

Report to: Strategic Planning Committee
Date of Meeting: 20th August 2019
Public Document: Yes
Exemption: None



Review date for release None

Agenda item: 10

Subject: **S106/Community Infrastructure Levy Developer Contributions Annual Report 2018/19**

Purpose of report: This report focuses on the financial contributions paid to East Devon District Council, the sums paid, where these have been spent and the balance of unspent monies at the end of the last financial year. It also reminds Members of the way that we collect financial contributions through CIL (Community Infrastructure Levy).

Recommendation: **That Members:**

- 1. Note the contents of this report.**
- 2. Agree that sums secured for Habitat Mitigation non-infrastructure be increased to those detailed in table 4 in the report to reflect the rebasing of the Habitat Mitigation Strategy.**
- 3. Agree that the amount top-sliced from CIL receipts for Habitat Mitigation be 8.6% on net CIL receipts (11.7% of total CIL receipts) to reflect the rebasing report.**

Reason for recommendation: To inform Strategic Planning Committee on the progress made on planning obligation matters between April 2017 and March 2018.

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Financial implications: All financial information is contained within the body of the report.

Legal implications: Planning obligations are governed by section 106 of the Town and Country Planning Act 1990, as amended. The Community Infrastructure Levy is governed by the Planning Act 2008, as amended and the Community Infrastructure Levy Regulations 2010 as amended. The revised CIL Regulations come into effect in September 2019 and therefore do not form part of this report to Committee. This report ensures the Council as Local Planning Authority is transparent in how it collects and proposes to spend such funds. There are no legal implications other than as set out in the report

Equalities impact: Low Impact

Risk: Medium Risk

The risk associated with not monitoring planning obligations relating to planning applications is that the Council could be criticised for not operating a transparent and comprehensive framework for monitoring such financial and non-financial obligations.

Without adequate co-ordination Commuted Sums could be spent on inappropriate schemes and not on priorities identified within the Council's various plans and strategies. Without an adequate and co-ordinated system for monitoring Section 106 Agreements and any subsequent Commuted Sums it is possible that should deadlines expire, secured sums would have to be returned (plus interest) to the developers and required community facilities /affordable housing would not be provided.

If CIL is not effectively monitored the Council could fail to identify receipts that would contribute towards the infrastructure identified within our Regulation 123 list. Ineffective collection and enforcement would delay timely delivery. We are required by Regulation 62 of the CIL Regulations to report on the CIL receipts and expenditure for a reported year, which for the avoidance of doubt is the financial year from April 2018 to March 2019.

Links to background information:

- [Council Report April 2016 – Introduction of CIL](#)
- [S106/Community Infrastructure Levy Developer Contributions Annual Report 2016/17](#)
- [HREC Rebasing the South East Devon European Site Mitigation Strategy July 2017](#)

Link to Council Plan: [Encouraging communities to be outstanding; Developing an outstanding local economy; Delivering and promoting our outstanding environment; and Continuously improving to be an outstanding council.](#)

1 Background

- 1.1 This report relates to the management and allocation of resources accrued through planning obligations and is the latest in a series of annual reports on the spend of monies collected through Section 106 agreements. This latest report will also advise on the monies collected from the Community Infrastructure Levy (CIL) which has been collected in the 17/18 financial year and S111 receipts which were introduced in May 2017.
- 1.2 Planning Obligations, commonly known as Section 106 Agreements, were introduced following the Town and Country Planning Act 1990. Section 106 Agreements are legal agreements and are negotiated between a local authority and developers, and are intended to enable infrastructure contributions to be made in order to make a development proposal acceptable. An Agreement must be fairly and reasonably related in scale to the proposed development and be directly related to the development, and should only be used where planning conditions attached to a planning permission would not provide an alternative approach.
- 1.3 Since the adoption of CIL most Section 106 Agreements relate to the delivery of infrastructure on the development site itself and are requirements placed directly on the applicant or land owner. CIL being paid to contribute to the cost of strategic infrastructure projects. However there remain a number of extant agreements that pre-date the adoption of CIL that make provision for the developer to pay a financial sum (a commuted sum) for a project to be implemented directly by the Council. This is because prior to the

