

## 1. Introduction and Background

1. In January 2019 the London Borough of Haringey (client Officer Emma Williamson, Assistant Director of Planning) commissioned Citiesmode to undertake a high-level review of the council's processes associated with the administration, monitoring and governance of Section 106 (S106) legal agreements and the Community Infrastructure Levy (CIL). In the case of CIL this includes the collection of the Mayor of London's CIL as well as the collection and spend of Haringey's own CIL. Both regimes were considered in the context of their association with the grant of planning permission for development within Haringey.
2. The objective of the review was to analyse the effectiveness of the current processes, including acknowledging areas of good practice, and to identify opportunities for improvement in order to optimise the service and make it more successful. The review included:
  - A two-hour overview workshop held on the 6<sup>th</sup> February 2019 with the Assistant Director of Planning, Development Management Team Leaders, Policy Team Leader, the S106 and CIL monitoring officer and business managers from Finance.
  - A two-hour follow up meeting held on the 7<sup>th</sup> February with the S106 and CIL monitoring officer who is principally responsible for undertaking the daily tasks involved with the monitoring of S106 legal agreements post the grant of planning permission and the administration of the collection and spend of Haringey Council's CIL and the collection and transfer of the Mayor of London's CIL. This allowed a deeper dive in to a number of matters including:
    - The functionality and utilisation of current databases and spreadsheets that are used for the monitoring of the processes associated with S106 and CIL; and
    - Filing and data storage management.
  - Telephone interviews with officers involved in the spend of S106 (but not yet the spend of CIL) for delivery of projects within their service areas in March 2019. This included interviews with an officer from the council's Regeneration service working primarily on public realm projects and an officer leading the council's employment agenda (and with oversight of associated S106 employment and training matters).
  - A review of written internal and external documents linked to S106 and CIL monitoring, collection, spend and reporting.
3. The purpose of this report is to provide the council with a summary of the findings of the review, including an analysis of the current processes, along with detailed recommendations for improvement that are practical and specific to Haringey Council. The report also identifies relevant training needs to support officers involved in the process and recommendations for further support that might be required or accessed from other sources.

4. It should be noted that the review and assessment was focused on the processes associated with the administration, monitoring and spend of S106 and CIL only. It did not therefore include consideration of matters associated with S106 policy or the setting of a CIL charging schedule and neither can it be considered to be a formal audit of the systems.

## 2. S106 and CIL in Context

5. The main planning tools for securing developer contributions to be used towards infrastructure that is required to support development are planning obligations, as secured through Section 106 (S106) legal agreements, and the Community Infrastructure Levy (CIL). The way each of these tools can be used is prescribed in the CIL Regulations 2010 (as amended). S106 is used to address site specific impacts arising from individual developments and to secure planning policy requirements. It is the main tool used to secure affordable housing linked to the grant of planning permission. CIL on the other hand is a strategic tool that is used to address the area wide and cumulative impacts of development.
6. Guidance on how planning obligations are used and secured through S106 legal agreements linked to the grant of planning permission in Haringey is set out in its [“Planning Obligations” supplementary planning document](#) that was adopted by the Council in March 2018. This document sets out the Council’s approach, policies and procedures on the requirement and use of planning obligations. It also sets out the relationship between them and the application of the Haringey CIL.
7. [Haringey’s CIL Charging Schedule](#) was adopted by the Council in July 2014 and came in to effect on 1<sup>st</sup> November 2014. This sets out differential charging rates for residential development (including student accommodation) across three defined zones in the borough. For other types of development single rates apply across the borough and there is no charge for office, industrial, warehousing, defined small scale retail development, health and educational uses. CIL is generally chargeable on most new developments and extensions that include 100 square metres or more of new build floorspace or comprise one or more dwellings. As of June 2018, the Council had collected £4,861,852 of Haringey CIL.
8. In accordance with the CIL regulations the Haringey CIL must be allocated for spend in the following proportions:
  - 70 – 80% on the provision, improvement, maintenance or operation of infrastructure to support the development of the London Borough of Haringey.
  - 15 – 25% of receipts collected within a “neighbourhood” to be ring fenced and spent in agreement with the community on infrastructure to support the development of their area or anything else that supports the development of their area.

