

	<b>REPORT TO PLANNING &amp; DEVELOPMENT COMMITTEE TO BE HELD ON 23 JANUARY 2014 AND CABINET ON 11 FEBRUARY 2014</b>
	<b>Key Decision</b> <b>NO</b> <b>Forward Plan Ref No</b> <b>N/A</b>
<b>Corporate Priorities</b>  <b>Quality Environments</b> <b>Prosperous</b> <b>Safe and Healthy</b>	<b>Cabinet Portfolio</b> <b>Cllr D</b> <b>Holder</b> <b>Bastiman</b>

**REPORT OF DIRECTOR OF SERVICE DELIVERY – 14/28**

**WARDS AFFECTED: ALL**

**SUBJECT: ANNUAL UPDATE ON SECTION 106 PLANNING OBLIGATIONS AND VIABILITY OF IMPLEMENTING A COMMUNITY INFRASTRUCTURE LEVY SCHEDULE**

**RECOMMENDATION (S):**

1. The updated information on Section 106 (S106) planning obligations be received and noted.
2. That the information on the current position on viability of the Community Infrastructure Levy be noted and that the implementation of a CIL charge be re-assessed in 2015 or at a time sooner if the economy improves substantially.

**REASON FOR RECOMMENDATION (S):**

1. The monitoring of S106 planning obligations and the reporting of that information to Members is required to ensure that the process is transparent. Continued reporting of this information and the availability of reports on the Council's website enables the process of collecting, allocating and spending of commuted sums to be transparent and the Council more accountable to the electorate.
2. The implementation of a CIL Schedule at the current time is not considered to be generally viable across the wider part of the Borough and the implementation of an additional financial burden on the development industry

could damage the economic recovery within the Borough area. The S106 process remains applicable for development proposals and will continue to be used where appropriate.

## **HIGHLIGHTED RISKS:**

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

Without adequate co-ordination commuted sums could be spent on inappropriate schemes and not on priorities identified within the Council's various plans and strategies.

Without an adequate and co-ordinated system for monitoring S106 obligations and any subsequent commuted sums it is possible that should deadlines expire, commuted sums would have to be returned (plus interest) to the developers and required community facilities / affordable housing would not be provided.

There are risks associated with the Community Infrastructure Levy, in terms of both its implementation and putting it 'on hold'. The implementation of a CIL charge whilst the economy remains fragile could lead to a further fall in construction in Scarborough Borough if developers consider the potential payments to be too high. A further risk is the financial implications of taking CIL forward in terms of the production cost. As any CIL Schedule must be taken through an independent Examination in Public, the costs can be significant. Other authorities have recently suggested costs of producing a CIL Schedule to be around £80,000 (Guildford, Wolverhampton and Kettering) with potential annual administration costs of up to £50,000.

With the future of CIL unclear (it has been amended numerous times since its introduction) and there is the potential that any change in Government could see it further revised or even scrapped.

A further risk of taking CIL forward is the impact on affordable housing provision. At the current time, negotiation can take place to secure the most appropriate levels of infrastructure, affordable housing, open space, etc. If CIL is implemented, the CIL charge is non-negotiable and based on a formula. Where schemes are unviable or borderline viable, the only means of improving the viability of a scheme would be the reduction in affordable housing provision at a time when affordable need is high in the Borough.

On the opposing side, not implementing a CIL charge could mean that the Borough Council forgoes funding, albeit funding which is 'ring-fenced' to pay for infrastructure only. Notwithstanding this, S106 will remain as an alternative option to CIL and can continue to be used to collect payments for infrastructure and other requirements.

It should be noted, however, that this recommendation is not 'never' to take forward a CIL Schedule, but to re-assess the situation as the economy recovers and the

viability of development improves. An opportune moment to re-assess viability would be mid-2015 beyond the General Election when the future of CIL or any likely replacement would become clearer and the economy has had time to further recover.

