

**REPORT TO THE SCRUTINY PANEL for RESOURCE DEVELOPMENT  
MEETING OF 7 APRIL 2011**

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**Status:** For consideration  
**Title:** Section 106 Debts (Annual Review)  
**Originator:** Stephen Pointer  
**Where from:** Scrutiny Work-Plan  
Resource Development Panel January 2011 - June 2011  
**Where to next:** Implementation

Objective:

1. To review outstanding Section 106 obligations
2. To inform the Panel of the new Community Infrastructure Levy Regulations which provide a new means of obtaining funding for community infrastructure and revised collection procedures.

**1. Outcome sought from Panel**

- 1.1 The panel is asked to consider the report.

**2 Background**

- 2.1 Section 106 Agreements are negotiated with applicants for planning permissions in order to make development acceptable in planning terms. Most agreements which the District Council enters into concern funding towards local community uses and affordable housing (if not provided on site) which become obligations when the development reaches a certain completion threshold. When this is reached, invoices are sent out and payments made.
- 2.2 Since 2008, and the onset of the recession, a number of development companies have experienced financial difficulties and not been able to fulfil payments. A report was made to the Panel meeting in July 2010 as part of a wider report on corporate debt management concerning outstanding payments and this report updates the Panel on the latest position.
- 2.3 In summary the status remaining obligations are:

- **Welland Quarter, Market Harborough** (Dec 2010 invoice not paid and now being re-issued);
- **Warwick Road, Kibworth** (Nov 2010 invoice not paid and now being re-issued);
- **Station Road, Scraftoft** (payments made according to payment plan);
- **Hawthorns, Main Road, Lubenham** (property now owned by building society - legal advice on liability being sought);
- **Old Coffee Mills, Market Harborough** (awaiting legal view – solicitor pursuing)
- **52-54 St Marys Road, Market Harborough** (Revs and Bens considering potential write off of debt);
- **Hunters Close, Husbands Bosworth** (Company dissolved. Revs and Benefits monitoring HDC status as creditor);
- **Fleckney Road, Kibworth Beauchamp** (not considered worthwhile pursuing owing to cost implication to Council).

2.4 It should be noted that the Section 106 Co-ordinator left the Council in January 2011 and he post has been deleted in the 2011/12 Budget in order to achieve service savings in Built Environment Services. Monitoring and liaison on payments is being absorbed into the work of the Housing Enabling Officer.

### **3 Section 106 and Community Infrastructure Levy**

3.1 The problems outlined above involving recovery of S106 obligations (particularly when companies go into receivership during a development) could well be avoided if the Council decides to adopt a new approach to securing community infrastructure. The Community Infrastructure Levy (CIL) was brought into being via Regulations in Spring 2010 but authorities were waiting to see what approach the Government would take to this initiative.

3.2 In recent months, the Coalition Government has indicated it supports this CIL approach to funding infrastructure from multiple developments and consequently the scope of Section 16 agreements will be scaled back. Unlike S106, CIL is an automatic levy on development based on every new property or a minimum floorspace increase, is paid at commencement and is enforceable with unlimited fines.

3.3 A paper attached briefs members of the Panel on CIL and indicates that the Council must consider this Levy approach and include reference to it within the planned Supplementary Planning Guidance on Developer Contributions due to be published in 2011. It is therefore proposed to report to the first meeting of Executive of the new Council to resolve whether to implement it locally. The comments of the Panel are invited from a Resource perspective. The paper was also discussed at Scrutiny Places Panel on 17 March and the issue has been considered by the Local Development Framework Task Panel on 30 January and 9 March. Both groups support the development of a local Levy.

### **4 Equality Implications**

4.1 None arising from this report.

5 Impact on Communities

5.1 Ensure planning obligations paid to meet community expectations

5.2 Release funding to assist in funding community infrastructure

6 Legal Issues

6.1 Specialist legal advice is being obtained as referred to in the body of the report.

7 Resource Issues

7.1 None directly for the Council, other than is work has been affected by the need to achieve budget savings.

8 Community Safety Implications

8.1 There are none arising directly out of this report.

9 Carbon Management Implications

9.1 There are none arising directly out of this report.

10 Risk Management Implications

10.1 There are none arising directly out of this report.

11 Consultation

11.1 None

12 Background Papers

12.1 None

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**Previous report(s): Information submitted to 22 July 2010 meeting**

