

# **South Gloucestershire Council Community Infrastructure Levy (CIL) & Section 106 Planning Obligations Guide**



**Supplementary Planning Document**

**Adopted March 2015**

# Community Infrastructure Levy (CIL) & Section 106 Planning Obligations Guide

## Introduction

The Community Infrastructure Levy (CIL) is a new levy that local authorities can choose to charge on new developments in their area. The government's aim is that the levy will simplify and make fairer the means by which development contributes towards the cost of supporting infrastructure.

The Council previously sought contributions towards supporting infrastructure from new development purely via Section 106 (S106) Planning Obligations. However, the Council is now a CIL 'charging authority'. The Council's commitment to implementation of a CIL is set out in Core Strategy Policy CS6 supporting text (paragraph 6.17). The Core Strategy (Adopted December 2013) can be found at [www.southglos.gov.uk/corestrategy](http://www.southglos.gov.uk/corestrategy). The CIL is not intended to fund the entirety of the cost of new infrastructure required to support new and existing communities, but will provide an additional source of funds alongside other local and national infrastructure funding streams, including S106 planning obligations. The legislative framework for CIL is set out in the Community Infrastructure Levy (CIL) Regulations 2010, and the CIL (Amendment) Regulations 2011, 2012, 2013 & 2014 (links below).

CIL Regs 2010	<a href="http://www.legislation.gov.uk/uksi/2010/948/contents/made">http://www.legislation.gov.uk/uksi/2010/948/contents/made</a>
2011 Amendments	<a href="http://www.legislation.gov.uk/uksi/2011/987/contents/made">http://www.legislation.gov.uk/uksi/2011/987/contents/made</a>
2012 Amendments	<a href="http://www.legislation.gov.uk/uksi/2012/2975/contents/made">http://www.legislation.gov.uk/uksi/2012/2975/contents/made</a>
2013 Amendments	<a href="http://www.legislation.gov.uk/uksi/2013/982/contents/made">http://www.legislation.gov.uk/uksi/2013/982/contents/made</a>
2014 Amendments	<a href="http://www.legislation.gov.uk/uksi/2014/385/contents/made">http://www.legislation.gov.uk/uksi/2014/385/contents/made</a>

The Government has also produced **National Planning Practice Guidance** regarding the Community Infrastructure Levy. This can be found at: [http://www.planningportal.gov.uk/uploads/cil/cil\\_guidance\\_main.pdf](http://www.planningportal.gov.uk/uploads/cil/cil_guidance_main.pdf). Guidance within this SPD (Part I – CIL) is a summary of that set out in the link above. It is recommended therefore that the guidance and legislation above is referred to for further information. **It is expected that further amendments to the CIL regulations will be made in the next parliament. The Council will therefore make any such factual changes to the SPD accordingly without further public consultation.**

South Gloucestershire has experienced considerable change throughout the past half century. In the period up to 2027 the district faces the challenge of continuing to ensure that the development that has taken place and that which is planned occurs in a way that supports the Council's commitment to sustainable communities. The cumulative effects of existing and planned new growth often creates a need for improved infrastructure, without which there could be a detrimental effect on the quality of life and environment. The CIL will help ensure that new developments contribute towards the provision of the necessary infrastructure required to mitigate its impact.

The objective of this SPD is to provide a guide for developers, stakeholders and local communities regarding the basis on which CIL & S106 contributions will be sought and how they will be administered.

## Contents

<b>Part I – Community Infrastructure Levy:</b>	<b>pg</b>
1. Relationship of the CIL to Planning Obligations (S106)	4
2. What development will be liable to pay CIL?	4
3. Who is liable to pay CIL?	5
4. What is the process of payment?	5
5. How is CIL calculated?	6
6. What is included as CIL chargeable floorspace?	6
7. What happens with applications that pre-date the date that CIL comes into effect in South Gloucestershire?	6
8. Is CIL payable if planning permission is not required for a development?	7
9. CIL Relief	7
10. What will CIL funds be spent on?	8
11. Review of CIL	9
<b>Part II – S106 Planning Obligations:</b>	
1. Introduction	10
2. National Policy Context	10
3. Local Policy Context	11
4. Council approach to location of provision through Obligations	12
5. Drafting of Agreements	12
6. Transfer of Land	13
7. Financial Contributions	13
8. Index Linking	13
9. Monitoring and enforcement of Obligations	13
10. Viability	14
11. Infrastructure Types	14
12. Local Transportation & Highway Works	14
13. Public Open Space & Landscaping Schemes	15
14. Other Site Specific Measures	18
<b><u>Part III – Grampian Conditions</u></b>	<b>19</b>
<b>Appendix 1 – Status of the Guide</b>	

## 1. Relationship to Planning Obligations (Section 106 agreements)

Regulations 122 & 123 of CIL regulations limit the use of planning obligations to where the obligation:

- is necessary to make the development acceptable in planning terms,
- directly related to the development, and
- fairly and reasonably related in scale and kind.

