

Internal Audit Report

S106 and CIL Developer Contributions

2024/25

Draft report: 20 September 2024

Final report: 29 October 2024

Last audited: May 2022 (Substantial assurance)

Audit Objective To ensure appropriate arrangements are in place to manage the receipt and expenditure of S106 and CIL developer contributions.

Assurance Opinion		Number of Actions				
		Priority	Joint	South	Vale	Reference
Reasonable	There is a generally sound system of governance, risk management and control in place. Some issues, non-compliance or scope for improvement were identified which may put at risk the achievement of objectives in the area audited.	Priority 1	-	-	-	-
		Priority 2	2	-	-	3 and 4
		Priority 3	7	-	-	1, 2 and 5 to 9
		Total	9	-	-	Appendix 1

Key Risks Reviewed

- Procedural guidance is not in place increasing the risk of errors.
- Systems access is not managed resulting in a risk to data security.
- Non-payment of developer contributions may impact the council's financial position.
- No reconciliation of systems, Capital Programmes, and budgets may result in funding anomalies going undetected.
- Governance controls fail to support the decision-making process.
- Statutory reporting requirements are not met, risking a legislative breach.

The audit scope included:

Objective	Audit Scope
1 Policies and procedures	<ul style="list-style-type: none"> • Appropriate procedures are in place for managing and monitoring S106/CIL contributions in accordance with any relevant legislation.
2 Monitoring and reconciling contributions	<ul style="list-style-type: none"> • Controls are in place to regularly monitor and reconcile S106 and CIL developer contributions.
3 Decision making and governance	<ul style="list-style-type: none"> • A robust decision-making and approval process is in place to support allocation and release of project funding in line with relevant legislation and policy.
4 Reporting	<ul style="list-style-type: none"> • Statutory reporting requirements are met and published accordingly.

Background Information

Section 106 Agreements (S106):

- Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as S106 agreements, is the legislation that covers S106 developer contributions and associated planning obligations. Developers must comply with any conditions attached to their planning permission.
- South and Vale publish guidance on S106 agreements on their websites alongside Supplementary Planning Documents (SPDs) for each council, in line with their local plan. The requirements for producing Supplementary Planning Documents are set out in Regulations 11 to 16 of the Town and Country Planning (Local Planning) (England) Regulations 2012. Guidance on how CIL will work alongside Section 106 and Section 278 agreements is also published within the SPD.
- S106 agreements are unique, and obligation conditions and trigger points (milestones) vary from agreement to agreement. Any instances of late or non-payment of S106 fees follow the corporate debt recovery process.
- Developers are solely responsible for notifying the councils once trigger points have been reached, otherwise interest charges can be added to late payments.
- The release of S106 funding is limited to specific use (as detailed within each S106 agreement). The local authority is responsible for delivering developer contributions in line with each S106 agreement obligation. External parties are welcome to submit a bid for S106 funding if they meet the required conditions and details on how to apply for funding is published on both South and Vale websites.

Community Infrastructure Levy (CIL):

- The Community Infrastructure Levy Regulations 2010 is the original legislation that covers use of CIL developer contributions. The current version was amended and came into force on 1 September 2019. The levy only applies in areas where a local authority has consulted on, and approved, a charging schedule which sets out its levy rates and has published the schedule on its website, in line with section 211(1) of the Planning Act 2008.
- The CIL Rates contained in the CIL Charging Schedule are index linked in accordance with Schedule 1 of the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019.
- Local authorities must report developer contributions annually through an Infrastructure Funding Statement (IFS), as set out under CIL Regulation 121A.
- Statutory reporting for Town and Parish developer contributions is set out in CIL Regulation 121B, of which a report must be published online (either through the local charging authority, or its own website).
- CIL debt recovery is covered by the enforcement procedures as set out in Part 9 of the Regulations and sit outside the Council's Joint Corporate Debt Recovery Strategy.
- CIL funding is approved and allocated to the council's capital programmes as part of the council budget setting each February. Funding can also be allocated and approved for projects during the year in line with the joint Financial Procedure Rules (FPR).
- A CIL grant bid pilot scheme is under trial for South in 2024. The council has allocated £750k from its CIL funds to support eligible organisations deliver infrastructure improvements and projects to support the growth in the district. As of August 2024, the application process is closed and applications are being assessed, and funding is yet to be awarded.

