

**Report for:** Housing and Regeneration Scrutiny Panel - January 15 2019

**Title:** CIL and Section 106 Briefing Note Planning Service - January 2019

**Report authorised by:** Helen Fisher, Director- Housing, Regeneration and Planning

**Lead Officer:** Emma Williamson, Assistant Director-Planning, x5507, emma.williamson@haringey.gov.uk

**Ward(s) affected:** All

**Report for Key/  
Non Key Decision:** N/A

## **1. Describe the issue under consideration**

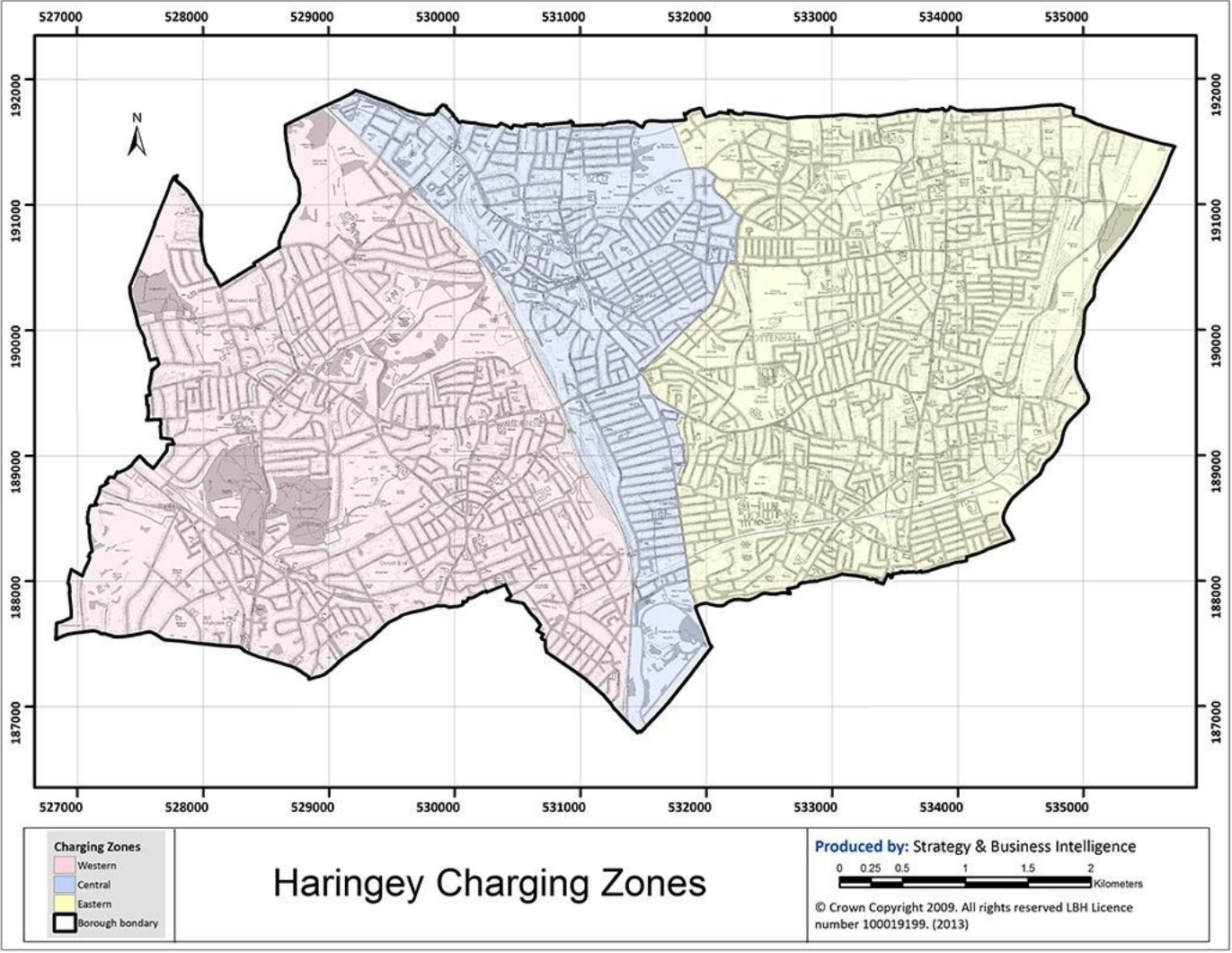
The Assistant Director - Planning was requested by the Scrutiny committee to provide an update on Section 106 and CIL.

