

Report to: **Overview and Scrutiny Panel**
Date: **1 April 2021**
Title: **Section 106 Agreement Monitoring update report**
Portfolio Area: **Cllr Hopwood**

Wards Affected: **All**

Urgent Decision: **Y** Approval and clearance obtained: **Y / N**

Date next steps can be taken:

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Recommendations:

That the Overview and Scrutiny Panel notes:

- 1. The current position on Section 106 funding in Appendix A.**
- 2. The current processes in place for monitoring and administering Section 106 Agreements and funding**
- 3. That a report will be brought to an Executive meeting in the summer detailing progress against the individual projects funded by section 106 monies.**

1. Executive summary

- 1.1. The purpose of this report is to update Members on the process of monitoring section 106 (S106) Agreements and to provide an update on the current spending and status of S106 monies.
- 1.2. The report also updates Members on the role and responsibilities of the S106 Monitoring Officer.
- 1.3. S106 Agreements are a formal mechanism which make a development proposal acceptable in planning terms (which would otherwise be unacceptable). S106 agreements can be used to impose non-financial

conditions on a planning approval, as well as to secure financial contributions towards investments in infrastructure or other demands on public services associated with a particular development or catchment area.

- 1.4. There are clear rules on the constraints on the collection and use of S106 funds, and the application of S106 funds must be:
 - Necessary to make the development acceptable in planning terms;
 - Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the development.
- 1.5. This report is a high level report and a further report will be brought to a summer Executive meeting and will provide details on specific projects that are funded with S106 monies.

2. Background

- 2.1. Under section 106 of the Town and Country Planning Act 1990 contributions can be sought from developers and landowners which can be put towards the costs of providing community and social infrastructure, the need for which has arisen directly as a result of a new development taking place.
- 2.2. S106 contributions therefore support and enable local communities to provide affordable housing and improve open spaces, sport, recreation and community facilities and the public realm in order to enhance the quality of life across the South Hams District.
- 2.3. It is important to note that S106 contributions may only be spent on new facilities or improvements to facilities where the new development has, at least in part, contributed to the need for that facility or will have an impact on existing facilities. This means that funding will normally be invested in facilities based within the same locality or catchment area in which the contributing development is located.
- 2.4. Between April 2015 and September 2019 there were restrictions on the pooling of planning obligations. Only five s106 contributions could be pooled for use on the same infrastructure project. This meant that where historically s106 agreements might have referred to improvements to facilities within a parish, during this period agreements typically named a specific project(s). The pooling restrictions were lifted on 1 September 2019, although the three 'tests' in the Community Infrastructure Levy Regulations on the collection and use of funds still need to be taken into account (see paragraph 1.4 above).
- 2.5. The level of contribution is negotiated with developers during the planning application process, and is based on the requirements set out in the Plymouth and South West Devon Joint Local Plan, and associated Developer Contributions Evidence Base. The Council receives the payment of S106 monies either when the development work commences or at specific phases in the development as set out within the S106 agreement. The obligation to pay the contribution rests with the developer and it is for them to ensure all S106 contributions agreed are paid when the relevant conditions are met or triggers reached. It is the role of the S106 Monitoring Officer to monitor the progress of the development to ensure that monies can be invoiced when the trigger points are reached.

- 2.6. The Council is the accountable body for the spending of S106 monies that relate to such provision as affordable housing, public open space, sport and recreational facilities and the public realm. The Council must therefore allocate all funds in accordance with the S106 legal agreement that the Council will have already entered into with the land owner or developer prior to the grant of the planning permission.
- 2.7. Legal agreements can include the County Council as a party to the agreement where, for example, developer contributions are required for education, highways and transportation, civic amenity and library facilities.
- 2.8. Legal agreements will normally specify a time period (or phases within the development) within which the S106 contributions must be spent.

3. Monitoring of S106 Agreements and contributions

- 3.1. The Council has a S106 Monitoring Officer who sits within the Case Management Team but who works closely with Development Management, Finance and Place Making in order to provide day to day management of S106 Agreements. The S106 Monitoring Officer's role is to:
 - 3.1.1. Manage incoming financial contributions and ensure that they are distributed to the appropriate bodies and/or correct accounts.
 - 3.1.2. Monitor all S106 legal agreements (financial and non-financial) to ensure that the obligations have been complied with; ensure a rolling programme of monitoring for large scale developments
 - 3.1.3. Ensure that developers / landowners pay the financial contributions
 - 3.1.4. Work with planning enforcement and legal services when s106 obligations have not been met
 - 3.1.5. Respond to queries requesting confirmation that the legal obligations have been complied with
 - 3.1.6. Ensure that financial systems and schedules are kept up-to-date with the latest S106 information
 - 3.1.7. Keep relevant bodies and internal services up to date with S106 information and compliance
 - 3.1.8. Continuously identify opportunities to improve processes and implement these to become standard working practice.
- 3.2. There is a separate Place Making Officer role which is funded through specific Open Space, Sport and Recreation (OSSR) S106 contributions. The role of this Officer is to:
 - 3.2.1. Comment on planning applications in respect of OSSR, including negotiating with developers to secure financial contributions and liaising with Town and Parish Councils to identify improvement projects where necessary.
 - 3.2.2. Assist in the drafting of OSSR clauses in s106 agreements, including the projects on which funds should be spent, trigger points for payments and time period within which funds must be spent.
 - 3.2.3. Liaise with Town and Parish Councils, sports clubs and other organisations to develop and deliver OSSR projects on third party land. Where this is the case, the offer of grant is made with appropriate terms

and conditions securing the interest of the Council and ensuring that the requirements of the S106 agreement are adhered to.