It is important to note that where there is a neighbourhood plan made in the area the portion of CIL receipts ring fenced should be 25%. Where there is no neighbourhood plan the amount of CIL ring fenced should be 15% **BUT** capped at £100 per council tax paying dwelling.

- Up to 5% on the costs associated with the administration of the CIL.
9. In December 2018, the [Government undertook a technical consultation](#) on draft regulations which included a proposal to introduce a requirement for authorities to publish an Infrastructure Funding Statement (IFS) by December 2019. If implemented this will mean that

the Council must report on S106 and CIL receipts received, spent and being held as well as identify projects that funds will be spent on over the proceeding five years. The draft regulations associated with this proposal also set out a requirement to provide forecast figures for receipts in future years. Whilst the IFS is not yet a legal requirement it is already referenced in [National Planning Policy Guidance](#) as a tool which can be used for effective cooperation in addressing strategic infrastructure needs.

10. The expectation is that the Regulations will be 'made' and take effect this summer however this is dependent upon Parliamentary timetables and availability. Given that there has not yet been a response by Government to this technical consultation it is anticipated that the requirement for an IFS is likely to be pushed back to December 2020. Notwithstanding, given that many authorities have a back log of historic records associated with the monitoring of S106 agreements it will be prudent for authorities to start to consider now how they will collate and report on this information to aid transparency in the system. This is also linked to the [wider ambition of Government](#) to have all S106, CIL and viability assessments as open data.

### 3. S106 and CIL Health Check

11. Haringey Council has S106 and CIL systems in place which align with the principal legislative and regulatory requirements. There are elements of good practice in the Council's approach. However, there are a number of deficiencies that reduce the efficiency, effectiveness and resilience of the service. A summary of the key areas of assessment that were undertaken is provided at Appendix 1. The 'headline' issues and a more detailed commentary is set out below.

#### **Issue 1: Lack of clarity on roles and responsibilities and processes to be followed**

12. The Assistant Director of Planning maintains good oversight of the systems including in particular expenditure from the S106 and CIL funds by ensuring compliance with relevant legislation or individual S106 agreements. Notwithstanding, at an operational level there is a lack of clarity on the precise processes for monitoring CIL and S106 and on the roles and responsibilities of officers. For example, who does what in the process, when and how is this recorded and what are the procedures for reporting?
13. Some monitoring tasks are undertaken by the S106/CIL officer and some by Development Management officers. It is understood that each scheme about to be implemented should be allocated to a Development Management officer who uses the S106/CIL officer's spreadsheet to actively monitor compliance with S106 agreements. The implementation of this system *has* improved the effectiveness of monitoring, particularly of non- financial obligations (known in Haringey as 'physical obligations'). However, this process needs to be formalised and training embedded.
14. Clarity is needed on how, and who, communicate decisions on compliance with S106 agreements to developers as well as how it is recorded on the Council's systems. Better defining these roles and the task split is also will also benefit internal and external customers who need to know *who* the point of contact is for enquiries related to S106 monitoring. Development Management officers also need to provide more regular feedback to the S106/CIL officer on progress monitoring the S106 – and when any decisions on compliance are made - to ensure records are kept up to date and consistent. Improvements are needed to

increase the efficiency of monitoring and reduce the risk of task duplication *or* of tasks being missed.

15. Council departments other than Planning also have a role in considering compliance with some non-financial obligations for example, energy and employment and training. Significant progress has been made recently with the Employment team who are looking at developing protocols for dealing with S106 obligations relevant to that service area. But the lack of clarity on roles and responsibilities reduces the effectiveness of the monitoring approach. This also inhibits effective resource planning for both the planning service and the other departments in determining who is or who *should be* involved, in the monitoring of S106 or S106/CIL spend and assessing the time needed to undertake these tasks.

