



Rushcliffe Community Infrastructure Levy

**Guidance upon the relationship
between the Community
Infrastructure Levy, Section 106 and
Section 278.**

September 2019

The relationship between the Community Infrastructure Levy, Section 106 and Section 278

1. Introduction

- 1.1 Rushcliffe Borough Council has adopted its Charging Schedule for consultation. Although the Community Infrastructure Levy (CIL) does not replace Section 106 (S106) planning obligations completely, it is anticipated that it will be an important means of securing funds from new developments to deliver strategic infrastructure. Development may be liable to pay the new levy, depending on their planning status, nature, scale and location.
- 1.2 This position statement sets out the Council's approach to securing planning obligations and defines the interactions between CIL, S106 and Section 278 (S.278) planning obligations after CIL has been implemented. The intention of this statement is to provide a transparent system for identifying what infrastructure will be funded through CIL and under which circumstances infrastructure would be provided as a planning obligation.

2. CIL Regulations and guidance

- 2.1 The statutory framework for planning obligations is defined in Section 106 of the Town and Country Planning Act (TCPA) 1990, as amended by the Planning and Compensation Act 1991. Under Section 106 the planning authority can enter into a legal agreement (S106 agreement) with developers in relation to planning applications to make an unacceptable development acceptable in planning terms.
- 2.2. Regulation 122 of the CIL Regulations 2010 (as amended) has limited the use of the planning obligations secured through the TCPA, to cases where three tests can be successfully applied:

“A planning obligation 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.”*
- 2.3 Regulation 122 ensures these tests are a statutory requirement. The intention was to provide greater clarity regarding the purpose of planning obligations since the introduction of the CIL regulations. In addition, regulation 122 (as

amended) allows for the payment of monitoring fees through S106, so long as they fairly and reasonably in scale and kind to the development.

- 2.4 As required by the regulations prior to 1 September 2019, an infrastructure list has been produced in support of CIL (formally known as the Regulation 123 list). This regulation has now been revoked though amendments to the CIL regulations. From December 2020, the former regulation 123 list will be replaced by an infrastructure funding statement (IFS). Part of the IFS will set out the types of infrastructure that will in whole or in part funded through the Community Infrastructure Levy receipts. In the interim, and for transparency, the former regulation 123 list contains the items of infrastructure that will be funded by CIL, and not through planning obligations.
- 2.5 **Table 1** sets out the Borough Councils approach to securing funding for infrastructure provision through CIL, S106 and S278 (highway agreement) contributions by infrastructure type. Table 1 also advises what types of infrastructure may be suitable for funding through the community/parish council proportion of CIL.

Table 1: Relationship between S106, S278 and CIL

Type of infrastructure	S.106 infrastructure/mitigation	S.278 mitigation	CIL funded infrastructure	Neighbourhood proportion of CIL (parished and unparished areas)
Affordable Housing	Provision of units on-site or contribution towards off-site provision in exceptional circumstances to overcome impacts directly related to developments.	Not applicable.	CIL regulations do not allow for funding of affordable housing other than in the case of the neighbourhood proportion.	The neighbourhood proportion of CIL can be spent on affordable housing.
Primary Education	Direct provision or improvements to existing provision in order to accommodate additional pupil places.	Not applicable	Not applicable	The neighbourhood proportion of CIL can be spent on provision of, or improvements to primary schools.
Secondary Education	Direct on-site provision where no available site for expansion. CIL payment in kind policy may apply in such cases.	Not applicable	Off-site provision of education places through provision of or expansion to existing facilities.	The neighbourhood proportion of CIL can be spent on provision of, or improvements to secondary schools.

Type of infrastructure	S.106 infrastructure/mitigation	S.278 mitigation	CIL funded infrastructure	Neighbourhood proportion of CIL (parished and unparished areas)
Transport and highways	<p>Local site-related transport requirements to overcome impacts directly related to developments.</p> <p>Site-related highway works, such as localised safety improvements, reinstatement of highways or access to roads.</p> <p>Walking, cycling and public transport improvements including demand management measures</p>	<p>Site-related highway works, such as localised safety improvements, reinstatement of highways or access to roads. Where appropriate, contributions towards strategic road network improvements in line with the Memorandum of Understanding for A52/A606 improvements.</p>	<p>Provision of Park and Ride along the A52 corridor and bus priority measures in West Bridgford</p>	<p>The neighbourhood proportion of CIL can be spent on transport and highways improvements.</p>
Health	<p>Direct on-site provision where no available site for expansion. CIL payment in kind policy may apply in such cases.</p>	<p>Not applicable</p>	<p>Off-site provision of health facilities through provision of new facilities or expansion to existing facilities.</p>	<p>The neighbourhood proportion of CIL can be spent on provision of or improvements to health facilities.</p>

Type of infrastructure	S.106 infrastructure/mitigation	S.278 mitigation	CIL funded infrastructure	Neighbourhood proportion of CIL (parished and unparished areas)
Community facilities	Development of specific community facilities	Not applicable	Not applicable	The neighbourhood proportion of CIL can be spent on provision of or improvements to community facilities.
Playing pitches and ancillary facilities	Direct on-site provision on very large scale developments also recommended (over 600 dwellings). CIL payment in kind policy may apply in such cases.	Not applicable	Provision of or improvements to playing pitches and ancillary facilities in order to support new development.	The neighbourhood proportion of CIL can be spent on provision of and improvements to playing pitches and ancillary facilities.
Provision of or improvements to indoor leisure provision.	Not applicable outside of strategic allocations. CIL payment in kind policy may apply in such cases.	Not applicable	Provision of or improvements to indoor leisure provision and ancillary facilities.	The neighbourhood proportion of CIL can be spent on provision of or improvements to indoor sports provision.

Type of infrastructure	S.106 infrastructure/mitigation	S.278 mitigation	CIL funded infrastructure	Neighbourhood proportion of CIL (parished and unparished areas)
Green Infrastructure and play area provision	Site related tree planting and landscaping. Provision of on-site related informal open space, land, play facilities and recreational equipment on large housing sites.	Not applicable	Not applicable	The neighbourhood proportion of CIL can be spent on provision of or improvements to green infrastructure and play area provision
Flood defence	Site-related defence infrastructure, such as the installation of SUDS (Sustainable Drainage Systems).	Not applicable	Not applicable	The neighbourhood proportion of CIL can be spent on provision of or improvements to flood defences
Other	The supporting text to policy 19 of the Local Plan Part 1, Rushcliffe Core Strategy lists other infrastructure where planning contributions may be sought. These will be considered on a case by case basis in consultation with relevant infrastructure providers	Not applicable	Not applicable	The neighbourhood proportion of CIL can be spent on a wider definition of infrastructure (see Regulation 59C of CIL Regulations 2010)