

controlled appropriately or whether there have been issues identified that need to be addressed.

3.2 In terms of scope, the audit covered the following risks:

1. Income due from CIL/s106 contributions not received.
2. Failure to monitor amount of income expected.
3. Exemptions or reliefs applied inappropriately meaning WDC does not receive all eligible revenue.
4. Contribution insufficient to mitigate the impact of development.
5. Risk of developers withdrawing their contribution.
6. Non-compliance with key legislation or legal requirements.
7. Non-compliance of agreement by the developer.
8. s106 agreements/CIL demand notices not completed in a timely manner.
9. Agreements do not deliver stated objectives i.e., infrastructure/affordable housing.
10. Council's carbon neutral targets not built into the s106 agreements.
11. Failure to provide appropriate advice to Members and developers in relation to s106/CIL.
12. Staff not appropriately trained on how to process and collect CIL/s106 contributions.
13. Failure to identify all elements that need to be captured within the s106 agreements.
14. Collaboration with the developer resulting in loss of income.
15. Monies received not used for the agreed purposes/incorrectly allocated.
16. Failure to identify relevant developments subject to CIL/s106 agreements.
17. Failure to effectively monitor the delivery of s106 agreements.

3.3 A 'risk-based audit' approach has been adopted, whereby key risks have been identified during discussions between the Internal Auditor and key departmental staff. The Place, Arts and Economy and Significant Business Risk Registers have also been reviewed.

3.4 These risks, if realised, would be detrimental to the Council with regards to meeting several of the priorities outlined in the new Corporate Strategy, 'Warwick District 2030'. The Council aims to support communities with the right infrastructure.

4 Findings

4.1 Recommendations from Previous Reports

4.1.1 There were no recommendations arising from the previous report.

4.2 Financial Risks

4.2.1 Potential Risk: Income due from CIL/s106 contributions not received.

A planning obligation is both legally binding and enforceable and is secured by either a deed of agreement or a unilateral undertaking. s106 obligations make otherwise unacceptable development permissible, by imposing controls that cannot be secured through planning conditions. The CIL, on the other hand, is

intended to focus on the provision of new infrastructure and unlike funding from s106, CIL funds can be spent on a wide range of infrastructure to support development without the need for a direct geographical or functional relationship with the development. CIL monies are intended to provide for infrastructure support rather than specifically to make development proposals acceptable in planning terms.

Planning obligations are linked to the land within the planning application, rather than the person or organisation that develops the land. These obligations remain with the title holder of the land in question and are, therefore, recorded as land charges. An overview of the CIL and s106 processes is outlined in the Warwick District Council (WDC) Developer Contribution Supplementary Planning Document (SPD).

WDC adopted a CIL Charging Schedule in December 2017, based on square metreage of new floorspace. Across Warwick district there are also different charging zones within which varying rates apply. Different types of development incur different charges - in Warwick district, charges are applied to residential developments, most retail development and student housing. Other uses (such as offices, hotels, and warehouses) are zero rated. Once adopted, CIL is fixed, non-negotiable and enforceable and applies to all residential planning approvals for one or more dwellings. For most schemes, CIL has to be paid within sixty days of commencement of the development (thereby providing funding sooner than many of the s106 agreements). CIL can, however, only be spent on infrastructure projects that are included within the WDC Project List.

Projects on the current CIL Project List include:

- Bath Street Improvement Scheme
- Emscote Road Multi Modal Corridor Improvements
- Kenilworth Leisure (Phase 2) Castle Farm Recreation Centre
- Medical Facilities – North Leamington (Cubbington/Lillington)
- Europa Way Bridge Link
- St Mary’s Land, Warwick
- Newbold Comyn
- Myton footpath/cycleway link
- Relocation of athletics facility and creation of Commonwealth Park
- Commonwealth Park Bridge
- Relocation of Kenilworth Wardens

As set out in Regulation 122 (CIL Regulations 2010), infrastructure contributions can only be made under s106 agreements where they are necessary to make the development acceptable. Contributions must also be directly related to the development and fairly and reasonably related in scale and kind. Requests for contributions can, therefore, only be made if there is robust evidence in place to justify them. Payments are usually made at specific agreed trigger points within the site development (e.g. on commencement, on occupation of 50% of the dwellings etc).

As of 16 October 2023, a total of £14,018,079 had been received from the CIL. Of this, £2,148,112 had been passed on to Town and Parish Councils under the neighbourhood portion. A total of sixteen infrastructure projects have been included on the Project List since its inception in April 2018.

The total CIL balance as of 16 October 2023 was £8,866,922. It is estimated that at least a further £706,000 CIL income will be received by the end of May 2024, although from this, money will also have to be paid out to Parishes in April 2024. Assuming WDC pay 25% to Town and Parish Councils at the end of the financial year, this will add a further £529,500 to the CIL balance. The anticipated balance at the end of 2023/24 is, therefore, expected to be around £9,400,000. Previously, WDC has committed £10,800,785 to projects on the Project List. This amounts to a deficit of around £1,400,000 in terms of WDC's ability to meet its current CIL obligations in 2023/24. CIL income has not matched projections owing to development not proceeding at the anticipated rate.