Regulation 123 also limits to 5 (back dated to April 2010) the number of S106 agreements that can be used to fund a project or type of infrastructure, from the point at which the Council commences charging the CIL or after April 2015. The impact of these changes is effectively to restrict the ability of the Council to pool contributions towards offsite strategic infrastructure via S106 planning obligations. Section 106 planning obligations will therefore accordingly be scaled back to cover predominantly the provision of on-site specific measures, (including affordable housing) and local highway works required to mitigate the impact of development. In South Gloucestershire, most major developments will therefore continue to have S106 agreements covering essential on-site and local site access and transport requirements (such as Public Open Spaces and local highway safety works) and pay the CIL.

**Part II** sets out the Council's approach to S106 agreements.

The Council produces an Infrastructure Delivery Plan which can be found on the Council's website at:

<http://www.southglos.gov.uk/Pages/Article%20Pages/Planning%20Transport%20-%20Strategic%20Environment/Planning%20policy/Infrastructure-delivery-plan-12392.aspx> .

The supporting appendices to the IDP provide information setting out the Council's approach to the consideration of infrastructure needs to support new development proposed in the Core Strategy.

The Council's Developer's Guide document which provides guidance on S106 planning obligations is superseded by this guide.

## 2. What development will be liable to pay CIL?

The following development types will be liable *in principle* to pay the CIL:

- Development comprising 100m<sup>2</sup> or more of new build floorspace
- Development of one or more dwellings<sup>1</sup>
- The conversion of a building that is no longer in lawful use

Where planning permission is granted for a new development that involves the extension or demolition of a building in lawful use, the level of CIL payable will be calculated based on the net increase in floorspace. This means that the existing floorspace contained in the building to be extended or demolished will be deducted from the total floorspace of the new development, when calculating the CIL liability.

---

<sup>1</sup> Including development of less than 100m<sup>2</sup> that results in the creation of a dwelling unit.

The definition of lawful use is contained in Regulation 40(10) of the CIL Regulations 2010 (as amended), which states the following:

*“contains a part [of the relevant building] that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development”*

The following Exemptions apply:

The CIL regulations provide for certain types of development to be exempt from paying CIL, as follows:

- Development of less than 100m<sup>2</sup> of new build floorspace, provided that it does not result in the creation of a new dwelling.
- The conversion of a building in lawful use, or the creation of additional floor-space within the existing structure of a building in lawful use.
- Development of buildings and structures into which people do not normally go (e.g. roads, pipelines, pylons, wind turbines, electricity sub stations, buildings or parts of buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery, e.g. power station turbine rooms etc).
- Vacant buildings brought back into the same use.
- Dwellings which are built by self builders.
- Residential annexes and extensions
- Specified types of development which local authorities have decided should be subject to a ‘zero’ rate and specified as such in their charging schedules.

‘CIL Relief’ also applies to certain kinds of development. See section below.

### **3. Who is liable to pay CIL?**

CIL will be paid by the owner of land where CIL liable development is to be carried out, unless another party volunteers to pay the CIL by assuming the liability, e.g. the developer. Anyone who wishes to pay the CIL can come forward and assume CIL liability for the development. Where no one assumes liability to pay CIL, the liability will automatically default to the owners of the relevant land and payment becomes due immediately upon commencement of development. CIL is payable on all liable / chargeable development whether subject to a planning permission or not (see part 9 below).

### **4. What is the process of payment?**

1. Before any development is commenced, a notice of chargeable development must be submitted to the Council (Regulation 64) with confirmation of the person or organisation who is assuming liability or joint liability (Regulation 31).

2. A CIL Liability Notice will then be issued by the Council (Regulation 65) confirming the amount of CIL and who is liable to pay the charge.

3. At least one day prior to commencement of development, a Commencement Notice must be submitted to the Council (Regulation 67).

4. In response to the Commencement Notice the Council will issue a Demand Notice (Regulation 69).

In the event of failure to serve the relevant notices additional surcharges may be payable (Regulations 80-83). Where a development has a party who has assumed liability, they will be entitled to a payment window and possibly payment through instalments or payments in kind (see Instalments & Payments in Kind Policies LINK), provided other CIL procedures such as the commencement notice are followed.

## 6. How is CIL Calculated?

CIL charges are calculated in accordance with Regulation 40 of the CIL Regulations 2010 as amended by Regulation 6 of the CIL (Amendment) Regulations 2014.