## **2. Community Infrastructure Levy**

- 2.1 In Haringey a minimum of 19,802 homes are planned to be built and 12,000 new jobs created by 2026. This growth will result in increased pressure on local infrastructure, services and facilities, creating demands for new provision. The Council and developers have a responsibility through the planning process to manage the impact of this growth and ensure that any harm caused by development is mitigated and that the necessary infrastructure is provided.
- 2.2 The Infrastructure required to support this growth has been identified in the Council's Infrastructure Delivery Plan. The Council expects new development to contribute to site related and wider infrastructure needs through a combination of the following mechanisms:
- Planning conditions (site/development related)
  - Planning obligations to secure developer contributions or works in kind eg Section 106 agreements (site/development related)
  - CIL (strategic local and borough-wide infrastructure)

2.3 Haringey introduced its Local CIL in November 2014. The rates are set out below along with the relevant map showing the zones. Note that, in addition to local CIL, Mayoral CIL is also applicable.

<b>CIL Charging Schedule for Haringey</b>				
<b>Use</b>	<b>CIL charge (£/square metre)</b>			
	<b>Western</b>	<b>Central</b>	<b>Eastern</b>	<b>Mayoral CIL</b>
Residential	£265	£165	£15	£35
Student accommodation	£265	£165	£15	£35
Supermarkets	£95			£35
Retail Warehousing	£25			£35
Office, industrial, warehousing, small scale retail (use class A1-5)	Nil Rate			£35
Health, school and higher education	Nil Rate			Nil
All other uses	Nil Rate			£35
<p>Superstores/supermarkets are defined as shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit.</p> <p>Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items, and other ranges of goods, catering mainly for car borne customers.</p>				



## **CIL Review**

- 2.4 An update of Haringey's current CIL was recommended through a 'Scrutiny in a Day' review.
- 2.5 To support the establishment of new CIL rates, a viability evidence base was procured. The original BNP study was borough-wide and concluded that development could not support the existing CIL rates in the western and central zones as a result of inflation and rising build costs. However, the southern part of the eastern zone could support a substantial uplift from £15/sqm (£17.70/sqm with inflation since 2014) to £130/sqm exclusive of Mayoral CIL.
- 2.6 The BNP study concluded that development within the northern part of the eastern zone could not support an increase in CIL rates (i.e. above the existing £60.70/sqm (£15/sqm + £35/sqm + inflation since 2014)).
- 2.7 Directed by the evidence, in preference to reducing the rates in the western and central zones, it was decided to progress with a partial review focused on the eastern zone.
- 2.8 The proposed new CIL rates, a revised Regulation 123 List and proposed CIL governance arrangements were reported to Cabinet in December 2016 and approved for public consultation.

## **Consultation**

- 2.9 Consultation on the Preliminary Draft Charging Schedule (PDCS) was held from 10th March to 21st May 2017.
- 2.10 15 representations were received but only one was considered to raise a valid issue – that, for outline applications the Council has already granted, the new CIL rate would be applicable to subsequent reserved matters applications. In these circumstances, the Council has granted the applications based upon a balance of obligations and viability predicated on the current CIL rate of £15/sqm (£17.70). The imposition of an increase in CIL to £130/sqm would be a significant detrimental impact on delivering these schemes and the levels of affordable housing negotiated.
- 2.11 It was concluded that this would impact on three strategic development sites that had outline planning permission in Tottenham Hale. Officers therefore sought legal advice.