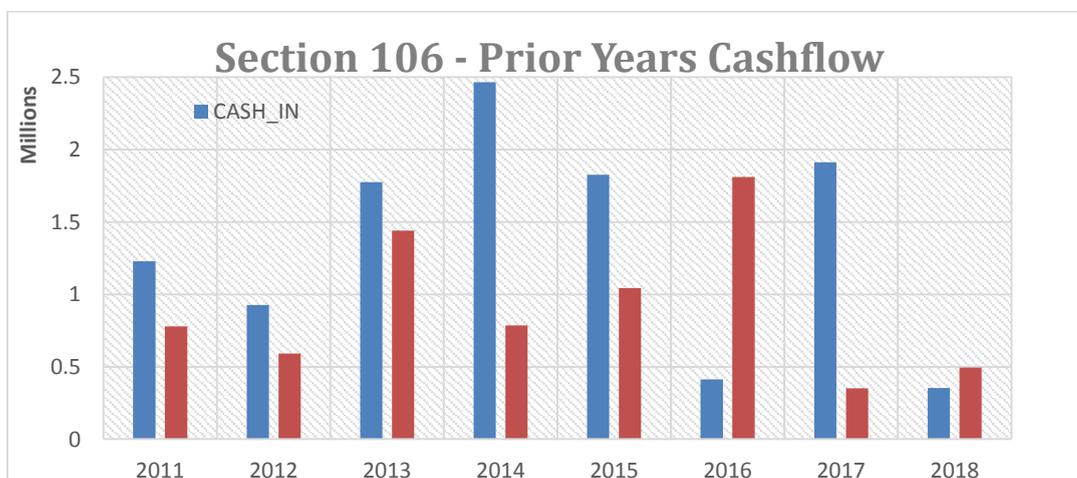
implementation of CIL Section 106 agreements were used to secure all infrastructure associated with a development. The Council still has a number of projects being delivered under consents granted prior to the adoption of CIL and therefore we are still collecting and spending monies under old Section 106 agreements.

- 1.4 CIL (Community Infrastructure Levy) is often confused with Section 106, or mistakenly taken to be the same thing. Community Infrastructure Levy is a tariff based system designed to cover the costs of all strategic infrastructure needs which are listed on the Regulation 123 list published by the Council. In order to calculate a Community Infrastructure Levy tariff, a council will consider the total costs of delivering strategic infrastructure (such as schools, transport and flood defences) against the total scope of development expected in an area and the ability of developments to contribute to the costs of the required infrastructure.
- 1.5 The Council has been charging CIL since September 2016 and has this year revisited its process to determine CIL spend through the CIL Members Working Party.

2 The spending of s106 contributions

- 2.1 Councils are restricted to spending s106 contributions on a defined purpose within each agreement or undertaking. Under the regulations we can no longer pool more than five obligations together to pay for a single infrastructure project or type of infrastructure and we cannot require contributions from small scale developments. These restrictions have forced us and other Council's to adopt CIL as often large pieces of infrastructure can only be funded through contributions from a large number of developments and this can only now be achieved through CIL. The government has consulted on proposals to remove the pooling restrictions on large strategic developments but the relevant legislation has not been brought forward.
- 2.2 The following graphs illustrate the cash flow of Section 106 monies over the years 2011 – 2018.

Graph 1: S106 transactions for the last eight financial years



There have been accruals of £353,156.16 in the reporting year.