For 2022/23 a total of £1,041,696.91 CIL was used to fund capital projects, including:

- Leamington Spa Station Forecourt - £532,000
- Newbold Comyn Masterplan - £369,152
- Wayfinding in Warwick - £32,666.67
- Emscote Rd Corridor Improvements - £58,049.24
- Bath Street - £49,829

s106 agreements can apply to minor applications. Imposing affordable housing through s106 agreements, however, can only be enforced on schemes of eleven dwellings or more. Furthermore, s106 agreements cannot apply to the construction of a residential annex or extension to an existing home.

An issue with the retention period of s106 documentation was flagged by the Accountancy team as a result of an FOI request for s106 affordable housing expenditure. Retention periods, at present, conflict with one another as financial documents can only be retained for six years plus the current year. The Development Manager advised that s106 documents, are currently kept 'in perpetuity' as they comprise legally-binding contractual agreements. Clauses relating to the time period for spending a contribution have to be included in s106 agreements. Generally, a clause is always included to pay back any unspent contributions and these are usually seven to ten years.

The auditor found several s106 contributions that had been committed to other schemes. The Development Manager did, however, advise that s106 contributions can be allocated to other areas or sites to provide off-site infrastructure or facilities. If there is an Affordable Housing contribution that cannot be fully catered for on site, this has to be allotted to a development site elsewhere. Green Spaces or Sports obligations will also often refer to 'the district' in general rather than specific areas, and so these funds can be allocated anywhere.

Every planning application is checked to see if it is CIL liable, which include builds over 100 square metres or those involving the creation of additional dwellings. Applicants are required to complete CIL Form 1 along with the application as part of the validation process. Upon receipt of the completed form, the WDC CIL Officer will ascertain whether the development qualifies for any of the relevant exemptions or relief. Once an application is permitted, the

CIL Officer will then ask for additional forms to be completed, including CIL Forms 2, 5, 7 (part 1), 8, 9 and 10.

s106 agreements include trigger points at which obligations become due and, unlike CIL, these specific trigger points are written into the s106 agreements. A trigger point may be the commencement of development, or at any other clearly defined point e.g., upon completion of 25% of the dwellings. The definition of commencement is different between CIL and s106 with CIL being a much lower threshold; almost any physical works relating to the development amount to commencement for CIL. The CIL Regulations (2010) determine that the agreed definition of 'Commencement of Development' is when 'a material operation is carried out'. A material operation can include any works of construction, demolition, or a material change in the use of the land. The CIL Officer has compiled a definition of commencement, and this is available on the Council website.

Although ultimate liability rests with the landowner, the regulations recognise that others involved in a development may wish to pay. To allow this, anyone can come forward and assume liability for the development. Where no one has assumed liability to pay the CIL, the liability will automatically default to the landowners of the relevant land. If the CIL Officer cannot obtain a copy of the Assumption of Liability form (Form 2) from the applicant or landowner, the liability notice can be served on the owners of the relevant land and the person who applied for the planning permission. It should be noted that there is no requirement to await receipt of an Assumption of Liability form before serving a liability notice. Once the Council has determined the amount due based on information in the planning permission documents or the notice of chargeable development, it must issue a liability notice to the parties that are liable to pay the charge. The liable party must then submit a Commencement Notice (CIL Form 6) prior to any works commencing on site.

Copies of s106 agreements are sent onto the Development Monitoring Officer (DMO). These are then recorded on Acolaid, which lists the separate obligations and various trigger points. The DMO monitors when s106 contributions have been paid and is responsible for raising s106 contribution invoices. An indexation formula spreadsheet is used to pre-calculate indexation which is then agreed with the developer. Trigger points are predominantly monitored through site visits, particularly for larger sites, but the DMO also uses Building Control records to ascertain which sites have had work either commence or complete.

4.2.2 **Potential Risk: Failure to monitor amount of income expected.**

Planning application details are input into Acolaid, including all documents and details regarding both CIL and s106. All applications are manually checked to ensure that all developments liable for CIL are identified. Each application is recorded on Acolaid under the application reference number and also backed up on a spreadsheet which lists the planning reference, address, development type, number of dwellings, square meterage, date of liability, amount charged and the charging zone. There are also monitoring dates which detail when the applicant was last contacted and when they need chasing. A record of all CIL commitments is contained on the CIL Projects List.

The monitoring of s106 agreements is reported in the quarterly developer contribution reports. A number of Planning Committee minutes were reviewed by the auditor to check that s106 agreements had been included in the relevant monitoring files. In six of the eight minutes sampled, a s106 agreement had been included in the appropriate monitoring files; two of these agreements were yet to be compiled. Four agreements had been included in the quarterly monitoring spreadsheets by the DMO. Two agreements only needed to be monitored annually due to the sites being of insufficient size to warrant quarterly monitoring. The remaining two cases were outline applications only and therefore required a Reserved Matters application in order to be granted permission. All eight of the agreements had been included on Acolaid.

Obligations and planning permissions will dictate how often a site needs monitoring. Sites with s106 agreements are monitored quarterly by the DMO, although anyone with Acolaid access can see which triggers have been met. The DMO also monitors the s106 sites on behalf of Warwickshire County Council (WCC); the DMO has a duty to inform WCC where trigger points have been met.

