Securing Section 106 and community infrastructure levy funds – a guide

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Introduction

This guide describes the Section 106 (s106) and community infrastructure levy (CIL) capital and revenue opportunities for NHS trusts and foundation trusts (referred to in this guide as trusts) impacted by a local development.

A few trusts have been very successful at securing s106 and/or CIL funding for projects, but such funding is the exception and not the rule; in 2016/17 the education sector received about 40% more funding through s106 payments than health and community projects.

When houses are built, or new jobs are created, and an area’s population increases as a result, existing infrastructure needs to be updated/expanded to provide more capacity and new facilities may need to be constructed. Given the scale of developments around the country all trusts need to be aware they can seek appropriate support to cover their increased costs and required specific capital investment as a direct result of such developments. They need to be clear about how their services and facilities will be impacted by development and the resulting increase in population in their catchment area. The principle is that the marginal revenue costs associated with population growth from new developments is a relevant charge against the development until the population-based revenue allocations to clinical commissioning groups (CCGs) ‘catch up’ by being updated for the new population.

NHS Improvement, NHS England, NHS Property Services, Community Health Partnership and NHS Healthy Urban Development Unit (HUDU) together responded to the government’s draft consultations on the national planning policy framework and on reforming developer contributions to affordable housing and infrastructure (both of which closed in May 2018), requesting a structured and equitable level of support for NHS organisations. This work assists trusts at a national level, but additional work is required at a regional level through sustainability transformation partnerships (STPs)/integrated care systems (ICSs) and at a local level through individual trusts to encourage them to continue to work directly with planning authorities.

Town and Country Planning and s106/CIL can be complex. Trusts should seek advice from the organisations listed at the end of this guide before approaching their local planning authority about or appointing professional advisors for s106/CIL.
Securing Section 106 and community infrastructure levy funds

As trusts are major employers in their areas and healthcare is an emotive local issue, local authorities are usually keen to engage and discuss plans. Trusts should also keep their relevant STP, ICS and CCG informed, with primary care organisations engaging through NHS England and their CCGs.

What is s106/CIL?

The Local Government Association explains s106 as: “...a mechanism which makes a development proposal acceptable in planning terms, that would not otherwise be acceptable” and s106 agreements are best known in connection with affordable housing and funding for primary care facilities. They are negotiated legal contracts between the organisation seeking planning consent for a development and the relevant planning authority. However, the final agreement is a charge on the land and therefore needs to be completed/paid for by the organisation fulfilling the agreement (ie developing on the land), not necessarily the organisation that negotiated the agreement.

CIL is described on the government website as: “... a tool for local authorities in England and Wales to help deliver infrastructure to support the development of the area”.

The difference between the two is that a s106 agreement can make individual schemes more viable through site-specific mitigation, whereas a CIL mitigates for the wider impacts of any development or the cumulative impacts of several developments.

Whereas s106 payment calculations are based on the specific measures needed to make a scheme viable, CIL is charged according to ‘rates’ set on all developments within the catchment area and published by the charging authority (generally the local planning authority; LPA). The funds are available for major infrastructure projects that support the wider development across the area. Each CIL charging authority publishes a Regulation 123 list of the infrastructure that may be funded by local CIL. This infrastructure cannot usually be secured by s106, to avoid an authority claiming funding twice or developers paying twice. The high demand on the CIL ‘pot’ means that not all listed infrastructure will be funded. Authorities typically build up a CIL ‘pot’ over the initial years to pay for larger items of CIL, and their CIL collection may vary from a few £’000s to several millions depending on the
scale of development starting in any year. London trusts should be aware that there is a specific London mayoral CIL.

CIL, where it exists, is likely to be the more appropriate route for trusts to seek contributions to fund infrastructure. Each CIL charging authority will have its own governance arrangement and process for allocating funding but all will generally categorise infrastructure as critical, essential, desirable, etc. Local authorities should publish information on how they make CIL expenditure decisions. These are ‘executive’ decisions, similar to those made on the local plan, and are not the responsibility of a planning committee.