Graph 2: S106 monies spent on projects in 2018/19

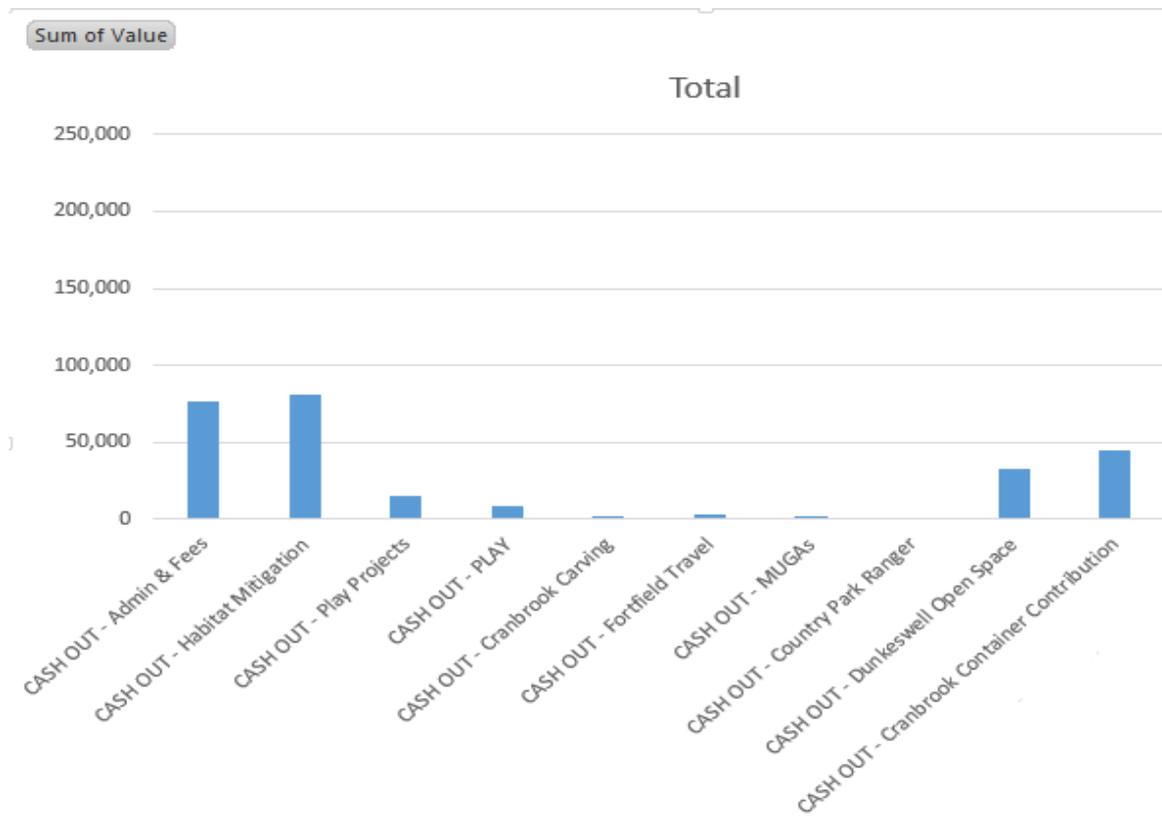


Table 1: Within the year there was an actual spend of just under £268,000 on the following items:

Project	Amount (£)
Admin, Maintenance (linked to delivered projects)	76171
Habitat Mitigation	80822
Play Projects	15530
Play	8590
Carving Communities	2204
Fortfield Travel Contribution	3000
Multi-Use Games Areas	2610
Cranbrook Country Park Ranger	1500
Dunkeswell Land Purchase	32311
Cranbrook Waste and Recycling Containers	45000
Grand Total	267738

- 2.4 As an example Dunkeswell Parish Council purchased an agricultural field in order to secure long term sporting provision within the parish. The S106 receipts were match funded with parish receipts and the land was purchased at agricultural values.
- 2.5 At year end 2018/19 a total of £4.852m was held in the s106 account (note that a proportion of this is based upon invoices raised and outstanding at year end).

3 Introduction of CIL – Progress Report

- 3.1 The way that we have traditionally delivered the infrastructure necessary to ensure that development is sustainable has been through s106 obligations. The policy restrictions have meant that this is less achievable and encouraged a move towards the introduction of CIL. As a LPA we went live with Community Infrastructure Levy (CIL) on 1 September 2016. The new CIL has not fully replaced s106 obligations but is an alternative to the way in which we have historically secured obligations. S106 is still the preferred method for securing all on-site infrastructure not identified on our regulation 123 list.
- 3.2 The following table shows a summary of CIL potential income, monies due and collected during the 17/18 financial year. This is broken down by the main areas of spend of CIL admin costs. The neighbourhood proportion going to town and parish councils and the remainder left for spend on reg 123 projects.