## **1. INTRODUCTION**

### **Section 106 Planning Obligations**

- 1.1 In 2002 the Development & Regulation Committee approved a protocol for monitoring planning obligations negotiated under Section 106 of the Town & Country Planning Act 1990. It was intended to meet the concerns of District Audit that a more transparent and comprehensive framework for monitoring financial and non-financial obligations was required. It would also ensure that the process is accountable and would allow ready access to information by the public and members.
- 1.2 It was also agreed that as part of the process an annual report on progress with the implementation of planning obligations would be prepared for consideration by members. The report is intended as an up to date statement of the current position as of 31 December 2013, and any developments over the last time matters were reported to Planning & Development Committee and Cabinet in January 2013. The detailed position, especially for financial contributions is set out in the tables in Appendices 1-3, while the Assessment section of this report provides a commentary.
- 1.3 Table 1 in Appendix 1 provides an overall picture for financial contributions, according to their current status and broken down in terms of the type of infrastructure provided. Tables 2a - 5 then break this down for the main types of infrastructure within the context of the last 4 years. Finally, Tables 6a – 11 in Appendix 3 summarise the current position on individual Section 106 planning obligations according to category. These tables do not normally include obligations which have been fully executed by the developer, Council or other party – for example where a commuted sum has been received in full by the Council and the monies have been subsequently spent on a project in accordance with the terms of the agreement. The report concentrates on those obligations which relate to commuted sums and/or affordable housing provision. It does not normally list other non-financial obligations which contain ongoing restrictions or specific requirements imposed on developers.

### **Community Infrastructure Levy**

- 1.4 The Community Infrastructure Levy (CIL) is a partial replacement for S106 Agreements brought in a number of years ago purportedly to simplify the funding of infrastructure and try and improve the transparency of development charges for developers. It is a process whereby different forms of development are charged on a square metre basis for new floorspace. These levies are set by undertaking viability assessments of different types of development (housing, industrial, retail, etc) within different areas of the Borough. Where certain development is not shown to be viable a £0 charge

can be set or a Local Authority may opt to not take forward a CIL Schedule at that time.

## **2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY STRATEGY**

2.1 Planning obligations help the Council to achieve 3 of its 4 Key Aims; namely:

- Quality Environments
- Prosperous
- Safe and Healthy

They also contribute to 'Accessible Communities' which is an additional priority referred to in the Community Strategy.

## **3. BACKGROUND AND ISSUES**

### **Section 106 Planning Obligations**

3.1 Section 106 of the Town and Country Planning Act 1990 allows Local Planning Authorities to impose restrictions or requirements on land, including the payment of monies towards infrastructure. Collectively, these are known as planning obligations and may take the form of a Section 106 agreement between a developer/landowner, the Council and possibly other parties, or alternatively, a unilateral undertaking provided by the developer alone. Obligations form part of a planning permission, but are only used when planning conditions are unsuitable, in part because of their complexity and the delay they can add to the planning process. Since 2010 it has been a legal requirement that that planning obligations may only constitute a reason for granting planning permission for the development if the obligation is: -

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development

3.2 The two most commonplace scenarios in which planning obligations are utilised are: (i) to secure monies for infrastructure required in connection with new development; or (ii) to provide affordable housing. The Planning Act 2008 made provision that most financial contributions can be secured by the Community Infrastructure Levy (CIL) and it was the clear intention that in due course this would become the usual means of securing funding for off-site infrastructure (excluding affordable housing). The Act stipulated that from 1 April 2014 that any pooled contribution arising from the Section 106 route could only be applied up to a maximum of 5 obligations. This in effect will limit the flexibility in spending these funds since it would be necessary to identify a particular project rather than merely being ring-fenced to a more generic type of expenditure. In 2013 the implementation date of this limitation was deferred until 1 April 2015.