There are various s106 monitoring spreadsheets in place, including:

- s106 sums received but that have not yet been transferred
- s106 sums received but not spent
- s106 sums transferred to third parties
- s106 sums agreed
- s106 sums received
- s106 sums received but not allocated
- s106 sums allocated but not spent
- Grounds Maintenance contributions received
- s106 sums spent

4.2.3 **Potential Risk: Exemptions or reliefs applied inappropriately meaning WDC does not receive all eligible revenue.**

Certain developments are eligible for relief or exemption from the CIL. This includes residential annexes and extensions, and houses and flats which are built by 'self-builders'. Exemptions and reliefs also apply in specific circumstances where the proceeds of development are used for charitable purposes and social housing. A development will also be exempt from CIL if it consists of mezzanine floors of less than 200 square metres inserted into an existing building, or the development is a change of use from a single dwelling to two or more separate dwellings. A list of the various exemptions is published on the Council's website. Relief is not automatically granted and has to be applied for once a Liability Notice has been issued; any relief awarded is recognised in HM Land Registry records for the property.

Self-build homes are exempt from CIL, subject to various criteria. The category of 'Self-Build' applies to anyone who is building their own home or has commissioned their home from a contractor, house builder or sub-contractor. Any CIL demand is automatically linked to HM Land registry and remains against the property until it has been paid, or until the owner has evidenced that they have lived in the property for three years. Self-builders are required to supply

rates bills, bank statements and Council Tax bills to evidence that they have remained in the property for three years after completion.

There are also clawback provisions on charitable exemptions if the development no longer qualifies for relief within seven years of the commencement of development. With regards to annexes, there is no requirement for the occupier of the annex to be related to the owner of the main dwelling, or to commit to staying there for a specific period of time. If, however, the annex is let or sold separately within the three-year clawback period, this will result in the exemption being lost.

The regulations provide 100% relief from the levy on those parts of a chargeable development which are intended to be used as social, affordable, and shared ownership dwellings. This lasts for up to seven years from the acknowledged site commencement date for all social, affordable, and shared ownership dwellings and can also be claimed on communal areas. The CIL Regulations provide relief for communal areas that are associated with social housing developments. If at any point a dwelling is sold at market price, the person(s) who have assumed liability would have to pay CIL, as the property would no longer be classed as social, affordable, or shared ownership. WDC has the option to offer relief from the levy in exceptional circumstances where a specific scheme cannot afford to pay the levy. The Council must first give notice publicly of its intention to do this. However, a s106 agreement must exist on the planning permission permitting the chargeable development. Furthermore, WDC must consider that the cost of complying with the s106 agreement is greater than the levy charge and that paying the full charge would have an unacceptable impact on the development's economic viability.

There may be circumstances where it is more desirable for WDC to receive land instead of money to satisfy a charge arising from the levy. An agreement to make an in-kind payment must be entered into before commencement of development. Land that is to be paid 'in kind' may contain existing buildings and structures and must be valued by an independent valuer who will ascertain its 'open market value', which will determine how much liability the 'in-kind' payment will off-set. Furthermore, pooled contributions may be sought from as many different planning obligations for an item of infrastructure that is not locally intended to be funded by the levy. The CIL officer advised, however, that there is currently no land-in kind or pooled contributions relating to CIL.

The gross internal floorspace of any existing buildings on site that are going to be demolished or reused may be deducted from the calculation of CIL liability, providing that a part of the building has been in continuous lawful use for at least six months over the past three years, ending on the day that the planning permission first permitted development. A number of CIL exemptions were investigated by the auditor to check that these had been applied appropriately. The sample contained a mixture of self-build relief claims, social, affordable housing claims and residential annexes/extension claims. In all twenty-five cases, a liability notice was issued on the same day that the exemption was applied. In seventeen cases, the applicant had submitted a claim form, and this was uploaded to the IDOX DMS. Ten of the applications tested had the exemption applied within the same week that the claim form was received.

The CIL officer keeps track of all exempt developments. Specific questions about CIL liability, payments and exemptions are available on the WDC website.

4.2.4 **Potential Risk: Contribution insufficient to mitigate the impact of development.**

The CIL charging schedule is on the WDC website and is updated annually. The charging schedule for 2024 was produced in December 2023 and took effect from 1 January 2024. The full formula for calculating CIL is contained in the CIL Regulations 2010. CIL is calculated by multiplying the net increase in gross internal floor area by the relevant CIL rate, plus any indexation for inflation or deflation between the year in which planning permission was granted and the year in which the charging schedule took effect.

CIL is due within sixty days of commencement of development; however, WDC allows payments by instalments in line with its adopted Instalments Policy. For outline applications which permit development to be implemented in phases, each phase of the development is classed as a separate chargeable development. In such cases the WDC Instalments Policy applies to each separate chargeable development.

CIL is a mandatory levy on new floorspace totalling 100 square metres or more to contribute towards infrastructure, and consequently, there are penalties and surcharges in place for non-payment, including the option to pay by instalment being automatically withdrawn. There are also strong enforcement powers, including Stop Notices, and prison terms. To date, WDC have not needed to add surcharges to the sums due.

CIL charges are index-linked according to the national All-In Tender Price Index published by the RICS Building Cost Information Service. From adoption of the CIL in December 2017 to December 2019, WDC did not apply indexation. A revised charging schedule was indexed and issued for the year 2020 and subsequent years thereafter; a guidance note has been produced for the charges taking effect from 1 January 2024.

A number of s106 agreements and CIL contributions were examined by the auditor to check that charges were reflective of the pricing schedules. Regarding s106 agreements, in eleven of the thirteen agreements sampled, the charge demanded of the developer fully matched the contribution charge and indexation. It was, however, found in two cases that the RPI and BCIS were different to those figures charged at the time of calculation. Indexation is subject to change, as BCIS issue provisional figures and only confirm these at a later date. Therefore, the indexation for the aforementioned cases, relied on the BCIS rates available at the time. It should also be noted that all calculations are confirmed by the developers before invoices are issued.