The amount of CIL you will be liable to pay ('the chargeable amount') depends on the size, type and land use(s) of your development. CIL is levied as a charge per square metre of net additional floorspace. The Council is responsible for calculating the charge based on information provided to it.

Simply put, the **CIL Charge = Gross internal area of the development minus (the gross internal area of any building in lawful use + the gross internal area of any dwellings that qualify as social housing) x Levy Rate x Inflation Index.**

CIL charges are index linked to the Building Cost Information Service (BCIS) All-in Tender Price Index from the date the Council commences charging the CIL.

Where the CIL charge is calculated to be less than £50 no charge will be levied.

## 7. What is included as CIL chargeable floorspace?

Generally, any water tight structure (into which people normally go), with walls and a roof is considered to be "internal" floorspace and therefore chargeable. All new build floorspace, measured as gross internal floorspace (i.e. the internal area of the building, including circulation and service space such as corridors, storage, toilets, lifts etc). It includes attic rooms that are useable as rooms, but excludes loft space accessed by a pull-down loft ladder. It includes domestic garages, but excludes car ports.

## 8. What happens with planning applications that pre-date the date that CIL comes into effect in South Gloucestershire?

The Regulations require CIL to be applied to all new planning consents<sup>2</sup> granted after the date that the charging schedule comes into effect. The date at which the application was made is not relevant, neither is the date of the officer's recommendation nor the date at which a planning application was considered by committee. The levy will also

---

<sup>2</sup> Reserved Matters associated with an Outline Consent granted before the CIL came into effect are not liable.

apply to any planning consents issued by a Planning Inspector as a result of a successful appeal after the introduction of the levy.

## **9. Is CIL payable if planning permission is not required for a development?**

Following the introduction of CIL, development commenced under 'general consent' will be liable to pay CIL. 'General consent' includes permitted development rights granted under the General Permitted Development Order 1995, and developments permitted through a Local Development Order.

If development under general consent is intended then a 'Notice of Chargeable Development' must be submitted to the Council before the development is commenced. Such a notice is not required if the development is less than 100 square metres of new floorspace and it does not comprise one or more new dwellings.

## **10. CIL Relief**

The CIL Regulations (41-58) make a number of provisions, some compulsory, others non compulsory, for charging authorities to give relief from CIL. 'Community Infrastructure Levy relief' means any exemption or reduction in liability to pay the levy.

Detailed information regarding CIL relief is contained in the Department for Community & Local Government's May 2011 'Community Infrastructure Delivery relief information document' which is available on their website at <http://www.communities.gov.uk/documents/planningandbuilding/pdf/19021101.pdf>

### Mandatory relief

Development that is entitled to Mandatory Relief from CIL (subject to conditions which apply):

- Development on land owned by a registered charity, and that is used wholly or mainly for charitable purposes (Regulation 43 of the CIL Regulations 2010), so long as the relief does not constitute state aid.
- Those parts of a development which are to be used as social housing (often called affordable housing), as set out in Regulation 49 of the CIL Regulations 2010 & as amended (2014).

### Discretionary relief

Charging Authorities can choose to offer discretionary relief for:

1. Charities investment activities (Regulation 44), and
2. Exceptional Circumstances (Regulation 55)
3. Discretionary Social Housing Relief (Regulation 49A)

See the web site for policies (LINK)

## 11. What will CIL funds be spent on?

The regulations require CIL funds to be spent on the provision, improvement, replacement, operation or maintenance of 'infrastructure'. Infrastructure is defined at section 216 (2) of the Planning Act 2008, as including (but not exclusively):

- (a) roads and other transport facilities,
- (b) flood defences,
- (c) schools and other educational facilities,
- (d) medical facilities,
- (e) sporting and recreational facilities, and
- (f) open spaces.

This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, district heating schemes and police stations and other community safety facilities. This gives local communities flexibility to choose what infrastructure they need to deliver their development plan (DCLG, May 2011 – CIL: An Overview)<sup>3</sup>.

Regulation 123 of the CIL regulations (2010) requires that the Council publishes a list on its web site of the infrastructure it intends to fund wholly or in part from CIL funds. S106 planning obligations are not allowed to be spent on items on the Regulation 123 list (LINK).