#### **Issue 2: Data/ Recording systems are not fit for purpose**

16. The S106 and CIL monitoring system comprises a series of Excel sheets. The record keeping is excellent but there are a number of issues:
  - the data/ records are not 'backed up' (other than as per IT standard on the server) and therefore there is a real risk of file deletion or corruption
  - the records are not in an easily accessible format – either in terms of who can access the files or the degree to which they can be easily used or interrogated.
  - the format of the records requires data input that is labour intensive and includes task duplication. For example, recording the same information in several places. This is in part a response to the difficulty in producing reports in the Excel (rather than ACCESS or other database formats)
  - there is weak / absent data on the spend and delivery of projects in the S106 and CIL monitoring systems (although these are recorded through other reporting mechanisms)
  - The records on the neighbourhood funding allocations show that the appropriate cap on funding is not being applied, although it is noted that no Neighbourhood CIL has been spent yet
  - Spend and delivery information is not integrated with the main S106 and CIL records which will raise challenges for dealing with information requests, including the multitude of freedom of information requests, efficiently and nor in the context of any challenge on spend.
17. There is a clear framework for the governance of spend which was agreed by the council's Cabinet in October 2017. This includes the requirement that all funding for new projects from the strategic CIL revenues will be required to be for projects within the Capital Programme for the borough. Projects are assessed by the Assistant Director of Planning for conformity with the relevant legislation and against guidelines set by the council. This is to ensure that projects support growth and are linked to development in the borough. S106 funding is also made available to service areas to bid for in accordance with the associated legal agreements. Spend on S106 is also reported to the Capital Board.
18. Notwithstanding, the clear governance process it is noted that there are unspent S106 receipts and no current projects held against future CIL receipts. In recent years quarterly reports on receipts are now going to the Capital Board and Borough Plan Delivery Board. However, there may be value in providing further guidance to internal officers on the processes to access funding alongside these regular updates to these officers – and the senior leadership team – on CIL and S106 contributions received and unspent sums.

#### **Issue 2: Resource challenges**

19. Many aspects of S106 (and to a lesser degree CIL) monitoring are carried out by a single S106/CIL officer. The S106/CIL officer works with a high degree of autonomy. Engagement on

a day to day basis from their line manager is low compared to other work streams within the team, for example, on local plan (it is noted that the line manager is part-time). An unintended consequence of this, is that wider awareness of day to day CIL and S016 processes and record keeping across the department is low. This raises significant service continuity risks.

20. The S106/CIL Officer is experienced and highly capable and maintains good records and has excellent relationship management skills. However, working across S106 and CIL combined with cumbersome systems reduces the capacity to step back and look at the bigger picture to undertake system checks or proactive monitoring. This means that there is:
  - limited or no checking to see if CIL cases are being missed by Development Management at the planning application stage or any analysis of how the CIL liability cases relate to the information the council has on development completion data
  - no review on whether land charges are implementing Stage 1 and Stage 2 land charges effectively (including claw back provisions).
21. Better systems for allocating and monitoring neighbourhood CIL proportions need to be put in place. This should include applying the appropriate 'cap' based on the number of council tax paying dwellings for 15% of CILs in those areas not covered by a neighbourhood plan. It is noted that no Neighbourhood CIL has been spent yet and the small ward size and levels of CIL means this is unlikely to change the amount; however, circumstances may change. The neighbourhood funding should be calculated in line with the CIL Regulations and it is important that this is communicated accurately to communities so that they understand how funds are apportioned.

## 4. Recommendations

22. There is a need for the development of, and investment in, the S106 and CIL systems at Haringey to improve the efficiency and resilience of the system. Key recommendations include:
23. **Recommendation 1: Develop a Section 106 and CIL manual with protocols that clearly establish who is responsible for which stage this should clarify matters in relation to monitoring (not policy or legal agreements).** This will help in the context of any future audit and should cover:
  - The roles and responsibilities of the S106/CIL Officer and Development Management officers related to S106 including mechanisms for feedback/ information sharing and on CIL in particular how reliefs are issued by who and when
  - Locations of files and databases on potential receipts, actual receipts and spend and who has access/ who approves access
  - The role of other services in the process including finance, land charges and the legal team as well as other council departments – e.g. Employment and training, carbon offset, car free etc.
  - How and when potential and actual receipts and spend are reported internally, who receives these, and when they are published in line with legislation and by whom
  - The details of the cost centres and codes where CIL and S106 funding is held and who has access to these to (i) view transactions and (ii) journal payments to internal costs centres or make payments to external organisations
  - How to bid for/ draw down funds in accordance with the relevant legal requirements, how this is approved and signed off and how it is recorded (including capturing the details of the recipient cost centre/ account) and how delivery of the project is monitored.
  - Clearly defined roles for the S106/CIL officer and finance on responsibilities for identifying, recording payments and transferring funds for spend