Table 2 CIL overview of financial year 18/19

Allocation	Potential	Due	Collected
Warning: The following application do not have a PERMITTED DEVELOPMENT date: 3963;			
CIL Admin	65,513.91	5,586.52	66,756.20
Neighbourhood CIL	231,721.49	15,671.61	200,274.97
CIL 123 List	1,013,042.90	90,472.25	1,068,092.90
TOTALS	1,310,278.30	111,730.38	1,335,124.07

- 3.3 The CIL Regulations allow the Council to retain up to 5% of the CIL receipts in the first three years to fund set up and ongoing costs, and 5% annually for ongoing costs thereafter. This pays for ICT systems required, additional Officer costs, training etc.
- 3.4 The Localism Act identified that a “meaningful proportion” of CIL funds would need to be transferred to town and parish councils for use on local priorities.

The CIL Regulations were amended in 2013 to identify exactly how much that “meaningful proportion” must amount to. The exact percentage varies depending on whether a town or parish council has an adopted Neighbourhood Plan or not and whether an area is parished or not. After the first 2 and a half years in excess of £200,000 was paid out to East Devon parishes as broken down in Table 3.

Table 3: Neighbourhood Proportion Payments

Parish	2016/17 Oct - Mar	2017 Apr - Sep	2017/18 Oct - Mar	2018 Apr - Sep	2018/19 Oct - Mar
Axminster	0	111.62 *overpayment to be rectified 18/19 financial year due to parish plotting error	0	0	57.2 (amount shows rebalancing from previous overpayment)
Aylesbeare	0	0	0	0	269.09
Beer	0	0	296.26	148.12	444.38
Bishops Clyst	0	0	0	7442.20	0
Broadhembury	0	0	0	0	212.51
Budleigh Salterton	0	0	2653.11	102.78	3888.33
Chardstock	303.75	0	464.87	1300.50	1305
Clyst St George	0	1191.67	0	0	0
Colyton	0	0	0	0	3527.33
Dalwood	0	0	0	0	11.96
East Budleigh	0	0	0	0	1055.11
Exmouth	0	9789.59	42203.47	61239.31	67120.33
Gittisham	0	0	0	2100.93	2100.93
Hawkchurch	0	0	0	0	70.9
Honiton	0	0	0	190.66	1461.28
Lympstone	0	0	0	1825.90	0
Newton Popleford	625.50	432.85	303.75	589.49	1215
Offwell	0	742.81	345.58	345.58	826.34
Ottery St Mary - West Hill	0 0	0 299.68	595.83 299.68	0 665.13	4192.75 2372.89
Payhembury	0	0	0	0	115.2
Rockbeare	0	0	0	0	1349.81
Seaton	0	35.59	0	444.71	13316.49
Sidmouth	0	182.72	353.64	353.74	4370.47
Southleigh	0	0	0	0	109.24
Stockland	0	0	0	0	47.10
Uplyme	0	0	244.79	1469.34	244.79
Woodbury	0	0	0	10629.66	3328.09

- 3.5 Taking account of the above, across the district as a whole this leaves around 76% of the Total CIL Income available for the Council to use towards required and identified infrastructure.
- 3.6 In 2016 the CIL forecasts predicted that the Total CIL income for the Local Plan period were likely to be in the region of £40.6M. The net income (having accounted for administration and meaningful proportion elements) available to spend on infrastructure projects was projected to be £30.8M, this assumed 10% of liable windfall dwellings being self-builds and therefore entitled to CIL relief. However the infrastructure requirements at that time exceeded £250M.
- 3.7 New CIL rates have been proposed as a part of the DRAFT Charging Schedule and the revised estimated £37,162,184.40 (note this is in part due to Cranbrook being removed from the CIL charging zone). Once reliefs, neighbourhood proportion and administration have been removed there is a projected net income of £27.1M.
- 3.8 Note that this includes our contribution towards the capital element of Habitat Mitigation.
- 3.9 Although there was a call for CIL projects in the 2017/18 financial year there were no projects allocated funding from the CIL 123 budget. This formed a separate report to this Committee. With regard to the future spend of CIL Members agreed at their meeting of the 24th July 2018 to:
1. Defer the bidding process for spending CIL until 2019 at the earliest;
 2. To focus CIL spending on infrastructure projects identified in the Infrastructure Delivery Plan (IDP) that are:
 - a. Known to be required to deliver development, and;
 - b. Identified as meeting the highest priority status;
 3. The CIL Member Working Party to meet again in September to consider the key infrastructure projects from the IDP to be prioritised.
 4. That no further CIL spend is undertaken until the identified projects have been delivered.

