

Report to: **Executive**
Date: **16 September 2021**
Title: **Expenditure of Section 106 Contributions**
Portfolio Area: **Councillor Hilary Bastone**

Wards Affected: **All**

Relevant Scrutiny Committee **Overview and Scrutiny**

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

Date next steps can be taken **Following Call-In**

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Recommendations:

That the Executive:

- 1. Notes the amount of Section 106 contributions held at 31 March 2021 as set out in Appendix A (totalling £5.879 million) and the future expenditure proposals.**
- 2. Notes the process for consulting and informing Town and Parish Councils regarding Section 106 contributions.**
- 3. Actively encourages all Members to continue to engage with their Town and Parish Councils to facilitate the expenditure of section 106 contributions, to enable the delivery of affordable housing, open space sport and recreation and community facilities in their areas.**

1. Executive summary

- 1.1. The purpose of this report is to provide details of Section 106 contributions received by the Council and how it is proposed to spend these contributions to enable the delivery of affordable housing, open space, sport and recreation and community facilities.
- 1.2. Appendix A sets out the Section 106 contributions that the Council is in receipt of (at the 31 March 2021), which totals £5.879 million. This is made up of £5.725 million of Section 106 contributions which have conditions attached, a further £0.038 million where there are no conditions attached and a further £0.117 million in Capital Grants Unapplied.
- 1.3. Appendix A also sets out the Parish in which the development generating the contribution is located, as well as the purpose of the Section 106 contribution, which has been split into the categories below:
 - Thriving Economy Delivery Plan (Langage Energy Centre, Employment and Sherford)
 - Strengthening Community Wellbeing Delivery Plan (Open Space, Sport and Recreation)
 - Homes and Built and Natural Environment Delivery Plan (Affordable Housing, Ecology, Tamar Special Area of Conservation, Air Quality, Ivybridge Mill Group and AONB Mitigation)
- 1.4. For each row, a traffic light coding system has been applied to indicate the progress with the expenditure, with the following definitions:
 - Green = either spent between 31 March 2021 and present, or with clear plans for spending e.g. a grant offer made to a Parish Council/relevant organisation
 - Orange = where part but not all of the contribution is committed for spend OR where discussions about potential projects have started to take place but details are not finalised, and no grant offer has yet been made to the Parish Council (PC)/relevant organisation.
 - Red = where projects are yet to be developed.
- 1.5. Columns have also been provided to indicate what is predicted to be spent in 2021/2022, what is predicted to be spent in 2022/2023, and which s106 contributions have no firm timescales for expenditure. A comments column has also been added to give further information on the project.
- 1.6. As set out in Appendix A, of the £5.879 million of S106 Deposits, £1.624m will fall within the Thriving Economy Delivery Plan, £2.577m within the Strengthening Community Wellbeing Delivery Plan and £1.678m within the Homes and Built and Natural Environment Delivery Plan within the Council's strategic vision, 'Better Lives for All'.

- 1.7 Based on the £5.879 million Section 106 contributions that the Council is in receipt of, the following expenditure is expected:

AMOUNT	£'000
Amount of s106 deposit predicted to be spent in 2021/2022	£1,286
Amount of s106 deposit predicted to be spent in 2022/2023	£2,805
Amount with no firm timescale for the s106 deposit to be spent	£1,788
TOTAL	£5,879

2. Background

- 2.1. The aim of Section 106 contributions is to mitigate the impact of development, and support and enable local communities to provide and improve provision of affordable housing, open space, sport and recreation and community facilities, in order to enhance the quality of life across the South Hams District.
- 2.2. All Section 106 contributions must meet the following three tests set out in the Community Infrastructure Levy Regulations 2010:
- 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.
- 2.3. The Council is the accountable body for the spending of the Section 106 contributions in Appendix A. The majority of these contributions relate to either open space, sport and recreation facilities or affordable housing. As the accountable body, the Council must allocate all contributions in accordance with the Section 106 legal agreement that has been entered into with the landowner or developer.
- 2.4. Legal agreements can include the County Council as a signatory to the agreement where developer contributions are required for education, highways and transportation, civic amenity and library facilities, as key examples.
- 2.5. Legal agreements will normally specify a time period within which any submitted contributions must be spent.
- 2.6. Details of historical expenditure of s106 contributions is set out in Appendix B. The total s106 monies spent by the Council in 2019/20 totalled £0.977 million, with the projects being delivered being listed in Appendix B, which included £487k on new employment units at Ermington Mill and £193K on play areas within the District.