Calculations had been prepared by the DMO, checked by the relevant accountant, and authorised by the Head of Service or Planning Policy and Major Sites Delivery Manager. In four cases sampled, however, there was no signature from these officers or emails in lieu of the signatures to evidence that the calculations had been checked and verified. With regards to the CIL payments, the sums received in all fifteen cases matched the sum expected and all fifteen

charges matched the CIL charging schedule based on the area zone and square meterage. The Project List was also verified by the auditor to ensure that no s106 agreements were also in receipt of CIL.

Recommendation - Staff should be reminded to check and verify s106 contribution calculations and upload evidence of these to the network files.

4.2.5 **Potential Risk: Risk of developers withdrawing their contribution.**

If a developer believes that a development is not viable, they have to prepare a viability statement which is examined by an independent assessor whose fees are paid for by the developer appealing the contribution. Aspects of viability that are most common include education and affordable housing as these obligations usually have the greatest impact upon development viability. There were just two relevant viability assessments located by the auditor. These related to St Mary's Road and Talisman Square with a request to reduce the number of dwellings/affordable houses on site. The fees for both of these assessments had been fully paid and were showing in the relevant journals on Ci Anywhere. In both cases, the viability assessment had been saved to the IDOX DMS. The Planning Policy & Major Sites Delivery Manager also advised of an upcoming viability assessment regarding Kenilworth Rugby Club.

WDC may enter into negotiations to specifically request s106 developer contributions for items not already covered by consultation responses received on a planning application. These obligations provide the justification as to why further funding is being sought along with various trigger points. s106 monitoring fees are included in the s106 agreements, which is the sum payable to the Council for the purpose of monitoring and supervising compliance with the obligations.

4.3 **Legal and Regulatory Risks**

4.3.1 **Potential Risk: Non-compliance with key legislation or legal requirements.**

The Principal Planning Officers will chase for responses from consultees regarding s106 contributions if they have not received a response by the time the consultation closes. The consultation period is three weeks; however, the Planning team can accept responses right across the assessment period of an application. The Planning Policy and Site Delivery Officers work together to ensure that the contributions requested are in line with the Local Plan and comply with the CIL.

The CIL Officer receives the monthly planning newsletter which outlines any new pieces of legislation and changes to policies or exemptions. The Planning Policy & Major Sites Delivery Manager also circulates anything of this nature. The DMO is part of the Joint Monitoring Officer Group with representatives from local authorities in Coventry and Warwickshire who explore s106 themes and trends.

A number of s106 agreements were examined by the auditor to check that they made reference to relevant legislation; this was the case in all cases sampled.

4.3.2 **Potential Risk: Non-compliance of agreement by the developer.**

Often a development may need renegotiation, in which case, part of the Site Delivery Officers role is to help iron out any issues. Where it is clear that planning obligations have not been met, the Planning Enforcement team would become involved. Enforcement is, however, seen as a last resort and to date, there have been no breaches of s106 obligations or CIL commitments.

Developers with either s106 obligations or CIL commitments receive regular reminders and are given reasonable opportunities to make payment before the enforcement process is instigated. Surcharges can be added onto late CIL payments, which is usually an incentive for the liable party to pay. In addition to the surcharge for late payment, WDC can charge interest on any late payments.

Where development has started, the CIL has not been paid and WDC thinks it expedient to stop the development from progressing any further until payment is made, it may issue a Stop Notice. If this course of action is chosen, then the Council must issue a warning notice of its intention to impose the Notice. If the date in the Stop Notice is reached without payment, then no further specified activity must take place, although works necessary in the interest of health and safety may not be the subject of a Stop Notice. It is an offence to contravene the Notice (regulation 93), with the potential for a fine of up to £20,000 (or more on indictment). The Council may also apply to the Courts for an injunction if necessary to enforce a Stop Notice.

s106 agreements are legally-binding and so, if there is a breach of an obligation, WDC would seek input from Legal Services over the breach of contract and civil remedies for that breach. A s106 agreement can be enforced by injunction and the Council can take direct action to recover expenses. Usually, if a party does not have the ability to pay, for example owing to circumstances relating to development viability, then they have the ability to seek to vary the s106 agreement.

4.3.3 **Potential Risk: s106 agreements/CIL demand notices not completed in a timely manner.**

Demand notices must be distributed within ten days after the CIL has been triggered. Commencement Notices received by the Council have to be acknowledged in writing by the CIL Officer. If an applicant does not submit a Commencement Notice, they must pay a surcharge.

A list of CIL payments was collated through Acolaid. These were then investigated by the auditor to check that sums had been received upon commencement of development. All fifteen of the transactions tested had the sums received in full and correctly recorded in Ci Anywhere. In twelve of the fifteen cases tested, the demand notice was issued on the same day as commencement; two cases had demand notices issued within the ten-day timescale.

A number of s106 agreements were evaluated by the auditor to check that the developers had been charged when the relevant triggers were hit. Demands were issued within four weeks of the trigger date in seven cases. Eight of the thirteen developers paid the sum demanded within four weeks of the demand being issued. A number of s106 agreements were also investigated to check that decision notices had been distributed in a timely manner after the planning application was made. The decision notices were issued across a fairly sporadic timescale after planning applications were received, ranging from five to seventeen months; however, this is entirely dependent on how long the consultation period takes and on which date the Planning Committee arrive at a decision.