- 3.3 In 2007, the Council adopted Supplementary Planning Documents setting out the detailed guidance on thresholds, financial formulae and means of securing: (i) affordable housing, (ii) education, and; (iii) public open space, play and sports facilities for residential development. This introduced greater consistency and lowered the threshold for the minimum number of units for which s106 obligations applied. The Affordable Housing SPD was subject of a review in 2012. Other areas, such as transport and health are not currently subject to formulae for calculating commuted sums. Transport accounts for the majority of commuted sums which are not directly calculated with reference to supplementary guidance, but these amounts are normally determined in respect to the cost of providing specific highway infrastructure in the vicinity of the development site, relative to its scale.
- 3.4 The Borough Council is most often responsible for the expenditure of monies relating to affordable housing, public open space, play, sport and occasionally transport. The County Council normally spends or has a key determining role in the expenditure of transport and education funds. Subject to suitable safeguards, monies may also be spent by other organisations, such as Parish Councils, statutory infrastructure providers or community groups.

### **Community Infrastructure Levy**

- 3.5 The Government introduced CIL a number of years ago as an alternative, in part, to S106 Obligations. The purpose was to try and simplify this system and the payment of sums in relation to planning permissions. This was to be achieved by introducing a standard or variable tariff across the Local Authority in question based on a contribution per square metre. These tariffs are established through the completion of viability studies to ensure the tariffs proposed do not deter development and provide a greater level of transparency for the development industry.
- 3.6 Since its inception, the CIL has been amended on numerous occasions and has become more difficult to navigate and has not necessarily found favour with the development industry. Changes have included amendments in the contribution conversions make (reduced now to only any additional floorspace) and the ability for developers to provide on or off-site infrastructure in lieu of CIL payments. There are also further proposals for self-build developments to be exempted from CIL although 'self-build' is not formally defined. This is in addition to the exemption of affordable houses from paying CIL.
- 3.7 The issue being raised here is whether CIL should be taken forward in Scarborough Borough and that is considered in the Assessment.
- 3.8 The current view on CIL nationally is a little unclear. The previous proposals to reduce the influence of S106 obligations by limiting the numbers of schemes that can be pooled for a single piece of infrastructure have been delayed by at least a further 12 months until Spring 2015 and criticism of CIL from the development industry that it has prevented economic growth has not made the future of this tariff any clearer. In addition, the Shadow Planning Minister cast further doubt on the future of CIL by suggesting a change in Government

could be followed by a complete review of CIL and S106 and its replacement with a 'community investment fund'.

- 3.9 It is notable that as of June 2013 only 5% of authorities had adopted a CIL charging schedule and two thirds had no published CIL plans.

## **4. CONSULTATION**

- 4.1 Consultation has not been necessary with respect to the ongoing monitoring process. It has, however, been prepared with input from other service areas, including Environment and Countryside, Housing and Finance.
- 4.2 Consultation on the CIL Schedule has not been necessary to date. Consultation will take place if and when the Borough Council decide to take forward a CIL Schedule.

## **5. ASSESSMENT**

### **Section 106 Planning Obligations**

- 5.1 Section 106 obligations completed in 2013 have continued to result in a range of contributions towards infrastructure or community facilities required as a direct result of the proposed development. Most frequently, these obligations require payment of a commuted sum to be expended off-site. Table 1 in Appendix 1 shows the importance of these funds. If all developments with planning permission, and subject to s106 obligations, were to be implemented, this would raise up to £6,607,082, in addition to the £1,740,920 which has been received and is awaiting expenditure. Including monies owed, this gives total funds of up to £8,419,880. These figures should be treated with some caution since payments will not be triggered if a developer decides not to proceed with a scheme. The Government has also made it easier for developers to reduce contributions if it can be demonstrated that they affect the overall viability of a scheme.
- 5.2 The most significant s106 obligations completed since the last update report relate to Middle Deepdale, Eastfield and the Sands. A number of larger schemes have also reached the stage where sums have become payable, including West Garth, Cayton and Sainsbury in Scarborough.

