

Babergh and Mid Suffolk CIL and s106 Guidance Note

Purpose of Guidance

1.1 New Community Infrastructure Levy (CIL) Regulations came into force on the 1st September 2019 which (amongst other matters) included the following changes to infrastructure provision and delivery:-

- **Abolition of the CIL 123 Lists which set out the types of infrastructure that will be provided through CIL.** A replacement document known as a CIL Position Statement has been produced for Babergh and Mid Suffolk and is on the Councils' website. This will allow expenditure to continue to occur for the delivery of infrastructure projects for both Districts until such time as this CIL Position Statement document is reviewed and/or replaced. The CIL Position Statements for Babergh and Mid Suffolk can be viewed using the hyperlinks below:-

Babergh

<https://www.babergh.gov.uk/planning/community-infrastructure-levy-and-section-106/community-infrastructure-levy-cil/spending-cil/>

Mid Suffolk

<https://www.midsuffolk.gov.uk/planning/community-infrastructure-levy-and-section-106/community-infrastructure-levy-cil/spending-cil/>

- **Removal of the pooling restrictions for s106 planning obligations** (albeit not retrospectively) such that from the 1st September 2019, it will no longer be necessary to limit s106 contributions to 5 planning obligations (i.e. more than 5 development schemes can contribute towards one piece of infrastructure).
- **The production of an Infrastructure Funding Statement for both Councils** which will set out infrastructure expenditure – both s106 and CIL (e.g. Infrastructure expenditure already spent or committed and which is planned). This will be produced for both Councils respectively and will be reviewed each year.

1.2 In order to assist developers/builders with these changes, this guidance note has been produced to provide clarity around the types of infrastructure that will be sought through section 106 and that which will be provided for by CIL. This document is a guidance document only to assist with the transition given the new CIL Regulations. It will however be followed by Supplementary Planning Documents (SPD) which will involve stakeholder engagement and consultation

S106 Planning Obligations

1.3 The statutory framework for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990 (as amended). Planning Obligations are legally binding. They enable Local Authorities to secure the provision/delivery of infrastructure or contributions towards them and to provide for affordable housing in order to support new development.

1.4 The National Planning Policy Framework – February 2019 - (NPPF) includes the following in relation to planning obligations. Paragraphs 54 and 56 relate to the use of planning obligations (within the NPPF) and state:-

“ 54. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.”

“56. Planning obligations must only be sought where they meet all of the following Tests (as set out in the CIL Regulations 122 (2))

- a) necessary to make the development acceptable in planning terms;*
- b) directly related to the development; and*
- c) fairly and reasonably related in scale and kind to the development”*

1.5 With Section 106 Agreements, which are secured before the grant of planning permission for the developments, the triggers for payments of monies towards infrastructure or the actual infrastructure provision will occur when the trigger points in the Section 106 agreements have occurred. All s106 agreements are available online through both Councils Developer Contribution database; this can be accessed on the Councils website using this hyperlink: -

<http://pfm.exacom.co.uk/midsuffolkbabergh/index.php>

Community Infrastructure Levy (CIL)

1.6 The Community Infrastructure Levy (CIL) is a fixed rate payment that Councils can charge on new buildings in their area to off-set the impacts of additional homes and businesses or facilities such as public transport infrastructure, schools, open space and health centres (infrastructure) and to enable sustainable growth. Section 106 legal agreements will be used alongside CIL to secure the provision and delivery of infrastructure.

1.7 Babergh and Mid Suffolk District Councils adopted CIL Charging Schedules on 20th and 21st January 2016 respectively. The charging of CIL on all relevant planning permissions granted and all relevant permitted developments started from 11th April 2016.

1.8 All monies collected are used for the provision of infrastructure (except for 5% of the monies collected which are used to offset the cost of the operation of CIL. CIL is collected and allocated in accordance with the CIL Regulations 2010 (as amended).

Each Council retains up to 5% of the total CIL income for administration of CIL. From the remainder, 15% is allocated to Parish or Town Councils (subject to a cap) but where there is a Neighbourhood Plan in place this figure rises to 25% (without a cap). For those parishes where there is no Parish or Town Council in place the Council retains the monies and spends the CIL Neighbourhood funds through consultation with the Parish.