The CIL draft amendment regulations 2013 establish that a proportion of CIL Receipts are passed to the local communities where it was raised:

- 15% (capped at £100 per existing 'council tax' property per year) where there is no Neighbourhood Plan in place, or,
- 25% of receipts (uncapped) where a locality has a Neighbourhood Plan,

Parish & Town Councils will also have to spend the funds on the provision, improvement, replacement, operation or maintenance of infrastructure, *or anything else that is concerned with addressing the demands that development places on an area*. This can include spending on affordable housing and the development of a Neighbourhood Plan. Parish & Town Councils are thus not bound by the Council's Regulation 123 list of infrastructure. Where there is no Parish or Town Council the District Council (as the charging authority) is required to spend the CIL receipts derived in those areas in consultation with those communities. Parish & Town Councils should work closely with the Council and their neighbouring councils to agree on spending priorities.

The District Council may also reclaim CIL receipts spent inappropriately or not within 5 years by Parish & Town Councils. It must then spend the reclaimed receipts in that parish or town council area. Parish & Town Council's may also pass back CIL receipt to the District Council for spending on strategic infrastructure.

The Council and Parish & Town Councils are required to produce a report for each financial year detailing how much CIL funding was raised and what it was spent on (Regulation 62).

---

<sup>3</sup> The definition of infrastructure does NOT include affordable housing.



The Council may also, use up to 5% of CIL collected to cover administrative expenses incurred in establishing CIL procedures and collecting the levy.

## **12. Review of CIL**

Changes to the adopted charging schedule are subject to consultation and Independent Examination. It is therefore not practical to amend the charging schedule frequently. It is however acknowledged that fluctuations in residential and commercial development markets and changes in construction costs may have significant impact on development viability. Periodic monitoring and review is therefore necessary to ensure the CIL Charging Schedule is appropriate.

The Council will therefore annually monitor market and build cost indicators and take account of new planning policies and evidence as appropriate, such as the Strategic Housing Market Assessment (SHMA) & Policies Sites & Places Development Plan Document. Should these indicators demonstrate the need to undertake a review or in any event every 3 years the Council will review viability evidence in order to decide whether amendments to the charging schedule are appropriate and thereby instigate the review process. These indicators will be reported in the Council's Annual Monitoring Report. The Council will in any event instigate a review when it reviews its Core Strategy (to be completed in 2018).

## PART II

### **S106 Planning Obligations**

#### **1.0 Introduction**

Planning obligations, also known as Section 106 Agreements, are legally binding agreements entered into between a Local Authority and a developer. In addition to the CIL, they provide the mechanism by which measures are secured to mitigate the impact of development.

This Appendix comprises two parts:

**Part One** sets out the Council's overall approach to planning obligations. It shows how the SPD complies with national and local policy, and deals with procedural matters relating to the drafting and enforcement of Section 106 Agreements.

**Part Two** sets out the types of planning obligation that the Council may seek to secure from development. It identifies the relevant policy basis and usual method / process by which the obligation will be sought. It specifically covers the following obligations:

- Local Transportation & Highway Works
- Public Open Space & Landscape Schemes, and
- Other Site Specific Measures (education, community buildings, health facilities, ecology, heritage, public rights of way & public art)

#### **2.0 National Policy Context**

The legislative framework for planning obligations is set out in Section 106 of the Town & Country Planning Act 1990, as amended by Section 12 of the 1991 Planning and Compensation Act. Further legislation is set out in Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010, and the CIL (Amendment) Regulations 2011.

The CIL Regulations require that local authorities cease to use planning obligations as the primary mechanism to support growth, upon adoption of a CIL or by 6 April 2015, whichever is the sooner. In addition the CIL Regulations also prevent the pooling of Section 106 contributions from more than five developments to enable the provision of new infrastructure. Regulation 122 sets out the following tests that must be satisfied in order for obligations to be required in respect of development proposals:

- the obligation must be necessary to make the proposed development acceptable in planning terms;
- the obligation must be directly related to the proposed development;
- the obligation must be fairly and reasonably related in scale and kind to the proposed development.

Regulation 123 also requires that the Council sets out what infrastructure items it intends to use CIL receipts to fund. The introduction of the CIL Regulations therefore means that upon the adoption of a CIL, or by 6 April 2015, whichever is the sooner, planning obligations are to be scaled back to cover the provision of affordable housing and site specific measures required to mitigate the impact of development. S106 obligations will not be able to be sought for items on the 'Regulation 123' list.

The National Planning Policy Framework (NPPF – March 2012), promotes sustainable development. Paragraph 176 states that, *‘where safeguards are necessary to make a particular development acceptable in planning terms (such as environmental mitigation or compensation), the development should not be approved if the measures required cannot be secured through appropriate conditions or agreements. The need for such safeguards should be clearly justified through discussions with the applicant, and the options for keeping such costs to a minimum fully explored, so that development is not inhibited unnecessarily’*. Paragraphs 203-205 go on to state that, *‘Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Planning obligations should only be sought where they meet all of the following tests:*

- *necessary to make the development acceptable in planning terms;*
- *directly related to the development; and*
- *fairly and reasonably related in scale and kind to the development.*

*Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled’.*

### **3.0 Local Policy Context**

*Policy CS6 – Infrastructure & Developer Contributions*, of the Core Strategy requires development to contribute towards infrastructure in order to mitigate impact on existing communities and provide for the needs of new occupants arising as a consequence. The policy also committed the Council to introduction of a CIL. The Council therefore intends to introduce a CIL for South Gloucestershire by spring 2015.