## **Summary of Legal Opinion**

- 2.12 Planning permission "first permits development" on the day that the planning permission is granted for that development. The CIL Regulations were amended in 2014 to make different provision for phased development, such that: -

*"In the case of an outline planning permission, the planning permission "first permits" a phase of the development (regs. 8(2) and 8(3A)(a)) -"(i) on the day of final approval of the last reserved matter associated with that phase; or(ii) if earlier, and if agreed in writing*

*by the collecting authority before commencement of any development under that permission, on the day final approval is given under any pre-commencement condition associated with that phase.”*

- 2.13 The reference to “final” in the last sub-para is slightly misleading, as the main point is that the Council can agree that the liability for CIL is calculated on the day that approval is given under any of the pre-commencement conditions.
- 2.14 In practice this means that the CIL rate can be fixed at the point when the first pre-commencement condition on the first reserved matters application in each outline application is approved. Nevertheless, the legal opinion concluded that we had also fallen foul of the National Planning Policy Guidance, which set out the following: *“When reviewing their charging schedule, charging authorities should take account of the impact of revised levy rates on approved phased developments, as well as future planned development.”*
- 2.15 Unfortunately, the outline permissions granted in Tottenham Hale had not been taken into account in the BNP viability work carried out to support the increased rate.
- 2.16 For the sites affected in Tottenham Hale, we estimated that they would discharge their pre-commencement conditions by January 2019. Given that we did not wish to undermine the current levels of affordable housing agreed on these sites, Cabinet recommended to delay the revision of the CIL until a projected implementation date of January 2019.

#### **Further changes impacting a review**

- 2.17 In June 2017, the Mayor of London published revised Mayoral CIL rates that would see Haringey’s Mayoral CIL rate increase from £35/sqm (*£43/sqm inclusive of inflation*) to £60/sqm. Given the current inflation adjusted rate, it was not considered the application of an additional £17/sqm would put development within the borough at risk and that the funding was required to fund Crossrail2 in the future, which would significantly benefit Haringey residents. This was the Council’s response.
- 2.18 No further consultation has taken place on the Mayoral CIL. Although indications are that the GLA are still planning to bring this into effect in 2019.
- 2.19 The evidence base prepared by BNP, in support of the review of the Haringey CIL, was prior to the consultation and has not had regard to this potential increase in Mayoral CIL, which is effectively ‘top-sliced’ from the local CIL rate.
- 2.20 In January 2018, the Government published consultation on proposed amendments to developer contributions (i.e. both S106 and CIL). There were many welcome proposed changes. These include:
- Reducing the stages required to prepare and consult upon the introduction or review of a CIL, making it around four to five months shorter;

- Lifting the pooling restrictions on S106's for 'strategic development sites', which would enable Haringey's growth areas to be excluded from CIL and subject to just planning obligations to deliver all infrastructure needed to support the planned development;
- Allowing CIL rates to be set based on the existing use of the land. This would allow the Council to capture any value generated through planning permissions to fund infrastructure, such as the change of use from low grade industrial use to mixed-use with a significant proportion of high value residential use.

2.21 The Government is currently consulting on further changes.

**Timetable for Review**

2.22 Given the changes list above, it would be necessary to start the review afresh. This includes commissioning a new viability evidence base and updating the infrastructure requirements plan. A revised viability report has been commissioned.

2.23 Assuming the change is made to streamline the process, below is an indicative work plan:

Stages	Months															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Commission evidence	█	█	█													
Draft new Charging Schedule			█													
Regulatory approvals				█	█	█										
Consultation						█	█									
Analysis of comments & amend Charging Schedule							█	█								
Regulatory Approval for submission to SoS									█	█	█					
Submission											█					
Examination in Public														█		
Receipt of Inspector's report																█
Formal adoption																█
Implementation																█

