



# Cabinet

9<sup>th</sup> July 2019

Report of:

Portfolio Holder for Growth  
and Prosperity

## DEVELOPER CONTRIBUTIONS: UPDATE AND PROPOSED APPROACH

1.0 Corporate Priority:	Decision Type:
1.1 OG1 Delivering quality services to business and residents; understanding what really matters to our customers.	Non Key Decision
1.2 OG3 Becoming a more agile and commercial Council; Securing our financial future	

2.0 Summary:
2.1 This report is to update members on progress and issues around implementing the Community Infrastructure Levy (CIL), and to seek agreement for an approach that in the short to medium term, consolidates the role of Section 106 contributions as the primary means of securing developer contributions for local infrastructure. It also commits the Council to revisiting progressing CIL when the current instability and uncertainty in the development and construction sectors has abated.
2.2 The report also considers how the developer contributions collected could be used more effectively to achieve the Council's local plan and growth priorities and recommends preparation of a Developer Contributions SPD. It makes specific recommendations for an open spaces and children's play strategy to be prepared to guide the amount, size, type and location of open spaces provided and the use of developer contributions collected. It would also provide the basis for bidding for complementary funding for strategic provision that could benefit residents and visitors alike.

3.0 Recommendations
<b>That Cabinet agree that progress on the Community Infrastructure Levy (CIL) be suspended.</b>

- 3.2 That Cabinet notes that a high priority be given to working with the County Council and other public sector infrastructure providers to prepare a Melton Developer Contributions Supplementary Planning Document, to develop a strategic, justifiable and transparent approach to securing developer contributions.
- 3.3 That Cabinet note that an Open Space and Children's Play Strategy for Melton will be prepared.

#### 4.0 Reason for Recommendation:

- 4.1 With regards to Community Infrastructure Lev, the course of action proposed is in order to avoid abortive work where a positive cost /benefit analysis cannot be predicted.
- 4.2 It is necessary to ensure a robust deliverable approach to collecting developer contributions for local infrastructure priorities, in the absence of an adopted CIL charging schedule.
- 4.3 The approach recommended would also ensure that fair and appropriate developer contributions can be secured from developers for facilities that the Council delivers and maintains, and an approach to prioritisation where all infrastructure requests cannot be met.
- 4.4 Finally, item (iv) would underpin an approach to open space and children's play provision that ensures a sustainable portfolio of well used high quality accessible spaces.

#### 5.0 Alternate Options Considered

- 5.1 The Council could decide not to progress CIL further at all. However, the reasons to progress CIL in the future may outweigh the current reasons not to.
- 5.2 The Council could decide to progress now with CIL, and rely less on S106 contributions. This would not address the urgent need to ensure that the developer contributions secured are more closely aligned to the local infrastructure priorities, and it could result in smaller developments (which have been the backbone of housing supply in Melton) being unduly burdened.
- 5.3 The Council could decide not to prepare a SPD. However, this could prolong negotiations with developers at planning application stage and may not result in all the contributions being achieved for the infrastructure items that are a local priority.
- 5.4 The work is essential to ensure that the contributions that are requested are sufficient to cover the costs of the services for which they are intended. Some of the requirements associated with monitoring will be mandatory rather than optional from 2020.
- 5.5 To do nothing or delay work on the open spaces strategy until needed for local plan review. By aligning this work with the Developer Contributions SPD work, the Council can ensure from the outset that the open spaces and contributions it is seeking from developers will cover the type of open space and children's play provision envisaged for the Borough as a whole for the future and which it can adopt and maintain on a sustainable basis. Not doing so risks under-resourced

services and/or more open space being managed by third parties who are not locally accountable. The work could also identify savings that could be made in how open spaces are managed, and through a more focused approach, could free up some sites for other uses and form the basis for attracting funding for strategic 'destination' provision.

## **6.0 Report Detail**

### **6.1 Background**

Developer contributions towards infrastructure and community facilities needed as a result of development can be secured when planning permission has been granted. The approach currently used by the Council is through Section 106 agreements negotiated on a site by site basis. In 2016, the Council started looking at alternative way of securing developer contributions, known as the Community Infrastructure Levy (CIL), and which about a third of Councils are using or plan to use.

6.2 Preliminary work has been undertaken to introduce the Community Infrastructure Levy in Melton, but there are several key stages to get through before it can be adopted and a charging scheme can become operable. It will take a significant amount of officer time to do so, to undertake tasks such as preparing technical evidence for independent examination, setting up administrative processes to actually charge and collect CIL, and agreeing policies on things like discretionary reliefs and payment instalments, and how S106 contributions will be reduced to reflect introduction of the Levy. Whilst 5% of CIL receipts can be retained by MBC to administer and set up CIL, a proportion of CIL collected would be payable to Parish Councils – 15% where there isn't a neighbourhood plan in place and 25% where there is.

