which:-

- a) It collects CIL, or CIL is collected on its behalf; or
- b) An amount of CIL collected by it or by another person on its behalf (whether in the reported year or any other) has not been spent.

CIL Regulation 62 sets out the specific requirements which must be covered by this Report, the first such annual CIL monitoring report and covers the financial year 6 April 2018 to 31 March 2019 and will be made available on the council's website.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

None

6. LEGAL APPRAISAL

The exercise of S106 Agreements is carried out under the legal powers held by the Council and under strict guidance issued by central government and case law. The Council's operation of CIL is summarily covered by statute and clear government

guidance concerning how it should operate and be administered.

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

Section 149 of the Equality Act 2010 states that the Council must, in the exercise of its functions “have due regard to the need to eliminate conduct that is prohibited by the Act, advancing equality of opportunity between people who share a protected characteristics and people who do not share it, and fostering good relations between people who share a protected characteristic and people who do not share it. For this purpose section 149 defines “relevant protected characteristics” as including a range of characteristics including disability, race and religion.

7.2 SUSTAINABILITY IMPLICATIONS

None

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

None

7.4 COMMUNITY SAFETY IMPLICATIONS

None

7.5 HUMAN RIGHTS ACT

None

7.6 TRADE UNION

➤ None

7.7 WARD IMPLICATIONS

Ward Members are notified upon completion of a Section 106 Agreement for their ward.

In line with the CIL Regulations 2010 (as amended) 15% of CIL income will be passed directly to those parish and town councils where development has taken place (the neighbourhood proportion), subject to the cap set in national CIL regulations. This will increase to 25% in any areas with an adopted neighbourhood plan.

7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS (for reports to Area Committees only)

None

7.9 IMPLICATIONS FOR CORPORATE PARENTING

None

7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

None

8. NOT FOR PUBLICATION DOCUMENTS

None

9. RECOMMENDATIONS

It is recommended that the contents of this report be noted.

10. APPENDICES

Appendix 1 – Section 106 Agreements signed

Appendix 2 - Section 106 payments received

Appendix 3 – CIL liability notices issued

Appendix 4 – CIL payments received and neighbourhood payments

11. BACKGROUND DOCUMENTS

- Bradford District CIL Charging Schedule
- Bradford CIL Regulation 123 List
- Report 'Governance Arrangements for the Bradford CIL Charging Schedule' to the Governance and Audit Committee on 28 February 2017

Officer Report

1. SUMMARY

Bradford Council became a Community Infrastructure Levy (CIL) charging authority on 1st July 2017.

The Community Infrastructure Levy (CIL) is intended as a means of contributing to the funding of infrastructure required to support the delivery of the Local Plan, including the adopted Core Strategy and other Development Plan Documents. It replaces part of the system of Planning Obligations (S106 Agreements), the scope of which has been restricted since 6 April 2015.

CIL was adopted by Full Council on 21 March 2017, and the charges were implemented from 1st July 2017. The process for the collection, spending and reporting of CIL monies must be transparent and undertaken in line with the requirements set out in the CIL Regulations.

The report to the Governance and Audit Committee on 28 February 2017 sets out the governance arrangements for allocating, spending and reporting on the Bradford CIL. This resolved that CIL receipts will be directed into two main funding streams; a CIL Strategic Fund and a Neighbourhood CIL Fund. The Council will retain 5% of the total CIL receipts collected to cover administration and implementation costs.

The allocation of the CIL Strategic Fund is decided upon by Executive Committee and the first allocation took place in July this year.

This report will summarise the allocations decided upon by Executive Committee.

SECTION 106 AGREEMENTS SINCE THE INTRODUCTION OF CIL

As CIL replaces part of the system of Planning Obligations secured through Section 106 Agreements, there has been a reduction in the number of Section 106 Agreements entered into.

The last monitoring report for Section 106 Agreements was presented to Members of this committee in November 2017 and was concerned with Agreements signed for the first six months of the financial year 2017/2018.

For consistency this report will detail the Agreements signed for the second half of financial year 2017/2018 up to the end of financial year 2019.

AGREEMENTS SIGNED

5 Section 106 Agreements were signed in the latter half of 2017/2018 and a further 15 signed between 1st April 2018 to 31st March 2019.

In total these 20 Agreements included 5 Deed of Variation Agreements. These Deed of Variations were entered into to amend the delivery of affordable housing

units to Discount Market Sales units, to confirm the financial sums to be paid following the grant of reserved matters applications and to add the mortgagee exclusion clause to the original Section 106 Agreement.