### Affordable Housing

- 5.3 Planning obligations are an important mechanism for securing and retaining affordable housing. They are normally used to provide either a proportion of on-site provision on new residential developments or a commuted sum towards off-site provision. Not all affordable units are secured by this route. Where the planning applicant is a Registered Provider of social housing, then a planning obligation may not always be necessary since they are governed by other regulatory safeguards to ensure retention of affordable stock. Where existing housing is acquired by a Registered Provider this normally falls outside the planning process

- 5.4 The Affordable Housing SPD sets out the Council's policy for considering the level of provision within new residential schemes, and where applicable, the level of off-site contribution required. It was revised in 2012 to take account of the impact of current economic conditions on the viability of schemes. On larger residential schemes, (10+ or 5+ depending on the area) on-site provision of between 20% and 40% provision is expected - the higher requirements applying to more buoyant housing market areas, such as Whitby. At the same time, on smaller schemes residential schemes the revised SPD introduced the payment of a sum towards off-site affordable provision.
- 5.5 During the economic downturn, relatively few new affordable units were secured by means of s106 obligation. Table 2a demonstrates a significant upward trend with 51 units completed during the last year. This comprised 47 houses at Muston Road, Filey (a further 10 are under construction), as well as 4 flats at the Moorlands Hotel, Whitby. Work has also started on affordable housing at West Garth, Cayton, Eskdale Park, Whitby and Milestone Farm, Seamer. Further affordable housing (not secured by S106), comprising Wreyfield Drive in Barrowcliff, extra-care units at Middle Deepdale, as well as Ridgeway and Manham Hill, Eastfield is under construction.
- 5.6 In terms of schemes granted planning permission in the last year, the most significant was Middle Deepdale, which may yield up to 270 units, depending on viability assessment. The total number of unimplemented commitments with planning permission has increased significantly over recent years from 148 in March 2010 to 651 now.
- 5.7 Tables 2B and 6B summarise those cases where payment of a commuted sum for off-site affordable housing has been agreed. The number of applications making a financial contribution has increased significantly this year following the changes to the SPD, which introduced a payment on most schemes for 1-9 dwellings. There have been 22 such applications approved in the last year which when implemented would raise £191,023
- 5.8 The Government's Autumn Statement revealed the intention to consult on a new 10 unit lower limit for section 106 affordable housing contributions to reduce costs for small builders. If implemented, this would largely remove this source of income – Planning & Development Committee will be advised of any developments on this front.
- 5.9 It is not a function of this report to determine how commuted sums are spent. The normal procedure for this is the relevant Service Unit to make a request through the Capital Bid Process as part of the Financial Strategy. Cabinet has agreed to spend £220,000 of Section 106 funds to develop temporary accommodation for the homeless at Alma Square, Scarborough. A contribution of £50,000 is also to be made towards affordable housing in Sleights. The intention is, subject to Member agreement, to spend the remaining money to stretch an existing programme that uses Prudential Borrowing, Homes & Community Agency grant (if available) and Registered

Provider funds to meet affordable housing priorities in the current Housing Strategy (e.g. temporary accommodation for homeless, supported housing schemes, bringing empty homes back into use etc).

#### Public Open Space/Play Equipment/Sports Facilities

- 5.10 The SPD relating to such provision gives guidance as to whether this should normally be provided on or off site. While on-site provision would usually be expected on larger residential schemes, there is not an overriding presumption that this is in preference to an off-site commuted sum. For smaller developments on-site provision may not be practical and even on larger developments greater community benefit may be gained by improving existing or creating new facilities, possibly in the form of pooled contributions, which may also attract matching funding.

#### *On-Site Provision/ Improvement and Maintenance*

- 5.11 The process of ensuring provision of open space/play areas to an adequate standard, its adoption by the Council and procuring payment of commuted sums can be a drawn out process involving several Service Units. Consequently, Section 106 obligations have tended not to be used in recent years and the cases summarised in Tables 3A and 7A in the appendices were mainly agreed some time ago. However, there are exceptions – for example, the agreements completed this year for Middle Deepdale will secure on-site open space, play provision and maintenance sums of circa £486,000.
- 5.12 Where monies in Table 7A have only been partially spent this reflects the fact that payments cover maintenance, which is phased over a number of years (normally 10). This explains why not all the sums collected have been spent yet.