1.9 CIL cannot be collected before the developments starts and the amount of money will depend on the floorspace measurement of the eligible development and will be specified within the CIL Liability Notice. Once determined this amount will not alter unless there are changes to the development scheme. When the CIL monies are due will depend on the payment plan that the developer is tied into. Generally, for the larger developments there are payment plans which involve 5 equal payments spread over a two-year period by the developer. There is more detail around the Councils payment plans on the Councils web site (see hyperlinks below).

Babergh Instalments Policy:

<https://www.midsuffolk.gov.uk/assets/CIL-and-S106-Documents/Pre-Adoption-Documents-Babergh/BDC-instalments-policy-Jan-2016.pdf>

Mid Suffolk Instalments Policy:

<https://www.midsuffolk.gov.uk/assets/CIL-and-S106-Documents/Pre-Adoption-Documents-Mid-Suffolk/MSDC-instalments-policy-Jan-2016.pdf>

The interaction between s106 and CIL in the provision and delivery of Infrastructure

1.10 Both s106 and CIL sit alongside each other and both are used to provide and deliver infrastructure. A joint Infrastructure Delivery Plan has been produced for both Councils and is published on the Councils web site and comprises evidence supporting the emerging Joint Local Plan. This document identifies the infrastructure priorities for both Districts linked to the level of growth being provided though the Joint Local Plan and identifies whether the infrastructure is either critical, essential or desirable.

Infrastructure Delivery Plan

The hyperlinks to this document are below:-

Babergh

<https://www.babergh.gov.uk/assets/Strategic-Planning/Current-Evidence-Base/BMSDC-IDP-July-2019-.pdf>

Mid Suffolk

<https://www.midsuffolk.gov.uk/assets/Strategic-Planning/Current-Evidence-Base/BMSDC-IDP-July-2019-.pdf>

Phasing

1.11 Delivery of the infrastructure may occur in a phased manner as the degree of growth will determine the type scale and nature of the infrastructure to be provided. Cost multipliers have been used throughout the Infrastructure Delivery Plan to give likely costs for the infrastructure. At the time of the production of this document the cost multipliers being used are those specified by each of the Infrastructure providers for their section of the IDP (such as Suffolk County Council for education, libraries and waste measures, and the Clinical Commissioning Groups for health facilities).

1.12 The costs specified in the Infrastructure Delivery Plan for the infrastructure projects could include several different phases of the required infrastructure project and its delivery in a phased way will be directly related to the level of growth taking place across the Districts over the Joint Local Plan period. These likely costs therefore cannot be read as binding on the Councils in any way but are included to assist with understanding around how infrastructure can occur to support the proposed level of growth within the Joint Local Plan.

The following table represents guidance around the type of infrastructure which will be secured through s106 or CIL.

Table 1

| Infrastructure Types | Section 106 | Community Infrastructure Levy (CIL) |
|---|--------------------|--|
| Provision of onsite passenger transport improvements (e.g. Rail/bus) | ✓ | |
| Provision of offsite passenger transport improvements (e.g. Rail/bus) | | ✓ |
| Provision of library facilities | | ✓ |
| Provision of additional pre-school places at existing establishments | | ✓ |
| Land to secure erection of new pre - schools | ✓ | |
| Provision of and erection of new pre - schools | ✓ | |
| Provision of primary school places at existing schools | | ✓ |
| Provision of secondary, sixth form and further | | ✓ |

| Infrastructure Types | Section 106 | Community Infrastructure Levy (CIL) |
|--|--------------------|--|
| education places at existing schools | | |
| Land to secure new primary schools | ✓ | |
| Provision and erection of new primary schools | ✓ | |
| Land to secure new secondary schools | ✓ | |
| Provision and erection of new secondary schools | ✓ | |
| Highways (on site) necessary to make the development acceptable | ✓ | |
| Highways (off site) necessary to make the development acceptable | ✓ | |
| Footpath improvements (off site) necessary to make the development acceptable | ✓ | |
| Green travel plans | ✓ | |
| Land to secure new health facilities | | ✓ |
| Provision of health facilities | | ✓ |
| Provision of leisure and community facilities | | ✓ |
| Provision of 'on site' open space and play areas and equipment | ✓ | |
| Provision of 'off site' open space and play areas and equipment | | ✓ |
| Provision of off-site Strategic green infrastructure (excluding suitable alternative natural greenspace) | | ✓ |
| Strategic flooding (offsite) | | ✓ |
| Flood prevention and alleviation infrastructure | ✓ | |
| Provision of waste infrastructure | | ✓ |
| Provision of specific types of infrastructure required because of the impacts and characteristic of the | ✓ | |

| Infrastructure Types | Section 106 | Community Infrastructure Levy (CIL) |
|--|--------------------|--|
| development (see paragraph 1.13 below) | | |

1.13 The above listed infrastructure includes the normal types of infrastructure that are sought to mitigate the impact from development schemes. However as stated above there will be other specific types of infrastructure that will need to be provided dependent upon the characteristics of the development proposal and the impacts of the development. These will normally be sought through s106.