Within the 20 Agreements completed, there were 33 clauses in total of which 11 had a financial obligation. The value of the 11 financial obligations is £1,668,828.00.

Of the 22 non financial clauses, 6 were for the provision of on site affordable housing units or the provision of Discount Market Sales units.

Appendix 1 details all the Agreements signed by ward, obligation type and obligation value.

Table 1 below shows the number and value 11 of clauses requiring financial contributions by type.

Table 1: Number and value of obligations by clause type

Obligation type	No of clauses	Total value of clauses
Affordable housing	3	£644,530.00
Education	3	£791,298.00
Recreation	1	£108,000.00
Highways	1	£7,000.00
WYCA	3	£118,000.00
Total	11	£1,668,828.00

Table 2 below shows the number of non-financial contribution clauses by type.

Table 2: Number of non-financial obligations by clause type

Obligation type	No of clauses
Affordable housing – transfer of dwellings to RP or provision of Discount Market Sale units	6
On site public open space and communal areas	1
Car park spaces	1
Community facilities contribution	2
Highway works	2
Other	10
Total	22

SECTION 106 PAYMENTS RECEIVED

Financial contributions will normally be received when a particular trigger point has been reached. This is usually prior to the commencement of development and/or for large scale developments at another pre agreed stages based on occupation levels.

Since 1st January 2009 to the present day the total amount of Section 106 monies received is **£18,429,907.05**.

Appendix 2 provides a breakdown of the monies received by Ward and obligation type.

COMMUNITY INFRASTRUCTURE LEVY (CIL) APPLICATIONS

CIL was implemented 1st July 2017 and is payable for all CIL liable developments. The amount payable depends on the size and location of the development. The charging schedule for Bradford Council is:

Development type	CIL rate (£ per square metre)
Dwellings in residential zone 1*	£100
Dwellings in residential zone 2*	£50
Dwellings in residential zone 3*	£20
Dwellings in residential zone 4*	£0
Retail warehouses in Central Bradford only	£85
Large supermarkets over 2000sqm	£50
All other uses	£0

*This charge applies to the creation of one or more dwellings and residential extensions or annexes over 100 sqm or more gross internal area. It does not apply to specialist older persons' housing (also known as sheltered/retirement/extra care).

CIL INDEXATION

CIL payments must be index linked from the year CIL was introduced to the year that planning permissions are granted.

The index which must be used is the national All-in-Tender Index published by the Building Cost Information Service (BCIS).

The rate of indexation currently being charged is 11.2%. This amount will be reassessed and altered if necessary in January 2020.

CIL LIABILITIES

Since the introduction of CIL, 262 liability notices have been issued. A liability notice is the confirmation issued by Bradford Council of the amount of CIL to be paid when a development commences.

The 262 liability notices total £820,814.48. Appendix 3 details all CIL liability notices issued.

Table 3 provides a breakdown of the liability notices raised and the CIL zones in which they are located.

Table 3: CIL liability notices by CIL zone/liable use

CIL zone/liable use	Total number of liability notices	Total value of liability notices
Dwellings in residential zone 1	34	£318,134.40
Dwellings in residential zone 2	37	£451,172.92
Dwellings in residential zone 3	58	£633,525.96
Dwellings in residential zone 4	132	£0.00
Retail warehouses in Central Bradford only	0	£0.00
Large supermarkets over 2000sqm	1	£105,750.00

CIL EXEMPTIONS

There are a number of exemptions which may be applied for in order to reduce the CIL liability of a development.

These exemptions are:

Self build exemption: this can be granted to an applicant who is having a dwelling built that will be their main residence for a minimum period of three years from the date of completion. This exemption reduces the CIL liability to nil. If the applicant does not comply with either the commencement notice regulations or the occupation criteria post completion, financial penalties can be imposed.

Social housing exemption: this can be granted to an applicant who affordable housing units within their development. The floor space of the affordable housing units will be deducted from the overall floor space of the development and will reduce the CIL liability to be paid. If the applicant does not comply with the CIL regulations regarding commencement notices the exemption can be removed.

Charity exemption: this exemption can be granted to a registered charity and will reduce their CIL liability to nil. If the applicant does not comply with the CIL regulations regarding commencement notices the exemption can be removed.