6.3 CIL offers advantages over s106 agreements, primarily that the charges can apply down to a single dwelling and the Council has more freedom on where and on what the monies collected can be spent; s106 agreements are for very specific projects, and must be fairly and reasonably related to the development. There are also restrictions upon the number of contributions (less than 5) that can fund one project, though these are to be lifted soon. A Preliminary Draft Charging Schedule (PDCS) for CIL was consulted on in Summer 2017, which set out charging rates for new housing varying from £25/sqm to £235/sqm according to the size of the development and where it was in the Borough. It was estimated that this would generate £14M in CIL revenue by 2036. However, the feedback from this consultation suggested that the CIL would impact disproportionately on the small builders and developers who are vital to sustaining our housing supply.

6.4 In October 2018, the Council adopted its new Local Plan. This document includes policies such as IN3, that set out the range of matters and priorities for the things for which developer contributions will be sought.

6.5 A refresh of the viability assessment that underpinned the PDCS was undertaken in autumn 2018, to inform the next stage of CIL work. The updated assessment was completed in November 2018. It revealed that whilst residential and other development values had increased, the costs of development had increased much more – the latter 25% higher than found in the May 2017 work. This has significantly reduced the amount of value in developments that is available for satisfying planning and infrastructure requirements, whatever those items may be and however they are secured. This has had a big effect on the amount of CIL

that could be charged: it is now only possible to charge CIL on housing schemes of 10 dwellings or less and the amount that could be charged has also fallen, from between £45/sqm and £235/sqm for these sized developments in the PDCS, to £0/sqm and £121/sqm respectively that could be included in a revised schedule, based on current costs and values. The effect of this is that it is estimated that excluding inflation increases, CIL may only now generate £2.4M of receipts by 2036 (or £145,500 per annum) if it was brought into effect later this year. The proportion of this that MBC would receive and get to keep for infrastructure it delivers may only be about 15% of that, i.e. about £22,000, as the most costly infrastructure is associated with County Council functions such as roads and schools, and either 15% and 25% must be passed onto Parish Councils for developments occurring in their areas.

- 6.6 With the uncertainties surrounding Brexit, the construction and development sector is continuing to see costs increasing, whilst the increase in residential values is accelerating at a slower rate. The prospects for positive changes to the development economics that underpin the calculation of CIL are currently very uncertain. It is not considered to be a good time to commit to supporting CIL charges, as once this uncertainty has passed, the value in developments and hence the amount of CIL that could be charged could alter significantly. If it moves up, then fixing CIL rates now for several years would prevent any viable higher amounts being captured from developers, or conversely, if values go down, it could make developments unviable and contribute to stalling housing delivery.
- 6.7 As the costs of preparing and implementing CIL are relatively fixed and the projected CIL receipts are now much lower CIL is unlikely to be a cost effective way of securing the level of developer contributions for infrastructure that is needed to support new housing delivery and sustainable growth as intended.

## **SECTION 106 DEVELOPER CONTRIBUTIONS**

- 6.8 Since 2011, the MBC planning team has secured contribution agreements amounting to just over £20m on behalf of infrastructure providers including this Council, the County Council, the police, health agencies and Parish Councils. The overwhelming majority (£16m) of that sum is for Transport and Education infrastructure, whereas, for example, only £1.7m has been secured for open space provision and maintenance, including for Melton Country Park. In addition, very significant values have been secured in the form of affordable housing provision, normally with an 'on site' solution.
- 6.9 The recently adopted local plan provides the framework for identifying the types of infrastructure for which s106 contributions will be sought and what types of infrastructure should be prioritised. This is in the context of meeting the regulatory requirements for seeking S106 contributions, i.e. that they are necessary to make a development acceptable in planning terms, are directly related to the development and fairly and reasonably related in scale and kind to it. The Council's Infrastructure Delivery Plan provides an indication of the key infrastructure items for which funding is needed. This was refreshed in Autumn 2018.
- 6.10 Developer contributions are coming under increased scrutiny, both nationally and locally. Nationally, the Government is introducing a new requirement on local authorities to prepare an annual Infrastructure Funding Statement (IFS). The IFS

will provide transparency around all the s106 contributions that have been committed, how much has been received and spent, what it has been spent on and how much unspent monies have been returned to developers. The first IFS is required by 31<sup>st</sup> December 2020.

