

Report to: **Overview and Scrutiny Panel**
Date: **4 October 2018**
Title: **Section 106 Agreements (Update)**
Portfolio Area: **Support Services – Councillor Hopwood**

Wards Affected: **ALL**

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

Author: Sonia Powell Role: Case Management Manager

Contact: Email sonia.powell@swdevon.gov.uk
01803 861361

Recommendations:

That the Overview and Scrutiny Panel:

- 1. Note the progress and improvements made in monitoring and administering S106 Agreements**
- 2. Agree that monitoring of administration of S106 Agreements can be reported through the Internal Audit Reporting Cycle.**

1. Executive summary

In place since October 2017, the S106 Officer role is responsible for monitoring obligations and control of financial and non-financial administration arising within those S106 Agreements. Considerable progress has been made in bringing records up to date and a clearly defined process is in place for categorising different stages of applications and monitoring the conditions.

Last reported to Committee on 8th February 2018, this report provides a further update of the position up to 31st August 2018.

The report seeks approval for future reporting to revert back to inclusion within the standard Internal Audit Reporting Cycle.

2. Background

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.

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.

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.

The level of funding contribution is negotiated with developers during the planning application process. However the District Council normally only receives the payment of S106 monies either when the development work commences or more often, when it is partially complete.

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.

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.

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

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 (Appendix A)
- 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

The Green Infrastructure officer role, funded through the Open Space, Sport and Recreation (OSSR) S106 contributions secures new funds from developments, and is responsible for delivering projects with the existing secured funds.

The S106 officer co-ordinates the production of updated lists of OSSR S106s by Parish/Town, with updated reports published online.

The list of S106 Deposits were shown in Appendix C of The Capital Programme Monitoring Report presented to the Executive on 1st February 2018 (Agenda item 8) Updated figures will be included in the next Capital Programme Monitoring Report.

4. Monitoring reports on S106 funding

A schedule of Section 106 funds held by the Council are regularly reported to Members and were last reported to Executive on 1st February 2018.

Release of S106 funds for Affordable Housing projects was reported to Overview & Scrutiny on 14th June 2018.

The Council provides information on the South Hams website related to S106 contributions by parish and town. The latest information published, dated September 2017, related to open space, recreation and sport (OSSR) contributions and projects.
<https://www.southhams.gov.uk/article/4066/Funding-for-Open-Space-Sport-and-Recreation-Projects->

5. Update on Progress

All agreements have been reviewed and categorised according to three stages (Appendix A);

- **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 (PIF)** – all monies invoiced and paid, development work is ongoing, monthly monitoring of spend.

The records are maintained and up to date.

The review of non-financial conditions is ongoing, non-compliance issues are monitored and addressed by Placemaking CoP Lead.

The S106 2018/19 Follow Up Internal Audit Report, June 2018, recognises the continued

work by the S106 Senior Case Manager, particularly the significant changes in managing the S106 funds. Audit opinion progressed from Fundamental Weaknesses Identified to Improvements Required.

Improvements include;

- Ongoing reconciliation of funds between spreadsheets and General Ledger,
- Direct liaison with other services, such as Land Charges,
- Maintaining an electronic Smartsheet S106 Register and setting automated reminders from the Register for key target dates,
- Legal Services sending notification of Agreements, with a summary of obligations, to all relevant services,
- Direct communication with developers to obtain updates on progress of building completions,
- Arranging for developers to pay funds direct to Devon County Council and other related third parties,
- Prompt raising of invoices and coding of funds received,
- Calculation and recovery of monitoring fees.

Further improvements continue in collaboration with Affordable Housing, OSSR, Finance and Placemaking Cop Lead.

6. Proposed Way Forward

The Committee acknowledges much progress has been made in this area and agrees that administration of S106 can be monitored and reported through the Internal Audit Reporting Cycle.

7. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	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.
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>

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 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