**Information Issued Under Sensitive Issue Procedure: N**

**Appendices:**

**A. Outstanding S106 Invoices at 30 March 2011**

**B. Development Contributions Supplementary Planning Guidance and Community Infrastructure Levy**

**Outstanding S106 Invoices – March 22 2011**

<b>Date Invoice Raised</b>	<b>Development</b>	<b>Invoice amount</b>	<b>Payments</b>	<b>Total Outstanding</b>
13/12/10	Former Harborough Rubber Site Market Harborough St Mary's Developments 04/01573/OUT	£67,367.00	£0.00	£67,367.00
<b>22/03/11 Now beyond terms of invoice and no response from owner. Re-Contact owner to determine current position.</b>				

<b>Date Invoice Raised</b>	<b>Development</b>	<b>Invoice amount</b>	<b>Payments</b>	<b>Total Outstanding</b>
26/11/10	Warwick Road, Kibworth Harcourt DWH 04/00319/OUT	£11,220.00	£0.00	£11,220.00
<b>22/03/11: Now beyond terms of invoice. DWH contacted regarding outstanding amount and copy invoice to be re-issued as they have no record of receiving it.</b>				

<b>Date Invoice Raised</b>	<b>Development</b>	<b>Invoice amount</b>	<b>Payments</b>	<b>Total Outstanding</b>
22/04/10	Land off Station Lane, Scraptoft Five Oak Homes 06/01615/FUL	£16,875.00	£1,687.50 recvd 05/05/10 £1,687.50 recvd 25/05/10 £1,687.50 recvd 28/05/10 £1,687.50 recvd 11/07/10 £1,687.50 recvd 04/10/10 £1,687.50	£6,750.00

			recvd 02/11/10	
23/04/10 Payment plan agreed.				
<b>22/03/11 Maintaining agreed payment plan (four units left to sell)</b>				

Date Invoice Raised	Development	Invoice amount	Payments	Total Outstanding
17/12/09	Former Badger Bros Garage Site, Lubenham Chase Homes Ltd 04/01377/REM	£74,214.00		£74,214.00
<b>22/03/11 Council Solicitor is awaiting Counsel opinion on PBS position and discussing with Freeth Cartwright.</b>				

Date Invoice Raised	Development	Invoice amount	Payments	Total Outstanding
20/01/09	Former Symingtons Factory, MH Attridge Developments 03/01897/FUL	£356,875.00	£96,845.28 recvd 08//06/10	£ 260,029.72
<b>22/03/11: Awaiting legal view of issues - Council Solicitor pursuing</b>				

Date Invoice Raised	Development	Invoice amount	Payments	Total Outstanding
18/02/08	Former Symingtons Factory, Market Harborough Attridge Developments	£86,024.49	£6,617.27 recvd 19/09/08 £6,617.27 recvd 14/11/08 £6,617.27 recvd	£48,217.96

	03/01897/FUL		08/12/08 £17,954.72 recvd 08/06/10	
<b>22/03/11: Awaiting legal view of issues - Council Solicitor pursuing.</b>				

<b>Date Invoice Raised</b>	<b>Development</b>	<b>Invoice amount</b>	<b>Payments</b>	<b>Total Outstanding</b>
12/05/08	52 – 54 St Mary's Road, Market Harborough Oakwood Homes (Midlands) Ltd 05/00381/FUL	£62,222.23	£0.00	£62,222.23
<b>22/03/11: Oakwood Homes (Midlands) Ltd has entered into voluntary liquidation. The Directors Estimated Statement of Affairs highlights that it is unlikely there will be any funds available for preferential and unsecured creditors. Liaising with Revenue and Benefits; awaiting response from CBA</b>				

<b>Date Invoice Raised</b>	<b>Development</b>	<b>Invoice amount</b>	<b>Payments</b>	<b>Total Outstanding</b>
11/02/08	Hunters Close, Husbands Bosworth Barry Howard Homes 05/01876/FUL	£147,613.68	£0.00	£147,613.68
<b>22/03/11: Barry Howard Homes entered into a Company Voluntary Arrangement during 2008. HDC registered as creditor prior to adjudication but BHH are now in default of this CVA. Ensure HDC is registered as a creditor prior to further Administration.</b>				