- 6.11 Locally, other infrastructure providers, such as the County Council, police, both the the PCT and CCG, are increasingly trying to secure as much funding as possible through s106 contributions, in some instances to offset reductions in their own budgets and/or in the amount of money that they can access through Government funding streams. For example, the County Council consulted on a draft revised Developer Contributions policy in December 2018 that would significantly increase the number of developments that would attract a request for contributions, the value of contributions and the range of provision for which they would be sought.
- 6.12 Taking into account the reduced amount of funding likely to be available overall in new developments, the new policy framework provided by the adopted local plan and the increased competition for s106 monies from other infrastructure providers, the Council should start work urgently on preparing its own well justified Developer Contributions Supplementary Planning Document or similar guidance. This would help to ensure that the monies that are secured through s106s are for the infrastructure that most closely matches local planning priorities. As well as the various infrastructure referred to above this also includes things like the provision, management and maintenance of open space and children's play that are functions of this Council. It should also ensure that the monies collected reflect as far as possible the real costs of providing infrastructure and services. This work would also enable the Council to recover more of the costs it incurs in monitoring s106 agreements. Such a SPD would also have the benefit of providing greater clarity to developers regarding our expectations. As such, it could help to speed up the planning stage of the housing and other development delivery, and can help developers to secure land from landowners at a realistic price that takes account of all the planning costs.
- 6.13 If the Council decides to undertake the work outlined above, then it would also be opportune to reconsider whether the funding that can be secured through s106s for Council functions is being targeted to the schemes that most effectively deliver what is needed in that service area. This would be both from a local plan perspective and against wider corporate priorities.

### **THE NEED FOR AN OPEN SPACE STRATEGY**

- 6.14 The adopted Local Plan (Policy EN7) requires the provision of open space to meet identified deficiencies and to sustain quantity standards as the population grows. It opens the way for a more strategic, design-led approach to open space provision, that focusses on enhancing and providing green infrastructure in the areas identified in the plan (Policy EN3 and EN7). This is a marked change from the previous approach which was to provide new open space on a pro-rata basis for every development of 10 houses or more. This sometimes resulted in small open spaces in new developments which were of limited value to residents, were costly to maintain and were done so by 3rd part management companies. These spaces did not always deliver the types, sizes and quality of open spaces that are

needed to ensure the town and new development areas continue to be great places to live, and in some cases, led to local anti-social behaviour problems arising from misuse.

6.15 The data and distribution of forecast development from which the deficiencies set out in Policy EN7 were calculated is from 2015, and does not reflect the final housing allocations in the local plan, as a result of the changes that were made in its development through to, and including, the Examiner's recommendations. This data needs to be refreshed if types and areas of open space deficiency that need to be addressed are to be accurately identified. Moreover, a related piece of work will need to be undertaken to ensure provision supports wider corporate priorities, such as:

- (i) sustaining the attractiveness of Melton Mowbray as a place to visit - it could, for example, consider how a high quality well located strategic 'destination' outdoor children's play facility could contribute to this; and
- (ii) restructuring the approach to the provision of open space and children's play provision overall – it could make sure that the overall portfolio of sites is the minimum necessary and of sufficiently high quality and type and in the right amounts and locations to meet people's needs and for environmental gains. The approach could also take into account the long term sustainability of the provision from a management and maintenance costs perspective, and consider any actions the Council might want to take to ensure that any new open spaces required as part of new development are adopted by the Council, rather than 3<sup>rd</sup> party organisations that are remote from local residents and users, and not accountable to them.

6.16 This further work in respect of open space and children's play provision outlined above would be set out in an open spaces strategy and action plan. It could be used immediately to inform investment and bidding for funding but would need to inform an alteration of the Local Plan policy at its first review, before it could be given significant weight in determining planning applications. This would be necessary to formalise any revised approach that seeks to provide open space other than in accordance with the current policy. In the meantime, any updated evidence could be a material consideration to consider in deciding whether to deviate from the adopted local plan policy.

## **7.0 Consultation and Feedback (including Scrutiny Committee)**

7.1 If the recommendations are agreed, public and other stakeholder consultations would be carried out on a draft Planning Obligations SPD and any draft open spaces strategy; it is a statutory requirement for the former and best practice in the case of the latter. These consultations would also be in accordance with the Council's statutory Statement of Community Involvement (in planning).

7.2 If requested, the documents that this report proposes to prepare can also be considered by the Council's Scrutiny Committee at any stage.

## **8.0 Next Steps**

8.1 The local plan website [www.melton.plan.co.uk](http://www.melton.plan.co.uk) will be updated to reflect the Cabinet's decisions.

- 8.2 A public and stakeholder consultation will commence on a scoping report for the Planning Obligations SPD, prior to preparing a draft SPD. Consultations will then take place on the draft SPD before a future meeting of the Council will be asked to adopt the finalised document.
- 8.3 Consultants will be engaged to provide specialist support for the preparation of the open spaces strategy, bringing knowledge and expertise of best practice elsewhere. A draft strategy and action plan with indicative costs of delivery will be consulted upon, and a finalised document would be brought to a future meeting for agreement and authorisation to implement.

