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| Title of Report: | Response to Council Motion submitted 12th December 2013 (Item 23 (b)) |
| Report to be considered by: | Council |
| Date of Meeting: | 22 July 2014 |
| Forward Plan Ref: | C2820 |

Purpose of Report: To provide a response to the Motion agreed at Council on 12th December 2013 concerning S106 agreements and the Community Infrastructure Levy ("CIL").

Recommended Action: To approve the report.

Reason for decision to be taken: In order to respond to the Motion.

Other options considered: None

Key background documentation: Adopted SPD "Delivering Investment from Sustainable Development"

The proposals will help achieve the following Council Strategy principle:

CSP8 - Doing what's important well

The proposals contained in this report will help to achieve the above Council Strategy principle by:

Examining current processes and procedures to confirm that they are fit for purpose

| Portfolio Member Details | |
|---|---|
| Name & Telephone No.: | Councillor Hilary Cole - Tel (01635) 248542 |
| E-mail Address: | hcole@westberks.gov.uk |
| Date Portfolio Member agreed report: | 20 May 2014 |

| Contact Officer Details | |
|-------------------------|---------------------------------|
| Name: | Caroline Walsh |
| Job Title: | Developer Contributions Officer |
| Tel. No.: | 01635 503018 |
| E-mail Address: | cwalsh@westberks.gov.uk |

Implications

Policy: The policy for collection of developer contributions is well established and efficient and effective. Policy regarding CIL will be established in line with regulations in due course.

Financial: Effective systems and processes are necessary to ensure that developer contributions are received when due, and are spent in

the most efficient manner to ensure best value is achieved from the receipt.

Personnel: Not applicable.

Legal/Procurement: Contributions requested and paid pursuant to S106 Agreements must comply with the CIL Regulations 2010 (as amended). The allocation and spend of contributions received as a result of a S106 agreement must at all times comply with the terms of the agreement.

Property: Not applicable.

Risk Management: Proper systems and procedures ensure that money received is spent in line with statutory requirements, thus minimising the risk of challenge and the possibility of being required to refund contributions.

| Is this item relevant to equality? | Please tick relevant boxes | Yes | No |
|--|----------------------------|--------------------------|-------------------------------------|
| Does the policy affect service users, employees or the wider community and: | | | |
| • Is it likely to affect people with particular protected characteristics differently? | | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| • Is it a major policy, significantly affecting how functions are delivered? | | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| • Will the policy have a significant impact on how other organisations operate in terms of equality? | | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| • Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics? | | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| • Does the policy relate to an area with known inequalities? | | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Outcome (Where one or more 'Yes' boxes are ticked, the item is relevant to equality) | | | |
| Relevant to equality - Complete an EIA available at www.westberks.gov.uk/eia | | | <input type="checkbox"/> |
| Not relevant to equality | | | <input checked="" type="checkbox"/> |

| Is this item subject to call-in? | Yes: <input type="checkbox"/> | No: <input checked="" type="checkbox"/> |
|---|-------------------------------|---|
| If not subject to call-in please put a cross in the appropriate box: | | |
| The item is due to be referred to Council for final approval | | <input checked="" type="checkbox"/> |
| Delays in implementation could have serious financial implications for the Council | | <input type="checkbox"/> |
| Delays in implementation could compromise the Council's position | | <input type="checkbox"/> |
| Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months | | <input type="checkbox"/> |
| Item is Urgent Key Decision | | <input type="checkbox"/> |
| Report is to note only | | <input checked="" type="checkbox"/> |

Executive Summary

1. Introduction

- 1.1 At its meeting on 12th December 2013 the following (amended) Motion was submitted by Councillor Longton and seconded by Councillor Macro.

“This Council:

Welcomes the Coalition Government's decision to delay the deadline for implementing the Community Infrastructure Levy (CIL) for 12 months until April 2015;

Notes that the existing system involving "Section 106" financial contributions from developers, which CIL will replace, has proved to be fair and generates about one third more in capital receipts than is expected under CIL; also that West Berkshire's operation of Section 106 was endorsed by Government as exemplary under both Liberal Democrat and Conservative Administrations; but that Ward Members and local councils in this District are not always involved in every stage of the process;

Therefore we call:

- a. On the Leaders of both Parties on this Council to continue pressing for retention of the S106 system by writing to the Minister of Planning; and
- b. On the Planning Department to ~~amend~~ review its procedures so as to ensure that local town and parish councils and Ward Members are involved from the outset in the allocation of S106 and CIL funds, from the pre-application stage through to post-construction of new developments.”

