

### **Using S106 and/or Community Infrastructure Levy (CIL) for funding the creation of new public access –**

#### **Briefing Note May 2018**

##### **Introduction**

The purpose of this note is to consider the opportunities for seeking developer-funding towards the creation of new and / or improved public rights of way / new access to the countryside.

Within Norfolk there are two different routes to gaining developer-funding towards supporting infrastructure associated with new development. Firstly there is the use of Planning Obligations using S106 legal agreements to secure funding for infrastructure needed to mitigate the impacts of development; and secondly there is the use of the Community Infrastructure Levy (CIL), where it has been implemented by the respective Local Authority (District Council).

The remainder of this note briefly explores the two approaches of seeking developer funding:

##### **Planning Obligations**

The County Council's Planning Obligations Standards sets out where developer funding can be sought. In terms of Green Infrastructure it indicates, inter alia, that:

The County Council ..... expects that green infrastructure provision is considered and secured through on-site open space provision with appropriate connections to the wider off-site GI network. This can be achieved, for example, through strategic Highway planting, enhancements to the Public Rights of Way network and effective use of sustainable urban drainage systems as multifunctional assets.

Any developer funding in this scenario would need to satisfy the legal tests set out in the Community Infrastructure Levy Regulation 2010 (as amended) (Reg 122) and be:

- 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.

In addition any obligation sought would also need to take in to account the restrictions/limitations placed on the use of planning obligations with regard to the pooling of contributions as set out in Reg 123 (3) of the CIL Regulations (as amended 2014). These restrictions came into force on 6 April 2015 and limit the

amount of pooling of S106 contributions by a local authority to no more than five obligations providing “for the funding or provision of that project, or provide for the funding or provision of that type of infrastructure”. The County Council therefore has to assess very carefully any contributions it seeks with a view to minimising the need to pool contributions.

### **Community Infrastructure Levy**

Within Norfolk CIL has been implemented in the Greater Norwich area (i.e. covering Norwich City; Broadland; and South Norfolk District Councils) and across King’s Lynn and West Norfolk.

Where CIL has been introduced this takes away the need to make the link between the respective development and the proposed mitigation / infrastructure required (i.e. no Reg 122 or Reg 123 (3) tests to satisfy). Developers pay a standard CIL rate (subject to any exemptions) and the CIL fund are then collected and pooled by the CIL Charging Authority (District Council).

The only limitations on the spending of CIL is in respect of:

- (a) Whether it is needed to support growth in the area;
- (b) It has to be infrastructure as defined in S 216 (2) Planning Act 2008;
- (c) It has to be identified in the Charging Authority’s Reg 123 List (i.e. Infrastructure to be funded through CIL). If it is not on the list then funding can potentially be sought through S106 (obligations) subject to the above restrictions. Even if PRow are identified on the Reg 123 List, if there is any land transfer associated with such infrastructure requirements, then this would need to be undertaken through a S106 agreement as CIL simply provides “cash” not land.

While it is potentially easier to use CIL funds for new or improved PRow etc than relying on S106 agreements, it has to be recognised that there is only a limited CIL funding Pot. As such the bid process can in practice be very competitive / difficult as such works/infrastructure would be competing against other CIL infrastructure projects such as new roads; schools; library extensions and other Green Infrastructure projects.

### **Summary of Issues to consider**

- (1) Where are the new / improved PRow being sought – is it in a CIL Charging area or in S106 area?
- (2) If in CIL charging area – will need to check whether what is being sought is on the Reg 123 List (list of infrastructure potentially funded through CIL);
- (3) If in a S106 area -will need to satisfy legal tests in Reg 122 and the pooling restrictions in Reg 123 (3).