

Report of the Head of Governance and Scrutiny Support and Director of City Development

Report to Scrutiny Board (Infrastructure and Investment)

Date: 25 October 2017

Subject: Scrutiny Inquiry into Sustainable Development in Leeds

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

1. Summary of Main Issues

- 1.1 Leeds City Council has an ambition to be the best council in the UK, compassionate fair, open and welcoming with an economy that is both prosperous and sustainable, so all our communities are successful. The Vision for Leeds 2011 – 2030 supports this ambition, stating that by 2030 all communities will be successful where local services, including shops and healthcare, are easy to access and meet people's needs. It also states that local cultural and sporting activities are available to all and there are high quality buildings, places and green spaces, which are clean, looked after, and respect the city's heritage, including buildings, parks and the history of our communities. The Best Council Plan 2017 – 2018 states that the Council wants everyone to live in good quality, affordable homes within clean and well cared for places.
- 1.2 At its meeting on the 21 of June 2017, Scrutiny Board (Infrastructure and Investment) considered their work programme for the 2017/18 municipal year. At this meeting the Board discussion the approach in Leeds to 'sustainable development' through the provision of structure that supports the physical and social needs of the people, now and in the future, who will ultimately, live, work and spend time in their community. The Scrutiny Board stressed the importance of designing and planning places that are supported sufficiently by transport, health and education infrastructure and services. The Board resolved that this would be the main scrutiny inquiry for 2017/18. Terms of reference for the inquiry were agreed on the 19 July 2017.

- 1.3 This report provides information to support the third session of the inquiry which focuses on developer contributions through s106 and CIL monies and their responsibility in terms of providing sufficient and appropriate support for sustainable development.

2. Recommendation

The Scrutiny Board (Infrastructure and Investment) is recommended to:

- i. note the information contained within this report and make recommendations as deemed appropriate.

3 Purpose of this report

- 3.1 This report provides information to support the third session of the Scrutiny Inquiry into Sustainable Development in Leeds. The purpose of this report is to provide the Scrutiny Board with an overview of the current system for managing S106 Agreements and the operation of the Community Infrastructure Levy (CIL) in Leeds.

4. Background

- 4.1 At its meeting on the 21 of June 2017, Scrutiny Board (Infrastructure and Investment) considered their work programme for the 2017/18 municipal year. At this meeting the Board discussion the approach in Leeds to 'sustainable development' through the provision of structure that supports the physical and social needs of the people, now and in the future, who will ultimately, live, work and spend time in their community. The Scrutiny Board stressed the importance of designing and planning places that are supported sufficiently by transport, health and education infrastructure and services. The Board resolved that this would be the main scrutiny inquiry for 2017/18. Terms of reference were agreed on the 19 July 2017, when the first session of the inquiry was undertaken.
- 4.2 The purpose of the inquiry is to make an assessment of and, where appropriate, make recommendations about the delivery of sustainable development in Leeds, and the extent to which the local authority can influence sustainable development.
- 4.3 Sustainable Development is a wide ranging concept at a global and through to the local level and has emerged as a key strand of public policy, with the ambition of securing patterns of development, economic prosperity, social progress and the management of environmental resources, at the same time. Whilst a number of core elements can be identified, sustainable development has multiple definitions and interpretations and has introduced a plethora of new technical language.
- 4.4 Sustainable Development is therefore a cross cutting imperative, which aims to take a longer term and holistic view and is the responsibility of Governments, the business community and wider society, to operate within acceptable limits, to meet its objectives. Within this overall context, and within the UK, the Planning system has a key role to play in delivering the principles of sustainable development but it is by no means the only mechanism through which these aims might be achieved. Planning is also limited in its scope, is impacted by externalities (such as wider Government policies, global economic conditions and changing evidence) and does not have the financial resources available to put in place all of the necessary interventions and programmes to facilitate a more sustainable future. However, within the limitations of Government requirements and legislation, Planning does provide an opportunity to shape the character of places and to help influence and coordinate investment decisions.
- 4.5 In the UK local planning authorities have the responsibility for the preparation of the Local Plan (Development Plans with a 15 year time frame and the determination of planning applications via the Development Management process. In Leeds the Local Plan is comprised of a series of documents including the Core Strategy (adopted 2014), the Natural Resources and Waste local plan (adopted 2013), the Aire Valley Leeds Area Action (adoption anticipated November 2017) and the Site

Allocations Plan (adoption anticipated 2018). Once 'made', Neighbourhood Plans will also form part of the development plan.

4.6 In providing a strategic planning framework for allocation Plans, the Leeds Core Strategy sets out a series of interrelated objectives, strategic and thematic policies, based around the principles of sustainable development. It should be emphasised also that with the context of national planning guidance, the Core Strategy is a spatial plan, which is seeking to make provision for the overall scale and distribution of regeneration and growth across the District, whilst seeking to manage environmental resources and meet social objectives (such as aspects of public health and deprivation). Key components of the Core Strategy include:

- Supporting the provision of community infrastructure that is tailored to meet the needs of the community including high quality health, education and training, cultural and recreation, and community facilities and spaces.
- The provision of new educational facilities to meet increased demand either through extensions to existing establishments or through the building of new schools in areas of housing growth or adjacent to them.
- That new development should be located in accessible locations that are adequately served by existing or programmed highways, by public transport and with safe and secure access for pedestrians, cyclists and people with impaired mobility.

4.7 The following information has been considered by the Scrutiny Board during previous inquiry sessions in July and September.

- The origins and definition of the term, "Sustainable Development".
- The definition of "Sustainable Development", as set out in the National Planning Policy Framework (NPPF)
- The Councils strategic planning framework
- Housing numbers, the requirement to demonstrate a 5 Year Land Supply, the issue of viability, and local authority influence to compel developers to build out existing planning permissions, particularly on brownfield land.

5. Main Issues

5.1 Planning Obligations, also known as S106 agreements, are typically agreements negotiated between local authorities and developers in the context of granting planning consent in order to mitigate their impacts and make them acceptable in planning terms. Direct provision, through on-site benefits, and/or commuted financial contributions may relate to transport provision, affordable housing, green space, education or other community benefit. The wording of each S106 agreement will vary depending upon the benefit being sought.

5.2 National planning policy, set out in Planning Practice Guidance 'Planning Obligations' March 2016 sets out the requirements for the use of s106 agreements. Further guidance is also set out in the Community Infrastructure Levy (CIL) Regulations 2010 (as amended). National policy sets out statutory tests in relation to the scope of section 106 (s106) and its use. Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the

development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind. To help achieve this objective a number of limitations were introduced in the CIL regulations. In particular Regulation 122 of the CIL Regulations requires planning obligations to be necessary, site specific and fair and reasonable. Local planning policies translate national policy and are also set out in local Supplementary planning documents as part of the LDF process.