- 3.2.4. Monitor compliance with the grant offers made at 3.2.3 and work with the S106 Monitoring Officer and the Case Management team to arrange payment at appropriate milestones.
- 3.2.5. Deliver OSSR improvement projects on SHDC land, including carrying out public consultation exercises, tendering for works and monitoring work carried out by contractors.
- 3.3. A separate, future report will be brought to the Executive in the Summer with details of these projects.

4. Monitoring reports on S106 funding

- 4.1. A schedule of Section 106 funds held by the Council is regularly reported to Members and was last reported to Executive on 11 March 2021.
- 4.2. A schedule of current funds held by the Council is attached at Appendix A for Members' reference.
- 4.3. As stated above, a detailed report on the progress of various projects supported by S106 contributions will be brought back to Members from the Place Making Team to an Executive meeting in the Summer.
- 4.4. The Council provides information on the South Hams website related to S106 funding for Open Space, Sport and Recreation projects¹. This list will be updated in April 2021.
- 4.5. The Council must publish an annual Infrastructure Funding Statement setting out what developer contributions have been secured (financial and non-financial). This Statement helps inform the public and all interested parties on the funding and provision of new infrastructure and gives policy makers a better insight into how developer contributions are supporting new development and local infrastructure. The 2019/2020 Infrastructure Funding Statement can be seen at the following link:
<https://www.southhams.gov.uk/Developer-contribution>

5. Outcomes/outputs

- 5.1. The Council has specific obligations regarding S106 Agreements and (through the role of the S106 Monitoring Officer), the Council has a transparent and effective system for monitoring the financial and non-financial obligations of each agreement. The Council will also ensure that funds are spent (or allocated) appropriately and information regarding these monies and obligations are published and accessible to the public and interested parties.

6. Proposed Way Forward

- 6.1. That the Overview and Scrutiny Panel acknowledges the position in relation to the Monitoring of S106 Agreements and contributions, and notes that a further report will be brought to Members on progress on specific projects.

¹ <https://www.southhams.gov.uk/article/4066/Section-106-Funding-for-Open-Space-Sport-and-Recreation-Projects->

7. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>S106 agreements are secured under Section 106 of the Town and Country Planning Act 1990 (as amended) to support projects that mitigate the impact of development. The Council has an obligation to spend the funds in accordance with the terms of the agreement which are agreed prior to the grant of planning permission.</p> <p>Under the Community Infrastructure Levy (CIL) (Amendment) (England) (No.2) Regulations 2019 there are clear constraints on the collection and use of s106 funds. The purposes to which the funds are applied must be:</p> <ul style="list-style-type: none"> • Necessary to make the development acceptable in planning terms; • Directly related to the development; and • Fairly and reasonably related in scale and kind to the development.
Financial implications to include reference to value for money	Y	<p>The S106 funds are held in a specific ledger code relating to S106 contributions. Each S106 has its own individual income code (Classification code on the finance system), and a separate revenue spend code is set up for expenditure as it is committed to projects or spend.</p> <p>Appendix A sets out that the total value of S106 deposits held at 31.12.2020 totalled £6,011,146.</p> <p>The Council's Financial Procedure Rules require that where expenditure over £30,000 is proposed, that this needs to be agreed by Executive.</p> <p>The expenditure relates to s106 funds specifically for the purpose of mitigating impacts from development. The parameters for expenditure (in particular the location and type of project that can be supported) are prescribed in the s106 agreement.</p>
Risk	Y	<p>There is a risk of funds not being collected or spent in accordance with the S106 agreement. To address this, where any S106 funds are passed to community groups to develop and deliver projects, offers of grants will be made with appropriate terms and conditions securing the interest of the Council and ensuring that the requirements of the S106 agreements are adhered to.</p>

		<p>There is a risk of funds not being collected in accordance with the s106 agreement. A key objective of the S106 Monitoring Officer is to ensure all monies are collected.</p> <p>Some S106 agreements have 'clawback' clauses allowing the developers to be re-paid the money if it is not spent within a certain timeframe. Thus there is a risk of communities losing out if money is not spent within the specific timeframes. Careful monitoring by the S106 Monitoring Officer prevents this from happening.</p> <p>There is a risk of funds not being spent in accordance with community aspirations and that community benefits may not be secured for the long term. Any recipients of grant offers will need to hold necessary powers and have a suitable organisational structure in place. Where necessary, in relation to OSSR, Community Use Agreements will be implemented to secure long term community use of facilities funded via S106 contributions.</p> <p>There is a risk that the requirements of the Council's Financial Procedure Rules will not be met. All payments will be made in accordance with the Rules and contracting/tendering procedures where relevant.</p>
Supporting Corporate Strategy		Homes, Communities
Climate Change - Carbon / Biodiversity Impact	N	Not directly related to this report. Specific projects will have varying impacts and will be addressed within the individual projects.
Comprehensive Impact Assessment Implications		
Equality and Diversity		N/a
Safeguarding		N/a
Community Safety, Crime and Disorder		N/a
Health, Safety and Wellbeing		N/a
Other implications		None

Supporting Information

Appendices:

Appendix A: Schedule of S106 Contributions

Background Papers:

Executive – 11 March 2021 – Capital Programme Monitoring report