- The format and frequency of reporting from the Finance team to S106/ CIL Officer, Head of Planning Policy, Transport and Infrastructure and Assistant Director of Planning on transactions in/out of the S106 and CIL cost centres and codes.
24. **Recommendation 2: Invest in a S106 and CIL database to make monitoring and reporting more efficient, bring records into a single location and standardise approaches to record keeping.** This will help the council respond to the emerging requirements from Government notably Infrastructure Funding Statements, make reporting easier and provide a more secure platform to hold important information. The costs can be met through the monitoring fees that the council retains for administration and monitoring. A bespoke S106 and CIL system should be used or as a minimum a well-designed access database that is properly backed up on a regular basis (in addition to as per IT standard on the server).
25. One option might be the EXACOM system which deals with processes end to end (so charge, collection and spend) and has an option to include a public facing module: <http://pfm.exacom.co.uk/midsuffolkbabergh/cil.php>. This system also accommodates neighbourhood CIL monitoring and reporting (and deals with the application of the relevant cap as referenced above). The Council should buy access to BCIS indices to ensure the index applied is up to date (it may be that the license costs can be shared with other council departments it should be noted that RICS members may be able to access it at a discount). In the interim, regular back-ups of all CIL and S106 files are essential and advice on how to do this from the council's IT support should be sought (other than as per IT standard on the server).
26. **Recommendation 3: Expand the CIL and S106 resource to more officer resource to improve systems, minimise resource risk, prepare for new reporting requirements (e.g. infrastructure funding statements) and adopt more proactive approaches that are likely to help optimise receipts and efficiency.** Consideration should be given to:
- Ensuring that a single manager within planning has a greater role in the day to day management ensuring adherence to the manual/ protocols across the council. They should also ensure that they have oversight of the dedicated S106 and CIL staff resource needs, performance and an awareness of any team member support requirements.
  - Creating a new S106 and CIL Post at PO4 level to better reflect the **existing** scope of responsibilities especially in connection to Finance and strategic relationship management. This would also encourage responsibility for more proactive monitoring/ system checks and to **introduce new supervisory responsibilities**. Linked to this it may be appropriate to provide this role with greater exposure to spend decisions and regular reporting to senior management teams (including in the context of the IFS). This will ensure that there is a greater sense of where the role fits in the council's structure, what it delivers and provide the greater visibility internally that the position requires.
  - The existing CIL / S106 officer post (PO2 level) should be retained to focus on day to day S106 monitoring and issuing the required CIL notices.
23. It should be noted that attempting to implement a new S106 / CIL software with one officer would significantly impact their ability to continue to undertake the current day to day work. This could therefore put the council at risk of loss by impeding the required daily monitoring functions. Indeed, the scope of any data transfer exercise should be assessed, and if appropriate consideration be given to temporary support to help with the transfer of historic records.
24. **Recommendation 4: Instigate a regular programme of training for Development Management officers on CIL.** Training of officers should not be considered as a one off and should be carried out on a quarterly basis to deal with staff changes and as a refresher to

ensure compliance with regulations and build the capability of officers to administer CIL. This should cover:

- Identifying what is a CIL case
  - CIL calculations including how to deal with existing floorspace (when it can be offset and when it cannot) and how reliefs are calculated
  - Feedback from the Development Management officer to the S106/CIL officer on any issues and protocols on information sharing
25. It may also be helpful to advise officers of the projects that have been allocated S106 and CIL funding to help them understand the important role that these planning tools have in place shaping and supporting the development of the borough