The Council previously published ‘The Developers’ Guide’, which set out the Council’s requirements for the provision of, or financial contributions towards services and infrastructure. This document will be withdrawn upon commencement of CIL charging. It is replaced by policy CS6 of the Core Strategy, the Infrastructure Delivery Plan (IDP) and this SPD. The IDP (supporting appendices) sets out the background information & rationale for contributions towards such items as education, community meeting spaces and health. This information is particularly relevant where new development proposals are of a scale that such amenities may be required onsite to provide for the needs of the new occupants. Most medium and small-scale developments however, are rarely required to provide for on or near site infrastructure items other than:

- affordable housing,
- local highway enabling works,
- ecological mitigation, landscape works, open space and play equipment,
- public art, and where appropriate works to
- listed buildings,
- public rights of way, and
- other identified and justified site specific measures

Where a site is of such scale that it would generate the need for a significant piece of ‘generic’ infrastructure **onsite** that is identified on the Regulation 123 list, such as a new primary school, the developer will be required to provide the land for that infrastructure through the S106 agreement. Otherwise contributions will be dealt with via the CIL or funded from other sources. Affordable Housing (AH) will continue to be sought via S106 and is dealt with by its own SPD.

Proposals for development that may require the provision of planning obligations should be made in accordance with the relevant policies of the adopted Development Plan, which currently comprises the Core Strategy and saved policies from the South Gloucestershire Local Plan (SGLP). This SPD which supports the Core Strategy, therefore constitutes an important material consideration in the decision making process. The Council also intends to adopt a Policies Sites & Places Plan in 2016, that will replace saved policies in the South Gloucestershire Local Plan.

As any proposal that may require the provision of planning obligations will require the consideration of a number of planning issues, a variety of policies contained in the SGLP & Core Strategy will apply. The SPD supplements, in particular, the following policy CS6 – Infrastructure and Developer Contributions of the Core Strategy.

#### **4.0 Council approach to location of provision through obligations**

Wherever possible, provision should be made on-site for facilities (inc land) required through a planning obligation. However, there will be cases where this is neither practicable nor appropriate, such as for local highway enabling works. In these instances, the Council will require financial contributions towards the provision of necessary measures to mitigate the impact of the development.

The Council will consider the issue of whether facilities are to be provided on or off-site, on a case-by-case basis. However, it is expected that where affordable housing obligations are required, provision will be on-site, unless in exceptional circumstances a financial contribution is agreed.

In cases where a small number of developments (up to a maximum of five) are proposed in close proximity to each other and the cumulative effect will result in the need for a specific mitigating measure, and the measure is identified as excluded from the Regulation 123 list, the Council may pool contributions from each of the developments, in order to fund the necessary measure in an equitable way.

#### **5.0 Drafting of Agreements**

The Council encourages the use of a standard form of S106 agreement to ensure a consistent approach.

A copy of the basic model agreement can be provided upon request. The Council expects the agreement to be prepared by its own Solicitors, and that the final ongoing version is produced on its own I.T. system. (This enables the Council to store electronically the final agreement and in the future produce and deliver copies electronically).

For the same reasons, the Council is developing standard requirements for the size and format of agreements.

#### **Unilateral Undertakings**

A Unilateral Undertaking is a simplified version of a Planning agreement and is only entered into by the Landowner. There may be occasions when the use of a Unilateral Undertaking (where it benefits both the applicant and the Council) can assist in ensuring that planning permissions are granted expediently.

## Costs

The Council will recover the following costs associated with the preparation, implementation and monitoring of the S106 Agreement:

- Legal costs in preparation of the Agreement
- Costs in supervising 'public' works, i.e. works to be adopted by the Council (e.g. roads, open spaces etc)
- Administrative and related costs in implementing the agreement and in monitoring compliance (i.e. routine visits or ad hoc requests seeking information from the Developer etc).

An estimate, or basis of fee/cost calculation can be provided.

## Monitoring Fee

Where a S106 agreement requires significant monitoring by the Council a fee equivalent to 4% of the total financial contributions will be levied to cover Council costs for the monitoring of the Section 106 Agreement. This will be paid preferably on the signing of the agreement, but can in some instances be paid on commencement of development by prior arrangement.