4.4 **Reputational Risks**

4.4.1 **Potential Risk: Agreements do not deliver stated objectives i.e., infrastructure/affordable housing.**

s106 agreement criteria is fairly standard. Acolaid holds all of the details of the agreements in place regarding both CIL commitments and s106 contributions. Individual Case Officers ensure that all relevant documentation and agreements are uploaded onto the system. This includes planning approval, s106 agreements and any correspondence regarding the application. CIL and s106 are also recorded in the Authority Monitoring Report (AMR) which is published on the Council's website annually. The AMR is the Council's method for reporting on the housing and employment land monitoring it undertakes, as well as a range of other related topics, to measure performance against Local Plan objectives.

The Development Management Business Manager advised that the Planning team know which applications need a s106 agreement as this tends to relate to major applications. s106 agreements are also largely guided by the consultation responses which lead to the various clauses and contributions being written into the agreements. The Infrastructure Manager at WCC co-ordinates the various responses to determine the contributions required for libraries and education etc. Under major schemes, the NHS and Warwickshire Police also require contributions.

Charges vary depending on the contribution; consultees usually agree at a price which mitigates the impact of the development. Unlike CIL, s106 cannot use tariff-based contributions and instead, s106 charges have to be specific and must provide evidence that they contribute towards the infrastructure. Contribution amounts have to be agreed by the developer. A developer could, in theory, decide not to sign a s106 agreement, but this would most likely result in a refusal of planning permission. WDC are the ultimate decision makers and therefore depend on advice from WCC. Any planning applications containing a s106, results in the application going to Planning Committee. Unilateral Undertakings are different in so much as these are signed directly by the developer, negating the need for these to go to Planning Committee. Planning decision notices are issued once s106 agreements are completed. s106 agreements contain the objectives of the development as they refer to the relevant planning application and state that the developer must adhere to the obligations laid out in the planning conditions.

4.4.2 **Potential Risk: Council's carbon neutral targets not built into the s106 agreements.**

Whilst carbon neutral targets are not specifically written into s106 agreements, s106 contributions include Air Quality and Biodiversity Mitigation costs, in line with WDC's climate emergency pact. A number of s106 agreements were evaluated by the auditor to ascertain if they made reference to climate targets. Climate targets were included in three of the applications, linked with Air Quality Mitigation contributions and Biodiversity Loss contributions.

4.4.3 **Potential Risk: Failure to provide appropriate advice to Members and developers in relation to s106/CIL.**

Once all consultation responses are returned, an agreement is drawn up by the solicitors in the form of a s106 agreement. A template s106 agreement is set out in Appendix 3 of the adopted Planning Obligations Supplementary Planning Document. Agreements are formulated into s106 contracts either during or after Planning Committee. The Constitution requires that s106 applications go to Planning Committee in order to be finalised. There are various reports in place which provide updates to stakeholders, including quarterly monitoring reports, the AMR, and the Infrastructure Funding Statement (IFS). Quarterly monitoring reports display the s106 contributions and developments which have hit triggers. These are shared with the relevant Council services and external third parties who have an interest in the development. The AMR has no deadline, as there is no legal obligation to publish this, although as best practice, WDC publish this document every year; both CIL and s106 agreements are recorded in the AMR. As part of this report, information is collated pertaining to the CIL demand notices issued, CIL income received, CIL liability notices issued, s106 sums received and s106 sums paid to WCC. The schemes which are to be funded by CIL in Warwick district are defined in the CIL Projects List, which can be found on the WDC website.

A number of s106 agreements were examined by the auditor to check that the agreements had been signed by all the relevant parties. Ten of the thirteen agreements had signatures from all parties; one of these had the signatures redacted. In two cases, the signatories were only partially completed.

Advisory – Consideration should be given to reminding staff that all parties need to sign the agreement and copies of these should be uploaded to the network files.

During the monitoring year, s106 agreements relating to developments in the Warwick district brought in £6.7 million in developer contributions. This includes £908,580.37 received by WDC and £5.2 million received by WCC. The WDC figure includes sums collected on behalf of South Warwickshire NHS Foundation Trust (SWFT), NHS South Warwickshire Clinical Commissioning Group (CCG) and the Office of the Police and Crime Commissioner for Warwickshire.

The Local Plan outlines the basic requirements for s106 contributions. It also outlines the steps to be taken if the developer feels that the contributions are not viable. The policies laid out in the Local Plan shape the questions that WDC ask of developers. There is also the Developer Contribution SPD in place which

contains a draft s106 template to which WDC can direct applicants. Only one agreement in the cases sampled by the auditor, referred to the Local Plan, although this is not a legal requirement.

CIL forms are completed as part of the planning application process; applicants can download the various forms through the planning portal. These include the CIL Additional Information form and the Transfer of Assumed Liability form.

4.4.4 Potential Risk: Staff not appropriately trained on how to process and collect CIL/s106 contributions.

A collection process flowchart is in place that details the step-by-step CIL procedure. A CIL Collection and Monitoring Procedure has also been in place since WDC first adopted the CIL, although this is currently being updated. This was last updated in December 2023 and sets out the processes required to administer the collection and monitoring of the CIL. This document contains links to the relevant regulations, forms and WDC website as well as step-by-step instructions on how to complete the CIL process e.g., calculating CIL and issuing liability notices etc. This is to be tested by staff to ensure that it is accurate.