The difference between the Community Infrastructure Levy (CIL) & Section 106 Agreements

- 5.3 The Community Infrastructure Levy (CIL) allows local planning authorities to raise funds from developers who are creating new buildings in their area. The funds raised will go towards infrastructure that is needed to support the growth of the city, such as schools and transport improvements. The CIL is applied as a charge on each square metre of certain types of new buildings, with the funds generated to be used to deliver infrastructure projects and priorities identified on the Regulation 123 list (Appendix 1). It replaces the method of seeking “pooled contributions” from developers via individual s106 planning obligations. In Leeds, these pooled S106 contributions were previously collected for green space, public transport improvements, education, and public realm.
- 5.4 Executive Board in February 2015 made key decisions around spending of the future CIL income, directing it into two main funding streams; a strategic fund, and a neighbourhood fund, plus up to 5% for administrative costs. Executive Board agreed that the strategic CIL fund will be 70-80% of the total CIL received, and that priorities for its spending will be decided on an annual basis as part of the Council’s budget setting process, in line with the Regulation 123 List, and taking into account the impact of specific and cumulative infrastructure needs arising from new development.
- 5.5 Within this context, s106s are continue to be used for site specific (on-site) requirements such as green space within the site, or access or nearby junction improvements. Following the introduction of CIL, the use of s106s for Affordable housing provision remains the same.

Core Strategy Policy Framework

- 5.6 In Leeds, the adopted Development Plan (including the Core Strategy) and Supplementary Planning Documents (which amplify requirements for particular policies in the Development Plan), provide a Policy basis for s106 Agreements. These include Policies for Affordable Housing, Green space, Public Transport contributions and Education provision.
- 5.7 These Policies and supplementary documents provide information on the level of contribution, the method of payment and the monitoring of agreements. The level of contribution may be, for example, the provision of land laid out as Green space (on the development site) or a commuted sum in lieu of this but which has to be spent on the provision or enhancement of Green space in the same community area. The

Policy and implementation documents primarily ensure a District wide approach to securing contributions, however, where necessary additional area specific Supplementary Planning Guidance/Supplementary Planning Documents has been provided by a number of approved documents, including Eastgate & Holbeck Urban Village.

- 5.8 Policies set out in the Development Plan have been devised via the preparation of a comprehensive evidence base, public consultation and tested via an independent Examination process. Within this context, the Core Strategy, Aire Valley Leeds Area Action Plan and Site Allocation Plan are supported with comprehensive Infrastructure Development Plans (IDPs). The IDPs have been prepared with a range of key stakeholders including Clinical Commissioning Groups and Childrens Services. The purpose of the IDPs is to help provide an overall framework to identify infrastructure programmes and projects either in place or planned to support the Plans objectives and allocations. These proposals to address both existing infrastructure shortfalls as well as planning for future growth. In terms of site specific proposals for new development, the 'policy compliance requirements' are intended to deal with the infrastructure requirements etc. arising from these proposals, rather than remedying existing infrastructure shortfalls. However, in some instances the provision of infrastructure to support new development proposals, will clearly be of benefit to local communities where shortfalls do exist. In terms of the cumulative impact of development proposals, CIL via the 123 List provides a strategic context wider infrastructure requirements. However, the CIL Regulations set limits on spending, consequently income from only five or less s106 obligations can be pooled towards a specific item or type of Infrastructure. S106s are continued to be used to mitigate site-specific requirements to make an individual development acceptable.
- 5.9 In terms of the City Council's overall requirements, the starting point through the Development Management process is to secure schemes that are Policy compliant across the Development Plan. These Policies have been tested through the plan-making process and supported by evidence include viability testing of Policies within the Plan (see below).

Principles governing the management of Planning Obligations

Compliance with the terms of a S106 Agreement

- 5.10 When s106 Legal Agreements are drafted, the structure for the payment of contributions usually follows a phased schedule, from commencement of development through to the full occupation of the development. When s106 contributions are deemed to be a necessary condition of the development, phasing these payments can ensure that the viability of the development is not compromised.
- 5.11 The responsibility for the payment of contributions ultimately lies with the developer and any subsequent landowner and for this reason the s106 charges are registered as a local land charge which shows up on any land search carried out by potential purchasers, whether homeowners or other developers who may be looking to purchase the land with the planning permission. Any non-compliance would be

evident and communicated to the potential purchaser. Non-compliance with the terms of an s106 Agreement could hinder both the sale of individual units and the site as a whole.

- 5.12 As the responsibility, for ensuring payments are made, lays with the landowner the main incentive for developers to comply with the terms of their s106 Agreement, in a proactive and timely manner, is the fact that all contributions are index linked (*according to the Building Cost Index*). This means that indexation is calculated and applied to all contributions from the point of the planning permission being granted to the point of payment. Any delay in payment obviously results in increased indexation charges which can be considerable, particularly on the larger developments. The prime reason for this is to ensure that financial contributions do not lose their value if they are not due to be paid until a later stage of the development. However, it has also had the additional effect of encouraging developers to pay early in some cases to avoid any indexation at all.
- 5.13 The responsibility for monitoring s106 Agreements lies with the Chief Planning Officer although a number of different service areas are involved at several stages. The Planning Agreement Manager is responsible for co-ordinating the different stages of this process and manages a database detailing information on all planning obligations. This information includes;
- monies received,
 - monies due,
 - monies spent,
 - monies available to spend,
 - restrictions on spend,
 - any onsite works due/carried out.
- 5.14 The database is used to track and monitor developments. This information is then available to Ward Members and Officers and is reported as required. The database is updated on a daily basis to enable accurate information to be continuously available to members, officers, developers and the public.
- 5.15 When s106 Legal Agreements are signed all their details are entered onto the s106 database so that a record is held of all sums pledged under s106. However, even though the Agreements are signed and the contributions are recorded as being due for that development, there are variables which can affect the collection of these sums. None of these variables affect the enforceability of the terms of the Agreement though.
- Some of the developments may never be implemented so these monies would then not be payable, however they need to be recorded and monitored until the planning permission lapses.
 - Some developments may commence and then stall onsite (this was more common several years ago due to the effects of the economic downturn). In such cases, developers sometimes request extensions of time to their planning permissions and sometimes developers seek to sell the land on but as commencement has occurred the permission is extant.
 - Some monies may only become due if onsite works are not carried out as agreed, particularly pertinent with Affordable Housing where we add a clause

citing that a fall back contribution must be provided if the units cannot be passed onto a Housing Association.

- On more complex developments with several phases, contributions may be paid at different stages of each phase of the development and this phasing may affect the speed at which the Agreement is fully complied with. For example, the planning permission may have been granted in 2012 and the Legal Agreement entered into at that point. Development on site, which is outside Leeds City Council control, may not have commenced until 2015 and the final contributions may not have been due to be paid to the Council until the final phase of the development is 75% occupied which may be 2017 or some other future date. Deeds of Variation are often entered into on more complex sites and this, also, can alter the speed at which payments are made.

5.16 For the reasons above, it can be difficult to forecast when s106 contributions are going to be paid to LCC as it can depend on the specifics of the Agreement and the rate at which the development progresses amongst other external influences, such as the economic climate.

5.17 Therefore, when total amounts of monies pledged to LCC under s106 can appear vast but need to be read in the context of the above variables. Although the responsibility for compliance ultimately lays with the developer, we carry out regular monitoring checks to ensure that triggers for payment are adhered to and any problems are identified at the earliest opportunity.