Examples of projects funded or part funded using section 106 contributions in 2019/20



New employment units at Ermington Mill



New cricket nets at Dartington and Totnes Cricket Club



Play area renewal at Courtenay Park, Salcombe



Play area renewal at Lower Brook Drive, Ivybridge

3. S106 Contributions for Langage Energy Centre

- 3.1. The Section 106 contributions for the Langage Energy Centre are set out in Appendix A, and are split into different elements e.g. Landscape Fund, Construction of Starter Units etc.
- 3.2. £1.195 million of the £1.451 million available S106 contributions is for the construction of the starter units. It is noted that a report was taken to the Executive on 31 October 2019 providing an update and recommending that Council approve the use of up to £200,000 to fund the costs of extending the lease of the starter units from 21 years to 125 years, funded from the business rate retention reserve (Executive minute E.54/19 and Council minute 45/19 refers).
- 3.3. Since then, work has been ongoing with the land owner, LEPL, to conclude the masterplanning of the northern part of the site. This in turn will lead to a planning submission.
- 3.4. Habitat surveys of the land north of Holland Road have been complete (this took a season to undertake) and it has been agreed that that should be the location of the units. More recently, any potential impacts of the Freezone are also having to be factored in to ensure complementarity for the wider site.
- 3.5. A detailed planning application can now be brought forward and the technical aspects of the build are being discussed by the Engineering team.
- 3.6. Once the planning is submitted and agreed a contract to design and build the units can commence, funded from the S106 money secured for that purpose. Construction is not anticipated to start until late 2022 or into 2023 at the earliest. This timetable will be impacted by both the planning phase and the procurement timeline.

4. Section 106 Contributions for Affordable Housing

- 4.1. The level of funding contribution is negotiated with developers during the planning application process. This is currently based on the JLP Supplementary Planning Document. For historical Section 106 agreements it was based on the South Hams Affordable Housing Supplementary Planning Document 2008.
- 4.2. A process flowchart (see Appendix C) for the spending of Section 106 contributions for affordable housing was approved at the Overview and Scrutiny Panel meeting on 6 July 2017, minute O&S.16/17 refers. Through this process Ward Members and the relevant Town or Parish Council are informed when section 106 contributions for affordable housing are received by the Council, and are invited to identify any projects on which the contribution could be spent. An application form for Section 106 contributions for affordable housing was also approved at the July 2017 meeting (see Appendix D).

- 4.3. The figures for affordable housing in Appendix A total £1.505 million. This is made up of £1.395 million of Section 106 contributions which have conditions attached, a further £0.023 million where there are no conditions attached and a further £0.087 million in Capital Grants Unapplied. It is predicted that £0.344 million will be spent in 2021/2022 and £0.901 million in 2022/2023. There is a further £0.260 million with no firm timescale for expenditure.
- 4.4. Some of the key projects either already delivered, or expected to be delivered between 2021 and 2023 include:
- 11 March 2021 Executive approved £167,200 from the contribution from Cornwood Road, Ivybridge to be spent on the Butterpark, affordable housing proposals with Ivybridge Town Council for adults with learning disabilities, subject to planning approval (minute E.76/20 refers). A planning application is expected to be submitted later in 2021
 - 19 March 2020 Executive approved £97,700.91 from the contribution from the former Old Chapel Inn, St Anns Chapel, Bigbury and £65,193.00 – from the contribution from the Hollywell Stores, Bigbury to spend on a community housing scheme at St Anns Chapel being developed by South Hams District Council (minute IE.6/19). These payments will be made once construction commences.