4.4.5 Potential Risk: Failure to identify all elements that need to be captured within the s106 agreements.

If s106 is applicable, then the Development Management team assess the planning application and send out the information to the various consultees for a response. Consultation responses are sought from external and internal parties to enable the Council to request a s106 contribution. Standard s106 consultees include Warwickshire Police, WCC, and the WDC Green Spaces team.

It should be noted that it is for the Case Officer to decide on whether s106 requests from infrastructure providers meet the statutory tests and whether these requests are reasonable. Sometimes, infrastructure providers may make requests that are unreasonable, as they may not be required to make the development acceptable, or the extent of the request may not be appropriate to the scale of development. Therefore, covenants have to be written into the s106 agreements, which are reflective of the decisions reached by all parties involved. The consultation process itself is not written into these agreements, as the conditions of the application are laid out in the decision notice. When tested by the auditor, it was found that the consultation process was included on IDOX in all cases tested.

4.5 Fraud Risks

4.5.1 Potential Risk: Collaboration with the developer resulting in loss of income.

There is little need for segregation of duties as s106 agreements are by their nature, legally binding and therefore have to be vetted and authorised by Legal Services; CIL is also a legislative demand which cannot be avoided. CIL contributions are checked and authorised by the CIL Officer, Planning Policy & Major Sites Delivery Officer and/or Head of Place, Arts and Economy before

being distributed. The Acolaid system is also restricted to authorised personnel only.

At present, conflicts of interest are not declared annually, although the DMO advised that they would be expected to declare any conflicts of interest.

Advisory – Consideration should be given to asking the Planning Policy & Delivery team to formally re-declare any conflicts of interest on an annual basis.

When s106 triggers are hit, the DMO is responsible for calculating the amounts due. There is a checking process in place whereby the Planning Policy & Major Sites Delivery Officer and the Assistant Accountant review these figures. The Assistant Accountant will also check if calculations relating to indexation are accurate.

Reconciliations are performed between the payments made and the amounts expected and this forms part of the daily monitoring process. Once s106 contributions are received, the DMO has to gather information from various WDC departments as to which funds have been allocated and how these have been spent; this is then recorded in the IFS.

4.5.2 Potential Risk: Monies received not used for the agreed purposes/incorrectly allocated.

The Council maintains a CIL Projects List setting out projects that it intends to spend CIL income on and also annually determines funding to be allocated to projects for that specific year (and in some instances multiple years). The CIL Projects List sets out the projects that the Council intends to fund through CIL and this list is kept under annual review. In compiling and reviewing the CIL Projects List, the Council assesses the likely levels of CIL income over the next five years; this is done using the annually updated housing trajectory and a CIL trajectory model. WDC then recommends projects to be included on the CIL Projects List. If a specific CIL contribution is committed for a certain year but, for reasons of project slippage, the money is not drawn down within that same year, the commitment can be carried forward. However, it does mean that, although there is currently a healthy balance of CIL contributions, all of these are already committed to existing projects. In terms of s106 spending, contributions are broken down into Affordable Housing, Air Quality, Biodiversity Contributions, Country Parks, Environmental Improvements, GP Surgeries, Hospitals, Monitoring Fees, Open Spaces, Police, Sports Facilities and Unique Clauses.

A portion of the CIL money collected is also distributed to the Parish/Town Council (PTC) in which the development falls. This portion must be spent to support the impact of development on local communities, and PTCs must in turn report on their levy income and expenditure. It is up to these bodies as to how they spend the money, although there is guidance in place to help them. WDC are required to pass 15% of CIL receipts to the relevant PTCs which do not have a Neighbourhood Plan (NPD). Payments are capped to £100 per Council Tax dwelling per year. For example, a PTC with 500 dwellings cannot receive more than £50,000 of CIL receipts per year. The levy contribution increases to 25%

for PTCs with an adopted NPD; there is no cap on the amount paid if an NPD is in place. In order for this to apply, the NPD must have been made before the first relevant planning permission for that development. The CIL regulations state that the amount to be received by the PTC is determined at the point at which permission is first granted for a development.

The Planning Policy and Delivery team monitor the payments to PTCs within the period. WDC has produced a guide to assist PTCs in understanding their responsibilities regarding CIL; this includes what the CIL can and cannot be spent on. Providing CIL is spent in accordance with Regulation 59C, CIL monies may be used to match funding with other income streams and may be spent collaboratively with other Parish Councils, community interest companies or other providers to make the most efficient use of funding to benefit the community. PTC funds can be spent on a variety of items including allotments, litter bins, memorials, or community gardens. Funds cannot be spent on firework displays, Christmas lights, hedge cutting or verge mowing.

After a period of five years from the date CIL income is received, if it is not spent in full by the PTC, then WDC may reclaim monies back by sending the PTC a repayment notice. WDC will then be required to spend any recovered funds in the area in which the PTC falls. Exceptions may be made if the PTC can demonstrate that they have allocated their CIL income to a particular project for which they are accumulating funds before spending. If the PTC mis-spends CIL income, i.e. if it has not spent CIL in accordance with the CIL Regulations, WDC will send the PTC a repayment notice for the mis-spent funds. If the PTC is unable to repay the amount specified in the repayment notice, then WDC will recover the amount from future CIL income that the PTC are due to receive.

