

CABINET
25TH OCTOBER 2018

REPORT OF MRS JENNY CLIFFORD, THE HEAD OF PLANNING, ECONOMY AND REGENERATION

SECTION 106 AGREEMENTS AND FINANCIAL CONTRIBUTIONS – PROPOSED GOVERNANCE

Cabinet Member(s): Cllr Richard Chesterton
Responsible Officer: Mrs Jenny Clifford, Head of Planning, Economy and Regeneration

Reason for Report:

Mid Devon District Council currently collects financial contributions from new development through legal agreements signed under Section 106 of the Town and Country Planning Act 1990 (as amended), sometimes also referred to as planning obligations. It is considered that the governance of the s106 contributions set out in the Councils adopted SPD can be further refined to enhance the transparency of this process. The report therefore sets out the additional recommendations for governance of s106 contributions.

RECOMMENDATION: That Cabinet agrees the governance arrangements set out in this report for consultation purposes with Parish and Town Councils.

Relationship to Corporate Plan:

The Planning Service is a statutory service, the effective operation of which will deliver funds for necessary community projects which are central to the delivery of Corporate Plan priorities of community, housing, economy and environment

Financial Implications:

S106 agreements will normally include clauses stating when the funds will be paid (by reference to some trigger in the development phase) and for what purpose they will be used, often project or location specific. There is also provision for the return of contributions if they remain unspent or uncommitted after an agreed period of time, typically 10 or 15 years depending on the nature of the contribution. All monies collected on applications submitted since April 2015 must be spent on the specific project that it was allocated to at the time the planning application was submitted and should be set out clearly in the s106 agreement. It cannot be spent on any other project and will only become available for spending once a development has commenced on site. Therefore if a site is never developed the monies won't become available and equally if development of the site is delayed, some monies may not become available for some time. It is therefore important to track payments to ensure any secured funds are used before they have to be returned.

Legal Implications:

Planning obligations, also known as Section 106 agreements and procedures must comply with the following legislation and Government guidance:

1. The 1990 Town & Country Planning Act
2. Community Infrastructure Levy Regulations 2010 ("CIL Regulations")
3. National Planning Policy Framework 2018

4. Ministry of Housing, Communities & Local Government Planning Practice Guidance.

Risk Assessment:

Clearer governance and the opportunity for Town and Parish Councils to engage with the process results in greater transparency and understanding of the processes that need to be followed in order to comply with the aforementioned legislation and guidance.

Equalities Impact:

There are no equality issues identified in this report.

1.0 BACKGROUND.

- 1.1 The Audit report of May 2018 flagged up the need to review and formalise governance arrangements in relation to Section 106 agreements. Mid Devon District Council currently collect financial contributions from new development through legal agreements signed under Section 106 of the Town and Country Planning Act 1990 (as amended), sometimes also referred to as planning obligations.
- 1.2 The need for planning obligations are considered on a case by case basis and may only constitute a reason for granting planning permission if they meet the following statutory tests from the CIL Regulations, namely that they are:
 - necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind.
- 1.3 Planning obligations must be fully justified (usually by reference to development plan policy requirements) and evidenced.
- 1.4 Since April 2015, Regulation 123 of the CIL Regulations has placed a national restriction on the traditional approach of 'pooling' Section 106 contributions from numerous developments towards the provision of infrastructure, such as public open space, schools or roads. Such pooling is now only permissible for up to five separate planning obligations, for any given infrastructure by project or type.
- 1.5 Local planning authorities are expected to use all of the funding they receive through planning obligations in accordance with the terms of the individual planning obligation agreement. This will ensure that new developments are acceptable in planning terms; benefit local communities and support the provision of local infrastructure. Agreements should normally include clauses stating when and how the funds will be used by and allow for their return, after an agreed period of time, where they are not. Equally, if monies are not spent in accordance with the terms of the s106 agreement, developers can request that their contribution is returned to them.