Trusts should ensure their LPA’s consultation database includes an appropriate named contact for them, to ensure they are notified of consultations on CIL and local plan changes.

**Developer contributions via the planning system**

Local authorities have for many years used s106 agreements to make a development acceptable in planning terms by requiring affordable contributions (in kind or financial) to mitigate its impacts. Many authorities include contributions to health facilities where a direct link between the development and increased demand on local services can be demonstrated. Requirements for planning obligations (s106) are set out in local plan policies, with supplementary planning documents detailing what can be included and how the requirement may be identified/calculated.

The government made it possible for local authorities to charge a local CIL in 2010, to make the developer contribution process fairer, faster and more transparent, and to address the cumulative impact of development on infrastructure in an area. However, some authorities have decided not to introduce a local CIL. A list of authorities that have adopted a CIL charging schedule setting out the £ per sqm of CIL payable for different developments is maintained by the Planning Inspectorate.

To collect a CIL payment local planning authorities must demonstrate that there is a ‘funding gap’ and a CIL is needed to help pay for the necessary infrastructure to deliver growth in the local plan. As with s106, proposed developments must remain financially viable for a CIL to be charged.
Seeking revenue support

Trusts need to appreciate that:

• revenue support claims can only be made for costs that are not met, or intended to be met, through taxation-based funding (payment by results/block for revenue, public dividend capital/Department of Health and Social Care debt for capital)
• revenue support is ‘one off’ and time limited to cover a gap in funding
• applications must provide evidence for the legality of the claim and for how new housing will impact on their services
• applications cannot be made retrospectively
• money can only be spent on the purpose for which it is provided.

As an example, the scope of revenue support for an acute trust could include the costs associated with the increased patient activity and capacity in A&E, non-elective, elective, diagnostic and outpatient services. In addition to these marginal revenue costs, funds could include premium staffing costs if required to deliver the care.

Working with local authorities

Trusts need to inform local authorities of their board-approved estate strategies and development plans, including the phasing of any development and a realistic timescale for delivery. They should engage with councillors and officers across the health and social area, and planning departments to keep them updated on their estate strategies and development plans. STP, CCG and health forums, eg health and wellbeing boards, can be useful for sharing information that shows how estate change increases and improves services. Information on the health facilities required to meet demand from the increased and changing population also needs to be shared because the local authority must demonstrate that infrastructure funded from developer contributions meets new demand and is not making up for historical under-investment.

Both local plans and CIL require the local planning authority to prepare/update infrastructure delivery plans that set out the infrastructure required over the short/medium and long term, focusing on the next five years: type of infrastructure, timescale, costs, sources of funding and partners involved. They also provide a
starting point for discussions particularly in relation to securing CIL but also s106 contributions.

Local authorities expect s106 contributions to be spent within a specified timescale, typically five years, as their purpose is to pay for facilities that make a development acceptable. As both s106 and CIL are limited resource with competing pressures, councils will want to make sure they achieve community benefit.

**How is the case for s106/CIL supported?**

Figure 1 below shows that CCGs, STPs and ICSs are well placed to establish the overall case for s106/CIL, with trusts working with their CCG/STP/ICS to optimise the evidence for why s106/CIL is required. These have a view of the needs of the wider health economy and, with support from strategic estate planners, can identify and plan for population increases across wide geographical areas. They can also provide the data on primary, acute, mental and community health that demonstrates which services will be most affected by changes in demographics and population size, matched with the potential infrastructure and staffing pressures faced by different trusts.

When reviewing the case for funding, the LPA will want to confirm a new development’s impact on health services. Funds are not available for completed schemes, but proposed schemes of 10 or more housing units will be assessed to confirm the potential impact and needs. Good baseline data needs to be available and trusts/CCGs need to collaborate to work out, and then report on, which services and facilities will be impacted by the housing growth. For example, if the new development includes a large number of family homes, demand for paediatric services may increase; an extra care housing development might increase the pressure on A&E services and hospital beds; and a large population influx with a major housing development may increase community and mental health demand.
Figure 1: Assessing and compensating for the impact of new developments – role of the CCG and STP/ICS supporting the case (courtesy of HUDU)
What can individual trusts do?

