

Report to: **Executive**

Date: **3 December 2020**

Title: **Allocation of Section 106 Funds for Open Space, Sport and Recreation Projects**

Portfolio Area: **Cllr Jonathan Hawkins**  
**Executive Lead: Parks and Play Parks, Leisure and Health and Wellbeing**

Wards Affected: **Bickleigh and Cornwood**  
**Dartington and Staverton**  
**Ivybridge West**  
**Marldon and Littlehempston**

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

Date next steps can be taken: **Upon the expiry of the Scrutiny Call-in period: 5.00pm on Monday, 14 December 2020**

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**Recommendations:**

**Allocation of s106 funds for OSSR listed in Table 1 (Bickleigh and Cornwood; Dartington and Staverton; and Ivybridge West wards)**

- 1. To approve the release or allocation of s106 funds for Open Space, Sport and Recreation projects as set out in Table 1.**
- 2. That where a project is identified, that agreement of specific details be delegated to the Head of Place Making in consultation with the Ward Member(s) and Portfolio Holder.**
- 3. Agreement to any substitution of alternative projects to those identified in Table 1 shall be delegated to the Head of Place Making in consultation with the Ward Member(s) and Portfolio**

**Holder subject to the alternative being in accordance with the s106 agreement.**

**Allocation of s106 funds for OSSR listed in Table 2 (Marldon and Littlehempston ward)**

- 1. To approve the allocation of up to £45,000 towards the renewal of Torfield play area subject to the conditions set out in paragraph 5.12 of the report.**
- 2. That the conditions be discussed at a meeting of elected members of the Parish Council, the District Council and members of the Marldon community, facilitated by officers from the District Council.**
- 3. That approval that the conditions set out in paragraph 5.12 of the report have been met be delegated to the Director of Place and Enterprise in consultation with the Ward Member, Portfolio Holder and Head of Legal Services.**
- 4. To approve the allocation of the remainder of the funds available in Marldon in accordance with a Parish OSSR Plan.**
- 5. That agreement of details of specific projects within the OSSR plan to be delegated to the Head of Place Making in consultation with the Ward Member and Portfolio Holder.**

**1. Executive summary**

- 1.1. The Council has a key role as Local Planning Authority in securing funds for appropriate mitigation projects in relation to development. These funds can be deployed either directly on Council projects or released to Town/Parish Councils, community groups and other organisations to develop projects that assist in mitigating the impact of developments. The current mechanism for securing funds is through Section 106 (s106) of the Town and County Planning Act 1990.
- 1.2. The Council has secured s106 funds for a number of Open Space, Sport and Recreation projects. The Council's Financial Procedure Rules require that where expenditure is proposed over £30,000 that this be authorised by Executive. The purpose of this report is to request the release or allocation of s106 funds over £30,000 for delivery of a number of projects.
- 1.3. The release of funds will allow the provision of enhancements to open space, sport and recreation facilities to mitigate the impacts of specific developments.
- 1.4. The report anticipates expenditure of both funds already held by the Council, but also those committed in s106 agreements but yet to be triggered by development. This is to allow a long term and comprehensive approach to be taken to projects and, in particular, allow Town and Parish Councils, community groups and other organisations to plan and phase projects and maximise chances to gain match funding from other sources.
- 1.5. The report also considers the application from Marldon Parish Council for £45,000 s106 funds for the renewal of Torfield play area (see paragraphs 5.9 – 5.16).

**2. Background**

- 2.1. Where development creates an impact on a local community it is appropriate that reasonable mitigation be put in place to deal with that impact. Where the impact can't

be mitigated on the site then it is appropriate to seek financial contributions for offsite projects. The current mechanism for this is through agreements signed under Section 106 of the Town and Country Planning Act 1990. For Open Space, Sport and Recreation, financial contributions have been sought in accordance with the planning policy in place at the time of planning permission (previously DPD policy CS8 and the 2006 Open Space, Sport & Recreation Supplementary Planning Document and currently Joint Local Plan Policies DEV4 and DEV27 and the JLP Developer Contributions Evidence Base 2020).