Key Findings		
Objective	Key Findings	
1	Policies and procedures	<ul style="list-style-type: none"> We reviewed S106 and CIL information published on South and Vale websites which we found to be up-to-date, comprehensive, and aligned to legislative requirements, including: <ul style="list-style-type: none"> Annual Infrastructure Funding Statement (IFS). Joint S106 financial contributions and monitoring fees statement. CIL Charging schedules, which were adopted in line with each council’s local plan (South: Jan 2023, Vale: Nov 2021). CIL Rate Summary with rates updated annually (in line with inflation). CIL Viability Assessments, alongside CIL Spending Strategies. Internal procedures support the infrastructure team in their day-to-day operations; however, there is no version control within supporting documents. Review of Ocella (Planning Management System) and Unit4 (Financial Management System) permissions are not currently performed, which ensures systems and data is restricted to authorised individuals.
2	Monitoring and reconciling contributions	<ul style="list-style-type: none"> As well as being notified of new S106 agreements by the Legal & Planning Registration team, the infrastructure team regularly monitor a shared file drive for completion of Planning Legal Agreements. The infrastructure team add new S106 agreement information, obligation conditions, and ‘trigger points’ (milestones) into Ocella (LAM module). As a result of the previous audit, the Legal Team now also send a copy of all new completed S106 agreements. Officers regularly follow up on the status of developments, usually every six months. S106 payments in Unit4 are monitored to ensure they are received, allocated, and recorded accurately in Ocella. We reviewed ten (five South and five Vale) S106 agreements in full and identified only one occurrence where a developer payment received with additional legal fees, was not allocated to the correct account on Unit4 for seven weeks. Checks were not made to ensure accurate allocation to the correct cost centre/account, prior to updating Ocella records. S106 obligations payable to third parties (OCC) are made directly by the developer to the County Council. Only obligations due to South and Vale are received and managed internally. Infrastructure officers monitor reports from Ocella on a weekly basis to identify payments due and ensure these are invoiced and received. Through our sample testing we verified that all S106 obligation payments due to South and Vale were received appropriately. Third-party obligations (OCC) are not monitored, consistently recorded in Ocella, or subsequently published onto the local authority register displayed on their webpage. Through testing we established all payments had been received appropriately for CIL liabilities and all administration and third party (town/parish) allocations had been accurately applied in Unit4 (as of 26 June 2024). Supporting CIL application forms are not consistently published on council websites; however, there is no guidance published in relation to what documents must be published by local authorities. We reviewed neighbouring authorities and found no standardised approach. In line with the CIL Regulations, the councils have a duty to ensure Town and Parish councils receive their CIL allocation twice a year. We confirmed that all Town/Parish allocations within our sample had been transferred accurately, allocated correctly within Unit4, and paid within the appropriate biannual payment run (April and October). A CIL monitoring process has recently been implemented to review funding allocated internally within the Capital Programmes. For South, we

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identified funding anomalies between Ocella and the approved and provisional capital programmes that were not identified through team checks.

Key Findings

Objective

Key Findings

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Decision making and governance