<b>Date Invoice Raised</b>	<b>Development</b>	<b>Invoice amount</b>	<b>Payments</b>	<b>Total Outstanding</b>
21/11/07	4 Fleckney Road, Kibworth Beauchamp A1 Alpha properties 04/01211/FUL	£102,282.88	£10,000.00 07/03/2008	£92,282.88
<b>22/03/11: Due to lack of funds and assets of limited company it is not currently worthwhile pursuing any legal action as there would be a cost implication to the Council with no prospect at the current time of securing any funds.</b>				

### **Supplementary Planning Guidance on Developer Contributions**

Part of the Councils Local Development Framework as set out in a local development scheme (updated by Executive in December 2010) is a Supplementary Planning Document on Developer Contributions. The purpose of this document is to set out details of the Councils policy for delivery of community infrastructure made necessary by development. Last year, it was planned to report to Scrutiny Places Panel on a draft document in March.

The programme of preparing this document has been affected by the new guidance issued by the coalition government in November on the new Community Infrastructure Levy. The Community Infrastructure Levy is a new planning charge that came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010. With the election of a new government it was uncertain what stance would be taken on this until later 2010.

The Government has issued guidance which confirms that the Community Infrastructure Levy is seen as the approach to be taken to enable funding of community infrastructure from a number of separate developments. A summary of this Guidance is set out on the following pages.

The LDF Task Panel and subsequently Executive will now need to examine the principle of using the Levy rather than traditional S106 agreements and thus progress on the SPD needs to wait until this decision is made.

Site specific matters and Affordable Housing provision will continue to be delivered through existing planning obligations delivered by S106 agreements. A transitional period of four years to 6 April 2014 is allowed in regulations before planning obligations cannot be used to pool contributions towards infrastructure (from over five developments)

The Levy should be implemented on the basis of an up to date development plan, drawing on the infrastructure planning that underpins the development strategy for their area. Charging authorities will be the planning authority for an area. The charging authority's responsibilities, if they decide to levy CIL, will be to:

- prepare and publish a document known as the "charging schedule" which will set out the rates of CIL which will apply in the authority's area. This will involve consultation and independent examination.
- apply the CIL revenue it receives to funding infrastructure to support the development of its area, and;
- report to the local community on the amount of CIL revenue collected, spent and retained each year.



## **Issues for the District Council**

1. Despite initial thoughts that CIL was essentially geared to larger authorities with major development and infrastructure proposals, further consideration of the recently re-published guidance from the Coalition Government suggests that the District Council should move to a CIL arrangement for the following reasons:
  - a. planned reduction in the ability of traditional S106 agreements to continue to pool contributions via a tariff system
  - b. the opportunity to capture contributions from a much greater number of developments via CIL
  - c. the potential efficiencies offered by CIL compared to the cost of creating and administering individual agreements
2. The CIL provides a tariff based approach to funding of new infrastructure and will be of benefit to authorities with significant development proposals requiring large amounts of investment in infrastructure. With a few exceptions, overall development levels in Harborough District are very modest without a significant requirement for additional infrastructure. Nevertheless CIL is now available and the Council will need to consider its introduction across the District in comparison with the existing system of S106 planning obligations.
3. The creation of a CIL needs to be based upon an up to date development plan for an area and thus can only take effect in Harborough District once the Core Strategy DPD is adopted.
4. A Charging Schedule needs to be prepared which will be part of the LDF but not part of the development plan. The Schedule must be subject to consultation and independent examination before being adopted and would require the infrastructure evidence provided by the Core Strategy.
5. A decision will be needed from Council after the election on moving forward to create a Community Infrastructure Levy or relying on planning obligations. The proposed Development Contributions SPD is the vehicle for consulting on the issue of implementing developer contributions and is due to be consulted on from Spring 2011 onwards. It could be used to consult on the introduction of a CIL and arrangements for ongoing planning obligations (eg towards affordable housing etc).
6. The views of the Panel are sought prior to including a potential approach in a draft SPD for further consideration

## **The Community Infrastructure Levy - CLG summary**

### **What is the Community Infrastructure Levy?**

The Community Infrastructure Levy is a new levy that local authorities in England and Wales can choose to charge on new developments in their area.

The money can be used to support development by funding infrastructure that the council, local community and neighbourhoods want – for example, new or safer road schemes, park improvements or a new health centre.

The system is very simple. It applies to most new buildings and charges are based on the size and type of the new development.