To optimise access to s106/CIL funds action is needed at three levels of the health and care system.

**From the centre**

Through the National Planning Policy Framework, regular communication with the Ministry for Housing, Communities and Local Government and technical support and assistance from NHS England, NHS Improvement, Strategic Estates Planners, HUDU and NHS Property Services, we can widen opportunities to access funds.

**At a regional level**

As described above, CCGs and STPs (along with NHS England for primary care developments) can influence the process at a regional level and, with appropriate clinical evidence/data to support applications, can identify and track housing developments and their impact on services. Primary care organisations must apply via their commissioners.

**At a local level**

Trusts have the most critical role as they need to talk to their planning authority on a regular basis. High level guidance is outlined in Section 3.0 of health building note (HBN) 00-08 and Addendum 2,¹ but in summary a trust needs to:

1. Respond to consultation requests from its LPA, especially when it requires feedback on local plans: for example: major applications for new residential developments.
2. Meet on a scheduled and regular basis with the case officers at its LPA to ensure that it can make streamlined planning applications on its own property because it understands the process and knows who decides the applications: for example, how long planning applications take and whether

¹ HBN 00-08 provides a comprehensive overview of the management of an efficient NHS estate. [Section 3.0 “Town planning and the NHS” and Addendum 2](#) set out the background and guidance on planning, including information on s106 and CIL. Trusts should ensure that they review Estatecode before talking to professional advisors and their LPA.
the LPA has a specific information and process requirements before applications are made.

3. Work with its LPA to ensure that planning applications align with the design and use of estate with the aspirations of the LPA: for example, the heights of buildings.

4. Make representations to the LPA about s106/CIL and, through regular contact, set out the impact of new housing and major infrastructure schemes on the services it delivers: for example, the LPA should be made aware of specific capital requirements for new facilities as part of any planned growth.

5. Engage with different council teams through the local health and wellbeing board, the STP/ICS, the One Public Estate forums and other local council initiatives.

6. Senior members of the trust (non-executive directors, chief executive or another executive board member) should engage with senior members of the community to influence the local health and investment agenda: for example, the chief executive of the county council and director of planning/strategy/investment at the borough council attend town council meetings.

The above list is not definitive, and trusts should consider every opportunity to work with their relevant council contacts.

Contacts

Securing funds can be a complicated area. While trusts should be engaging with their relevant planning authority on a regular basis, they also need to discuss how they can work with adjoining trusts and their STP/ICS to ensure the optimal result for all parties. Additional advice, either from a trust or system level, can be requested from the following points of contact:

- **Strategic Estate Planning:** your local strategic estates advisor
- **NHS Improvement:** [ian.burden1@nhs.net](mailto:ian.burden1@nhs.net) – Capital & Cash
- **NHS England Primary Care:** [Jo.fox@nhs.net](mailto:Jo.fox@nhs.net) – Senior Programme Lead
Next steps

• Co-ordinate through the strategic estates planning (SEP) team to ensure that applications are not replicated by other trusts and primary care commissioners. Trusts are encouraged not to apply individually for s106 and CIL unless they have already contacted the SEP team and STP/ICS to confirm that no other NHS organisations in their area are applying for funds at the same time.

• Work with the SEP team and STP/ICS to appoint specialist support, as necessary, to apply for s106 and CIL, and to ensure economies of scale and efficient use of resources through shared applications.

• The appointment of professional advisors should ensure value for money and follow appropriate procurement guidance, including testing for value for money. Consultancy fees paid to secure s106/CIL funds cannot be paid from those funds.

• Ensure the right person in the trust is on the LPA’s consultation database and have an engagement strategy for the various levels of the council, including between chief executives.

• Send updates on estate and infrastructure proposals to the authority and ask for these to be reflected in the infrastructure delivery plan/infrastructure schedule for the area.