#### *Off-Site Provision/ Improvement*

- 5.13 Table 3B shows global figures for off-site open space, play and sports facilities, while Table 7B provides details of individual cases. Over the last year a potential sum of £145,615 has been secured, of which £100,000 would relate to a new play area at or in the vicinity of the Sands development.
- 5.14 Individual sums received in this category may often not be sufficient to fund a meaningful project alone. The pooling of contributions has therefore been the approach adopted for the spending of these funds, subject to the legal requirement that expenditure directly relates to the development. Hence, the SPD indicates facilities should be accessible as in terms of a 5 minute walk to equipped play areas (400 metres) or 15 minute walk (1000 metres) to green space and sports facilities. Where there are several smaller developments within the same geographical area it allows the sums to be accumulated and reach a critical mass for a particular project, as well as being used to attract matching funding. As indicated in para. 3.2, from April 2015 onwards obligations will have to be more project-specific if pooled contributions are to be used within legal parameters.

- 5.15 Historically, monies were allocated by Cabinet to projects emerging from the Play and Open Space Strategies as agreed by Cabinet. However, now they would normally come forward through the Capital Bid Process, again approved by Cabinet. Therefore, where a project is identified in the fifth column of Table 7B those in italics are provisionally agreed, whereas those underlined are confirmed projects as part of the Capital Bid Process or the planning obligation specifically identifies a project for expenditure. The majority of s106 funds in this category, which were spent during the last year (£35,861), related to works at Filey Country Park and a final tranche of monies spent by Whitby Rugby Club.
- 5.16 A point of discussion arising from previous monitoring reports has been the expenditure pooled contributions towards open space and play, particularly where those sums were paid some time ago, but have not been spent yet. The most notable relates to contributions previously identified for expenditure at South Cliff and Valley Gardens. It is not the function of this report to decide how monies are spent, but to provide greater explanation a supplementary report has been prepared by the Environment & Countryside Service regarding these monies and is attached as Appendix 4. None of these sums are required to be repaid before 2018.

#### Education

- 5.17 The threshold for securing an education contribution in the relevant SPD is normally 25 dwellings and then the County Council only requests a sum where insufficient school capacity exists. Consequently, there are fewer schemes where such a sum is sought than for some other types of infrastructure. Table 4 in the appendices provides an overview on these funds, while Table 8 shows details of individual obligations.
- 5.18 No new planning obligations relating to education have been completed in the last year. If new primary school provision is required for Middle Deepdale, this would be provided as part of the development outside the ambit of the S106 agreements. Overall, the potential sums have decreased over the last year, as based on the recommendation of the County Council, Planning Committee agreed to a reduction in the sums liable in relation to Muston Road, Filey. The first of 4 instalments (£120,676) arising from development at West Garth has been paid, which is ring-fenced for Cayton Primary School.

#### Transport

- 5.19 Unlike other types of obligation, commuted sums for transport tend to be requested in response to specific impacts on local infrastructure, rather than having standard formulae/thresholds applied to all development. The County Council are normally responsible for most expenditure. However, there are exceptions – for example the Borough Council will be responsible for securing funding (including expenditure of s106 funds received from Sainsbury) for road improvements at Whitby Business Park which are likely to start in early 2014. Table 5 in the appendices provides a summary of the global picture and

full details of individual obligations are shown in Table 9. As can be seen from Table 1, transport is the category which generates the largest potential share of s106 financial contributions. It should be noted in some cases the constituent sums making up the £2,532,290 of untriggered contributions, is dependent on the County Council deeming specific highway works necessary, while in other cases (e.g. new bus services) a reconciliation process exists which may allow the developer to be partially refunded.

- 5.20 In 2013, a Section 106 agreement between the developers of Middle Deepdale and the County Council secured major highway infrastructure relating to the development. This includes financial contributions of up to £910,000. The most recent Sands s106 agreement secured a new Park & Ride bus service to the Water Park with contributions of up to £345,000, as well as a payment towards cycle infrastructure.
- 5.21 A number of transport payments have been received during the course of 2013. These include sums relating to West Garth Cayton, the Creamery site, Whitby and Sainsbury's store in Scarborough. The County Council are currently costing works including a pedestrian crossing and extension of urban traffic control for Falsgrave and Seamer Roads to spend the monies received from Sainsbury. When sufficient funds have accrued, the County also intends to proceed with the signalisation of the Prospect Hill/Mayfield Road Junction in Whitby. A significant part of this funding would be from s106 contributions which have been pooled from a number of sites. In the short term, the County are proposing to carry out some works to the junction to ensure a sum received from Homebase does not have to be returned.