**2.24 CIL collected since inception of Mayoral and Borough CIL**

Ward	CIL Collected (minus Admin) 2015/16	Neighbourhood Portion	CIL Collected (minus Admin) 2016/17	Neighbourhood Portion	CIL Collected (minus Admin) 2017/18	Neighbourhood Portion	CIL Collected (minus Admin) 2018/19 Qtr 1	Neighbourhood Portion	%	Total Neighbourhood Portion Collected
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Year	Mayoral	Borough	Total Amount
2012/13	90,856.49	-	<b>90,856.49</b>
2013/14	454,386.72	-	<b>454,386.72</b>
2014/15	329,074.03	-	<b>329,074.03</b>
2015/16	2,602,303.82	764,856.73	<b>3,367,160.55</b>
2016/17	3,957,496.79	1,904,625.21	<b>5,862,122.00</b>
2017/18	890,240.67	1,887,688.21	<b>2,777,928.88</b>
2018/19 (Q1)	736,130.52	368,975.96	<b>1,105,106.48</b>
<b>Total</b>	<b>9,060,489.04</b>	<b>4,557,170.15</b>	<b>13,986,635.15</b>

2.25 Haringey CIL is divided into 3 portions- Strategic portion (generally 80% ), Neighbourhood portion (generally 15%) and administration portion (5%)

CIL spent:

2.26 Mayoral CIL is just collected by Haringey and passed across to TfL on a quarterly basis after the deduction of a 4% administration portion that remains with Haringey. £1.9 million was spent in 2016 on the expansion Bounds Green Primary School.

Neighbourhood portion

2.27 The following table shows the neighbourhood portion collected from introduction.

Alexandra					24,143.59	3,621.54	89,977.46	13,496.62	15%	<b>17,118.16</b>
Bounds Green			121,646.27	18,246.94	131,042.27	19,656.34	25,752.14	3,862.82	15%	<b>41,766.10</b>
Bruce Grove	1,513.35	227.00	1,268.22	190.23	4,160.40	624.06			15%	<b>1,041.29</b>
Crouch End	66,889.98	16,722.49	138,111.81	34,527.95	16,132.95	4,033.24	35,556.16	8,889.04	25%	<b>64,172.72</b>
Fortis Green			266,827.56	40,024.13	188,010.71	28,201.61	39,536.33	5,930.45	15%	<b>74,156.19</b>
Harringay	38,588.05	5,788.21	806,130.94	120,919.64	769,693.77	115,454.07	7,333.39	1,100.01	15%	<b>243,261.93</b>
Highgate	635,440.13	158,860.03	146,883.54	36,720.88	184,029.25	46,007.31			25%	<b>241,588.22</b>
Hornsey			30,089.42	4,513.41	155,757.22	23,363.58			15%	<b>27,876.99</b>
Muswell Hill	6,293.75	944.06	44,308.00	6,646.20	302,104.53	45,315.68			15%	<b>52,905.94</b>
Noel Park			12,225.87	1,833.88	28,972.42	4,345.86			15%	<b>6,179.74</b>
Northumberland Park			2,493.24	373.99	6,626.25	993.94			15%	<b>1,367.93</b>
Seven Sisters			972.98	145.95					15%	<b>145.95</b>
St. Anns	2,664.75	399.71			412.34	61.85	299.23	44.88	15%	<b>506.44</b>
Stroud Green	1,183.23	177.48	3,373.45	506.02					15%	<b>683.50</b>
Tottenham Green	598.50	89.78	14,364.71	2,154.71	34,625.28	5,193.79	96,434.69	14,465.20	15%	<b>21,903.48</b>
Tottenham Hale					5,375.63	806.34	9,792.71	1,468.91	15%	<b>2,275.25</b>
West Green	11,015.25	1,652.29	20,546.68	3,082.00	254.42	38.16			15%	<b>4,772.45</b>
White Hart Lane	669.75	100.46	5,985.00	897.75					15%	<b>998.21</b>
Woodside			289,397.52	43,409.63	36,347.19	5,452.08			15%	<b>48,861.71</b>



