

**REPORT OF THE HEAD OF PLANNING, ECONOMY AND REGENERATION.**

**S106 CONTRIBUTIONS**

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

**Reason for Report:** At the meeting on 19<sup>th</sup> April 2021, Members of Scrutiny Committee resolved that a report should be brought before them providing a review of the current status of S106 funding with an emphasis on what has been collected and how it has been spent. The scope of the requested report was subsequently clarified via the Chairman as:

1. Performance of collections and the processes involved
2. System for charging / allocating funds.
3. Monies collected, where and when they've been spent.
4. Are there any that have been returned because they've not been spent.
5. Whether the Council's development company 3 Rivers pays S106 contributions.

**RECOMMENDATION:** That Members consider the contents of this report and appendices.

**Financial Implications:** Financial contributions which are collected must be spent in accordance with the terms of the legal agreement and the Council's adopted policy otherwise there is a risk that developers could request a refund of all monies paid.

**Budget and Policy Framework:** More recent S106 agreements include a clause to cover the cost to the Council in monitoring the agreement. The cost varies according to the complexity of the agreement and number of clauses to be monitored.

**Legal Implications:** The use of s106 agreements is regulated by s122 of the Community Infrastructure Levy Regulations 2010. A planning obligation may only form a reason for granting planning permission if it is:

- a) Necessary to make the development acceptable in planning terms;
- b) Directly related to the development, and
- c) Fairly and reasonable related in sale and kind to the development.

**Risk Assessment:** The Council has a Planning Obligations Monitoring Officer in post to ensure that financial contributions are collected, recorded and spent in accordance with the legal agreement and the Council's adopted policy. The approval of governance arrangements also provides assurance over the allocation of funds and spend.

**Equality Impact Assessment:** None directly arising from this report.

**Relationship to Corporate Plan:** The primary purpose of the planning system is to regulate the use and development of land in the public interest. The collection of

financial contributions from development seeks to mitigate the impact of that development and can assist with the delivery of Corporate Plan priorities of community, housing, economy and environment.

**Impact on Climate Change:** S106 agreements seek to mitigate the impact of development in accordance with planning policy requirements. It is expected that the next Local Plan will include specific policies to cover issues including carbon emissions and off setting, renewable energy and biodiversity net gain. It is likely that in accordance with planning policy, that S106 agreements (or their replacement due to impending reform) will play an increasing part as a tool to secure climate change mitigation.

## 1.0 Introduction

- 1.1 Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as s106 agreements, are legal agreements between Local Authorities and developers specifically in relation to planning applications. Planning obligations may also take the form of a unilateral agreement, whereby the land owner or developer makes a legal agreement. In this latter type, the Council is not a signatory.
- 1.2 Planning obligations are used when it is considered that a development will have significant impacts on the local area that cannot be moderated by means of conditions attached to a planning decision. For example, a new residential development can place extra pressure on the social, physical and economic infrastructure which already exists in a certain area. A planning obligation will aim to balance the pressure created by the new development with improvements to the surrounding area through the mitigation of its impact. This could either be by carrying out works in the local area or providing a financial contribution towards something relevant in the area. The S106 financial contribution thereby seeking to mitigate the impact of the development in accordance with planning policy.
- 1.3 Under the Community Infrastructure Levy Regulations the use of S106 agreements must meet a series of tests and may only form a reason for granting planning permission if it is:
  - a) Necessary to make the development acceptable in planning terms;
  - b) Directly related to the development, and
  - c) Fairly and reasonable related in sale and kind to the development.
- 1.4 The most common planning obligations used in Mid Devon have historically been for the collection of monies towards a) the provision, or improvement of public open space as required by planning policy (if not provided on site) and b) the improvement of air quality in the Air Quality Management Areas in Crediton and Cullompton.
- 1.5 On larger developments, a planning obligation would be used to secure affordable housing provision (either with physical dwellings on site or if allowable by policy, a financial contribution to enable them to be delivered elsewhere), contributions towards education provision where the development would result in the local school exceeding its capacity, improvement works to the existing highway or anything else which is

relevant to the development. The latter payments go to the County Council as Education and Highway Authority. In each case the need for a S106 would be justified by planning policy and may be subject to the development meetings certain thresholds or criteria within policy.

## 2.0 **System for charging / allocating funds: Governance**

2.1 A system of S106 governance was adopted by Council at the meeting of 28<sup>th</sup> October 2020 following consideration by Cabinet. This is attached at **Appendix 3** and sets out arrangements for authorising spend of collected S106 funds, arrangements for selecting projects for S106 spend, the process of selecting S106 heads of terms and prioritisation between S106 requirements where viability is an issue and how requests to vary or renegotiate S106 agreements are to be considered. Members of Scrutiny Committee may also recall considering the draft governance proposals at the meeting of 17<sup>th</sup> August 2020.