5. Section 106 Contributions for Open Space, Sport and Recreation (OSSR) and Community projects

- 5.1. The level of funding contribution is negotiated with developers during the planning application process. This is currently based on the JLP Developer Contributions Evidence Base. For historical Section 106 agreements it was based on the 2006 OSSR Supplementary Planning Document.
- 5.2. Where specific projects are named within Section 106 agreements, these are normally identified from a review of the 2017 Play and Greenspace Audits, the current Playing Pitch Strategy, and any Town/Parish OSSR Plan (which may be part of a Neighbourhood Plan). Where an obvious project cannot be identified, the relevant Town or Parish Council is normally contacted for further information.
- 5.3. Whilst acknowledging that the three tests detailed in paragraph 2.2 must be met, where possible some flexibility on projects is written into the section 106 agreement to help avoid the need for future deeds of variation to agreements.
- 5.4. A table listing the Section 106 contributions, including both those received and those which are signed and pending receipt once development progresses and payment triggers are reached, is available on the Council website. This has been recently updated and sent to all Town and Parish Councils, as well as Members. Details of how to apply for OSSR contributions are also provided on the website, as well as a template for producing an OSSR plan.

- 5.5. In the future, Ward Members and the relevant Town or Parish Council will be informed when section 106 contributions for open space, sport and recreation are received by the Council and invited to identify any projects on which contributions could be spent, mirroring the process for affordable housing set out in paragraph 4.2.
- 5.6. Reports taken to Executive on 10 September 2015, 13 December 2018 and 3 December 2020 have sought the approval for the release or allocation of section 106 contributions for a range of OSSR and Community projects. These reports set out various delegations in relation to the spending of OSSR contributions, with consultation with the Ward Member(s) and Portfolio Holder to be undertaken to agree the specific details of identified projects, or to agree the priorities for spend through OSSR Plans (minutes E.18/15, E.60/18 and E.42/20 refer).
- 5.7. Where possible, opportunities to maximise benefits and to lever in additional funding are sought. Where projects take place on third party land, the contribution is offered by way of a conditional grant which secures the Council's interests and the specific requirements of the Section 106 agreement.
- 5.8. The figures for OSSR in Appendix A total £2.577 million. This is made up of £2.562 million of Section 106 contributions which have no conditions attached and a further £0.015 million of Section 106 contributions which have conditions attached. It is predicted that 0.819 million will be spent in 2021/2022 and 0.705 million in 2022/2023. There is a further £1.053 million with no firm timescale for expenditure.
- 5.9. Some of the projects either already delivered between 31 March 2021 and present, or expected to be delivered before 2023 include:
- Improvements to the surfaced footpath through the Bridgetown Green Corridor in Totnes;
 - Resurfacing of Blackawton tennis court;
 - Improvements to facilities at Meadowbrook, Dartington including improvements to the Community Centre, tennis courts and outdoor swimming pool, and the provision of a new woodland adventure bike track;
 - Improvements to football and cricket facilities in Dartington;
 - Play area improvements/revamps in Bittaford, Brixton, Ermington, Marlton, Modbury, Totnes, Ugborough and Yealmpton;
 - New clubhouse for Ivybridge Town Football Club;
 - Improvements to Woodlands Park, Ivybridge (tree planting, seating, additional play equipment, interpretation etc.);
 - Refurbishment of the all-weather pitch at Ivybridge Community College;
 - Improved provision at Modbury Recreation Ground through improvements to drainage, lighting, refurbishment of Multi-Use Games Area and improved cricket practise facilities.
 - Improvements to Follaton Arboretum and Smithfields site, Totnes.
 - Provision of a new path between the Langdon View development site in Wembury and Wembury Recreation Ground.

Examples of projects funded or part funded using section 106 contributions between March 2021 and present, or expected to be delivered before 2023



Tree planting at Woodlands Park, Ivybridge
– April 2021



Renewal of Ermington play area - May
2021



Renewal of Torfield Play Area, Marldon -
July 2021



Image of affordable housing to be
provided at St Ann's Chapel

6. Other Section 106 Contributions

- 6.1. Other Section 106 contributions may be sought as set out in JLP policy DEV30 and the JLP Developer Contributions Evidence Base.
- 6.2. As set out in Appendix A, the Council is in receipt of the following S106 contributions:
 - Ecology (cirl buntings) - £58,401.25 with no firm timescale for expenditure. A project was due to be progressed by the National Trust at East Soar but due to the covid-19 pandemic they were unable to commit to the project. Officers are in discussion with the developer to seek an extension to the time period for expenditure;
 - Employment - £57,959.27 with no firm timescale for expenditure;
 - Tamar Special Area of Conservation - £20,292.18 with £18,426.04 spent between 31 March 2021 and present and the remainder to be spent in 2022/2023;
 - Air Quality - £5,724.64 with no firm timescale for expenditure;
 - Ivybridge Mill Group - £10,000 with no firm timescale for expenditure;
 - AONB Mitigation - £48,811.35 with no firm timescale for expenditure;
 - Sherford - £108,749.53 with £101,094.55 to be spent in 2021/2022 and £7,654.98 with no firm timescale for expenditure; and
 - Kingsbridge Tesco footpath – £30,000 with no firm timescale for expenditure.