### **What are the benefits of the Community Infrastructure Levy?**

Local authorities should introduce the levy because it:

- delivers additional funding for them to carry out a wide range of infrastructure projects that support growth and benefit the local community
- gives them the flexibility and freedom to set their own priorities for what the money should be spent on – as well as a predictable funding stream that allows them to plan ahead more effectively
- provides developers with much more certainty ‘up front’ about how much money they will be expected to contribute, which in turn encourages greater confidence and higher levels of inward investment
- ensures greater transparency for local people, because they will be able to understand how new development is contributing to their community
- enables local authorities to allocate a share of the levy raised in a neighbourhood to deliver infrastructure the neighbourhood wants.

### **Who can charge and collect the levy?**

Most councils in England and Wales can charge and spend the levy: district and metropolitan councils; London borough councils; unitary authorities; national park authorities; the Broads Authority; the Council of the Isles of Scilly; and the Mayor of London. In Wales, county and county borough councils can charge, along with national park authorities. These bodies are known as charging authorities.

The levy is normally collected for the charging authority by the authority that grants planning permission.

In most cases this will be the charging authority itself. However, in cases where county councils grant planning permission, they collect the levy on behalf of the charging authority.

If the Mayor of London has a levy in place, London boroughs collect the levy on the Mayor's behalf.

Other bodies that grant planning permission can collect the levy if they and the charging authority agree on such an arrangement.

### **How will a charging authority set a rate for their levy?**

Charging authorities must produce a document called a charging schedule which sets out the rate for their levy. The levy is intended to encourage development by creating a balance between collecting revenue to fund infrastructure and ensuring that the rates are not so high that they put development across the area at serious risk. These rates should be supported by evidence, such as the economic viability of new development and the area's infrastructure needs. The charging authority can set one standard rate or it can set specific rates for different areas and types of development. Any differential rate must be justified by the economic viability of new development. Charging authorities must consult their local communities – including local businesses and neighbouring authorities – regarding their proposed rates for their levy. Anyone has the right to give their views on the formally published draft charging schedule. It must also undergo a public examination by an independent person (for example, a qualified planning professional, such as a planning inspector, or a chartered surveyor) before the charging authority can formally approve it.

### **When will the levy be charged – and when won't it?**

The levy is charged on most new developments that involve an increase in floor space. New buildings – or extensions to existing buildings – are liable for the charge if a charging schedule was in place when planning permission was granted. The levy will not be charged if there is no extension of floor space as a result of the development. Nor will it be charged on structures or buildings that people only enter for the purpose of inspecting or maintaining fixed plant or machinery. Most developments under 100 square metres in area will not pay the levy, for example, a small extension to a house. But development that involves the creation of a new residential unit (such as a house or a flat) will pay the charge, even if the unit is below 100 square metres in area.

### **Who is liable to pay the levy – and when?**

An individual or organisation (for example, the developer) may assume liability for payment of the levy. If no one assumes liability, the land owner is automatically liable for the charge. If someone assumes liability, then they will be allowed to pay the levy within a specified extended period of time. However, if no one assumes liability the charge is immediately payable by the land owner as soon as development work starts.

### **How is the levy paid?**

The charge must be levied in pounds sterling (£) per square metre. It will be collected, in most cases, as a cash contribution. But in some cases it may be more appropriate to transfer land to the charging authority as payment of the charge. In such cases, a number of conditions must be met. In particular, the land must be used to provide – or facilitate the provision of – infrastructure to support development in the area.

### **What exemptions are there from paying the levy?**

There are three main types of relief from the levy:

- charitable relief – a mandatory exemption for a charity if it owns part of the land, and the development will be used wholly or mainly for charitable purposes
- social housing relief – a mandatory exemption for social housing
- exceptional circumstances – charging authorities have the option to offer relief in cases where the levy would have an unacceptable impact upon the economic viability of a development.

### **How will the levy affect planning obligations?**

Planning obligations (private agreements between the local planning authority and the developer) will continue to play an important role in helping to make individual developments acceptable to local planning authorities and communities.

For example, new affordable housing will continue to be delivered through planning obligations rather than the levy. However, reforms have been introduced to restrict the use of planning obligations. Some of these have already come into effect and others will take effect from April 2014 – or as soon as a charging authority starts to charge the levy.

Most importantly, after April 2014, planning obligations can no longer be used as the basis for a tariff to fund infrastructure.

The levy will be used as the mechanism for pooling contributions from a variety of new developments to fund infrastructure.