<b>Total</b>	<b>764,856.74</b>	<b>184,961.52</b>	<b>1,904,625.21</b>	<b>314,193.32</b>	<b>1,887,688.22</b>	<b>303,169.45</b>	<b>304,682.11</b>	<b>49,257.93</b>		<b>851,582.20</b>
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- 2.27 At October 2017 Cabinet it was agreed that all funding for new projects from strategic CIL revenues will be required to be for projects within the Capital Programme for the borough, which are assessed by the Assistant Director for Planning as being CIL eligible and suitable to support growth linked to development in the borough. It has been agreed with members to refresh the Capital Programme and this review will ensure all the projects needed to support regeneration are listed.
- 2.28 Where there is a neighbourhood plan in place, the neighbourhood plan should identify the local neighbourhood projects required to support development proposed by the plan or to give effect to policies/proposals within the plan. Projects eligible for the neighbourhood portion of CIL funding should be specifically identified and, where appropriate, projects prioritised. In areas where a neighbourhood plan is in place 25% of the CIL is allocated to the Neighbourhood portion, elsewhere it is 15%.
- 2.29 In areas where there is not an adopted neighbourhood plan, wards have been grouped into 8 CIL Neighbourhood Groups. Consultation will be undertaken this year with the communities in each of these group areas to identify and prioritise projects specific to each that the neighbourhood portion of CIL could deliver in part or full. The indicative list of projects for each Neighbourhood Group area will be provided on the Council's website alongside the neighbourhood portion of CIL receipts received and owing. Neighbourhood projects costing more than £100k will be referred to the Council's Capital Board for approval, otherwise, the Assistant Director for Planning will approve the projects following an assessment of CIL eligibility and evaluation against criteria to ensure these support new development and growth, and represent value for money.
- 2.30 The CIL Neighbourhood Groups are set out below alongside the funding available up to June 2018:
- Area 1 – Fortis Green, Alexandra and Muswell Hill wards £144,1809.29
  - Area 2 – The areas of Highgate & Crouch End wards outside of the Neighbourhood Plan areas, along with Hornsey and Stroud Green wards TBC as the Highgate Neighbourhood Plan area needs to be plotted

- Area 3 – Bounds Green ward £41,766.10
- Area 4 – Noel Park and Woodside wards £55,011.45
- Area 5 – Harringay ward £243,261.93
- Area 6 – White Hart Lane and Northumberland Park wards £2,366.14
- Area 7 – West Green, St Ann's and Seven Sisters wards £5,424,84
- Area 8 – Tottenham Green, Bruce Grove and Tottenham Hale wards £25,220.02

2.31 The Planning Service has recently concluded a consultation asking for ideas from the community within each CIL Neighbourhood Group in order to compile an initial list of projects and the priorities. CIL receipts raised within each CIL Neighbourhood Group will then be spent against the list of projects compiled for each area with the decision on this spend being made by the Assistant Director of Planning in consultation with the Capital Board/P4 board (to be decided). Approximately 250 responses were received and these are currently being collated and analysed.

2.32 The Assistant Director of Planning will assess and prioritise project proposals against the following set of guiding criteria:

- a) The proposed project has the support of the service provider or operator;
- b) The use of CIL funding is necessary as no alternative funding sources are available to deliver the proposed infrastructure, including funding that may be made available in a later funding period (the exception is where there is an urgent need for the infrastructure and the Council can secure the CIL funds to be reimbursed at specified later date);
- c) The proposed infrastructure will promote a sustainable form of development and will not give rise to local impacts;
- d) The use of CIL funding can help to optimised the delivery of identified infrastructure through the ability to leverage other sources of funding, such as match or gap funding, or to reduce borrowing costs;
- e) The use of CIL funding can provide additionality to a capital infrastructure project that maximises the benefits of the parent project where mainstream funding does not provide for this;
- f) The use of CIL funding can increase the capacity of existing strategic infrastructure;
- g) The use of CIL funding can help to deliver coordinated improvements within the area;
- h) The use of CIL funding can help to accelerate the delivery of regeneration initiatives;
- i) The use of CIL funding will help further sustainable economic growth for the benefit of the area or the borough;
- j) The proposed infrastructure is of a sufficient scale or scope so as to positively impact the local area;
- k) The proposed infrastructure can be delivered within 24 months of authorisation;

l) The use of CIL funding represents value for money and will not give rise to long-term liabilities that place a financial burden on the service provider or operator.

2.33 The more criteria met, the greater the priority the CIL funding a project will receive.

2.34 The consultation will be rerun every two to three years to ensure the projects and priorities are still the most relevant to the local community.

