

Report to: **Hub Committee**
Date: **21 September 2021**
Title: **Expenditure of Section 106 Contributions**
Portfolio Area: **Cllr Chris Edmonds**
Wards Affected: **All**

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

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

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RECOMMENDATIONS:

That the Hub Committee:

- 1. Notes the amount of Section 106 contributions held at 31 March 2021 as set out in Appendix A (totalling £1.091 million) and the future expenditure proposals;**
- 2. Notes the process for consulting and informing Town and Parish Councils regarding Section 106 contributions; and**
- 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 £1.091 million of Section 106 contributions which have conditions attached.
- 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 is set out within the following categories:-
- Homes and Built and Natural Environment Delivery Plan of the Corporate Strategy (Sub categories are Affordable Housing and Heritage)
 - Strengthening Community Wellbeing Delivery Plan of the Corporate Strategy (Sub categories are Community Facilities and Open Space Sport and Recreation)
- 1.4 As set out in Appendix A, of the £1.091 million of S106 Deposits, £0.616m will fall within the Homes and Built and Natural Environment Delivery Plan and £0.475m will fall within the Strengthening Community Wellbeing Delivery Plan within the Council’s strategic vision, ‘A Plan for West Devon’.
- 1.5 For each row, a traffic light coding system has been applied to indicate the progress with 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 been made to the Parish Council/relevant organisation.
 - Red = where projects are yet to be developed.
- 1.6 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 contributions have no firm timescales for expenditure. A comments column has also been added to give further information on the project.
- 1.7 Based on the £1.091 million Section 106 contributions that the Council is in receipt of, the following expenditure is expected:

AMOUNT	£
Amount of s106 deposit predicted to be spent in 2021/2022	£136,000
Amount of s106 deposit predicted to be spent in 2022/2023	£832,000
Amount with no firm timescale for the s106 deposit to be spent	£123,000
TOTAL	£1,091,000

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 and open space, sport, recreation and community facilities, in order to enhance the quality of life across the West Devon Borough.
- 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. Legal agreements will normally specify a time period within which any submitted contributions must be spent.
- 2.5 Details of historical expenditure of s106 contributions is set out in Appendix B.

3 Section 106 Contributions for Affordable Housing

- 3.1 The level of funding contribution is negotiated with developers during the planning application process. This is currently based on the Joint Local Plan (JLP) Supplementary Planning Document. For historical Section 106 agreements it was based on the West Devon Affordable Housing Code of Practice 2012.
- 3.2 A process flowchart for the spending of Section 106 contributions for affordable housing is in place (see Appendix C). 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 contributions could be spent. An application form for Section 106 contributions for affordable housing is also available (see Appendix D).

3.3 The figures for affordable housing in Appendix A total £0.603 million of Section 106 contributions which have conditions attached. It is predicted that all of this £0.603 million will be spent in 2022/2023 on the redevelopment in Tavistock for high quality homelessness accommodation. Outline Plans are shown below.



3 | View - Proposed - Rear E



4 | View - Proposed - Rear N

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

- 4.1 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 Atkins West Devon OSSR Study 2007.
- 4.2 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.
- 4.3 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.
- 4.4 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 3.2.
- 4.5 A report taken to the Hub Committee on 20 November 2018 sought the approval for the release of section 106 contributions for a range of OSSR projects (minute *HC49 refers). That report set out the 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.
- 4.6 Where possible, opportunities to maximise benefits and to lever in additional funding are sought. Where projects take place on third party land, the funds are offered by way of a conditional grant which secures the Council's interests and the specific requirements of the Section 106 agreement.
- 4.7 The figures for OSSR in Appendix A total £0.424 million of Section 106 contributions which have conditions attached. It is predicted that 0.102 million will be spent in 2021/2022 and 0.210 million in 2022/2023. There is a further £0.111 million with no firm timescale for expenditure.

4.8 Some of the projects either already delivered between 31 March 2021 and present, or expected to be delivered before 2023 include:

- Land purchase for Tavistock Rugby Club;
- Improvements to Tavistock Cricket Club pavilion;
- Improvements to Tavistock Hockey Club pavilion; and
- Enhancement of Bannawell Street play area, Tavistock.

5 Other Section 106 Contributions

5.1 Other Section 106 contributions may be sought as set out in JLP policy DEV30 and the JLP Developer Contributions Evidence Base.

5.2 As set out in Appendix A, the Council is in receipt of the following contributions:

- Community Facilities - £43,414.51 with £26,190 predicted to be spent in 2022/2022 and the remaining £17,224.51 in 2022/2023.
- Heritage - £13,236.40 with £2,000 predicted to be spent in 2022/2023 and the remaining £11,236.40 with no firm timescale for spend.
- Street cleansing - £7,588.11 predicted to be spent in 2021/2022.

6 Accounting arrangements for Section 106 Contributions

6.1 Section 106 contributions are shown under the Creditors section of the Council's Balance Sheet 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.

6.2 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 Hub on the monitoring of Capital Programme.

7 Monitoring arrangements for Section 106 Contributions

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

8 Proposed Way Forward

8.1 Officers will continue to progress the spending of section 106 contributions in accordance with the legal agreements and reports to members.

8.2 Members are requested to note the current and future processes for consulting and informing Town and Parish Councils as set out in paragraphs 3.2, 4.2 and 4.4 of the report.

- 8.3 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 Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	See Section 2 of the Report.
Financial	Y	See Paragraph 1.6 and Appendix A of the Report. The Council's Financial Procedure Rules require that where expenditure over £30,000 is proposed, that this needs to be agreed by Hub.
Risk	Y	<p>There is a risk of contributions not being spent in accordance with the section 106 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. 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 will prevent 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 £1.091 million of S106 Deposits, £0.616m will fall within the Homes and Built and Natural Environment Delivery Plan and £0.475m will fall within the Strengthening Community Wellbeing Delivery Plan within the Council's strategic vision, 'A Plan for West Devon'. This will also ensure leisure provision meets the needs of residents through maximising funding for playing pitches and outdoor sports facilities.
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 S106 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 S106 contributions for affordable housing

Appendix D – Application form for S106 funding for affordable housing

Background Papers

None