- 1.6 With the introduction of the CIL legislation, the Government has ‘scaled back’ the use of planning obligations, as CIL is viewed as a replacement for the use of planning obligations in some circumstances. When Mid Devon introduces CIL, the use of planning obligations to raise financial contributions towards infrastructure is restricted and, with the exception of the identified strategic sites, will generally only be used for site-specific impacts of new development, necessary on-site infrastructure and the provision of affordable housing.
- 1.7 Upon implementation of the Mid Devon CIL, the Council will also implement the “Regulation 123 List” which sets out the items of infrastructure which will be wholly or partly funded by CIL. After that time, it will not be possible to use Planning Obligations under Section 106 to fund infrastructure items on that list. Accordingly, there will be a scaling back of Section 106 use. Before it can be introduced, Mid Devon CIL will be subject to examination by the Planning Inspector at the end of the Local Plan Review hearings.
- 1.8 The following four sections indicate the areas which may still be subject to planning obligations under S106 following adoption of the Mid Devon CIL:

1. Non – Infrastructure Requirements

- The funding and provision of items which are not defined as infrastructure, such as affordable housing.
- Other non-infrastructure requirements such as development phasing, the implementation of travel plans and construction management.
- For other purposes which do not require developer contributions, such as regulating the use of land.

2. Infrastructure for Urban Extensions.

The provision of infrastructure within, directly related to, or required as a result of, development within the defined areas of the North West Cullompton, East Cullompton and East Tiverton urban extensions allocated in the adopted Local Plan Review. Zone 1 - Zero rated.

3. Site –Specific Transport Improvements.

Site-specific improvements needed to make a development acceptable in planning terms.

4. Other Infrastructure Provision.

Infrastructure provision which meets the tests set out in the CIL Regulations but which is not included on the Regulation 123 list to be funded by CIL may be sought through the use of Planning Obligations. A full list of infrastructure to be sought through planning obligations is not included, since much would depend on the specific development put forward, but the following forms of infrastructure are specifically referred to within the Local Plan.

- Public Open Space -the provision of public open space (publicly accessible open space, allotments, other green infrastructure and sports pitches with associated changing facilities) in accordance with the adopted policies of the Local Plan Review including where

necessary replacement provision as a result of the loss of an existing facility.

- Sustainable Urban Drainage Systems
- Wildlife protection, enhancement and mitigation
- Measures related to pollution and contaminated land.

2.0 PUBLIC OPEN SPACE

- 2.1 Since the adoption of the Provision and Funding of Open Space Through Development Supplementary Planning Document (SPD) in 2008 (and the Supplementary Planning Guidance prior to that), the District Council has been collecting and spending financial contributions from developers through s106 Planning Obligations for this purpose. Contributions are taken towards new or improved open space in order to mitigate for the additional demand arising from the development in question. Day-to day management and routine maintenance of existing open space may not be funded by S106, but improvements may be. The contributions which have been collected are held in a fund by the Council and made available for spend within the relevant catchment area (referred to as catchment funding) to bring forward new or improved provision of sports areas, children's play areas and informal open space. This is in accordance with policies within the Development Plan and SPD
- 2.2 The 62 parishes across Mid Devon have been grouped into 28 catchment areas. All the monies which have been collected prior to April 2015 can be spent on any public open space project within that catchment area. Catchment areas are set out in **Appendix A**.
- 2.3 Since April 2015 s106 funds must be spent on the specific project that it was allocated to at the time planning permission was granted. It cannot be spent on any other project, without an agreed variation to the section 106 agreement. It is likely that the Council would be asked to cover the costs of such a variation. The financial contributions only become available to spend once they have been paid to the Council. In some cases, this may be shortly before there is a commencement on site, but in some cases, the contribution is payable on a later trigger e.g. prior to any residential occupation on site.
- 2.4 The SPD specifies that, in spending contributions, the Council will have regard to:
- The views of Council Ward Member(s) in the catchment area;
 - The views of Town or Parish Council(s) in the catchment area;
 - The priorities for improving open space identified in the Council's Open Space and Play Area Strategy (December 2006).
 - Providing value for money;
 - The potential for securing external or matched funding.

3.0 PROPOSED SECTION 106 GOVERNANCE

3.1 The following governance arrangements are proposed for consultation with Town and Parish councils:

1. **All payments received by MDDC for section 106 agreements must be given the relevant planning application reference upon receipt.**
2. **Arrangements for the spending of financial contribution for S106 agreements where financial contributions are not project specific (generally pre 2015 and by infrastructure type):**

Spend <£10,000 delegated to Head of Planning, Economy and Regeneration in consultation with relevant MDDC departments

Spend >£10,000 shall be referred to a S106 Board comprising of the following:

1. Cabinet Member of Planning and Regeneration
2. Cabinet Member for Community Well being
3. Senior officer from Planning (Head of Planning, Economy and Regeneration or Group Manager for Development)
4. Senior officer from Operations
5. Senior officer from Estates
6. Admin support –Planning Obligations Officer

Views will be sought from Parish or Town Council and Ward Members within the catchment area in advance of Board Meeting (14 days allowed)

3. Project Selection for spend : PUBLIC OPEN SPACE

For S106 financial contributions post 2015, these are required to be project specific. Accordingly prior to the signing of a S106 agreement at the planning application stage the project upon which the financial contribution should be spent needs to be specified.