A total of 44 exemptions were granted during the period 1st July 2017- 31st March 2019. Five were social housing exemptions and the remaining 39 were self build exemptions.

CIL PAYMENTS RECEIVED

CIL is payable upon the commencement of the development. Depending on the total CIL liability due, the sum can be paid in instalments.

Between the period 1st July 2017 and 31st March 2019, 12 CIL liable developments commenced and paid their liability. The total sum paid was **£350,697.00**. Appendix 4 provides a breakdown of the CIL monies paid.

CIL NEIGHBOURHOOD FUND

In line with the CIL Regulations 2010 (as amended) 15% of CIL income will be passed directly to those parish and town councils where development has taken place (the neighbourhood proportion), subject to the cap set in national CIL regulations. This will increase to 25% in any areas with an adopted neighbourhood plan.

The neighbourhood proportion will be transferred annually by the 28th April each year.

In areas where there is no parish or town council communities will still benefit from the neighbourhood proportion, however the Council will retain and ring-fence the CIL receipts for these areas. The existing approach used for Planning Obligations (Section 106) will be used to direct spending of the CIL Neighbourhood Fund in areas without a parish or town council, in consultation with relevant ward councillors.

Appendix 4 provides a breakdown of those parish and town council and ward who received a CIL payment and the amount received.

In addition to the 15%/25% transferred to the parish, town councils and wards, Bradford Council are able to retain a maximum of 5% of the CIL receipts to be used towards the costs of monitoring and administering CIL. It has been decided that Bradford Council will retain the maximum 5% and the sum retained can be found at appendix 4.

ALLOCATING THE CIL SPEND

CIL is a key part of the delivery of the Council Plan priorities and can be spent on any infrastructure item set out on the Regulation 123 list.

Executive Committee were presented with a report on 9th July 2019 detailing the CIL receipts up to the 31st March 2019. The Executive Committee resolved to allocate CIL as follows:

Regulation 123 List Infrastructure Type	Allocation of CIL Strategic Fund (July 2017 to March 2018)	Reason for allocation
Education including primary and secondary provision	40% of £225,686.90 balance after Strategic CIL pot deposit £90,274.76	There is a proven link between the provision of new houses in a given area and increased pressure for additional school places.
Recreation and open space	30% of £225,686.90 balance after Strategic CIL pot deposit £67,706.07	There is a proven link between the provision of new houses in a given area and increased pressure on existing recreational facilities.
Green infrastructure, public realm and air quality	15% of £225,686.90 balance after Strategic CIL pot deposit	It is a Council priority to mitigate the adverse impacts on air quality

	£33,853.04	created by new development.
Habitat mitigation schemes including Suitable Alternative Natural Greenspace	15% of £225,686.90 balance after Strategic CIL pot deposit £33,853.04	Required by European legislation see paragraph 3.4.

The allocations above resulted in a remaining balance of £56,421.72. It was resolved that this sum would be retained and would be the first deposit in a Strategic CIL pot.

Collection period	Total CIL receipts less Neighbourhood funds and 5% admin	Minimum 20% to be retained	Pot total
July 2017- March 2019	£282,108.62	£56,421.72	£56,421.72

As the intention of CIL is a means to fund infrastructure required to support the delivery of the Local Plan, the Council is able to set aside a percentage of each year's CIL receipts into a Strategic CIL pot.

The aim of this funding pot would be to support the delivery of future strategic infrastructure projects which may come forward in the future.

CIL funds can be used for match funding for any project which will fall within the remit of the infrastructure listed on the Regulation 123 list.

This funding pot would be separate to any CIL funds allocated to internal infrastructure providers such as education, recreation and green infrastructure.

AMENDED CIL REGULATIONS

The seventh amendment to the original CIL Regulations (2010) came into force on 1 September 2019. The Government's stated purpose in introducing the revised Regulations is to make developer contributions through CIL and Planning Obligations fairer and more effective, as well as to make their application more transparent.

Key changes introduced in the amended regulations included the following:

- the removal of Regulation 123 Lists and lifting of the pooling restrictions for planning obligations;
- placing monitoring fees on a statutory footing and the introduction of annual Infrastructure Funding Statements (IFS) for monitoring and reporting on CIL and Planning obligations;
- reducing the penalties for failure to submit a notice before commencing building;
- and simplify the process for adopting or amending CIL charging schedules.

These changes will require changes in the way the Council operate and administer CIL and officers are making the necessary changes in compliance with the new regulations.