- The Infrastructure Delivery Plan (IDP) guides all infrastructure policy in line with the local plan. Copies are published on council websites, including the allocation split in respect of CIL funding received. This is further supported within the Community Infrastructure Levy Spending Strategy.
- As part of the decision-making process to award developer contributions, a non-statutory S106/CIL officer working group meets regularly to review and consider eligible projects. A further non-statutory member working group is also being considered to incorporate and align with the council's Joint Growth Bid process, however, this is not yet in place.
- The FPR state the rules relating specifically to S106 and CIL income and related expenditure, including the expenditure approval thresholds. Through our sample testing we are satisfied that the correct approval process was sought in line with the Joint Constitution.
- As part of the annual OCC CIL funding bid, the councils allocate 50% of CIL funding to successful infrastructure projects that conform to CIL Regulations. We verified that the bid validation process was followed, and payment of South and Vale allocations were made accurately under delegated authority, in line with the Joint Constitution.
- 20% of the total remaining balance of CIL funding is retained for Health Care (Oxfordshire Clinical Commissioning Group - OCCG) infrastructure projects. CIL funding is awarded to healthcare providers on an individual application basis and requires a bid application detailing the infrastructure projects the funding will be assigned. We verified that the that the correct approvals were obtained in line with the Constitution and that payments were allocated accurately in line with the individual funding agreements.
- Consultation with specialist council teams (Risk and Insurance and Corporate Health and Safety) was not consistently sought prior to the award of S106 funding for external projects that may present a higher risk to public safety, such as local art installations, artistic park benches and repairs and improvements to local sports facilities. Although funding is provided to third parties to manage these projects, the councils should ensure liability to implement and maintain such projects is clearly established and defined.

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Reporting

- South and Vale publish an Infrastructure Funding Statement (IFS) annually, as set out under CIL Regulation 121A. Information supporting developer contributions is published on council websites and includes links to access historic data (2018-2022). The latest IFS (2022/23) was published in December 2023, and the mandatory data requirements for reporting S106 and CIL obligations have been met. The IFS for 2023/24 is due to be published by 31 December 2024.
- Both South and Vale publish a report to inform the proportion of CIL paid to town and parish councils biannually (April and October each year). We identified four individual Town/Parish council monitoring reports had not been published on the charging authority (or own) council website, three were due to a formatting issue that was resolved following auditor query, and one monitoring report remained outstanding. Evidence was provided this is being chased regularly by the infrastructure team.
- S106 and CIL updates are also regularly shared with members as part of the monthly finance update provided to portfolio holders. There is no statutory requirement to provide regular S106 and CIL performance reporting to Council, Cabinet or Committee, however, the IFS is shared with Cabinet as part of the annual capital expenditure and budget setting process.

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Funding performance summary (as at 20 August 2024):**Section 106 Agreements (S106):**

- Section 106 (S106) payments are collected by both councils to secure the funds necessary to make specific developments acceptable in planning terms. Contributions secured under S106 agreements are collected at agreed trigger points during delivery of the development.
- During 2023/24, South Oxfordshire District Council collected £1,749,509 of S106 funding. During the same period, £495,302 of funding was approved for use on projects delivered directly by the council, or by other organisations. Collection for Vale in this period was £5,198,221, with £2,720,765 approved for use on projects.
- So far during 2024/25, South Oxfordshire have collected £1,845,465 and approved £106,764, with Vale collecting £746,002 and £9,460,555 approved for use. Please note that funding approval is usually for contributions collected in previous years, hence why for Vale the approved figure is higher than the received amount for the same period.
- In addition to financial contributions, S106 agreements also secure the delivery of onsite infrastructure, such as public open space, play areas, sports pitches, and community buildings. These facilities are delivered by the developers at agreed trigger points in the development and are monitored by the Infrastructure Obligations Team.

Community Infrastructure Levy (CIL):

- South Oxfordshire District Council began collecting Community Infrastructure Levy (CIL) in April 2016, with Vale following in November 2017. Both Councils have a CIL Spending Strategy which sets out how funds are allocated between the county council, district council, and public healthcare. A proportion is also allocated to town and parish councils and to cover the administrative costs of CIL, as set out in the CIL regulations.
- Since collection began at South Oxfordshire in 2016 and up to 31 March 2024, the district council's CIL proportion totalled £11,920,139 (£1,310,516 collected in 2023/24), of which £9,481,469 has been allocated to infrastructure projects to be delivered directly by the council, or in partnership with other organisations. In 2024/25 so far, the district council's CIL collection is £378,086.
- For Vale, the collection from November 2017 to 31 March 2024 for its CIL allocation is £4,470,268 (£805,195 collected in 2023/24). £5,941,129 has been allocated to infrastructure projects using the funds collected and forecast collections over the medium financial term. In 2024/25 so far, the district council's CIL collection is £199,551.