Compliance with the financial obligations within a S106 Agreement

5.18 When a financial contribution becomes payable, an invoice is raised to the developer and from that point forward Sundry Debtors follow their protocol for the collection of monies. Often a developer will raise a query about the calculation of indexation and this is dealt with by Planning or may request copies of the s106 Agreement and any Deeds of Variation.

5.19 Due to the value of s106 Agreements (and CIL invoices also) Sundry Debtors apply a manual monitoring system alongside their standard recovery procedures. This allows the 'debt' to be monitored more closely for payment or further recovery action. Also, alongside this, if a debt remained outstanding, an automatic recovery process on Civica (the invoicing system) would ensure that the invoice would also appear on a work queue for officers to action/chase up and therefore these invoices cannot be omitted from further recovery action.

5.20 The standard procedure for issuing s106 invoices is as follows;

- The invoice is raised and issued either by post and/or emailed if an email address is available.
- The invoice is reviewed weekly and the 'debtor' contacted to confirm the expected payment date or to pick up, at an early stage, any reason for non-payment, such as a dispute or query.
- A Reminder is issued after 21 days if the debt remains outstanding.
- The invoice continues to be reviewed on a weekly basis and the 'debtor' is contacted again to confirm the expected payment date.

- A letter and/or email is issued to the debtor regarding any non-payment and advises that legal proceedings will commence if the debt remains unpaid.
- Contact is made with Planning Services to confirm if there are any reasons for non-payment.
- If there are no acceptable reasons for delay then Sundry debtors request Planning Services to provide evidence in order to refer the case to legal services for court proceedings.
- Planning Services provide the evidence and Legal Services issue a Letter before Action to the debtor.
- The case is then subject to court proceedings, if the debt remains unpaid.

- 5.21 If a 'debtor' wishes to put an official case forward for viability, then their case is submitted and assessed. If the 'debtor' claims to be experiencing financial hardship then they must submit details of bank accounts to Sundry Debtors and they will make an assessment of what is affordable on a monthly basis and an official instalment plan may be drafted, with the condition that if one default occurs then the debt becomes immediately payable in full. If a debtor only pays part of the debt, or does not allow for the indexation, then LCC pursue the outstanding amount following the process above.
- 5.22 There is a constant flow of communication between Sundry Debtors, Planning & Legal Services to ensure that debts are monitored closely and issues are picked up on at the earliest opportunity. For example, Planning Services will advise Sundry Debtors if any issues/delays are anticipated so that the debt can be monitored more closely, or if the 'debtor' has a history of slow payments.
- 5.23 In general the only time S106 obligations are not fulfilled is if the developer provides onsite or financial benefits in lieu of the obligation. There is often a clause written into the S106 Agreements allowing for a 'fall back' contribution if any onsite works become unviable. Also there may be instances where works are only required if issues are identified post completion, for example, parking problems or traffic congestion. This is particularly pertinent with Traffic Regulation Orders. Therefore clauses are written into Agreements stating that particular works will need to be carried out only if any specific issues are identified within 5 or 10 years of completion or occupation.
- 5.24 Write off is not common and where a company goes into administration a debt will remain registered with the Administrators until resolved. An example of this is for an amount of £7,899.95 for a greenspace contribution for land at Westfield Mills Greenock Road.

The Release & Allocation of S106 Contributions

- 5.25 After s106 monies have been received, the Council's aim is not to spend these monies at the earliest opportunity but to invest the sums available on viable and sustainable projects which meet local needs and priorities. This approach values consultation with ward members as a means to ensure that local communities are involved in these decisions. This process can take considerable time. Listed below are some of the key reasons why monies may remain unspent for a period of time.

- Monies have specific restrictions on where/how they must be spent. (Planning obligations should only be sought where they are: 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 – NPPF paras 203 to 205).
- Payments are often pooled to fund priority schemes, or a more comprehensive project, from a number of different sources in the same locality. This often means projects are delayed awaiting receipt of all the required financing.
- Some monies are earmarked for specific schemes which are programmed but not yet carried out.
- Some of these monies have only been received recently, even though the planning approval was some years ago. This is because payment of the sums is tied to 'trigger points' the development process, e.g. Commencement of works, first occupation, 50% occupation, amount of floorspace constructed etc.
- Commuted Sums are only identified as 'committed' once official approval has been achieved. The sums are then only identified as 'spent' when they are actually allocated, i.e. paid out. This is to ensure the transparency of the Council's accounting procedures and meet the requirement of auditors. Consequently, many sums which are left 'uncommitted' are currently going through the approval for spend process or are at the early stages of consultation.

5.26 The actual process for the allocation of monies varies and can depend on the type of benefit the commuted sum is in lieu of or in contribution to (e.g. Green space, Affordable Housing, Education, Community Benefits, Highways and Public Transport Infrastructure). (See appendix 2 & 3)

- Children's Services are responsible for allocating s106 sums received for Education. In order to release sums, they present a request to their internal Good Learning Places Board, who decide whether they support and are prepared to authorise the allocation.
- Monies received for Green space & Play Areas are restricted in some way by the wording in the various s106 Agreements, either to a specific project or to the community area in which the development is located. If the sums of money or on-site benefits were not restricted in this way then they would not be in accordance with national and local policy and guidance. Thus, any attempt to utilise s106 funds in locations which are remote from the funding development or to pay for unrelated, non-green space projects, would be open to challenge from developers and the legality of such actions would also be questioned by the Auditors.

5.27 The process for agreeing the implementation of the monies differs depending on what the money is to be spent on. The system for spending monies for Green space & Play Areas involves extensive consultation with the relevant Ward Members, communities and other Council Directorates/services). There is then a tender process to follow and a construction period which is often seasonable by its very nature.

5.28 Ward Members, officers or the local community may first identify potential Green space projects. A corporate officer working group, the Green space Implementation

Group (GIG), has been established to bring these schemes forward in accordance with agreed priorities and to ensure that there is Ward Member and community support for suggested schemes. Irrespective of where a particular scheme originates, consultation with Ward Members is a pre requisite.

- Public Transport Infrastructure contributions are ring fenced for those scheme identified within Appendix 1 (November 2011 update) of the Public Transport SPD and other major infrastructure schemes. The contributions must be used in compliance with the Community Infrastructure Levy (CIL) regulations and therefore be related to the development from which it was secured. If no appropriate major / strategic infrastructure scheme as listed in Appendix A can be identified then other local schemes in the vicinity of the development will be considered.
- The majority of off-site Highways works are delivered via S278 agreements and outside the scope of this S106 pot. Financial contributions received under S106 Agreements tend to relate to specific schemes or provision of facilities in the vicinity of the development.
- Where sums are secured for Affordable Housing, they are in effect, 'banked' until sufficient funds are in place to implement schemes. However, the key aim of the policy to secure affordable housing is to ensure that provision is made on the application site.

Ongoing use of S106 Agreements

5.29 For clarity, the list below provides an outline of the matters which will continue to be addressed through S106 or S278 Agreements.

