

**Meeting**                    Audit Committee

**Portfolio Area**        Planning & Regeneration

**Date**                        17 November 2020



## SECTION 106 (S106) ALLOCATION UPDATE

### 1 PURPOSE

- 1.1 To provide Members with an update to how the S106 allocations process has historically worked and how it could more effectively work.

### 2 RECOMMENDATIONS

- 2.1 For Members to note the update

### 3 BACKGROUND

- 3.1 S106 are legal agreements between a developer and council to mitigate the impacts of that development on local facilities and amenities. S106 relates to Section 106 of the Town and Country Planning Act. S106 agreements are negotiated during the planning application process and bind the landowner to make payments, provide affordable housing / land or access and the like. It can be used to help fund affordable housing as well as roads, school, parks and youth services, health etc.
- 3.2 As many of these types of mitigation are provided by other partners, much of the S106 allocations are transfer to HCC as Highways or Education Authority or to the NHS.

- 3.3 Although the S106 agreements will state the trigger for when the monies are due in terms of the construction, the Council will not know until the monies are received when it is being paid. As such there is always a time lag between received the monies and being able to spend or allocation them. In addition S106's may be tightly limited to the immediate area of the development and have a time limit in which they must be spent. If a suitable scheme that meets the S106 condition can not be found or is outside the deadline for spend these s106 funds are returned to the developer.
- 3.4 The Community Infrastructure Levy (CIL) is a planning charge introduced by the Planning Act 2008, as a tool for local authorities to help deliver infrastructure to support the development of their area. It allows local authorities to raise funds from developers undertaking new building projects. The money can be used to fund a wide range of infrastructure, such as transport schemes, schools, community facilities, parks and leisure facilities, which are needed as a result of development taking place.
- 3.5 CIL is fairer, faster and more certain and transparent than the system of planning obligations (S106), which causes delay as a result of lengthy *negotiations and is subject to viability*.
- 3.6 SBC introduced CIL from the 1<sup>st</sup> of April 2020 and as such new S106 obligations will be reduced to site specific mitigation, particularly for the larger schemes i.e. where a whole school is required as part of a specific development (e.g. North Stevenage and West of Stevenage) or where road/cycleway improvements are required within or in close proximity to the development. S106 is only allowed for infrastructure that is directly related to the scheme and is required in order for the development to be acceptable.

#### **4 REASONS FOR RECOMMENDED COURSE OF ACTION AND OTHER OPTIONS**

- 4.1 As reported in the Quarter 2 Capital Monitoring report to Executive (17 November 2020) S106 balances total £378,147 of which £167,622 has been allocated to identified schemes as detailed in the table below:

Table one: S106 Update					
Available for financing	£	2020/21 Forecast	remaining	Budgeted in Future Years	remaining
		£	£	£	£
Affordable Housing	£62,091	£0	£62,091	£62,091	£0
Childrens Playspace / open space	£9,773	£9,773	£0	£0	£0
Community / Greenspace / Ecological Infrastructure	£70,338		£70,338	£70,338	£0
Parking / Transport	£154,960		£154,960		£154,960
Gardening Club	£4,576		£4,576		£4,576
Arboretum	£25,420	£25,420	£0		£0
Pedestrian Link	£35,000		£35,000		£35,000
Household Surveys	£15,990		£15,990		£15,990
<b>Total</b>	<b>£378,147</b>	<b>£35,193</b>	<b>£342,954</b>	<b>£132,429</b>	<b>£210,525</b>

- 4.2 With the introduction of CIL, the new reporting requirements and the need to better spend our S106 budgets there is an opportunity have a more effective and open process.
- 4.3 The current process has been for Planning to record the S106 obligations and to notify the potential spend departments, and Finance. Finance have encouraged the spend departments to spend the S106 where possible. However as some S106 obligations are very specific it has not always been possible to fully fund a spend project with the S106 available. There is now an opportunity to strengthen the communication between Finance and Planning when looking at opportunities to allocate S106 monies. On an occasion Planning were not given the oversight to ensure the allocations align with the obligations requirements.
- 4.4 As such it is proposed to bring the S106 allocations more into line with the CIL allocations process as they now both require annual reporting and use the same systems.
- 4.5 CIL and S106 income and expenditure will be reported annually and published on our website, along with our infrastructure priorities and local needs.

- 4.6 CIL infrastructure expenditure below £75,000 will be delegated to the Assistant Director of Planning & Regulation after consultation with the Portfolio Holder. Expenditure of CIL on infrastructure of £75,000 and above will be determined by the Planning & Development Committee.
- 4.7 Officers will explore with Members how best to link the approval process with S106 and CIL given S106 funds will be decreasing and there is now an agreed process for CIL. Furthermore the new process needs to encourage spending on appropriate projects.
- 4.8 Where S106 obligations allows, the impact of S106 mitigation will be maximised by aligning it with the Corporate Priorities for us and our key infrastructure providers.

## **5 IMPLICATIONS**

### **Financial Implications**

- 5.1 There are considerable risks to the Council in not spending the monies received in the time limits stipulated in the agreements. This can require the Council to return the funds with interest, which would result in the mitigation of the new developed not being addressed. The risks identified in 5.2 present finance risks too, requiring repayment, compensation and damage our ability to secure future obligations.

### **Legal Implications**

- 5.2 As S106 monies are payments required by 'contract' obligation from a developer to the Council for a prescribed mitigation, there are significant legal risks from inappropriately spending S106 monies on things that are not in accordance with those obligations.

### **Environmental Implications**

- 5.3 S106 can provide the opportunity to improve our local environment.

### **Climate Change Implications**

- 5.4 S106 can provide the opportunity to improve our local environment.

### **Staffing and Accommodation Implications**

- 5.5 There is budget available for 50% of a FTE to support with CIL Policy, and administration. It would be a logical addition to this person's role to fulfil the same function for S106 as the systems and processes are very similar.

## **BACKGROUND DOCUMENTS**

None.