Officers are currently liaising with infrastructure providers to identify the highest priority projects. A meeting of the CIL Member Working Party has now taken place and the panel have indicated a preferred project. They are seeking further information from the project proposer before making their formal recommendation. This is likely to be at the October Strategic Planning Committee meeting. To date there has been a total spend of £87,000 from the

CIL admin budget on staff and other admin costs. In addition money has been from the Neighbourhood CIL budget to the parishes in the amounts listed above. There have been no payments in kind and no receipts recovered from Town/Parish Councils. Of the £1.765m collected from the launch of CIL until the end of the 18/19 financial year, £1.411m has been retained.

- 3.8 CIL income will be inconsistent over the plan period with higher levels of income expected when large scale housing developments commence. It will take many years for the CIL pot to grow to an extent that large scale projects can be afforded and when making funding decisions for smaller projects thought also needs to be given to how larger scale projects may be funded in the future.

4 Habitat Regulations Assessment Mitigation

- 4.1 The Exe Estuary, Pebblebed Heaths and Dawlish Warren are European Wildlife Sites that have strong legal protection and the Council must not grant planning permission, unless any harmful effects will be fully mitigated.
- 4.2 The Conservation of Habitats and Species Regulations 2017 sets out how we must deal with planning applications that have potential to impact on European wildlife sites (Special Protection Areas, Special Areas of Conservation and Ramsar sites). This impact may be direct or indirect:
- eg. distant development may cause significant impact on the key species when they are away from the designated site
 - eg. a single development may have a small effect but a combined overall large effect
 - The legislation says that we **MUST NOT** grant consent for a development that would, either alone or in combination with other developments, have a likely significant effect on a European wildlife site, unless full mitigation is provided.
- 4.3 Any housing or tourist accommodation developments within 10km of the Exe Estuary/Pebblebed Heaths/Dawlish Warren must provide appropriate mitigation. We have worked with Exeter City Council, Teignbridge District Council, Natural England and others, and determined that housing and tourist accommodation developments will have an impact (called a Likely Significant Effect) on the Exe Estuary SPA and Dawlish Warren SAC through impacts from recreational use. The impacts are highest from developments within 10km of the SPA/SAC.
- 4.4 Teignbridge, East Devon District Council and Exeter City Council have joined together to form the [South East Devon Habitat Regulations Executive Committee](#) that works across the three authority areas to protect the Exe Estuary, Dawlish Warren and the East Devon Pebblebed Heaths for future generations to enjoy. This Committee is working with partners including Natural England, Clinton Devon Estates, National Trust, RSPB, Exe Estuary

Management Partnership and Devon Wildlife Trust to off-set the effects of new developments and population growth on these protected conservation sites.

4.5 Funding will come from developer contributions on new residential housing or tourism accommodation within a 10km "zone of influence" from the protected sites. At this point in time we collect contributions through a combination of CIL, S106 (UU and S106 agreements) and S111. We collect Capital Habitat Mitigations via top-slicing CIL receipts and they are identified on EDDC Regulation 123 list. Non-infrastructure Habitat Mitigation contributions are secured by either;

- A S111 agreement and payment (a standardised letter linking an upfront payment to a submitted application).
- A S106 Agreement (normally has several types of planning mitigation secured).
- A Unilateral Undertaking (a simplified type of S106 agreement normally payable linked to occupation)

4.6 A report to the SEDHREC set out that initial assumptions on the amount of houses making a full financial contribution to the delivery of the Strategy were incorrect. It stated that "to meet our legal obligations it is imperative that new per dwelling contributions based on re-validation of income, cost and expenditure are implemented by each of the partner authorities". As such the amount top-sliced and the non-infrastructure element secured is now out of date.