- Affordable housing
- Employment and skills agreements e.g. local employment or apprentice contracts
- Site specific matters needed to make the development acceptable in planning terms, including:
 - o New bus connections or services and cycle/pedestrian routes and connections if directly required by the development
 - o Local junction / highways improvements and access into the site
 - o Metrocards, travel plans and monitoring fee / co-ordinator posts
 - o Primary schools/extensions as a direct result of large sites or groups of up to five sites identified in the Site Allocations Plan
 - o On-site greenspace as required by Core Strategy Policies G4 and G5 (which include requirements for a financial contribution in lieu of on-site provision in certain circumstances¹).
 - o Public realm improvements on-site, and off-site where this is required as a direct result of an adjacent development.²
 - o On-site drainage and flooding solutions
 - o On site sustainable energy requirements

Community Infrastructure Levy (CIL)

- 5.30 The Community Infrastructure Levy allows the Council to raise funds from the creation of new buildings in the District. The funds raised are intended towards infrastructure that is needed to support the growth of the city, such as schools and transport improvements.
- 5.31 The CIL is applied as a charge on each square metre of certain types of new buildings. It replaces the previous method of seeking pooled s106 contributions for green space, public transport improvements, education, and public realm in the Holbeck Urban Village. It is primarily linked to the granting of planning permission.
- 5.32 Legal guidance on the CIL is set out in the Community Infrastructure Levy Regulations 2010 (as amended), and some guidance is also given in National Planning Practice Guidance 'Community Infrastructure Levy'. A range of guidance is also on the Council's website.
- 5.33 The Leeds CIL Charging Schedule was adopted by the Council on 12th November 2014, and charging was implemented on 6th April 2015. It has applied to all relevant development permitted after this date.

Principles governing the management and collection of the CIL

- 5.34 Anyone involved in a development may take on the liability to pay, but in most cases it will be the developer who has applied for planning permission, or the

¹ Clarification added April 2015

² Clarification added April 2015

landowner. If by the time development commences no one has assumed liability to pay the levy, the liability defaults to the landowner(s). The CIL is registered as a local land charge which shows up on any land search carried out by potential purchasers. Any outstanding payments would therefore be clear and the potential purchaser would be aware.

- 5.35 The developer/landowner has to inform the Council of the intended date of commencement of their development, after which a Demand Notice and a separate invoice is sent. There are strict payment responsibilities, and the CIL payment is mandatory and non-negotiable. Late payments or non-payments or non-compliance with the various stages of providing the Council with requested information are subject to surcharges. There are also strong enforcement powers and penalties for failure to pay, such as interest added, a Stop Notice, or court proceedings.
- 5.36 The CIL rates are index linked each year to the date of the planning permission and so far have increased by 8.88%.
- 5.37 The responsibility for the CIL process lies with the Chief Planning Officer although a number of different service areas are involved at several stages. The CIL officer and other colleagues in Development Management deal with queries, measurements, and generating planning Notices. Finance (Sundry Debtors) send out invoices and track payments and Legal follow through any further enforcement action necessary alongside Development Management Compliance team.
- 5.38 The standard procedure for issuing CIL invoices is as follows;
- When Commencement of Development has occurred a CIL Demand Notice is sent to the Developer, which reaffirms the total CIL amount due and the instalment policy.
 - If surcharges are to be applied, an email is also sent detailing the reason for the surcharges and the CIL Regulations these relate to.
 - An Invoice is then raised and issued with details of the CIL instalment policy.
 - A Weekly review is carried out and the debtor is contacted if instalments are not made as demanded.
 - Civica (the invoicing system) also monitors for payment and would issue a Broken Arrangement Letter if the instalment payment was in default.
 - Planning Services are contacted if the CIL debt remains unpaid with a view to adding surcharges and late payment interest to the invoiced debt as required.
 - Failure to pay the invoice can result in a Stop Notice being served by Planning Services Compliance team.
 - If the debt remains unpaid evidence is passed by Planning Services, to Legal Services, for the issue of court proceedings in the Magistrates courts following a Letter Before Action.

CIL Audit

- 5.39 It should be noted that in Summer 2017 the CIL process within Development Management was subject to internal independent audit, with a report published highlighting findings and actions for improvement. These actions are currently underway, including for example recruitment of a full-time CIL officer. This provided

an in-depth scrutiny of the CIL process and collection process and overall the findings were positive.

The Allocation and Spending of the CIL

- 5.40 Executive Board in July 2017 received a report summarising the processes undertaken so far which have allocated the CIL funding streams, and which recommended the spending of all CIL income received so far in the Strategic Fund to be spent on education. This report is attached as Appendix 4

Community Committees and Parish Councils have responsibility for spending of the Neighbourhood Fund, and a protocol has been drawn up by all interested parties.

Amount of CIL Income

- 5.41 The current amount of CIL invoiced and received will be provided to the Scrutiny Board in advance of the meeting as late supplementary information.

Application of Sustainability principles through the Development Management process

Overview

- 5.42 Following the adoption of the Development Plan, the consideration of planning applications via the Development Management process is an important means of delivering the principles of sustainable development through day to day decision making. Planning applications need to be considered within the context of Policies in the Development Plan, together with other material considerations including national planning guidance.
- 5.43 As emphasised in previous presentations to the previous two Scrutiny Boards into this matter, current national planning guidance is set out in the National Planning Policy Framework (NPPF, 2012). As noted previously, this guidance adopts a particular interpretation of sustainable development, with emphasis upon 'development, means growth'. Within this context, the City Council's experience post 2012 has been that issues of development viability and the need for local authorities to demonstrate a five year supply (5YS) of housing land especially significant.

Viability

- 5.44 In recent years and within the context of the economic downturn (2008 – 2012) and the NPPF, the viability of development proposals (especially for housing development on brownfield land within urban areas) and compliance with Policy requirements, has become a highly contested area. At the outset, through pre-application discussions and early engagement work, Development Management case officers make an assessment of policy requirements (and the Council's expectations are in terms of contributions), the applicant will then make the case whether they can or cannot achieve the Council's expectations. If the applicant is unable to comply with the Council's Policy requirements, they are asked to submit a viability statement to prove their assertions. This is sent on usually to the District

Valuer (DV) who advises the Council as to whether the assumptions made by the developer and conclusion is reasonable taking account of the DV's extensive knowledge of similar comparable developments throughout the country.

Five Year Housing Land Supply Issues

- 5.45 The presence of a 5YS is necessary to maintain control over local policies for housing land release. The Council, like many other local planning authorities, has fought many planning appeals on this issue. In 2011 UDP Phase 3 sites were released to bolster the supply of land for housing. Similarly in March 2013 the Council introduced a pragmatic interim-PAS release policy which further bolstered supply.
- 5.46 However, since this time the Council has contested (and lost) a series of planning appeals over successive years and has been found not to have a 5YS and is a 20% authority. At the centre of this debate has been the identification of suitable sites for development and the preparation of a Strategic Housing Land Availability Assessment (SHLAA). Prepared within the context of the NPPF, the purpose of the SHLAA is to monitor whether there is an adequate supply of housing land at any point in time.
- 5.47 Whilst it is a fundamental role of the planning system to bring forward a supply of land for housing development, the current emphasis upon the 5YS issue has become a dominant feature of planning. As a result, the more holistic interpretations of sustainable development and the broad range of policy commitments set out in the NPPF, given less emphasis. That is not to say however, the provision of housing land does not have concurrent economic, social and environmental benefits.