2.2 The S106 Board comprises the following:

1. Cabinet Member of Planning and Regeneration (Chair)
2. Cabinet Member for Community Well being
3. Cabinet Member for Climate Change
4. Senior officer from Planning (Head of Planning or DM Manager)
5. Senior officer from Operations
6. Senior officer from Estates
7. Admin support – Planning Obligations Officer
8. Relevant Ward Member(s)

2.3 Following the adoption of the governance arrangements in October 2020, the S106 Board has been convened in several occasions and authorised requests for £31,935 towards air quality projects, £200,000 towards Chawleigh affordable housing scheme and £29,193.64 towards play equipment at Longmead play area, Hemyock.

## 3.0 **Monies collected, where and when they have been spent.**

3.1 At the meeting of Cabinet on 3<sup>rd</sup> December 2020 a report on the Infrastructure Funding Statement was considered. Information was subsequently published on the Council's website. This was in response to the legal requirement for the Council to publish no later than 31st December in each calendar year an annual infrastructure funding statement. The first year to which this new requirement related was the financial year 19/20 with publication of the infrastructure funding statement by 31st December 2020. This annual statement includes a report relating to the previous financial year on planning obligations, with a further report for the financial year 20/21 needing to be published prior to the end of December 2021. A further Cabinet report on the Infrastructure Funding Statement will be prepared in Autumn 2021 for publication, as will a report on S106 planning obligations for the last financial year 20/21.

3.2 The 19/20 S106 report information is accessible on the Council's website and has been appended to this report as **Appendices 1A, 1B and 1C**

- 3.3 In addition further S106 record transaction information is also appended for several financial years including 20/21, with balances as at the end of March 2021. The following information is appended:

**Appendix 2A** Air quality

**Appendix 2B** Public open space balances and payments

- 5.4 The majority of affordable housing secured through the planning system is delivered on site. Policy S3 of the Mid Devon Local Plan (adopted 2020) provides that sites of between 6 – 10 dwellings outside Tiverton, Cullompton and Crediton will be permitted to make a financial contribution sufficient to provide the affordable dwellings in another location. Recent invoicing against planning permissions has brought in £405,885.27 towards the provision of affordable housing off site, from the following sites

Farleigh Meadows, Tiverton  
Livingshayes Farm, Silverton  
Belle Vue, Uffculme

#### 4.0 **Refunds**

- 4.1 There are two main circumstances that could lead to the issue of a refund:
- If funds have been collected in advance and the development does not take place. This might be because the planning application was withdrawn, refused or if granted, the permission is not implemented (the S106 funds to mitigate its impact are not required if the development does not take place).
  - If the funds are not spent within a time period specified in the S106 agreement.

- 4.2 Refunds indicated in the appended information are for the first reason- due to the development not taking place rather than not being spent within time. The previous limit on the number of contributions that could be pooled by infrastructure project or type also raised a risk of refunds as a result of noncompliance with those requirements i.e. exceeding the number of contributions that could be pooled. This risk was mitigated through the identification of projects and tracking of the number of contributions towards them.

#### 5.0 **Whether the Council's development company 3 Rivers pay S106 contributions.**

- 5.1 A specific query has been received from a Member of Scrutiny Committee over whether S106 financial contributions apply to the Council's development company 3 Rivers. The planning application process deals with the proposal in hand and assesses it against the policies in the development plan. It does not distinguish between different applicants. In this manner, planning applications by the Council's development company are considered in the same way as any other applicant, save that they are determined by Planning Committee rather than under delegated powers. This is in accordance with the scheme of delegation. If S106 financial

contributions are justified by the application in accordance with planning polices, then they will be requested as they would for any other applicant.

## **6.0 The use and collection of financial contributions in future.**

- 6.1 The Planning White Paper 'Planning for the Future' August 2020 established an expectation of considerable future reform of S106 developer contributions and the Community Infrastructure Levy systems. (This Council is not a CIL charging authority). The White Paper proposes:

*'The Community Infrastructure Levy and the current system of planning obligations will be reformed as a nationally set, value-based flat rate charge (the 'Infrastructure Levy'). A single rate or varied rates could be set. We will aim for the new Levy to raise more revenue than under the current system of developer contributions, and deliver at least as much – if not more – on-site affordable housing as at present. This reform will enable us to sweep away months of negotiation of Section 106 agreements and the need to consider site viability. We will deliver more of the infrastructure existing and new communities require by capturing a greater share of the uplift in land value that comes with development'.*

- 6.2 The Government is yet to publish its response to the consultation on the White Paper. At the time of writing this report, the Housing Secretary Robert Jenrick has indicated that the revised system will involve 'more predictable, transparent levies which will be locally set and locally levied, with greater flexibility for you as councils to determine how they are spent'. However at this time more information on the precise nature and timescale for that future reform is not yet available.

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**Circulation of the Report:** Cllr Richard Chesterton, Cabinet Member for Planning and Economic Regeneration

### **List of Background Papers:**

Mid Devon Local Plan 2013-2033

Community Infrastructure Levy Regulations 2010 (as amended)

Cabinet 3<sup>rd</sup> December 2020

Planning White Paper 'Planning for the Future' August 2020