#### Health Infrastructure & Miscellaneous Obligations

- 5.22 Contributions towards health infrastructure would improve local surgeries with £100,000 to be provided in connection with High Mill Farm, Scalby and £50,000 arising from Muston Road, Filey (see Table 10). Neither scheme has reached a stage when payments are due. In 2013, the Middle Deepdale agreements secured £250,000 towards health infrastructure.
- 5.23 Table 11 in appendix 3 shows some of the more important obligations not falling into other categories. These relate to Middle Deepdale or the Dean Road superstore. The Middle Deepdale agreement includes provision for community facilities, £140,000 towards a foul drainage feasibility study and £100,000 for a Regeneration Study/Development Brief for Eastfield High Street.

#### **Community Infrastructure Levy**

- 5.24 Following the introduction of the concept of the Community Infrastructure Levy the Forward Planning section was pro-active in investigating the viability of introducing such a charge and commissioned consultants with a specialisation in the viability of construction and an understanding of the development industry to undertake such work. This 'scoping report' split the Borough into three areas; Scarborough Central, Whitby and the Scarborough

Hinterland. These three areas were assessed for the viability of residential development in terms of small developments (5 units) up to the larger developments (100 units). Furthermore, the report also assessed the viability of other forms of development including industrial, office, retail (convenience and comparison goods), hotels, educational and health facilities.

- 5.25 The assessment is simplistic in nature (although carrying it out is a technical task) and in basic terms looks at the costs of development and the expected sale price. If the sale price is sufficiently higher than costs allowing an acceptable profit margin for the developer the development is viable. Any additional profit that remains is theoretically that which could contribute to a CIL charge.
- 5.26 The bulk of the assessment related to the viability of residential development as this generally makes up the most substantial portion of existing S106 payments and will continue to do so under any replacement. The findings were mixed and demonstrated that Scarborough Central was unviable, Scarborough Hinterland had the potential for a minimal charge and Whitby was viable to a greater extent.
- 5.27 In relation to other uses only retail (convenience) was shown to have sufficient coverage to allow a CIL charge to be made. As expected (and has been found across much of the north of England) industrial and office developments showed no opportunity for applying a CIL charge and would, if applied, simply further stagnate development at Scarborough Business Park and other locations across the Borough.
- 5.28 Officers therefore suggest that taking a CIL charge forward at the current time is not pragmatic. This has been reported to the Local Plan Members Working Group over recent months who shared the officers' opinion that CIL should not be pursued at the current time. It was, however, considered necessary to formally bring this to Planning and Development Committee and Cabinet to update Members on the current position and the likely timescale for any subsequent re-evaluation.

Other Local Authorities:

- 5.29 The situation in relation to CIL differs from authority to authority. Redcar & Cleveland Borough Council is in a similar position to Scarborough Borough with initial work showing CIL to be unviable at the present time, and has subsequently put CIL on hold for the time being. The North York Moors National Park Authority is yet to make a final decision, however, any CIL in the park area will be used on limited occasions due to the low levels of development experienced. The viability of development within the park area will likely be greater owing to higher house prices and the general 'premium' paid for dwellings in that area.
- 5.30 Ryedale District Council is looking to take a CIL Schedule forward in 2014 as early work has shown it to be viable. The lack of deprived wards and the proximity to York mean that the viability of housing development is greater.

The position with East Riding of Yorkshire is unclear at the moment although early investigations have taken place and the principal of taking forward a CIL charge was agreed in 2011.

Reasons for not taking CIL forward now.