## 5. Next Steps

26. It is recommended that the council progress the actions above. It is suggested that based on this report, the following immediate actions are undertaken:
1. *Prioritise production of a first draft working manual based on the knowledge of the S106 officer of process in the first instance (wider engagement/ sign up can be programmed in)*
  2. *Carry out training for all Development Management officers on CIL liability calculations and clarify their role in the S106 monitoring process – including what information and approvals should be fed back to the S106 officer*
  3. *Back up of records (CIL and S106 files) securely and regularly (in addition to as per IT standard on the server)*
  4. *Ensure there is more oversight of CIL and S106 tasks at a day to day operational level and take steps advertise for additional resources.*
26. CITIESMODE PLANNING are available to deliver a presentation of the findings to the Assistant Director of Planning and any other officer(s) as directed. This will provide an opportunity for us to clarify the content, answer any questions and provide more detailed advice on the actions recommended.

## APPENDIX 1 Summary Health Check February 2019

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| Green = A good approach with no or only minor suggestions to improve effectiveness | Orange = Improvements needed to ensure effective operation of S106 and CIL systems | Red = Risk to service delivery/ continuity and non-compliance with regulations |
|--|--|--|

|  | INDICATOR   | ASSESSMENT  | RAG SCORE    |
|--|---|---|--------------|
|  | <b>Overall management of function and service</b>                       | <p>The Assistant Director of Planning maintains oversight of the systems including governance and reporting.</p> <p>The Assistant Director of Planning instigates service improvements and monitors outputs overall.</p>  | <b>Green</b> |
|  | <b>Day to day management oversight/ checking of monitoring function</b> | <p>The Policy manager provides useful reporting support to the Assistant Director of Planning but the part time basis means there has been less day to day engagement with the work of the S106/CIL officer (compared to other project areas), low interface with how applications are considered for CIL liability in Development Management with no overall checking of systems and process or S106 officer performance. There is also low oversight of the level of demand on the S106/CIL officer from the Finance team and the impact of this on day to day monitoring – it is noted that there are a high number of time-consuming finance tasks that are undertaken by the S106/CIL officer.</p> | <b>Red</b>   |

|  | INDICATOR  | ASSESSMENT   | RAG SCORE |
|--|--|--|-----------|
|  | <b>Capability (skills) and capacity of officer(s) responsible for Section 106 monitoring</b> | <p>The S106 monitoring is primarily undertaken by the S106/CIL monitoring officer (all financials and some non-financials). However, some monitoring in parallel is done by the Development Management service. The exact scope of this is unclear and appears inconsistent across the team with at times weak feedback on monitoring from the Development Management Officers to the S106/CIL monitoring officer (including the use of separate recording systems). The employment and training team are more directly involved in employment and training obligations.</p> <p>As well as good organisation skills, a major strength of the officer is good relationship management across and beyond the authority - this increases the effectiveness of the service and is under utilised at present.</p> | Orange    |
|  | <b>Capability (skills) and capacity of officer(s) responsible for CIL admin</b>              | <p>CIL administration is split with Development Management calculating liability and the S106/CIL officer issuing demand notices. This split is sensible and necessary given that there is only one officer in post. It also helps minimise any lag between the issue of decision notices and CIL liability notices.</p> <p>The S106/CIL officer issues CIL demand notices effectively based on the liability notice. There may be a need for further (and ongoing training) to ensure Development Management officers are capturing CIL cases and calculating these accurately. Particular attention should be paid to calculation of reliefs and any netting off of existing floorspace</p>  | Orange    |
|  | <b>Capacity of officer(s) responsible for CIL admin</b>                                      | <p>The S106/CIL Monitoring officer is experienced and capable with high standards of work. However, the officer is stretched across S106 and CIL demands meaning there is limited capacity to undertake proactive monitoring (checking for missed CIL cases, proactive chasing up of commenced developments) or systems improvements. A substantial amount of officer time is spent on financial tasks (recording receipts and setting up journals which are checked and approved by finance). While more efficient to have the S106/CIL officer doing this from a corporate and systems perspective this is a time consuming task which is not necessarily acknowledged in the work planning for the officer.</p>   | Red       |