Further information can be obtained from the Council's Legal Services Team, or the Section 106 Co-ordination Officer.

## **6.0 Transfer of Land**

Occasionally obligations will require land to be transferred to the Council, usually in respect of public open space obligations. In such cases, developers will be required to pay the Council's legal costs in respect of the land transfer.

## **7.0 Financial Contributions**

Financial contributions will be payable at specific stages in the development process, usually on commencement or on first occupation of the development. However, there may also be cases in large-scale development where contributions can be phased, in order to match the proportional impact of each phase of the development. Trigger dates for the payment of financial contributions will be included in the Planning Agreement, as will any time periods by which the contribution is to be spent.

## **8.0 Index Linking**

Financial contributions will be index linked. The appropriate indexation and start date will be agreed as part of the S106 agreement process.

## **9.0 Monitoring and enforcement of Obligations**

Monitoring of obligations will be undertaken by the Council to ensure all obligations entered into are complied with on the part of both the developer and the Council.

The Council will work with developers to find solutions in cases where there is difficulty in making provision or payments at the trigger set out in the Agreement. This could be through agreeing payment or provision of obligations at a later stage of the development process, or agreeing payments by instalments. However, where it is imperative that the relevant measure is in place prior to a development being occupied, the obligations to fund it will always become payable on commencement of the development.

The Council will enforce obligations through the relevant legal channels once all other reasonable approaches to remedying a failure to comply with the obligations have been exhausted. In such cases, the Council will seek to retrieve its legal costs in taking action from the party that is in breach of its obligations.

## **10. Viability**

The Council accepts that there may be occasions where development proposals are unable to meet all the relevant policy requirements and still remain viable. Where the Council is satisfied that an otherwise desirable development cannot be fully policy compliant and remain viable, a reduced package of planning obligations may be recommended provided the S106 package is still sufficient to satisfactorily mitigate development to the extent that it is acceptable in planning terms (Reg 122 & 123 of the CIL regulations 2010).

In order to enable the Council to assess the viability of a proposal, the applicant will be required to provide any necessary cost and income figures to the Council, and pay the Council's full costs in appointing consultants to undertake a viability assessment.

In all cases, the Council requires viability to be undertaken using a residual land value approach. This means that the starting point for a viability assessment is to be the existing use value (i.e. what the site is worth in its current condition for the use that it has planning consent for). Viability claims based on an over-inflated price that has been paid for a site will not be accepted, as the Council does not consider it right that the public purse should suffer due to an ill judged purchase of land by a developer.

## **11. Infrastructure types**

**S106 obligations (or S278 agreements under the Highway Act 1980) will not be used for items set out on the Regulation 123 infrastructure list. The items below constitutes infrastructure that S106 will continue to be regularly utilised where they meet the CIL tests set out at Regulation 122. S106 will also be used to deliver infrastructure to mitigate the impacts of that development where the site is of sufficient scale to require provision on or in the immediate locality of the site.**

## **12. Local Transportation & Highway Works**

### Policy Background

The justification for requiring obligations in respect of Transportation & Highway Infrastructure Works is set out in saved Policies T3, T4, T5, T6, T7, T8, T9 of the SGLP and CS1, CS7 & CS8 of the Council's Core Strategy. SGLP Policies will be replaced by the Policies, Sites & Places Development Plan Document (expected to be adopted in 2016). Please check the Council website and/or with the Strategic Planning Policy Team for further information.

S106 obligations in respect of Highway Infrastructure & Transportation works will normally be restricted to localised enabling works, and be required where there is a requirement to improve existing, or construct new, highway infrastructure in order to access the development in a safe and appropriate manner. The extent of these works will be dependant upon the scale of the development. Consequently there is no trigger below which a transportation or highway infrastructure obligation will not be required

and there are no types of development that would be exempt from Highway and transportation Infrastructure obligations.

Required measures could range from small-scale footway reinstatement, kerb build-outs, provision of pedestrian crossings and bus shelters, to the construction of new junctions or access roads. Highway Infrastructure Works will be secured through one of two routes, as follows:

1. Where other obligations necessitating a full Section 106 Agreement are required, Highway Infrastructure Works will be incorporated in the agreement. In addition, where the Highway Infrastructure Works are complex in nature they will also be secured through a Section 106 Agreement, as it is important that the scope of such works are agreed prior to the granting of a planning consent.

2. Where there are no other obligations or the other obligations only require a simple Unilateral Undertaking, and the required Highway Infrastructure Works are straightforward, they can be secured using a “Grampian” condition. This will enable a planning consent to be granted more quickly, but will require the developer to enter into a Section 278 Highways Agreement prior to commencing their development.