5.31 The reasons why it is not proposed to take a CIL charge forward at the current time are set out below:

- a) The viability of introducing a CIL charge at present is questionable. The only area where a charge could be applied for residential development is Whitby (see E) and Borough-Wide for convenience retail (see F). As such the majority of development would not be subject to a charge;
- b) Although there are growing signs of a recovery, the economy of the Borough (and the UK in general) remains fragile. The house building market has picked up with the commencement of some large residential developments across the Borough, however, it is some distance from full recovery and the completion levels witnessed in the mid 2000's. A further financial burden on the house building industry in the Borough at this time could affect the recovery;
- c) The future of CIL and S106 remains uncertain. If a CIL Schedule was adopted with the expense of further viability work, an Examination in Public and full local referendum could be money wasted if the CIL system is further amended or even replaced in 2015 by a new Government;
- d) The level of affordable housing delivered from housing schemes could be affected. Once adopted, a CIL charge is non-negotiable which means that in schemes which are border-line the only real option for negotiations over viability is to reduce the affordable housing contribution. At a time when affordable housing needs are substantial this is not considered an appropriate strategy. The continued use of s106 payments enables all elements of the potential developer contributions to be negotiated and prioritised, providing a greater degree of flexibility;
- e) The majority of infrastructure required as a result of future growth is expected to be in Scarborough Urban Area (e.g. junction improvements) and the payment of this work solely from CIL charges for residential development in the Whitby area is not considered equitable;
- f) The only other viable development would be convenience retailing. Following a period of convenience retail growth across the Borough, the capacity for further developments is limited, with the exception of a replacement for the Dean Road site following the decision from Tesco. It is unlikely that a CIL Schedule could be in place prior to any future planning application on this site and the financial returns would not justify taking a CIL Schedule forward solely for this site. Any future developer of the site (be that retailer or other) will be subject to a S106 Agreement and any benefits or financial contributions derived from CIL can likewise continue to be attained through this former method.
- g) Implementing CIL involves the submission and formal examination of the proposed approach by a suitably qualified expert (for example a Planning Inspector). The costs of developing the evidence base and convening the requisite examination fall to the local planning authority, and therefore

would require additional resources with the risk that the examination could find the selected approach unsound.

- 5.32 The implementation of CIL should, however, be re-assessed at a later date; either in 2015 or sooner if the economy of the Borough grows quicker than expected.

## **6. IMPLICATIONS**

### **(a) Policy**

- 6.1 The issues in this report are within the Council's planning policies.

### **(b) Financial**

- 6.2 The costs of operating the monitoring system have to date been absorbed by the Planning Service budget. Monitoring charges were introduced in April 2011 to cover these costs. There are no immediate financial implications relating to CIL. If a CIL Schedule is taken forward at a later date then there will be the cost implications of the viability testing by appropriate consultants, the costs of an Examination in Public, the costs associated with conducting a local referendum and staff costs.

### **(c) Legal**

- 6.3 If the system of planning obligations is not dealt with properly, there is a risk that developers and/or the community could mount a legal challenge to the Council's actions. District Audit would also criticise the Council if it has not reacted positively to previously raised concerns over the process of negotiating for commuted sums and the transparency of the system.

### **(d) Environmental**

- 6.4 Planning obligations have positive environmental impact; for example by providing and maintaining Public Open Space and Play Areas and access to decent homes through the negotiation of affordable housing.

### **(e) Staffing**

- 6.5 Monitoring is carried out by Planning Services in consultation with other service areas such as Finance, Environment & Countryside and Housing.

### **(f) Crime and Disorder Act 1998**

- 6.6 The implications for crime and disorder will be considered when the allocation of funds is determined and officers making recommendations will ensure that any proposed schemes have due regard to this issue.

**(g) Health and Safety Issues**

6.7 The Health and Safety implications are positive in that the allocation of funds towards health facilities, open space, recreation and play and affordable decent housing should have a beneficial impact on the health of the community.

**(h) Co-operation with Health Authorities**

6.8 The improvement of open space/recreation facilities and affordable housing has the potential to improve the health of the community. Where a commuted sum is negotiated for improvements to local health or medical facilities, this will be carried out with the full involvement of the relevant health body.

