



Community Infrastructure Levy and Section 106 Contributions

At the end of April 2013 the Department of Communities and Local Government issued further guidance on the Community Infrastructure Levy (CIL). CIL can be used to provide, improve, replace, operate or maintain infrastructure to support the development of a local authority area, and should be based on an up-to-date local plan.

A site can be subject to a CIL payment and a S106 (developer/planning) contribution and the table below has been designed to try to explain the differences between them.

	Planning Obligations (S106) (Site specific negotiations)	Community Infrastructure Levy (Charging Schedule)
What Infrastructure?	Must be site specific (related to development, and can include education, health etc.)	All identified infrastructure necessary to support development of the area (district wide)
Geographic Area	Site specific (application site only)	Must cover whole Planning Authority Area with no exceptions (rates may vary)
Does it include Affordable Housing?	Yes – S106 can be used to prescribe a proportion of affordable housing	No, related to infrastructure only
What types of development are included?	All development , however, typically only larger schemes, payable per development	As defined by the authority, and may include exemptions existing for charities and social housing), payable per square metre
Eligibility of Capital & Revenue	Capital & Revenue for ongoing maintenance, subject to scope	Capital & Revenue for ongoing maintenance
Can the money be pooled?	Yes, however after April 2014 Councils will not be able to collect S106 contributions from five or more developments	CIL is effectively a pooling mechanism with complete flexibility over spending priorities
Once the money is collected how easy is it to change what it is spent on?	No change, items agreed within the S106 Agreement only	CIL can be spent on any infrastructure. Authorities need to set out the items they intend to fund, or types of infrastructure within their CIL documentation
Is there a need to establish a list of Infrastructure requirements?	No, however, S106 must be justified as necessary based on the three legal tests: <ul style="list-style-type: none"> necessary to make the development acceptable in planning terms directly related to the development fairly and reasonably related in scale and kind to the development 	Yes, must prove local need , however awareness that the list will change over time
Differential rates	Negotiated on each development/site specific but must comply with the three legal tests above	Differences in rates should only relate to viability in different zones or uses
Testing Viability	Case by case basis (recommended negotiation during pre-application discussion). Current scope to renegotiate following consent where unviable	CIL is tested at a Council-wide level at the evidence base/examination stage, then CIL payments are mandatory (subject to any defined exceptions such as social housing etc.)

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