4.7 It has unfortunately taken some time for the non-infrastructure contributions to be recalculated in light of the rebasing of the strategy, however the total amount required to mitigate the impacts of development have always been correct. It is the proportion that has been infrastructure funding vs the infrastructure amount that has been incorrect. It is now proposed to correct this imbalance through the introduction of the rebased non-infrastructure amounts.

4.8 The total infrastructure amount for East Devon is £3,570,916. This is made up of the following:

- SANGS - £2,312,212
- Exe Estuary - £ 666,846
- Pebblebeds - £ 591,858

To date £390,364.56 of Capital receipts to fund Habitat Mitigation infrastructure have been secured through the S106 route. The outstanding total of £3,180,551.44 must be secured via CIL.

4.9 This equates to 11.7% of all CIL net income (8.6% of all CIL receipts).

4.10 The revised per dwelling non-infrastructure contribution required is as the table below:

Table 4:

	EXE	PBH	BOTH
Total required from future EDDC dwellings	£164	£190	£354

4.11 It should be noted that the habitats mitigation strategy will need to be rebased on a regular basis to ensure that the amounts charged are accurate and can deliver the strategy and so the CIL proportion for habitats mitigation and the non-infrastructure element will be kept under review and Members will be updated annually through these monitoring reports.

5 S106 and CIL Monitoring

5.1 EDDC has an Officer dedicated to the negotiation, monitoring and delivery of planning obligations. This long standing post has been supported by the role of Planning Obligation Support Officer who has aided the introduction and administration of CIL and is funded by the admin element of the CIL receipts.

5.2 To aid the work of the posts we have introduced CIL/S106 Administrator product called EXACOM. It is designed to take the sting out of administration, and enables an administrator to capture information, calculate charges, levies, surcharges etc., generate notices and manage finance. We now have all live S106 agreements and CIL activity on the system. We look to take the system public facing in the near future. This will allow Parish Councils, developers to see what is going on with particular projects, agreements etc. The past year has been spent ensuring that all spend activity is on the system and that no pooling in terms of spend has taken place.

5.3 The figures within this report are held within the councils' databases and are proactively monitored to aid delivery of infrastructure by ensuring all obligations are met and any associated spend is in accordance with the specified infrastructure need. S106 breaches are referred to our legal department for enforcement action to be taken.

5.4 Community Infrastructure Levy Regulations 2010 contain enforcement provisions, aimed at ensuring that the collection process runs smoothly, by giving collecting authorities the power to issue a range of surcharges, stop notices, and if necessary to recover funds by appropriate legal action.

Collection and enforcement arrangements are supported by the right to appeal certain decisions.

- 5.5 In the majority of cases the developers follow the correct process, however, where a developer has failed to submit a Commencement Notice prior to development commencing, the CIL Regulations provide that the liable person(s) will no longer be able to benefit from the Instalment Policy and the development will cease to be eligible for social housing relief or exemptions for self-build housing or annexes. In addition the Council may issue a surcharge of 20% of the liable amount or £2,500 whichever the lower amount.
- 5.6 Where there are problems in collecting the levy, the CIL Regulations have made provision in that the collecting authorities are able to penalise late payment and discourage future non-compliance.
- 5.7 The regulations provide for a range of proportionate enforcement measures, such as surcharges on late payments (as set out in [regulations 80 to 86](#)). In most cases, these measures should be sufficient.
- 5.8 In cases of persistent non-compliance, collecting authorities may take more direct action to recover the amount due. For example, a collecting authority may issue a Community Infrastructure Levy Stop Notice (under [regulations 89 to 94](#)), which prohibits development from continuing until payment is made and the stop notice is withdrawn.
- 5.9 The collecting authority may, after issuing a reminder notice to the party liable for the levy, apply to a magistrates' court to make a liability order allowing it to seize and sell assets of the liable party. A party may also apply for a charging order if there is at least £2,000 owing. The court can issue an order imposing a charge on a relevant interest to secure the amount due.
- 5.10 In the very small number of cases where a collecting authority can demonstrate that recovery measures have been unsuccessful, they may apply to a magistrates court to send the liable party to prison for up to 3 months (under [regulations 100 and 101](#)).