

Report to: **Overview and Scrutiny Panel**  
Date: **7 February 2018**  
Title: **Section 106 Agreements (Update)**  
Portfolio Area: **Support Services – Councillor Wright**

Wards Affected: **ALL**

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

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**Recommendations:**

**That the Overview and Scrutiny Panel note the progress made in monitoring and administering by the new S106 Officer.**

**1. Executive summary**

- 1.1 The new s106 Officer role in place since October 2017 is responsible for monitoring s106 Obligations and control of financial administration arising from s106 Agreements. Considerable progress has been made in bringing records up to date and introducing a clearly defined process for categorising different stages of applications and monitoring financial conditions.

**2. Background of S106 Agreements**

- 2.1 Under S106 of the Town and Country Planning Act 1990, as amended, contributions can be sought from developers to be put towards the costs of providing community and social infrastructure, the need for which has arisen directly as a result of a new development taking place.

- 2.2 The purpose of the S106 Fund is therefore to support and enable local communities to provide affordable housing and improve open spaces, sport recreation and community facilities and the public realm in order to enhance the quality of life across the South Hams District.
- 2.3 It is important to note that S106 contributions may only be spent on new facilities or improvements to facilities where the new development has, at least in part, contributed to the need for that facility or will have an impact on existing facilities. This means that funding will be invested in facilities based within the same locality or catchment area in which the contributing development is located. The legislation also restricts the extent to which contributions can be pooled for larger projects.
- 2.4 The level of funding contribution is negotiated with developers during the planning application process. However the District Council normally only receives the payment of a S106 monies either when the development work commences or more often, when it is partially complete.
- 2.5 The District Council is the accountable body for the spending of S106 monies that relate to such provision as affordable housing, public open space, sport and recreational facilities and the public realm. The District Council must therefore allocate all funds in accordance with the S106 legal agreement that the District Council will have already entered into with the land owner or developer.
- 2.6 Legal agreements can include the County Council as a signatory to the agreement where developer contributions will be required for education, highways and transportation, civic amenity and library facilities, as key examples.
- 2.7 Legal agreements will normally specify a time period within which any submitted contributions must be spent (where no phasing is otherwise agreed as part of the agreement).

### **3. Monitoring of Section 106 agreements**

- 3.1 The list of S106 Deposits were shown in Appendix C of The Capital Programme Monitoring Report presented to the Executive on 1<sup>st</sup> February 2018 (Agenda item 8):

<http://mg.swdevon.gov.uk/documents/s12997/Capital%20Programme%20Monitoring.pdf>

Appendix C sets out the Section 106 contributions that the Council is in receipt of, which totals £5.498 million. This is made up of £5.227 million of S106 Deposits which have conditions attached, a further £0.038 million where there are no conditions attached, a further £0.117 million in Capital Grants Unapplied and Capital Grants Receipts in Advance of £0.115million.

- 3.2 The role of the s106 Officer (Case Manager) is that of monitoring and control of s106s Agreements. Specific work includes:
  - Review and categorisation of each Agreement for improved monitoring and maintaining an up to date record of the status of individual s106 Agreements

- Timely invoicing of funds
- Highlighting non-compliance
- Liaising with developers, officers and Members
- Providing regular updates for the Open Space Sport and Recreation (OSSR) webpage

3.3 A clear process is in place to administer all receipts and balance to the ledger. To date, sixty per cent (60%) of s106 Agreements have been reviewed and categorised according to three stages from a financial point of view:

- **Pre commencement**, - development work yet to commence, planning application in and approved.
- **Under Development** – development has commenced, stage payment/s received, actively monitored.
- **Paid in Full** – all monies invoiced and paid, development work is ongoing, monthly monitoring of spend.

The target date for completion of categorisation of remaining s106 Agreements is 31<sup>st</sup> March 2018.

3.4 Management of non-financial conditions is currently under review.

3.5 The Green Infrastructure officer role, funded through the Open Space, Sport and Recreation s106 contributions (which was part of a partnership project, and whose contract ended in July 2017 during her maternity leave) is due to return on 1<sup>st</sup> March. The role of this officer is that of securing new funds from development, and for delivering projects with the existing secured funds. It is anticipated that this will see more timely and successful utilisation of the s106 funds collected to date.

3.6 The S106 officer co-ordinates the production of updated lists of OSSR s106s by Parish/Town, the first of which was circulated to all Members, Town and Parish Councils, Neighbourhood Plan groups, with associated press releases following the July Report. The latest updated list along with supporting information is available to all at:

<https://www.southhams.gov.uk/article/4066/Funding-for-Open-Space-Sport-and-Recreation-Projects->

The list has been a useful awareness raising tool and has resulted in significant levels of contact from Town and Parishes.

#### 4. **Monitoring reports on S106 funding**

4.1 A schedule of Section 106 funds which are held by the Council are reported to Members on a quarterly basis. The latest report was to the Executive on 1<sup>st</sup> February 2018.

4.2 The Affordable Housing Supplementary Planning Document September 2008 details the management and spend of Affordable Housing contributions. Officers from Affordable Housing, OSSR and Finance will produce a further Appendix

which details the S106 contributions by Ward/Parish and splits these into the categories of Affordable Housing, OSSR and 'Other'. This will be provided in Members' Bulletins.

## **5. Update on Progress**

5.1 To be presented to Overview & Scrutiny in Qtr 1, 2018/19.

To include:

- Position of review of all agreements (due to be completed by 31 March 2018.)
- Update on review work relating to non-financial conditions. Target completion date 30 June 2018.
- An Appendix detailing issues of non-compliance issues and actions taken.

## 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>S106 agreements are secured under Section 106 of the Town and Country Planning Act to support projects that mitigate the impact of development. The Council has an obligation to spend the funds in accordance with the terms of the agreement.</p>
Financial	Y	<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> <p>The expenditure relates to s106 funds specifically for the purpose of mitigating impacts from development. The parameters for expenditure (in particular the location and type of project that can be supported) are prescribed in the s106 agreement.</p> <p>Appendix C sets out the Section 106 contributions that the Council is in receipt of, which totals £5.498 million. This is made up of £5.227 million of S106 Deposits which have conditions attached, a further £0.038 million where there are no conditions attached, a further £0.117 million in Capital Grants Unapplied and Capital Grants Receipts in Advance of £0.115million.</p>
Risk	Y	<p>There is a risk of funds not being collected or spent in accordance with the s106 agreement. To address this, where any s106 funds 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 s106 agreements are adhered to. If ambiguity exists over the appropriateness of a project, agreement of the developer will be sought.</p> <p>There is a risk of funds not being collected in accordance with the s106 agreement. A key objective of the s106 Officer is to ensure all monies are collected.</p> <p>Some s106 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</p>

		<p>not spent within the specific timeframes. Careful monitoring will prevent this from happening.</p> <p>There is a risk of funds 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> <p>There is a risk that the requirements of the Council's Financial Procedure Rules will not be met. All payments will be made in accordance with the Rules and contracting/tendering procedures where relevant.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	N/a
Safeguarding	N	N/a
Community Safety, Crime and Disorder	N	N/a
Health, Safety and Wellbeing	N	N/a
Other implications	N	none