7. Accounting arrangements for Section 106 Contributions

- 7.1. Section 106 contributions are shown under the Creditors section of the Council's Balance Sheet (Long Term Revenue Grants in Advance – Section 106 Deposits) as it is money that has been paid to the Council with conditions attached as to how that money is spent, in accordance with the Section 106 agreement.
- 7.2. A schedule of Section 106 contributions which are held by the Council is reported to Members on a quarterly basis as part of the report to Executive on the monitoring of Capital Programme.

8. Monitoring arrangements for Section 106 Contributions

- 8.1. Compliance with Section 106 agreements (both financial and non-financial elements) is actively monitored by the Council's Section 106 Monitoring Officer.

9. Proposed Way Forward

- 9.1. Officers will continue to progress the spending of Section 106 contributions in accordance with the legal agreements and reports to Members.

- 9.2. Members are requested to note the current and future processes for consulting and informing Town and Parish Councils as set out in paragraphs 4.2, 5.2, 5.4 and 5.5 of the report.
- 9.3. Members are actively encouraged to continue to engage with their town and parish councils to facilitate the expenditure of section 106 contributions to enable the delivery of affordable housing, open space sport and recreation, and community facilities in their areas.
- 9.4. It is noted that progressing the expenditure of Section 106 contributions will help in the delivery of the South Hams Corporate Strategy, Better Lives for All, particularly the Improving Homes and Strengthening Community Wellbeing themes.

10. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	See Section 2 of the Report
Financial	Y	<p>The Council has £5.879m in Section 106 Deposits at 31.3.2021. It is predicted that £1.286m will be spent in 21/22, £2.805m will be spent in 22/23 and £1.788m has no firm timescale for spend. Appendix A sets out the s106 Deposits in detail.</p> <p>Details of historical expenditure of s106 contributions is set out in Appendix B. The total s106 monies spent by the Council in 2019/20 totalled £0.977 million, with the projects being delivered being listed in Appendix B, which included £487k on new employment units at Ermington Mill and £193K on play areas within the District.</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>
Risk	Y	There is a risk of contributions not being spent in accordance with the s106 agreement. To address this, where any Section 106 contributions 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 Section 106 agreements are adhered to.

		<p>If ambiguity exists over the appropriateness of a project, agreement of the developer will be sought.</p> <p>Some Section 106 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/committed within the specific timeframes. Careful monitoring prevents this from happening.</p> <p>There is a risk of contributions 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 Community Use Agreements will be implemented to secure long term community use.</p>
Supporting Corporate Strategy	Y	As set out in Appendix A, of the £5.879 million of S106 Deposits, £1.624m will fall within the Thriving Economy Delivery Plan, £2.577m within the Strengthening Community Wellbeing Delivery Plan and £1.678m within the Homes and Built and Natural Environment Delivery Plan within the Council's strategic vision, 'Better Lives for All'.
Climate Change – Carbon/Biodiversity Impact		Section 106 projects need to take into account climate change and biodiversity impact, minimising impacts as far as possible.
Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	N/A
Safeguarding	N	N/A
Community Safety, Crime and Disorder	N	N/A
Health, Safety and Wellbeing	Y	Enhancements to Open Space, Sport and Recreation facilities are closely linked with improved health and wellbeing.
Other implications	N	N/A

Supporting Information

Appendices:

Appendix A – Summary of Section 106 Contributions as at 31st March 2021, with predicted timescales for expenditure

Appendix B – Section 106 expenditure in previous financial years

Appendix C – Flowchart showing the process for spending Section 106 contributions for affordable housing

Appendix D – Application form for Section 106 contributions for affordable housing

Background Papers

None