The PTC must report on the CIL received and spent each year. Payments to PTCs are calculated on 31 March and 30 September and can only include monies from CIL contributions that have been made by the developer(s) of relevant developments. Through community engagement, the PTC should encourage the community to submit ideas for the neighbourhood portion of CIL, and the Project List is the primary starting point for the PTC to make decisions on allocating funding. All funds received during the financial year by PTCs is collated in an annual report and verified by the PTC clerks and chairpersons; copies of these are held by WDC. The reports break down the total CIL income carried over from previous years, the total CIL income received, the total CIL spent, and the total CIL repaid. PTCs must publish the reports on their websites (if they have one) and a copy must be sent to the WDC CIL Officer as WDC must also publish all reports on their own website. Checks by the auditor confirmed that all PTCs had published the annual CIL reports on their websites, apart from Budbrooke, Cubbington and Hatton Parish Councils. Reports are, however, only required where a PTC has received CIL revenue.

Advisory – Consideration should be given to reminding PTCs to publish copies of CIL reports on their websites.

During the 2022/23 financial year, a total of £310,655.57 was transferred to PTCs including £110,126.20 to Leamington, £94,251.66 to Budbrooke and £31,598.78 to Warwick. PTCs are expected to keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the CIL

contribution monies received, for a period of at least seven years following receipt of any CIL contributions to which they relate.

A number of s106 agreements and CIL contributions were examined by the auditor to check that monies owed to external organisations had been paid in a timely manner. In terms of s106 contributions, all eighteen cases had been appropriately recorded on the s106 spending spreadsheets and were paid to either the SWFT, the CCG or the Warwickshire Police and Crime Commissioner. Evidence of these transactions was held on Ci Anywhere, as appropriate. Sixteen of these transactions had a relevant financial agreement (between WDC and the relevant recipient) signed and dated as evidence of the contribution agreement, although one of these agreements had not been signed. The auditor was unable to locate a financial agreement in two cases.

Fifteen of the contributions paid fully matched the financial agreements. The auditor was unable to calculate whether the contributions were correct in two cases, as an agreement could not be located. In two cases, the financial agreement only specified the amount for one instalment, and it was found that WDC had paid a final instalment that had not been recorded in the financial agreement.

Recommendation – Officers should remind the Legal team drafting the s106 agreements to include the instalments to be paid.

Contributions were paid to external organisations fairly sporadically after the monies were received from the developers. Five cases were paid within the same week that WDC received the funds. Eleven cases were paid during a time range of six weeks to four months. Two accounts were paid into the wrong ledger and had to be transferred to the capital expenditure ledger, hence the time delay. It should be noted that the DMO does not get notified when an invoice has been settled and so has to track received payments through their own spreadsheet. The DMO checks Ci Anywhere weekly to see if outstanding payments have been received.

Advisory – Consideration should be given to working with the Ci Anywhere Systems Officers to see if an automatic notification system can be implemented which would alert the DMO as to when a contribution has been received.

CIL contributions to PTCs were also investigated by the auditor. Fifteen of the eighteen amounts tested were paid within the specified timeframes. Fourteen cases tested were included on the CIL transaction spreadsheets; the remaining four had not been included as the spreadsheet had not been updated since 4 October 2023. This is due to the timeframes in which transactional data is loaded on to Ci Anywhere by the Finance team. Each CIL transaction to a PTC represented either 15% or 25% of the levy charge depending on whether the PTC had an NDP. It should be noted that Bishop's Tachbrook, Leamington Spa and Radford Semele all now have NDPs, but as these were adopted after permission was granted for the relevant applications, they have been calculated as having no NDP. One contribution was for £6,200 and whilst this had a financial agreement in place to support it, the figure did not represent 15% or 25% of the levy. It was, however, discovered that in 2022, the Old Milverton

PTC had a total of 137 dwellings, which meant that the total amount it could receive in 2022/23 was £13,700.00. As they had received £7,500.00 in April 2022, the maximum that could be awarded in October 2022 was £6,200.00 instead of another £37,500 which would have taken them over the annual limit.

All transactions were appropriately recorded on Ci Anywhere and had a fully signed and dated financial agreement in place. PTCs do not receive any money until the form is returned and signed by both parties.

The DMO is responsible for monitoring compliance with the s106 agreements, including if money has been received and that funds are being used as per the agreement for their intended purposes. The Planning Policy team also monitor project costs for all schemes on the CIL Project List and require applicants to complete a project spending proforma. The purpose of this form is to provide a summary of how CIL contributions paid by WDC to third parties have been spent.

Legal agreements are in place with the developers, setting out the amount of CIL and/or s106 sums to be paid and, where applicable, the triggers for payment. There are also legal agreements in place with external organisations which outline the sums due, the various trigger points and the specifications of how the funds can be used. There are no legal agreements in place with internal departments; this is not feasible as WDC is considered to be one legal entity and cannot have legal agreements within itself. The agreements also highlight the obligations of the recipient including monitoring the delivery of the CIL to ensure that the objectives of the project are being met and that the agreement is being adhered to.

4.6 **Other Risks**

4.6.1 **Potential Risk: Failure to identify relevant developments subject to CIL/s106 agreements.**

The IFS is a report providing information on the contributions sought and received from developers for the provision of infrastructure, and the subsequent use of those contributions by WDC. The Planning Policy team are required to publish this on an annual basis and set out the CIL and s106 planning obligations for the previous financial year. The IFS includes how funds have been used and how the Council intends to use the CIL towards future projects and infrastructure. This is in line with calendar year-end, and so the next report will focus on 2022/23. This is currently being held back as there are discrepancies in the figures given to the Planning Policy team by Finance.