|  | INDICATOR  | ASSESSMENT  | RAG SCORE |
|--|--|---|-----------|
|  | <b>Contact points for internal and external customers</b>                    | Internal customers seem to know who to contact and for what. This is possibly mainly as a result of the S106/CIL officer being in post for so long rather than a clear protocol for communication of who to contact. This could raise issues for new officers. External contacts were not assessed as part of this process but there were no obvious issues. Notwithstanding this consideration should be given to the provision of a standalone CIL and S106 inbox so that emails are accessible (not limited to one officer) to support service continuity. | Green     |
|  | <b>S106 Database/Records</b>   | There is good record keeping with key data recorded. But the current approach is neither secure in terms of back up, or easy to update and interrogate (other than as per IT standard on the server). Reporting from the Excel sheets is cumbersome and inefficient and unlikely to be suitable to emerging requirements from government on data transparency and standardisation. Emerging government requirements to produce infrastructure funding statements also demand more investment in systems to enable fast and comprehensive reporting.           | Red       |
|  | <b>CIL Database/ Records</b>   | <b>As above.</b><br>In addition, neighbourhood CIL pots are not being calculated or recorded correctly as the relevant cap is not being applied. Even though the sums identified are unlikely to differ the system should use the correct method of calculation.  | Red       |
|  | <b>Interface with Land Charges</b>   | This was not assessed as part of this projects. Scored orange primarily to flag the need for review as land charge data was not recorded in S106/ CIL records and no evidence of spot checking of this – whether the charge is applied or when it is removed. Particular attention should be given to ensuring Stage 2 (Demand notice) charges stay on for 7 years.   | Orange    |
|  | <b>Identification of CIL cases and calculation of CIL (including relief)</b> | Limited cross checking of these cases is undertaken and potentially a lack of clarity about exactly how reliefs are being administered and recorded from the Development Management team. Not necessarily a compliance issue but it is clear that further training is needed for Development Management managers and no doubt other officers involved   | Orange    |
|  | <b>CIL Demand notices payments</b>   | Issued by the S106/CIL monitoring officer – no issues but it is noted that there is limited checking of whether cases were missed at liability stage  | Green     |

|  | INDICATOR  | ASSESSMENT   | RAG SCORE |
|--|--|--|-----------|
|  | <b>Calculation of S106 financials and payments</b>                         | Checks of calculations not undertaken as part of the assessment  | Green     |
|  | <b>Ensuring compliance with S106 non-financials / physical obligations</b> | As noted above S106 monitoring is primarily undertaken by the S106/CIL monitoring officer (all financials and some physicals); However, some monitoring (physical obligations) is undertaken by Development Management. There is a lack of exact split of tasks, application appears inconsistent across the team with and there is in some instances weak/ infrequent communication back to the S106/CIL monitoring officer on compliance or non compliance with obligations. Separate recording systems are used/ notes and correspondence are not saved to the same file location. As a consequence, records <i>may</i> not be complete or up to date and it may be confusing for external customers. | Orange    |
|  | <b>Governance of spend</b>   | There is a published document setting out the governance approach to CIL (although not S106). There are good controls for spend with PIDS and an application, a board to consider spend and formal sign off process by the Assistant Director of Planning. Transparent systems in place, routed through a corporate board and with clear mechanisms for sign off and a form for audit. Consideration should be given to making clear that there is delegation to Planning Managers such as the Head of Planning Policy, Transport and Infrastructure of some levels of sign off in absence of the Assistant Director   | Green     |
|  | <b>Processes for accessing / transferring funding</b>                      | The processes are in place and do operate (based on know-how of finance/ S106/CIL officer) but should be codified so the process is clear should someone else have to pick it up as well as for transparency. There is a weak feedback loop on the delivery of projects to the S106/CIL officer.   | Orange    |
|  | <b>Reporting</b>   | Reporting in line with CIL Regulations is undertaken. However, more consistent reporting could be done internally particularly to push for expenditure of historic S106 receipts in line with agreements. Data on spend is not well integrated with main CIL and S106 receipts and could be clearer for audit. However, it should be acknowledged that it is not impossible as decisions on spend are recorded.  | Orange    |