#### **9.0 Financial Implications**

- 9.1 The recommendations of this report can be met within existing resources.
- 9.2 Implementation of the recommendations will help the Council to recover more of the funding needed to sustain the additional service provision needs that arise from new development.
- 9.3 An up to date and well justified open space strategy will help to support bids for funding to secure new and enhanced provision.

#### **10.0 Legal and Governance Implications:**

- 10.1 SPD preparation and any progress with CIL will be in accordance with appropriate regulations.
- 10.2 A new SPD would need to be adopted by Cabinet and the open space strategy agreed by the Council.

#### **11.0 Equality and Safeguarding Implications:**

- 11.1 The open space strategy will be drafted to ensure that no one is disadvantaged in terms of access to good quality and appropriate open spaces because of where they live or because they do not have access to a car.
- 11.2 Preparation of the Planning Obligations SPD will help developers to understand the full costs of development up front, and so help to avoid instances where the level of affordable housing provision has had to be compromised.

#### **12.0 Community Safety Implications:**

- 12.1 The proposals could contribute to improved community safety, e.g. by ensuring open spaces are located and sized to provide better natural surveillance, and by redesigning the use of those spaces that can currently be the focus of anti social behaviour.

#### **13.0 Other Implications(HR, Data Protection, Climate Change, etc)**

- 13.1 The work on planning obligations will need careful engagement with other service and infrastructure providers, such as the health service, the County Council and police, as the local setting of priorities for development contributions may result in some of the S106 contributions that are achieved for some services not being able to be funded through this source to the same level as currently.

**14.0 Risk & Mitigation:**

14.1 With reference to the table in paragraph 14.2 below:

Risk 1: cannot be mitigated as such. The mitigation in terms of achieving the most effective collection of developer contributions is the preparation of the Planning Obligations SPD proposed in this report.

Risk 2: regular, effective and open dialogue with all the infrastructure and service providers who are seeking developer contributions will be vital.

Risk 3: early and if necessary high level dialogue with the County Council to agree complementary workstreams.

Risk 4: The viability of the proposed contributions will be tested by specialist consultants as part of the preparing of the Planning Obligations SPD

Risk 5: The consultation outlined earlier in this report and consideration of the comments received should mitigate against this.

<b>L I K E L I H O O D</b>	<b>A</b>	<b>Very High</b>				
	<b>B</b>	<b>High</b>				
	<b>C</b>	<b>Significant</b>		1.2.	3. 4.	
	<b>D</b>	<b>Low</b>			5.	
	<b>E</b>	<b>Very Low</b>		6		
	<b>F</b>	<b>Almost Impossible</b>				
			<b>Negligible 1</b>	<b>Marginal 2</b>	<b>Critical 3</b>	<b>Catastrophic 4</b>

**IMPACT**

<b>Risk No</b>	<b>Risk Description</b>
<b>1</b>	The economics of development may not recover any time soon to enable work to restart on progressing CIL.
<b>2</b>	Work to progress the Planning Obligations SPD may take longer than anticipated.
<b>3</b>	Work to progress the Planning Obligations SPD may not complement work being proposed by the County Council in this area, and so confuse and/or put off potential developers .
<b>4</b>	Developers may say the level of developer contributions to be sought is unviable, so the amount of new housing needed may not come forward as needed.
<b>5</b>	Specific proposals in the open space and children’s play strategy may not be supported by local people.
<b>6</b>	The s106 strategy could result in a slower recovery period for the Councils funding towards MMDR if this was not afforded due priority

## Background Papers:

Material in these documents has been relied upon in drafting this report:

1. Melton Local Plan, MBC, October 2018
2. Melton CIL Viability Refresh, Cushman & Wakefield, November 2018
3. Draft Developer Contributions Policy, Leicestershire County Council, December 2018.
4. National Planning Practice Guidance on viability, updated May 2019
5. Government response to its Reforming Developer Contributions Consultation, June 2019

## Appendices

None.

## Report Timeline:

<b>Equalities Check &amp; Challenge</b>	N/A
<b>SLT Sign off</b>	13 <sup>th</sup> June 2019
<b>Previously Considered by Cabinet</b>	No.
<b>Director Approval</b>	11 <sup>th</sup> June 2019
<b>Chief Finance Officer Sign Off</b>	26 <sup>th</sup> June 2019
<b>Monitoring Officer Sign Off</b>	1 <sup>st</sup> July 2019

## Exempt Reports

N/A.

## Date of Review to make public

Not applicable.

## Report Author

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