- 1.2 The Motion as amended was put to the vote and declared CARRIED.
- 1.3 The report will detail actions taken in response to the Motion, and an explanation of procedures and processes in place with regard to S106 and also CIL.

2. Equalities Impact Assessment Outcomes

- 2.1 This item is not relevant to equality.

3. Conclusion

- 3.1 Members are asked to approve the report.

Executive Report

1. Introduction

- 1.1 The following amended Motion was submitted by Councillor Longton at a meeting of Council on 12th December 2013. The Motion was seconded by Councillor Macro, put to the vote and declared carried.
- 1.2 The purpose of the report is to respond to the Motion:

“This Council:

Welcomes the Coalition Government's decision to delay the deadline for implementing the Community Infrastructure Levy (CIL) for 12 months until April 2015;

Notes that the existing system involving "Section 106" financial contributions from developers, which CIL will replace, has proved to be fair and generates about one third more in capital receipts than is expected under CIL; also that West Berkshire's operation of Section 106 was endorsed by Government as exemplary under both Liberal Democrat and Conservative Administrations; but that Ward Members and local councils in this District are not always involved in every stage of the process;

Therefore we call:

- a. On the Leaders of both Parties on this Council to continue pressing for retention of the S106 system by writing to the Minister of Planning; and
- b. On the Planning Department to amend review its procedures so as to ensure that local town and parish councils and Ward Members are involved from the outset in the allocation of S106 and CIL funds, from the pre-application stage through to post-construction of new developments.”

2. Contact with Ministers

- 2.1 West Berkshire Council has expressed its opposition to the introduction of CIL since it was first suggested, requesting time and again for the Government to rethink its proposals, and instead copy our approach to seeking contributions to fully mitigate the impact of development from developers.
- 2.2 More recently, Cllr Chopping made contact with Richard Benyon MP regarding S106 and CIL in West Berkshire. Cllr Chopping, Cllr Cole and officers met with Richard Benyon in January and had a full discussion about the situation at West Berkshire, our successful policy for securing developer contributions using S106 agreements, and in contrast, the drawbacks of the Community Infrastructure Levy.
- 2.3 Richard Benyon was subsequently able to secure a Westminster Hall Debate on 5th February entitled “Community Infrastructure Levy (West Berkshire). Members and officers were able to attend the televised debate which took place between Richard Benyon and the Under Secretary of State for Communities and Local Government Minister, Brandon Lewis. The press release issued by Richard Benyon’s office following the debate is attached at Appendix A.

- 2.4 During the debate an offer was made by Mr Lewis for a further meeting with officials from the DCLG. Members and officers met with officials from DCLG at their offices on 13th May 2014 where a robust discussion took place.
- 2.5 Evidence was provided by officers showing the benefits of West Berkshire's current SPD for developer contributions, and members pressed officials to consider allowing it to continue, rather than implementing the CIL. Officials were unable to agree to Members' requests, but have agreed to take the evidence and discussion on board in their future work. During the meeting a number of detailed issues regarding CIL were discussed. It was agreed that a further meeting will take place in the coming months, where officials will travel to West Berkshire to find out more about our current processes and continue discussions on the detailed issues raised.
- 2.6 In addition, on 24th February 2014 Cllr Cole wrote to Richard Benyon regarding the most recent set of CIL Amendment Regulations 2014. This was sent on to Nick Boles MP, Parliamentary Under Secretary of State (Planning). A copy of this letter and the response from Nick Boles to Richard Benyon is attached at Appendices B and C. The opportunity was taken to further discuss this particular issue with DCLG officials at the meeting on 13th May 2014.
- 2.7 Members and Officers continue to press Ministers and Government officials regarding this issue.

3. S106 processes and procedures

- 3.1 As has been stated in the Motion, West Berkshire Council has been upheld as an example of good practice by the Audit Commission, and has been visited by Treasury officials and other authorities wanting to learn our practices and processes. Our streamlined, self funded system has brought in an average of £4.5m per annum since 2005, all to be used to mitigate the impact caused on local communities by development in West Berkshire.
- 3.2 Officers have reviewed the planning application procedures, and processes for allocating and spending developer contributions, with particular regard to the involvement of Members, and Town and Parish Councils.
- 3.3 The planning application process starts with Pre-Application advice, which is offered by the Council to any prospective developer of a site within West Berkshire. In particular, the Council encourages developers of major schemes to talk with Ward Members, the Parish or Town Council, and indeed engage with the public at this early stage of the development process. However this is not something which the Council can enforce – it is only something that we can advise they do.
- 3.4 Once a planning application has been submitted, the relevant Town or Parish Council, and the Ward Members will be consulted for their views of the proposed development. The Case Officer dealing with the application will take account of the consultation responses when assessing the application.
- 3.5 Where developer contributions may be required, in accordance with the Council's adopted Supplementary Planning Document ("SPD") "Delivering Investment from Sustainable Development", the case officer will also consult with relevant service units and partner organisations. Any requests for developer contributions received

from the service units or partner organisations will be considered by the case officer. Where the requests are considered to meet the requirements of the Community Infrastructure Levy Regulations, the applicant will be invited to enter into a S106 legal agreement, meaning that contributions will be required in order to mitigate the impact caused by the development.