Case Study

- 5.48 Within the context of the NPPF and City Council planning policies, the principles of sustainable development have been 'mainstreamed' as part of day to day working and decision making. As noted above there are particular issues relating to the level of emphasis given to particular policy areas and requirements. Notwithstanding this, through the Development Management process the City Council continues to seek to reflect the principles of sustainable development in relation to individual applications and proposals. The following case study gives an example as to how these matters have been considered.

Application 10/04068/OT, Former Clariant Works, Calverley Lane, Horsforth – up to 400 dwellings.

This included the first refusal reason as:

The site lies outside the main urban area, in a location which is remote from local services. As such, the site is not in a demonstrably sustainable location for residential development and the sustainability measures promoted are considered insufficient to outweigh this locational disadvantage. The proposal is therefore detrimental to the aims and objectives of sustainability policy, contrary to adopted Leeds UDP Review (2006) strategic goal SG4, strategic aim SA2, policies H4, T2, T9; RSS (2008) policies YH7, LCR1, T1 and government guidance in PPS1, PPS3 and PPG13.

And the second refusal reason as:

The site is poorly served by non car modes of transport. The proposed bus service is insufficient to meet the minimum standards suggested by the SPD Public Transport Contributions and proposals for Calverley Lane North result in disbenefits for cyclists. Consequently residents would be primarily dependent upon use of the private car. The proposal is therefore detrimental to the aims and objectives of sustainability policy, contrary to adopted Leeds UDP Review (2006) strategic goal SG4, strategic aim SA2, policies GP5, H4, T2, T2D, T5, T9; RSS (2008) policies YH7, T1, T3; SPD Public Transport Improvements and Developer Contributions (August 2008) and government guidance in PPS1, PPS3 and PPG13.

The Appeal was called in and allowed. On sustainability the Planning Inspectors/Secretary of State agreed with the appeal Inspector and said that both proposals, 'had potential to generate a material increase in traffic movement and that the sites were in a location with no existing public transport service and accessibility standards for travel on foot were not met. A package of measures was proposed to improve transport and that such improvements would be helpful'. On this basis, the accessibility of the site by public transport was considered to be adequate and that with improvements cycling was also a sustainable option. Therefore in these terms the proposal complied with UDP Policies (T2, T2D, T5, T9) and PPG13.

Walking was not considered an attractive option and the proposals did not perform satisfactorily against Policies T2, T5, YH7 and PPG13 in walking terms. However the proposal brought about 'benefits to existing uses, and there was the ability of the sites to be re-developed for industrial purposes without any such measures, the redevelopment of the sites would not be inappropriate having regard to policies which promote sustainable patterns of development'. In other words, the proposal complied with enough of the policies on accessibility to make it acceptable, especially in light of the package of benefits that would accrue and which would have wider benefit than just the site (e.g. public transport improvements). It was further recognised that as a brownfield site the re-use of the land enhanced the sustainability credentials of the appeal proposals.

6 Corporate Considerations

6.1 Consultation and Engagement

The board may undertake consultation should it be deemed appropriate in order to conduct the inquiry or gather necessary evidence.

6.2 Equality and Diversity / Cohesion and Integration.

- 6.2.1 Equality Improvement Priorities have been developed to ensure our legal duties are met under the Equality Act. The priorities will help the council to achieve its ambition to be the best City in the UK and ensure that as a city work takes place to reduce disadvantage, discrimination and inequalities of opportunity.

- 6.2.2 Equality and diversity will be a consideration throughout the Scrutiny Inquiry and due regard will be given to equality through the use of evidence, written and verbal, outcomes from consultation and engagement activities.
- 6.2.3 The Scrutiny Board may engage and involve interested groups and individuals (both internal and external to the council) to inform recommendations.
- 6.2.4 Where an impact has been identified this will be reflected in the final inquiry report, post inquiry. Where a Scrutiny Board recommendation is agreed the individual, organisation or group responsible for implementation or delivery should give due regard to equality and diversity, conducting impact assessments where it is deemed appropriate.

6.3 Council Policies and City Priorities

This inquiry will support objectives as defined in The Vision for Leeds 2011 – 2030 and the Best Council Plan 2015-20

6.4 Resources and Value for Money

There is no resource or value for money implications relating to this report. At the conclusion of the inquiry any identified impact will be reported in the final inquiry report.

6.5 Legal Implications, Access to Information and Call In

None

6.6 Risk Management

There are no risk implications relating to this report. At the conclusion of the inquiry any identified risk will be reported in the final inquiry report.

7 Recommendations

The Scrutiny Board (Infrastructure and Investment) is recommended to:

- a) note the information contained within this report and make recommendations as deemed appropriate.

8 Background documents³

None

³ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

COMMUNITY INFRASTRUCTURE LEVY REGULATION 123 LIST

September 2014

Regulation 123 provides for the Council to set out a list of those projects or types of infrastructure that it intends will be, or may be, wholly or partly funded through the Community Infrastructure Levy (CIL). In order to ensure that individual developments are not charged for the same infrastructure items through both Section 106 Agreements and the CIL, a S106 contribution or a S278 agreement cannot then be made towards an infrastructure item already on the List. Sustainable transport schemes:

- New Generation Transport (NGT)
- Leeds Core Cycle Network
- The Public Right of Way network

Leeds Flood Alleviation Scheme (FAS)

Secondary education

Primary education, except for large scale residential development identified in the Site Allocations Plan, which will be expected to provide primary schools either as an integral part of the development or as the result of no more than 5 separate planning obligations

Green infrastructure and public greenspace, except for on-site provision required by Core Strategy policies

Community sports facilities

Cemeteries

Public realm improvements, except for on-site provision or where this is required as a direct result of an adjacent development

District heating networks

Public health facilities

The Council will review this list at least once a year, as part of monitoring of CIL collection and spend, and any changes will be justified and subject to appropriate local consultation.

The R123 List does not identify priorities for spending within it, or any apportionment of the CIL funds across the District, and does not signify a commitment from the Council to fund the projects listed through the CIL.

The Council will work with local communities and parish/town councils to agree local priorities for spend. The 'meaningful proportion' held by local communities can be spent on the Regulation 123 List, but it does not have to be.

The Council proposed minor changes to the Regulation 123 list in accordance with the CIL Regulations at its Executive Board on 21st October 2015. These were minor changes and are proposed in order to increase clarity only. The amendments are attached as below for information. The amendments to the Regulation 123 were subject to public consultation from 13th November until 7th December 2015.