Highway & transportation obligations may also include the requirement for traffic regulation orders, stopping up orders, routing controls, traffic light re-phasing, travel plans and safeguarding land for specific transportation purposes, e.g. mass transit.

Specific details regarding the processes for undertaking Highway Infrastructure Works will be set out in the relevant Section 106 or 278 Agreement.

Developers will be required to enter into a bond for an amount specified by the Council, to ensure the Council’s position is protected should the developer default in any way with regard to the Highway Infrastructure Works. This bond can take the form of a formal bond entered into with an approved surety, or a cash deposit held by the Council.

The Council also charges a fee if a development is required to enter into a TRO obligation as part of a scheme of Highway Infrastructure Works. This covers the Council’s Legal and Traffic Management costs in processing the TRO. The costs of implementing the relevant lining and signs associated with the TRO will be borne by the developer as part of their Highway Infrastructure Works.

In addition developers will also be required to pay fees to cover the Council’s costs incurred in approving the detailed engineering drawings, inspecting the Highway Infrastructure Works and issuing the Certificates.

Advice with regard bonds and fees associated with traffic and highway works should be sought from the Transportation Team.

### **13. Public Open Space & Landscaping Schemes**

#### **Policy Background**

The justification for requiring obligations in respect of the provision of Public Open Space (POS) & Landscaping Schemes is set out in saved Policies L1, L4 & L5 of the

SGLP and CS1, CS2 and CS24 of the Core Strategy. SGLP Policies will be replaced by the Policies, Sites & Places Development Plan Document (expected to be adopted in 2016). Please check the Council website and/or with the Strategic Planning Policy Team for further information.

Policies CS2 sets out principles for the protection and conservation of existing green infrastructure and the delivery of new open space and landscaping. Policy CS24 sets out new minimum standards for open space provision with new development for the following typologies:

- Informal Recreational Open Space
- Natural / Semi-Natural Open Space
- Outdoor Sports Facilities
- Provision for Children and Young People
- Allotments

CS24 requires that provision is onsite, unless it is demonstrated that partial or full offsite provision or enhancement creates a more acceptable proposal. The location of the development, proximity to existing open space and type of development and dwellings proposed will be considered in assessing the need for new POS & landscaping. In general, this type of obligation will be used in the following circumstances:

- o where POS and landscaping is required onsite to serve the needs the new occupants
- o where a landscaping scheme is required to screen a development or integrate it into the surrounding area;
- o where on-site constraints are such or that it makes practical sense for a new development to contribute financially towards to the provision or improvement of an existing nearby local open space and ancillary equipment & amenities. In such instances the S106 must be specific about where & what improvements the contribution will be used for. No more than 5 obligations may be pooled towards a specific project or improvement.
- o where a landscaping scheme forms part of highway infrastructure works required from a new development.

POS will normally only be required onsite on major<sup>4</sup> residential and commercial development proposals. Landscape scheme obligations could however be applied to any development type, irrespective of size and consequently there is no threshold below which an obligation would not be required. Priority for on site provision of the different typologies will be dependent on the nature of the scheme, proximity of the site to existing provision and local surplus or deficit in provision.

The requirement for providing POS & landscaping can be fulfilled in one of three ways:

*i. POS & Landscaping Scheme provided by the Developer & maintained by the Council or Parish / Town Council*

In this case the requirement will be for the developer to design and implement the POS & landscaping scheme to a design and specification agreed by the Council. It will then be transferred to the Council once it is in an adoptable condition after an agreed period

---

<sup>4</sup> Major development - is defined in terms of residential development as erection of 10 or more dwellings and/or site area of over 0.5ha. Other forms of development or change of use (offices, industry, retail etc) over 1,000m<sup>2</sup> and/or over 1ha in site area



of maintenance. Upon transfer, a commuted maintenance payment will be required to cover the first 15 years of maintaining the POS & landscaping scheme.

The arrangements will be as follows:

- Development is not to commence until the developer has submitted to, and received written approval of the POS &/or Landscaping Scheme, from the Council.
- The developer is to implement the POS &/or Landscaping Scheme, and will arrange joint site inspections with the relevant Council officer at regular periods during the implementation of the scheme and upon practical completion. When the officer is satisfied that the scheme is acceptable a Certificate A will be issued and a 12-month maintenance period will commence.
- The developer will retain responsibility for maintenance during the maintenance period. At the end of the maintenance period a further joint site inspection will be undertaken and subject to any defects being satisfactorily remedied, a certificate of adoption will be issued. Upon the issue of this Certificate at transfer, the Landscaping Scheme will be transferred to the Council and a commuted maintenance payment will become payable. The level of the commuted maintenance payment will vary from site to site depending upon the type of hard and soft landscaping features contained in the Landscaping Scheme. The maintenance payment will be to cover a period of 15 years and will be calculated using either:
  - The maintenance cost for the 15 year period in place at the time of completion of the S106 agreement. These rates will be set out in the S106 agreement. The maintenance payment will be index linked to take into account inflation that may occur prior to the receipt of the payment, or
  - The maintenance cost for the 15 year period in place at the time the Certificate of Adoption is issued.
- Maintenance and capital contributions should be agreed prior to schemes being reported to committee, where appropriate.

