

# MEMBERS TRAINING

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

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# What are Section 106 Agreements



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# Section 106 Agreements

- Legal agreements made under Section 106 of the Town and Country Planning Act 1990 (as amended);
- S106 agreements create planning obligations between developers and the Local Planning Authority;
- They can take the form of bi-lateral (between two parties) agreements or unilateral undertakings (where the developer commits to do something);
- Through S106 obligations, it is possible to make acceptable development which would otherwise be unacceptable and therefore refused;
- Obligations imposed must have regard to the viability of the scheme.



# Section 106 Agreements

- They can
  - **Prescribe** the nature of development;
  - **Restrict** the development or use of land;
  - **Compensate** for loss or damage;
  - **Mitigate** the impact of a development.
- They cannot
  - remedy existing deficiencies;
  - be used to secure a betterment levy, namely to provide something which is not related to the impact of the development;
  - deliver a 'wish list'.



# Section 106 Agreements

- S106s must meet the necessary statutory test i.e. it **must** be:
  - 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.

(CIL Reg 122)



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# Section 106 Agreements

- On occasion, in order to achieve appropriate mitigation for a scheme, the developer may be required to make a contribution. Contributions may be:
  - in kind,
  - financial,
  - maintenance payment,
  - pooled contribution.
- In the case of financial payments, they can be made in the form of a lump sum or as phased payments over a period of time, related to defined dates, events and triggers.
- Monies received from developers are normally tightly ring fenced in the legal agreement to be spent in a specific way.
- Since 6<sup>th</sup> April 2015, ability to pool S106s has been restricted to no more than 5 S106s per single infrastructure project or type of infrastructure.



# What is the Community Infrastructure Levy



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# Community Infrastructure Levy (CIL)

- New local levy on new development that authorities can choose to introduce to help fund the provision of infrastructure in their area in line with their development plan.
- Came into force on 6 April 2010 but amended by Coalition Government.
- Adopted by NBC and apply to applications submitted since 1<sup>st</sup> April 2016.



# Community Infrastructure Levy (CIL)

- Councils are required to spend CIL on the infrastructure needed to support the development of their area.
- The infrastructure required must be set out in the infrastructure list – known as a Regulation 123 List.
- Cannot be used to remedy pre-existing deficiencies, unless the proposed development makes it worse.
- It can be used to increase the capacity of existing infrastructure.



# Community Infrastructure Levy (CIL)

Our Regulation 123 list focused on 4 strategic priorities:

- Northampton Growth Management Strategy (A45/ M1 Improvements);
- Northampton North West Bypass Phase 2;
- Indoor Sports Facility;
- Secondary & Specialist Schools.

# Advantages of CIL

- CIL will ensure that all new chargeable development across the Borough will bear a share of the cost, compared to the limited number of developments that pay through S106 now.
- Standard charge based on land value and viability gives certainty to landowners and developers. It's not negotiable.
- Part of the funds raised through CIL can be used by local communities to address the impacts of new development in their neighbourhood.



# CIL and Local Communities

- 15% of CIL receipts to spend on priorities agreed with the local community in parished areas where development is taking place – these monies are passed directly to the local community. No more than £100 per existing Council Tax dwelling can be spent per year.
- Increases to 25% of CIL receipts if there is a made Neighbourhood Plan. No limit on what can be spent per year.

# Who may charge CIL

- In England CIL charging authorities are district, metropolitan and unitary authorities, LBC's, National Park authorities and the Mayor of London.
- Collected by the Charging Authority - **NBC is a charging authority.**



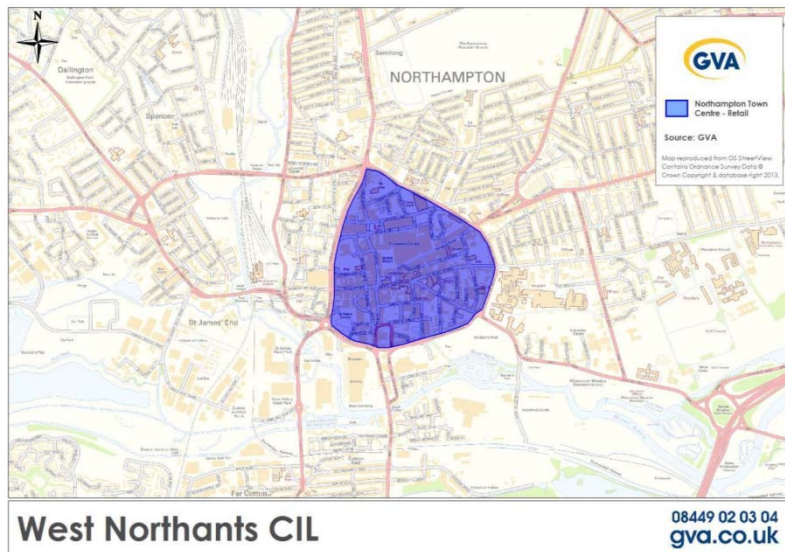
# The Charging Schedule

- Charging Authorities must produce a charging schedule;
- Must set out rate or rates;
- Rates proposed must support rather than harm new development they will charge;
- Must be supported by evidence and take into account economic viability;
- Must consult in preparation of CIL rates.



# NBC Charging Schedule

Development Type	Levy per sqm
Residential (excluding SUEs)	£50
Residential SUEs	£50
Retail (excluding central zone)	£100
All other uses	£0



Central Zone (nil retail charging)



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# How is CIL charged?

- Charged per square metre net additional floorspace on most buildings that people normally use over 100sqm gross;
- Chargeable on residential (Classes C3 and C4) and retail (Class A1, A2, A3, A4 and A5) uses;
- Based on evidence of the infrastructure needed through the Infrastructure Delivery Plan;
- The Charging Schedule subject to consultation and public scrutiny through examination.



# How is CIL charged?

- Chargeable on new builds permitted by some form of planning permission;
- Can also be paid in kind;
- Collected in instalments on large developments;
- Some developments are exempt - social housing and charitable developments.



# Section 106 and CIL

The role of S106 agreements has changed under CIL:

- They will still exist for site specific obligations to prescribe, mitigate and compensate e.g. affordable housing, maintenance of open space and sustainable urban drainage etc;
- And to mitigate for infrastructure requirements to meet the needs of the development not contained on the CIL Regulation 123 List, such as healthcare;
- Cannot collect CIL and S106 contributions for the same piece of infrastructure.



# Questions?



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