Regulation 123 list Amendments

Current Reg123 List	Proposed change	Explanation
Leeds Core Cycle Network	Leeds Core Cycle Network, except for where improvements or additions are necessary as a result of a specific development.	Where appropriate for the site, a development may be expected to provide a new cycle link or upgrade an adjacent existing route, via a S106. However, where that link or route happens to be part of the Leeds Core Cycle Network, this is not possible due to the generic category on the R123 List. Therefore by inserting the exclusion on the List, it will allow the CIL to be the main contributor (alongside other funding sources), yet not preclude S106 contributions from individual developments.
The Public Right of Way network	The Public Right of Way network, except for where improvements or additions are necessary as a result of a specific development.	Almost all development sites are expected to provide new pedestrian links or upgrade an adjacent existing route, and sometimes this is best sought through a S106. However, there have been instances where applicants have argued that because all walking routes are part of the public right of way network, then no S106 contribution should be made. It was never the intention that the CIL should supersede the proper planning of new development sites, therefore providing further clarity on this wording is considered appropriate.
Primary education, except for large scale residential development identified in the Site Allocations Plan, which will be expected to provide primary schools either as an integral part of the development or as the result of no more than 5 separate planning obligations	Primary education, except for large scale residential development, which will be expected to provide primary schools as an integral part of the development.	<p>It is very difficult to identify in advance which should be the specific sites to contribute towards off-site school need in each area. This is because it does not work out evenly basing this on size or location or phasing, because the need for the school and the timing of it will alter in each case depending on which sites come forwards at which points, and because there are inevitably more than 5 sites in most instances that will generate a cumulative demand for places. It also cannot be guaranteed which sites would come forwards first.</p> <p>In addition, the CIL Regulations refer to pooling of 5 S106 'obligations', which means that the tally includes where schemes may change and new/revised applications/S106s are required, and where reserved matters applications come forwards in phases spread across one sight which would each then require a S106.</p>

Current Reg123 List	Proposed change	Explanation
		<p>Therefore even a single site could on its own generate 5 obligations, after which no more could be taken into account either from that site or from any other site, no matter what was set out in the SAP and no matter whether the contributions would ever actually be received (i.e. if superseded by another application).</p> <p>The statutory consultation procedures relating to school expansions also means that even if a specific school were cited for expansion in the SAP or a S106 agreement, there is no guarantee that the outcome of the consultation would agree the expansion of that school.</p> <p>It is therefore more appropriate to remove the reference to identification of sites in the SAP to pool together up to 5 obligations.</p>
Secondary education	Secondary education, except for large scale residential development which will be expected to provide secondary schools as an integral part of the development	To provide consistency with the position for primary schools, and to support the few sites in the Site Allocations Plan where on-site secondary provision will be a requirement.
Green infrastructure and public greenspace, except for on-site provision required by Core Strategy policies	Green infrastructure and public greenspace, except for site specific provision required by Core Strategy policies	To provide better clarity about the scope of Core Strategy Policies G4 and G5, and the potential for site-specific provision to be provided by an 'on-site contribution in lieu' and not just physically on-site provision.
Public realm improvements, except for on-site provision or where this is required as a direct result of an adjacent development	Public realm improvements on-site, and off-site where this is required as a direct result of an adjacent development	To provide better clarity.

Appendix 2 - S106 Table of Current Position October 2017

	Invoice raised not yet paid	Amount Paid (in 2017/18)	Amount Spent (in 2017/18)	Total Amount Committed not spent	Total uncommitted balance
COMMUNITY BENEFITS	0	0	0	0	0
GREENSPACE	1,151,293.50	577,104	0	1,474,103	5,895,107
AFFORDABLE HOUSING	81,830.26	0	0	246,530	2,997,319
OTHER	179,027.97	1,075,878	354,828	987,095	6,090,607
PUBLIC REALM FUND	0	0	0	689,755.57	222,955
PLAY AREA	0	0	0	0	138,096
EDUCATION	156,219.26	1,467,649	0	0	9,488,024
TRANSPORT STRATEGY	197,124.99	309,968	0	93,000	6,203,236
TRAVELWISE	11,152.89	27,987	0	0	637,988
TOTAL	1,776,648.87	3,458,586	354,828	3,490,484	31,673,332

Appendix 3 - S106 Monies Received and Spent Trends by Year

S106 Monies Received

	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Community Benefits	241,000	89,355	92,424	13	0	2,500	0	13,136	29,729	0	0	0	0	0	0
Greenspace	1,383,534	1,169,236	975,260	1,910,641	1,448,061	512,801	1,324,776	1,194,263	395,408	804,873	1,530,417	1,103,334	2,009,517	1,702,649	577,104
Affordable Housing	1,584,231	299,067	779,000	40,000	288,603	0	0	461,334	386,485	1,310,556	427,419	0	509,609	983,948	0
Other	725,000	351,833	165,000	4,496,771	2,729,445	255,236	1,464,917	957,826	535,325	625,441	3,013,225	2,674,553	1,703,924	3,714,840	1,075,878
Public Realm	0	0	0	0	500,921	0	100,000	185,000	230,934	31,166	548,752	246,477	40,000	236,839	0
Play Areas	0	0	0	65,000	75,000	0	15,000	0	0	43,792	112,269	16,579	0	26,790	0
Education	0	0	0	60,000	0	121,712	0	0	54,500	1,242,801	1,731,898	2,803,337	2,310,469	2,977,220	1,467,649
Public Transport	218,500	482,750	638,905	298,750	513,000	270,588	348,817	1,346,999	618,800	479,738	1,816,546	1,765,080	903,314	1,192,892	309,968
Travelwise	0	0	0	0	0	14,340	38,629	71,558	75,315	47,136	99,317	142,559	79,785	173,871	27,987
TOTAL	4,152,266	2,392,241	2,650,589	6,871,175	5,555,030	1,177,177	3,292,139	4,230,116	2,326,496	4,585,503	9,279,843	8,751,919	£7,556,619	11,009,050	3,458,586

S106 Monies Spent

	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
COMMUNITY BENEFITS	78,572	70,682	94,753	154,274	81,036	169,314	76,652	16,403	22,598	18,920	2,660	0	0	32,434	0
GREENSPACE	987,569	512,133	925,952	759,005	810,554	1,309,520	979,600	1,142,285	1,106,206	991,087	336,972	1,259,367	1,241,825	1,171,134	0
AFFORDABLE HOUSING	0	0	141,250	1,127,253	3,853	876,987	1,679,907	1,036	0	0	184,483	0	202,905	100,000	0
OTHER	312,908	426,308	258,087	337,776	434,462	2,818,228	247,121	5,196,146	408,092	791,183	2,771,309	1,729,704	1,619,793	1,002,848	354,828
PUBLIC REALM FUND	0	0	0	0	0	4,950	100,000	141,885	77,226	48,606	257,822	128,891	119,760	139,204	0
PLAY AREA	0	0	0	0	0	50,000	0	36,729	18,865	0	50,000	0	30,740	0	0
EDUCATION	0	0	0	0	30,000	0	0	60,000	0	54,500	50,000	100,560	3,473,827	0	0
TRANSPORT STRATEGY	0	0	0	0	31,250	1,360,000	1,134,000	0	249,658	10,000	637,266	2,216,873	236,050	1,132,511	0
TRAVELWISE	0	0	0	0	0	0	12,578	8,140	14,131	33,962	42,720	27,887	33,496	0	0
TOTAL	1,379,049	1,009,123	1,420,042	2,378,308	1,391,155	6,588,999	4,229,858	6,602,625	1,896,776	1,948,258	4,333,232	5,463,282	6,958,396	3,578,130	354,828