CIL admin portion

2.35 4% of Mayoral CIL and 5% of Haringey CIL is protected for use in administering the function.

Year	Mayoral CIL Admin 4%	Borough Admin 5%	Total Amount
2012/13	3,785.68	-	3,785.68
2013/14	18,932.78	-	18,932.78
2014/15	13,711.42	-	13,711.42

2015/16	108,429.33	40,255.62	148,684.95
2016/17	164,895.70	100,243.43	265,139.13
2017/18	37,093.36	99,352.01	136,445.37
2018/19	30,672.10	23,864.26	54,536.36
Totals	377,520.37	263,715.32	641,235.69

2.36 £428,299.33 of this admin portion has been spent since 2012/13 and £158,400 remains in reserve.

2.37 This money has been used to fund the CIL Officer, contributions to planning officer time and management time, staff training and the costs associated with the CIL review.

#### Review of the management process

2.38 A review of the management of CIL collection, spend and reporting was an outstanding item from the Planning Service Improvement programme. A recent review of the CIL process by the Assistant Director has led to the conclusion that, given the level of development expected in the coming years and the level of complexity of the queries received that another post should be proposed in the forthcoming restructure.

2.39 In addition a review by a specialist CIL management consultancy will be taking place in February 2019. The initial review by the Assistant Director, after discussion with staff involved in the process and a desktop analysis of the processes, suggests potential matters to be improved following this review would potentially be the procurement of a specialist database, succession planning and improvement of reporting processes.

### **3. Section 106 (planning obligations)**

3.1 Where a development proposal does not meet the standards required of local planning policy, it may be possible to make acceptable development proposals which might otherwise be unacceptable through the use of planning obligations. Planning obligations are used to secure measures which are essential for the development to proceed and measures which are required to mitigate the impact of the development. Planning obligations do this through prescribing the nature of a development (eg by requiring a proportion of affordable housing); securing a contribution from a developer to compensate or re-provide for loss or damage created by a development (eg

through the transfer of land, the requiring of a cash payment to be made, or new habitats to be created) and mitigating a development's impact on the locality (eg through environmental improvements and the provision of both on and off-site infrastructure and facilities to serve the development such as new roads or junction improvements which without the proposed development taking place would not necessarily be required).

- 3.2 The outcome of the use of planning obligations should be that the proposed development is brought into compliance with the Local Plan policies and that any development specific works are undertaken satisfactorily. Used properly, planning obligations can significantly increase the quality of development.
- 3.3 While planning obligations can secure benefits capable of mitigating the adverse impacts of a development, they cannot however, be used to make a bad application good where, for example, a schemes does not comply with the spatial strategy and land use principles of the Local Plan.
- 3.4 Planning obligations can be made pursuant to several different legislative provisions but are most usually made under section 106 of the 1990 Town and Country Planning Act. This is where the term Section 106 agreement derives from.
- 3.5 Planning Obligations may either be positive ie requiring a person to carry out specified actions or negative is restricting a person from developing or using the land in a specified way.
- 3.6 These agreements run with the land and may be enforced against the person entering into it and against any successors in title.
- 3.7 The National Planning Policy Framework sets out that planning obligations need to meet three tests:
  - Be necessary to make the development acceptable in planning terms;
  - Be directly related to the development; and
  - Be fairly and reasonably related in scale and kind to the development.
- 3.8 It is not lawful to collect Section 106 contributions which are covered by CIL. In addition currently Section 106 contributions cannot be pooled from more than 5 sites.
- 3.9 The table below sets out the amount of Section 106 contributions that has been negotiated, received and spent since 2011/12.
- 3.10 To note the total figure negotiated, spent and collected set out are independent figures for each year ( ie the 5.755 spent in 2012/13 is not necessarily part of the 4.238 collected). Schemes subject to Section 106 agreements may take several years to reach construction stage, and may have several trigger points for payment of money due.