Many s106 agreements relating to developments in Warwick district have both WDC and WCC as signatories; sometimes developments close to or straddling the district boundary also have neighbouring authorities as signatories. Obligations typically due to WDC include affordable housing, public open space, Sustainable Drainage Systems (SuDS), and indoor and outdoor sports facilities. Obligations typically due to WCC include biodiversity, education, highways, and libraries.

The 2022/23 IFS figures are as follows:

- Obligations entered into 2022-23 = £204,659.56.
- s106 sums received = £944,148.37
- s106 sums received prior to 2022-23 and not allocated = £1,864,068.09
- s106 sums allocated but not spent = £6,506,611.06
- s106 sums held = £10,605,426.47
- s106 sums spent = £429,428.11
- CIL demanded = £4,230,273.66
- Infrastructure where CIL was allocated = £4,391,400.

Infrastructure required as part of planned development gets identified in the Infrastructure Delivery Plan (IDP). This is where all the infrastructure providers are contacted about the proposed and planned growth and identifies where contributions will be sought; stakeholders are consulted as part of every relevant or qualifying application. For infrastructure planning across different localities of the district, it is necessary to work closely with infrastructure providers to agree which infrastructure projects should be included within the Projects List. The last IDP was drawn up in 2019.

The CIL Officer checks validated applications on a weekly basis; the Acolaid validation tab will display whether the site is liable for CIL. Checks are then performed to see if an Additional Information Form has been completed by the applicant. If the applicant has not completed this form, and the CIL Officer is aware that the site is CIL liable, the relevant Case Officer is advised to ask the applicant to complete one of these forms. The CIL Officer can also generate Crystal reports to see which sites are liable. Decision notices contain an advisory section alerting the applicant to the possibility of CIL liability. The CIL Officer is also sent the weekly Building Control list which identifies which plots have commenced and therefore have triggered the CIL.

4.6.2 **Potential Risk: Failure to effectively monitor the delivery of s106 agreements.**

As aforementioned, the DMO and Site Delivery Officers conduct regular site visits and frequently communicate with the various developers to ensure that financial contributions and non-financial obligations are delivered on-time. Monitoring fees are charged in order to undertake such work. Monitoring activities include:

- the request, management and distribution of financial contributions and other obligations associated with the deed.
- monitoring on-line systems for Planning Officers, Managers, and the public domain.
- Checking, recording, and updating each trigger-point (timing requirement).
- physical monitoring of the development site (site visits).

s106 agreements are a negotiation as to what both the Council and the developer agree is necessary to mitigate the impact of development, in accordance with the statutory tests. Housing sites which are subject to s106 agreements are monitored quarterly. Other housing sites and non-residential developments are monitored annually, at the end of the financial year. This

includes employment land such as offices, research and development land, light industry, general industrial land and land for storage and distribution.

A number of s106 agreements were analysed by the auditor to check that these had been regularly monitored. In all cases sampled, the s106 agreement had been appropriately included in the quarterly monitoring spreadsheets and the sums demanded of the developer matched the sum received by WDC; these had been appropriately reflected and recorded in the Ci Anywhere journals. It was found by the auditor that the developments had been visited quarterly in ten cases.

5 **Summary and Conclusions**

5.1 Section 3.2 sets out the risks that were reviewed as part of this audit. The review highlighted weaknesses against the following risks:

- Risk 4 – s106 contribution calculations may not be verified and authorised.
- Risk 15 - Financial agreements do not always include the instalments due as part of a s106 contribution.

5.2 Further 'issues' were also identified where advisory notes have been reported. In these instances, no formal recommendations are thought to be warranted, as there is no significant risk attached to the actions not being taken.

5.3 Although the review highlighted some weaknesses, in overall terms we can give a SUBSTANTIAL degree of assurance that the systems and controls in place in respect of Community Infrastructure Levy and s106 Agreements are appropriate and are working effectively to help mitigate and control the identified risks.

5.4 The assurance bands are shown below:

Level of Assurance	Definition
Substantial	There is a sound system of control in place and compliance with the key controls.
Moderate	Whilst the system of control is broadly satisfactory, some controls are weak or non-existent and there is non-compliance with several controls.
Limited	The system of control is generally weak and there is non-compliance with controls that do exist.

6 **Management Action**

6.1 The recommendations arising above are reproduced in the attached Action Plan (Appendix A) for management attention.

Richard Barr
Audit and Risk Manager

Action Plan

Internal Audit of Community Infrastructure Levy and s106 Agreements – February 2024

Report Ref.	Risk Area	Recommendation	Rating*	Responsible Officer(s)	Management Response	Target Date
4.2.4	Financial Risk: Contribution fees insufficient to meet the development.	Staff should be reminded to check and verify s106 contribution calculations and upload evidence of these to the network files.	Low	Development Manager; Planning Policy Officers.	Agreed.	31 March 2024
4.5.2	Fraud Risk: Monies received not used for the agreed purposes/incorrectly allocated.	Officers should remind the Legal team drafting the s106 agreements to include the instalments to be paid.	Low	Planning Policy & Major Sites Delivery Manager; Development Monitoring Officer.	Agreed.	31 March 2024

* The ratings refer to how the recommendation affects the overall risk and are defined as follows:

High: Issue of significant importance requiring urgent attention.
Medium: Issue of moderate importance requiring prompt attention.
Low: Issue of minor importance requiring attention.