Report of Director of Resources and Housing

Appendix 4

Report to Executive Board

Date: 17th July 2017

Subject: The Leeds Community Infrastructure Levy – Investment of the Strategic Fund

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):	All	
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

Summary of main issues

1. In meeting the many challenges associated with the ambition to be the best city in the UK, central to the Best Council Plan is the desire to ensure that the need for growth and resilient communities is accommodated. The Council has progressed and adopted 'The Leeds Community Infrastructure Levy' (CIL), which has now been in place and applies to new development since April 2015 when it was adopted. This report relates to the investment of the strategic fund only. The CIL monies, held in the CIL strategic fund, will help to meet Leeds' priorities by using fund generated by CIL to provide infrastructure while being at appropriate rates which will continue to create growth, investment, create jobs, and deliver new housing.
2. Executive Board in February 2015 agreed that investment of the strategic fund will be determined by Executive Board as part of the Council's overall budget setting process, in line with the Councils Regulation 123 list and taking into account the impact of specific and cumulative infrastructure needs arising from new development.
3. The Regulation 123 list set out how CIL monies can be invested as attached in Appendix 1. This is the infrastructure list the Council approved on the adoption of the CIL. This specifies those infrastructure projects or types of infrastructure that the Council intends will be, or may be, wholly or partly funded through the CIL. There are restrictions set out in the CIL Regulations as to how the strategic fund can be invested.

4. The Community Infrastructure Levy Charging Schedule was implemented on the 6th April 2015 and applies to all relevant developments granted permission since then. CIL liability is payable on commencement of development rather than the granting of planning consent and this often has a long lead in period/ time lag before the Council receives any meaningful CIL receipts as a result. It has now been just over 2 years since development in Leeds has been liable to pay CIL. Consideration has been given to the Infrastructure Delivery Plan (IDP) and major planning application activity. Within this context the Strategic Investment Board recommends that sums accumulated up to November 2016, be in its entirety, used as a contribution to learning places deficit for schools and that this be approved by Executive Board.

Recommendations

5. Executive Board is requested to:
 - i) Agree the investment of CIL strategic fund as set out in table 1 (up to November 2016) be used to contribute to learning places deficit for schools;
 - ii) Note that the responsible officer for implementing the recommendation is the Chief Officer (Financial Services).

1. Purpose of this report

- 1.1 The purpose of this report is to seek Executive Board approval to investment of the CIL strategic fund for monies accumulated up until November 2016, as set out in Table 1.

2 Background information

- 2.1 The Community Infrastructure Levy (CIL) was adopted in April 2015, since its adoption the CIL strategic fund has gradually been accumulating (as set out in table 1). The liability of CIL is triggered on commencement of development which can often be up to a couple of years after the grant of a planning permission. It is only now that significant and meaningful sums of monies have been accumulated. Whilst Section 106 funds are closely associated with a specific development and are often directed towards specific types of infrastructure, CIL strategic funds are directed towards more strategic infrastructure priorities.

3. Main issues

- 3.1 Executive Board (February 2015), made key decisions around spending of the future CIL income, directing it into two main funding streams, a strategic fund, and a neighbourhood fund, plus up to 5% for administrative costs. The neighbourhood fund is 15% in an area without an adopted Neighbourhood Plan, and 25% in an area with an adopted Neighbourhood Plan to include Parish Councils. In town and parish council areas it is to be passed directly to those local councils, as required by national CIL regulations. In non-parished areas the decisions about spending are delegated to the relevant Leeds City Council Community Committee, and the CIL neighbourhood fund ring fenced by the City Council for that purpose.
- 3.2 In relation to the strategic fund Executive Board (Feb 2015) set out that priorities for its investment will be decided on an annual basis as part of the Council's budget setting process, in line with the Regulation 123 List, taking into account the impact of specific and cumulative infrastructure needs arising from new development. The investment of the CIL strategic fund is a Resources & Strategy led issue. Table 1 summarises the total strategic fund which has been collected since CIL was adopted up to November 2016. In total £685,434.61 has been received. This has been generated by the commencement of developments throughout Leeds which were granted permission following the adoption of CIL which were granted permission following the adoption of CIL and largely consists of some larger developments which have generated larger sums. The amount of CIL payable depends upon the size, type and location of developments.

	TOTAL STRATEGIC FUND PAID TO DATE
2015/2016	£101,502.58
2016/2017	£583,932.03
TOTAL	£685,434.61

Table 1

- 3.3 The purpose of the CIL strategic fund is to contribute to the costs of hosting development, not for the money to be substituted for general spending, for which funding streams should continue as at present. The levy has to focus on the provision and maintenance of infrastructure and should not be used to remedy pre-existing deficiencies unless those deficiencies will be made more severe by new development. Funds can be accrued to fund key items which are listed on the Regulation 123 list or passed onto any other body e.g. the Highways Authority. Investment of the strategic fund as such needs to take into consideration the restrictions set out in the Regulation 123 list. The Councils Regulation 123 list identifies both secondary and primary as an infrastructure type however, primary provision does not extend to that triggered by large scale residential development identified in the Site Allocations Plan, as that is expected to provide primary schools either as an integral part of the development or as the result of no more than 5 separate planning obligations.
- 3.4 Appendix 1 of this report sets out the current Regulation 123 list, which is the Infrastructure list the Council approved on the adoption of the CIL. This specifies those infrastructure projects or types of infrastructure that the Council intends will be, or may be, wholly or partly funded through the CIL. In order to ensure that individual developments are not charged twice for the same infrastructure items, the CIL Regulations restrict section 106 planning obligations in respect of infrastructure listed on the Regulation 123 list. Where the regulation 123 list includes a generic type of infrastructure (such as 'education' or 'transport'), section 106 contributions should not be sought on any specific projects in that category.
- 3.5 There are various options and pressures in relation to the investment of the strategic fund, such as competing demands for the monies from varying different types of infrastructure to include schools, public transport and flood alleviation. There are also pressures in terms of where the monies are spent geographically. The strategic fund can be invested on strategic infrastructure throughout Leeds and is not restricted geographically, however this can also mean that there is not necessarily a connection between development activity and where the strategic fund is spent. Whilst section 106 funds are closely tied to the local area around the relevant development and are often directed towards specific types of infrastructure, there is the potential to direct CIL funds towards more strategic infrastructure priorities.
- 3.6 Consideration has been given to major development. Some of this development activity will generate a need for education infrastructure. However smaller developments can also trigger smaller sums which can also accumulate CIL and pressure for infrastructure provision. CIL will not meet the total infrastructure needs as identified as identified by the Infrastructure Delivery Plan (IDP). However CIL can along with other funding sources make a contribution to the delivery of infrastructure. The IDP identifies as far as possible currently planned infrastructure provision in the Leeds District, including the critical infrastructure necessary for the delivery of the Site Allocations Plan (SAP) and Aire Valley Leeds Area Action Plan (AVLAAP) within the context of the Core Strategy up until 2028. The IDP provides an overarching framework for other service providers' plans and programmes, to bring them into one place and to ensure that all providers are planning for the predicted locations of future growth as set out in the SAP and AVLAAP whilst also

reflecting current infrastructure needs. Any future investment of the strategic fund will also need to reflect the continuing connection between the demands that development generates and investment of the monies. In addition future investment will need to take into account the impact of specific and cumulative infrastructure needs arising from new developments.