**(i) Equality Implications**

6.9 There are no implications for equality issues. Benefits from the allocation of Section 106 sums are generally community wide and not directed towards a specific group.

**(j) Human Rights Act 1998**

6.10 Improved open space and recreation facilities, affordable housing and other benefits through the Section 106 process will improve the general well-being of the community and provide greater options, for example, towards recreation, play and access to affordable housing.

**7. ACTION PLAN**

7.1 The following actions are identified:

<b>Objective</b>	<b>Target</b>
1 Continue monitoring of Legal Agreements	Ongoing
2 Prepare Monitoring Report	Annually
3 Re-evaluate viability of implementing CIL	2015



**Andy Skelton**  
**Director of Service Delivery**

**Authors:**

Section 106 Obligations

Hugh Smith, Major Projects Officer, Planning Services

Telephone No: 01723 383642

E-mail address: hugh.smith@scarborough.gov.uk

Community Infrastructure Levy

Steve Wilson, Senior Planning Policy Officer, Planning Services

Telephone No: 01723 383510

E-mail address: steve.wilson@scarborough.gov.uk

**Background Papers:**

Appendix 1 - Overall Summary Table for Current Section 106 Funds

Appendix 2 - Summary Tables for Individual Types of Infrastructure

Appendix 3 - Current Status of Individual Section 106 Planning Obligations

Appendix 4 - Statement by Environment and Countryside Service on outstanding Section 106 Contributions

## Risk Matrix

<b>Risk Ref</b>	<b>Date</b>	<b>Risk</b>	<b>Consequences</b>	<b>Mitigation</b>	<b>Current Risk Score</b>	<b>Target Score</b>	<b>Service Unit Manager/ Responsible Officer</b>	<b>Action Plan</b>
1		Section 106 Agreements are not monitored adequately.	The risks associated with not monitoring legal agreements associated with planning applications is that the Council could be criticised for not operating a transparent and comprehensive framework for monitoring such financial and non-financial obligations	The continued monitoring of information and the operating of a Section 106 Protocol ensures that the process is openly accountable and allows ready access to information by the public and members.	B2	A1	David Walker	None
2		Section 106 Sums are not spent.	Committed sums would be returned (plus interest) to developers and required community facilities would not be provided.	Regular monitoring and action in accordance with the agreed protocols/ procedures ensures that the sums are properly allocated.	B2	A1	David Walker	None
3		CIL Regulations may change further or could be replaced with a different system	A CIL Schedule becomes out-dated in a short space of time and the investment in the process is wasted and not recouped.	The production of the CIL Schedule is placed on hiatus until 2015 or such time prior to that when the future of CIL (or any replacement) is	C3	B2	David Walker	None

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
				clear.				
4		The implementation of a CIL charge places an unacceptable financial burden on the development industry.	Development within the Borough slows and the economy does not recover at the expected pace resulting in lost investment, job creation, etc.	The production of the CIL Schedule is placed on hiatus until 2015 or such time prior to that when the economy has sufficiently recovered to allow the additional financial burden of CIL to be borne by the development industry.	C4	B2	David Walker	None

## Glossary of Terms

Risk	An event which may prevent the Council achieving its objectives
Consequences	The outcome if the risk materialised
Mitigation	The processes and procedures that are in place to reduce the risk
Current Risk Score	The likelihood and impact score with the current mitigation measures in place
Corporate Objectives	An assessment of the Corporate Objectives that are affected by the risk identified.
Target Risk Score	The likelihood and impact score that the Council is aiming to achieve
Service Unit Manager	The Service Unit or Officer responsible for managing the risk
Action Plan	The proposed actions to be implemented in order to reduce the risk to the target score

## Risk Scoring

Impact	5					
	4					
	3					
	2					
	1					
		A	B	C	D	E
		Likelihood				

### Likelihood:

A = Very Low

B = Not Likely

C = Likely

D = Very Likely

E = Almost Certain

### Impact

1 = Low

2 = Minor

3 = Medium

4 = Major

5 = Disaster