- 3.6 When sending in their consultation responses, the Parish and Town Councils have the opportunity to request contributions towards necessary improvements to local facilities. This could reflect priorities that have been identified in their Parish or Town Plans. The requests will be considered by the case officer and will be discussed with the appropriate service unit where necessary.
- 3.7 Once a planning permission is granted, any S106 agreement attached to it is entered onto the developer contributions database. The S106 agreement will detail the amount of contribution payable, when it is due, and which service units will receive the money. In some instances a specific project is detailed in the agreement, but the contribution must always be spent to mitigate the impact of the development. Failure to do so could result in a legal challenge and a refund of any money collected.
- 3.8 In order that all Parish and Town Councils, and Ward Members are kept fully informed of developer contributions, officers send a report from the database each year. The report sets out S106 contributions agreed, received, allocated and spent, on a Parish and Town basis.
- 3.9 At the same time, Ward Members, and Parish and Town Councils will receive contact details for all service units in receipt of S106 money. This enables them to make contact with the service units to propose projects in their area which meet the terms of the legal agreements. The service unit will liaise with the Parish or Town Council before allocating the money to a project. The Portfolio Member for the service is involved with the decision making process.
- 3.10 In addition any Parish or Town Council and any Member are welcome to make contact with either the Developer Contributions Officer or the Developer Contributions Assistant to request information on any S106 agreement at any time. The contact details for these officers are included with the annual report.
- 3.11 The spending of developer contributions is monitored by the Developer Contributions Sub-Group of Capital Group on a regular basis.
- 3.12 The paragraphs above show that appropriate local consultation takes place before, during and after the planning application process, and information is readily available for any Parish or Town Council to engage fully with the allocation and spend of developer contributions.
- 3.13 Having reviewed the processes, officers consider that there is no opportunity to improve how Members, and Parish and Town Councils are involved in the planning application process or in allocating and spending developer contributions to mitigate the impact of development.

4. Parish and Town Plans

- 4.1 Parish and Town Plans set out the aspirations of local residents and highlight the future services and infrastructure required within those communities. The

mechanism of parish planning incorporates extensive community consultation and a strong evidence base which can be used as a guide to local priorities.

- 4.2 As good practice, community groups producing Parish and Town Plans are encouraged to include details of specific projects or targets to improve local facilities. This information can be used by the Parish or Town Councils in seeking funds to help mitigate the impact of development in their local area.

5. CIL procedures

- 5.1 Receipts of Community Infrastructure Levy are not linked to a particular service area. There is no requirement for the money to be spent in the vicinity of the development, or to mitigate the particular impact caused by the development that has paid the levy.
- 5.2 Proposals for the methodology to allocate and spend the CIL receipts are still being drawn up; however the use of CIL for projects will be reflected within the Council's Capital Programme. The Capital Programme is approved annually at a meeting of Council, so all Ward Members can see the projects being funded by the levy.
- 5.3 In addition the established Member Bid process (for capital projects in their Ward) can readily incorporate the use of CIL receipts if the project is an appropriate use of the levy.
- 5.4 CIL Regulations require 15% of all CIL receipts to be paid over to the Town or Parish Council where the development takes place. This will be paid over twice a year, in accordance with CIL Regulations, for the Parish or Town Council to use to improve the local area. This is subject to a cap of £100 per dwelling in any one year.
- 5.5 If a Parish or Town Council adopts a Neighbourhood Development Plan the percentage increases to 25% with no cap.
- 5.6 Reporting mechanisms will be put in place, in accordance with the Community Infrastructure Regulations, to ensure that all receipts passed to Parish or Town Councils are spent appropriately.

6. Recommendation

- 6.1 Members are asked to approve the report.

Appendices

Appendix A – MP Press release February 2014

Appendix B – Letter from Cllr Cole 24th February 2014

Appendix C – Response letter from Nick Boles MP 27th March 2014

Consultees

Local Stakeholders: Not applicable

Officers Consulted: Bryan Lyttle, Jo Naylor, Sarah Clarke, Liz Patient, Corporate Board

Trade Union: Not applicable