1.14 The above table also includes provision for land and build costs to be achieved either through s106 or CIL so as to ensure that the delivery of the infrastructure can be secured.

Ecology – Habitats Regulations

1.15 Impacts on ecology and securing ecological mitigation is a material consideration and a matter that is addressed through the planning process. Compliance with the Habitats Regulations is necessary where impacts would occur on formally designated Habitats/European Wildlife Sites. Any non-financial or financial contribution to deliver mitigation is normally currently collected through s106 and attributable to each development site.

1.16. Both Babergh and Mid Suffolk are working with Ipswich Borough and East Suffolk to deliver a cross boundary Strategy known as the Recreation Disturbance Avoidance and Mitigation Strategy (RAMS). This emergent strategy would replace current arrangements (by agreement) and is a means by which sustainable housing growth can be delivered (within all the Districts) at the same time as adequately protecting formally designated Habitats/European wildlife sites from harm that could otherwise potentially occur because of increased recreation pressure arising from new housing growth. Any financial contributions would be collected through s106 (unless another legislative alternative is agreed)

Affordable Housing

The following table represents guidance around affordable housing which will be secured through s106 only.

Table 2 – Affordable Housing

| Affordable Housing | Section 106 | Community Infrastructure Levy (CIL) |
|--------------------------------------|--------------------|--|
| On site affordable housing provision | ✓ | |

| Affordable Housing | Section 106 | Community Infrastructure Levy (CIL) |
|---|-------------|-------------------------------------|
| Committed sum towards off site affordable housing (where and if appropriate). | ✓ | |

Section 278 Agreements

1.17 Section 278 agreements enable the funding or undertaking of works on to the public highway network that are necessary to mitigate the impact of development. They are made between the landowners or developers and the Highway Authority under the Highways Act 1980 (as amended). The developer can either undertake the work themselves or pay the Highway Authority to do it.

Delivery of infrastructure

1.18 Delivery of the infrastructure to support development within Babergh and Mid Suffolk is very important as without the appropriate infrastructure the impacts from the development will not be appropriately mitigated and this would render the development unsustainable and unacceptable. The funding for the infrastructure whether secured through s106 Agreements with the developers or whether through the use of the Community Infrastructure Levy (CIL) or other funding streams (e.g. Neighbourhood CIL) will only start to be collected once the development is commenced.

Funding of Infrastructure

1.19 Infrastructure can be funded through a number of different funding methods:

- Section 106 obligations (entered into by the relevant local authorities, the developer and affected landowners);
- Through CIL expenditure (subject to the Local Authority's own expenditure regime (as this is not prescribed nationally));
- Highways infrastructure under s278 agreements of the Highways Act (as amended).
- Through Infrastructure Providers own budgets;
- Provision of infrastructure, through other funds (e.g. by other external funding means, Government Grants / loans, Homes England) and by other organisations (e.g. Lottery, Sports England)
- By Parishes through the use of Neighbourhood CIL and/or other Parish funds or with contributions towards larger projects from Parishes through Neighbourhood CIL.

1.20 To access CIL monies within Babergh and Mid Suffolk the Councils Expenditure Framework requires the submission of Bids in a prescribed format which would then be validated and screened (for availability of other funding) before being prioritised and determined. The prioritisation criteria are set out in the CIL Expenditure Framework documents which were adopted by both Councils in March 2019.

Affordability of the infrastructure, and whether it is necessary (i.e. contained within the Infrastructure Delivery Plan and where appropriate included within other strategies of the Council) are two key components of the CIL expenditure scheme.

Collaboration

1.21 Some infrastructure provision such as new schools or school extensions or new health facilities or improvements to existing health facilities will be costly and may rely on more than one source of funding for the infrastructure to be delivered. This will involve effective collaborative work between all the relevant organisations to ensure that the infrastructure is delivered in a timely manner.

Babergh and Mid Suffolk District Councils

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