*ii. POS & Landscaping Scheme provided by the Developer & maintained by a private management company or trust or Parish / Town Council*

In this case the developer will be required to make provision of a POS &/or landscaping scheme to adoptable standards prior to conveying the management & maintenance of the scheme to a management company or trust. The Development is therefore not to commence until the developer has submitted to, and received written approval of the POS &/or Landscaping Scheme, from the Council. Should this option be taken this will be on an in-perpetuity basis. The Council will also require that the private management regime (relationship with residents) is agreed.

- The developer is to implement the POS &/or Landscaping Scheme, and will arrange joint site inspections with the relevant Council officer at regular periods during the implementation of the scheme and upon practical completion.

With regard 1 & 2, the developer will be required to pay fees to cover the Council's costs incurred in approving the POS & landscaping scheme, undertaking inspections of the POS & landscaping scheme and issuing the Certificates. Advice should be sought from the Community Spaces or Major Sites Team with regard these costs.

#### **14. Other Site Specific Measures**

Site-specific measures are those obligations required to mitigate the impact of a particular development, which are not included on the CIL Regulation 123 list or other sections of this SPD. Site Specific obligations could be required from any development type, irrespective of size, and consequently there is no threshold below which an obligation will not be required. The determining factor is whether the development creates an impact that requires mitigation. **In such instances the S106 obligation must meet the CIL tests and thereby must be specific about where & what mitigation & enhancement works are required or what specific project the funding contribution will be utilised for. No more than 5 S106 planning obligations may be pooled towards a type of infrastructure or project.** The following examples cannot be considered to be exhaustive but give an indication of the types of obligation that may be required.

- Works or funding for the management and conservation of ecological measures where a development has an adverse impact on local habitats and ecology, or the provision of alternative habitats to compensate for any loss.
- Works or funding for the management and conservation archaeological interests where a development has an adverse impact.
- Works or funding for the restoration, conservation / enhancement of listed buildings, buildings of local importance and monuments.
- Works or funding for the diversion and or enhancement of Public Rights of Way
- Land for the provision of necessary infrastructure included on the Reg 123 list.
- Other identified and justified site specific measures

#### **Policy Background**

The justification for requiring obligations in respect of site-specific measures is set out in saved policies L1, L7, L8, L9, L10, L11, L12, L13, L14, L15, LC12 of the SGLP and Policies CS1, CS2, CS6, CS9 of the Council's Core Strategy. SGLP Policies will be replaced by the Policies, Sites & Places Development Plan Document (expected to be adopted in 2016). Please check the Council website and/or with the Strategic Planning Policy Team for further information.

## PART III

### **Grampian Conditions**

1.0 The NPPG (in respect of the Community Infrastructure Levy) states that: *'In England, the National Planning Policy Framework (paragraph 206) sets out that planning conditions (including Grampian conditions) should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects... When setting conditions, local planning authorities should consider the combined impact of those conditions and any Community Infrastructure Levy charges that the development will be liable for. The use of Grampian conditions will thus be considered on a site by site basis in accordance with this guidance.*

## **Appendix 1**

### **Status of the CIL & S106 Guide (SPD)**

Proposals for development should be made in accordance with the relevant policies of the adopted Development Plan, which currently comprises the Core Strategy (adopted Dec 2013) and a saved policies in the South Gloucestershire Local Plan (Adopted Jan 2006).

The CIL & S106 SPD supplements Policy CS6 – Infrastructure and Developer Contributions – of the South Gloucestershire Core Strategy. The SPD will be used as a material consideration in the determination of planning applications where appropriate. The SPD should be read in conjunction with the South Gloucestershire Core Strategy, the CIL Charging Schedule, the Regulation 123 Infrastructure List and the Infrastructure Delivery Plan (IDP).

In producing this SPD the Council has complied with the Town and Country Planning (Local Planning) (England) Regulations 2012, which set out the processes for its preparation, consultation and adoption. These regulations are separate from the CIL regulations which the Council must comply with in producing the CIL charging schedule.