Project nominations will be sought from:

1. Internal to MDDC – Relevant departments and Ward Members within the catchment area
2. External to MDDC – Parish or Town Council within the catchment area, sports and community groups (depending on relevance to S106 contribution)

(A flow diagram of the proposed governance arrangements is attached at **Appendix B** to this report).

Assessment of the eligibility of a project (assessed against statutory requirements, guidance and its relation to the planning application from

which contribution sought) – Delegated to Head of Planning, Economy and Regeneration via case officers.

In the case where project prioritisation is required between two or more eligible projects – Referred to S106 Board.

NOTE – Whilst the SPD identifies the use of a catchment area approach for the collection and spend of financial contributions towards public open space, in order to ensure that the tests of the CIL Regulations are met, there may be instances where a project or facility in an adjacent catchment area is more likely to be used/accessed due to it being closer/more accessible. In such cases the Parish, Town Council and Ward Members of both catchment areas will be consulted.

4. Project selection for spend: AIR QUALITY

For S106 contributions post 2015 towards air quality, these are project specific in order to deliver measures to improve air quality within the Air Quality Action Plan in accordance with the SPD. Project nominations will be sought from:

1. Internal to MDDC – Relevant departments and Ward Members (both ward within which the development is located and ward(s) of the relevant Air Quality Management Area).

NOTE – Air quality projects are generally those which will assist in the management of air quality within an Air Quality Management Area AQMA (Cullompton or Crediton). Financial contributions may be sought from development located outside the AQMA where it is identified that the new development would have a negative impact upon the AQMA.

5. Project selection for spend: OTHER CONTRIBUTIONS

Delegated to the Head of Planning, Economy and Regeneration.

NOTE – This usually arises from consultation responses from statutory consultees during the planning process.

6. Selection of s106 heads of terms and prioritisation between s106 asks where viability an issue

- Delegated to the Head of Planning, Economy and Regeneration in consultation with the relevant services (e.g. Housing, Environmental Health etc.)

7. Requests to vary existing s106 agreements

- Delegated to the Head of Planning, Economy and Regeneration in consultation with the relevant services unless the Ward Member, Chairman and Vice-Chairman of Planning Committee and Cabinet Member for Housing (the latter in the case of amendments to

affordable housing only) requires that the Committee consider the proposed changes having given clear planning reasons. (Existing process in place, agreed by Planning Committee 6th July 2016).

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Circulation of the Report: Cabinet Members

List of Background Papers: Audit report May 2018
Planning Committee 6th July 2016

APPENDIX A

DEFINITION OF CATCHMENT AREAS (The Provision and Funding of Open Space Through Development Supplementary Planning Document).

<u>CATCHMENT</u>	<u>PARISHES IN THE CATCHMENT</u>
Bampton	Bampton, Morebath, Clayhanger and Huntsham
Bickleigh	Bickleigh, Cruwys Morchard and Cadeleigh
Bow	Bow and Clannaborough
Bradninch	Bradninch
Burlescombe	Burlescombe, Holcombe Rogus and Hockworthy
Cheriton Bishop	Cheriton Bishop and Hittisleigh
Cheriton Fitzpaine	Cheriton Fitzpaine, Stockleigh English, Stockleigh Pomeroy, Poughill and Kennersleigh
Colebrooke	Colebrooke
Copplestone	Copplestone
Crediton Hamlets	Crediton Hamlets
Crediton	Crediton
Cullompton	Cullompton and Butterleigh
Culmstock	Culmstock
Down St Mary	Down St Mary, Zeal Monachorum, Coldridge, Brushford, Eggesford, Nymet Rowland and Wembworthy
Halberton	Halberton
Hemyock	Hemyock and Clayhidon
Kentisbeare	Kentisbeare
Lapford	Lapford and Chawleigh
Morchard Bishop	Morchard Bishop, Thelbridge, Washford Pyne, Puddington and Woolfardisworthy
Newton St Cyres	Newton St Cyres and Shobrooke
Oakford	Oakford, Stoodleigh, Washfield, Loxbeare and Templeton
Sampford Peverell	Sampford Peverell and Uplowman
Sandford	Sandford and Upton Hellions
Silverton	Silverton
Thorverton	Thorverton and Cadbury
Tiverton	Tiverton
Uffculme	Uffculme
Willand	Willand