<b>£mn</b>	<b>2011/12</b>	<b>2012/13</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>2018/19 (Q1)</b>	<b>Total</b>
Negotiated	21.898	4.238	6.548	3.716	3.898	3.249	5.95	<b>43.547</b>
Collected	2.068	4.019	0.992	2.867	2.104	1.843	0.007	<b>13.9</b>
Spent	0.419	5.755	0.743	1.693	0.158	3.92	0.133	<b>12.82</b>

3.11 The £21 million negotiated in 2011/12 was a combination of a number of large development proposals receiving approval, including Clarendon Road (£8 million) and Hale Village (£10 million). In fact the Clarendon Road sum will not be received as the scheme has now been superseded and the new section 106 sum is within 2017/18 negotiated figure. It is lower as most 106 items are now superseded by CIL payments.

#### S106 Spend – 2017/18

<b>Planning Obligation Type</b>	<b>Amount Spent</b>
Affordable Housing	1,571,954.52
Education	1,773,874.92
Employment	499,854.00
Highways/Transport	67,000.00
Recreation	5,600.00

3.12 The Total amount of Section 106 contributions that remains unspent is circa £2 million

#### Agreement of Section 106 spend

3.13 The Planning Service send out the available Section 106 funding to departments of the Council on a quarterly basis. Departments then need to bid for this funding. These bids are considered by the Assistant Director-Planning as to their suitability and are then put forward to the P4 Operational Board for approval. The spend is reported to the Capital Board on a quarterly basis.

- 3.14 There is an option for Developers to ask for Section 106 money that is not spent within 5 years to be repaid. In practice this very rarely happens. The monitoring tables are colour coded and is red where the 5 years have expired, amber after 3 years and green otherwise.

#### Revised processes

- 3.15 Following a review of section 106 processes which was again part of the Planning Service Improvement plan our processes around administering Section 106 agreements and monitoring compliance has been amended.
- 3.16 Previously the Section 106 requirements for each application were set out in a summary sheet for each application and kept on the drive with all the section 106 agreements as well as a master sheet that has all obligations on one master spreadsheet for all 106 applications. This system relied on the one Section 106/CIL monitoring officer. Given the number of schemes that will have starting shortly this is no longer sustainable. In addition there is a desire for planning officers to take responsibility for the process end-end. The new process that is currently in the process of being implemented requires each case officer to compile a detailed spreadsheet after the decision is issued setting out each obligation and the timeframe for it to be submitted (i.e. pre-implementation, pre-occupation etc). The case officer is then responsible for monitoring that obligations are carried out/paid when they should be. In the forthcoming restructure two additional enforcement monitoring/compliance posts are proposed in order to allow for pro-active site visits.

#### Remedies for non-compliance

- 3.17 There are not high levels of non-compliance, currently we have two cases where we have negotiated staged payments, however the following sets out what the process is when an obligation is not complied with.
- 3.18 In the event that a person breaches an obligation to pay a contribution under a section 106 agreement, the Council has the statutory power to apply to court for an injunction requiring payment of the contribution and, if the development is still underway, prohibiting any further building and occupation of the development until the debt has been paid. If a person fails to comply with an injunction, the court has the power to impose a fine or commit them to prison. Alternatively to seeking court injunctions, the Council can commence legal proceedings as a private debt claim, although by pursuing this option the Council cannot apply for a restriction on the developer prohibiting them carrying out and occupying the development. Normally any unpaid contribution in breach of a section 106 agreement will be subject to indexation and interest.
- 3.19 The Council has a range of statutory powers for non-payment of CIL, which includes imposing surcharges (in some circumstances up to 20% of the amount owed) and interest on any late payment. If the CIL payment is still unpaid and the development has started, the Council can issue a stop notice requiring building operations to cease. It is a criminal offence to contravene a stop notice, punishable by a fine of up to £20,000 in the Magistrates' Court or more if heard in the Crown Court. In addition, the Council may obtain a liability order from the Magistrates' Court confirming that the debt is owed and, once the order is obtained, it can take steps to enforce the debt;

for example, the Council could enter the land to recover goods, place a charge on the land, or in rare situations ask the court to the commit the debtor to prison.