- 3.7 In terms of the Site Allocations Plan which has now been submitted to the Secretary of State for Examination, the Council received 67958 representations, 9892 of these have been identified as mentioning school issues, including the link between new homes and increased pressure on existing school places. The Council also continues to monitor the overall deficit in funding which will arise from the need for new school places. This takes into account the latest demographic projections for primary and secondary places, the existing capacity in schools and projected funding assumptions up to 2019-20. The current Council estimate of the funding gap is £71.2m; however, this calculation is primarily based on EFA funding rates, which is known to be insufficient to meet current scheme cost estimates. This does not include the cost for additional nursery and sixth form places where required. The need for additional places in these areas is likely to increase this funding gap. Investment of the strategic fund for learning places for deficit for schools should relate to the demands placed by new development. It is recommended that investment of the strategic fund for learning places for deficit for schools is appropriate within the context outlined above.

4. Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 At previous stages of CIL the adoption of CIL has required consultation at key stages of the process. The charging schedule has also been the subject of public examination by an inspector.
- 4.1.2 SIB have considered the option for investing the CIL, in light of the CIL and other demands and made recommendation in relation to the investment of the strategic fund. SIB can approve governance and progress monitoring arrangements for programmes and projects with significant capital investment to ensure such risks are mitigated and managed.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 An Equality, Diversity, Cohesion and Integration screening has been undertaken in considering the equality impact considerations of this report. An EIA screening has been undertaken and due regard has been given. The recommendation proposes investment of the strategic fund (until November 2016) to contribute to learning places deficit for schools. This assists with the provision of vital infrastructure. In particular the key groups to benefit from this are young children who will directly benefit from the provision of schools.

4.3 Council policies and Best Council Plan

- 4.3.1 The investment of the strategic fund for learning places deficit for schools addresses the Councils policies, and in particular the Best Council plan aims of growth and creating resilient communities.

4.4 Resources and value for money

- 4.4.1 The investment of the strategic fund (until November 2016) to contribute to learning places deficit for schools provides value for money as it assists with the provision of vital infrastructure. The CIL Regulations state that the Council “must apply CIL to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area.”
- 4.4.2 The demand for infrastructure across Leeds is inevitably wide ranging and challenging, however CIL is only one component of the delivery of infrastructure within Leeds. The Infrastructure Delivery Plan (IDP) (Feb 2017) identifies other funding sources which can be used to deliver infrastructure.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The Community Infrastructure Levy Regulations 2010 (as amended) set out that CIL monies collected can only be used to fund (or part fund) infrastructure projects or infrastructure types specified in the Council’s Regulation 123 List.
- 4.5.2 The recommendations in this report are a key decision and are subject to call-in.

4.6 Risk Management.

- 4.6.1 In order to ensure that individual developments are not charged twice for the provision of the same infrastructure, the CIL Regulations restrict section 106 planning obligations in respect of infrastructure listed on the Regulation 123 list.

5 Conclusions

- 5.1 The CIL is a key part of the delivery of the Best Council Plan objectives of creating growth and resilient communities. This report recommends the investment of the strategic fund for learning places deficit for schools, this also provides linkages with the Capital Programme. Consideration has been given to the ‘Infrastructure Delivery Plan’ (IDP) (February 2017), and to the major developments since April 2015. Spend of the strategic fund for learning places deficit for schools is recommended as the most appropriate investment of the strategic fund accumulated up to November 2015.

6. Recommendations

- 6.1 Executive Board is recommended to:
- i) Agree the investment of the CIL strategic fund as set out in Table 1 (up to November 2016) be used to contribute to learning places deficit for schools;

- ii) Note that the responsible officer for implementing the recommendation is the Chief Officer (Financial Services).

7. Background documents¹

7.1 None

8. Appendices

8.1 Community Infrastructure Levy Regulation 123 List (September 2014)

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

COMMUNITY INFRASTRUCTURE LEVY

REGULATION 123 LIST

September 2014

Regulation 123 provides for the Council to set out a list of those projects or types of infrastructure that it intends will be, or may be, wholly or partly funded through the Community Infrastructure Levy (CIL). In order to ensure that individual developments are not charged for the same infrastructure items through both Section 106 Agreements and the CIL, a S106 contribution or a S278 agreement cannot then be made towards an infrastructure item already on the List.

Sustainable transport schemes:

- | |
|---|
| <ul style="list-style-type: none"> - New Generation Transport (NGT) - Leeds Core Cycle Network - The Public Right of Way network |
|---|

Leeds Flood Alleviation Scheme (FAS)

Secondary education

Primary education, except for large scale residential development identified in the Site Allocations Plan, which will be expected to provide primary schools either as an integral part of the development or as the result of no more than 5 separate planning obligations

Green infrastructure and public greenspace, except for on-site provision required by Core Strategy policies

Community sports facilities

Cemeteries

Public realm improvements, except for on-site provision or where this is required as a direct result of an adjacent development

District heating networks

Public health facilities

The Council will review this list at least once a year, as part of monitoring of CIL collection and spend, and any changes will be justified and subject to appropriate local consultation.

The R123 List does not identify priorities for spending within it, or any apportionment of the CIL funds across the District, and does not signify a commitment from the Council to fund the projects listed through the CIL.

The Council will work with local communities and parish/town councils to agree local priorities for spend. The 'meaningful proportion' held by local communities can be spent on the R123 List, but it does not have to be.

ONGOING USE OF SECTION 106 AGREEMENTS

For clarity, the list below provides an outline of the matters which will continue to be addressed through S106 or S278 Agreements.

- Affordable housing
- Employment and skills agreements e.g. local employment or apprentice contracts
- Site specific matters needed to make the development acceptable in planning terms, including:
 - o New bus connections or services and cycle/pedestrian routes and connections if directly required by the development
 - o Local junction / highways improvements and access into the site
 - o Metrocards, travel plans and monitoring fee / co-ordinator posts
 - o Primary schools/extensions as a direct result of large sites or groups of up to five sites identified in the Site Allocations Plan
 - o On-site greenspace as required by Core Strategy Policies G4 and G5 (which include requirements for a financial contribution in lieu of on-site provision in certain circumstances¹).
 - o Public realm improvements on-site, and off-site where this is required as a direct result of an adjacent development.²
 - o On-site drainage and flooding solutions
 - o On site sustainable energy requirements

¹ Clarification added April 2015

² Clarification added April 2015