- 2.2. Under the Community Infrastructure Levy (CIL) (Amendment) (England) (No.2) Regulations 2019 there are clear constraints on the collection and use of s106 funds. The purposes to which the funds are applied must be:
  - Necessary to make the development acceptable in planning terms;
  - Directly related to the development; and
  - Fairly and reasonably related in scale and kind to the development.
- 2.3. From April 2015 until September 2019 there were restrictions on the pooling of planning obligations. Only five s106 contributions could be pooled for use on the same infrastructure project (dating back to March 2010). Where historically s106 agreements often referred to improvements to open, space, sport and recreation facilities within a parish/across the District, during this period agreements typically named a specific project(s) based upon evidence of need<sup>1</sup>.
- 2.4. The pooling restrictions were lifted on 1 September 2019, although the constraints on the collection and use of funds listed at 2.2 above still need to be taken into account.
- 2.5. The Council has secured s106 agreements for Open Space, Sport and Recreation projects in the following wards:
  - Bickleigh and Cornwood;
  - Dartington and Staverton;
  - Ivybridge West; and
  - Marldon and Littlehempston.
- 2.6. Some of this money has already been received by the Council and the remainder has been secured through s106 agreements and will be received by the Council when the relevant triggers detailed in the agreements are met. It does need to be noted that if development doesn't advance that the contributions won't need to be made.
- 2.7. Once received, funds are held in ring fenced accounts by the Council and projects are then developed to deliver the required outcomes – with opportunities to maximise benefits and to lever in additional funding being key outcomes from such projects. Some projects take place on Council land but a significant number take place on third party land. Where they take place on third party land the funds are offered by way of a conditional grant which secures the Council's interests and the specific requirements of the s106 agreement.
- 2.8. The Council's Financial Procedure Rules require that where expenditure is proposed over £30,000 that this be authorised by Executive. Detailed proposals regarding the expenditure of secured s106 funds can be found in section 5 of this report.

### 3. **Outcomes/outputs**

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<sup>1</sup> The Evidence Base includes the 2015 Playing Pitch Strategy, 2017 Open Space, Sport and Recreation Study (including Greenspace and Play Audits) and other relevant Town/Parish documents including Neighbourhood Plans.

- 3.1. The desired outcome is the provision of enhancements to open space, sport and recreation facilities to mitigate the impacts of specific developments.
- 3.2. In combination the received and anticipated funds will deliver a significant number of facility improvements across the South Hams. Early agreement of the funds allows projects to be planned and phased and maximises chances to gain match funding from other sources.

#### 4. **Options available and consideration of risk**

- 4.1. The Council has a legal obligation to spend the s106 funds in accordance with the agreements. There are two main alternative approaches for expenditure of the s106 funds:

##### **Option 1 – The Council develops and delivers projects**

- 4.2. The first option is for the Council to develop and deliver projects. This allows more control over project plans and potentially more certainty that they will be delivered in accordance with the requirements of the s106 agreement. However there is an implication in with regard to time resource, and other partners may be best placed to develop projects, lead community consultation and bring in other funds, especially when projects are taking place on their land.

##### **Option 2 – The Council passes funds to community groups/other organisations to develop and deliver projects**

- 4.3. The second option is to pass s106 funds to Town or Parish councils/community groups/other organisations to develop and deliver projects. Where the Council has done this in the past, the offers of grants have been made with the appropriate terms and conditions securing the interest of the Council and ensuring that the requirements of the s106 agreements are adhered to.
- 4.4. The Council has also promoted the development of Town or Parish Open Space, Sport and Recreation Plans which help to determine the local priority for spend on Open Space, Sport & Recreation. These plans are informed by the relevant evidence base for the Joint Local Plan, namely the Playing Pitch Strategy and Open Space, Sport and Recreation Study (including Greenspace and Play Audits).
- 4.5. The Neighbourhood Planning process also provides an opportunity for communities to consider the priorities for investing s106 funds in open space, sport and recreation projects.
- 4.6. The Council is keen to maximise benefits for communities by ensuring that match funding is sought wherever possible.
- 4.7. In reality it is likely that some projects will be developed and delivered via Option 1 and some via Option 2.

#### 5. **Proposed Way Forward**

- 5.1. Proposals for the expenditure of secured s106 funds are detailed below.
- 5.2. Table 1 overleaf details proposed projects for consideration and agreement in the following wards:
  - Bickleigh and Cornwood;
  - Dartington and Staverton; and

- Ivybridge West.

- 5.3. Table 2 overleaf details the proposed projects for consideration and agreement in the Marldon and Littlehempston ward. This expenditure would be subject to the conditions set out in paragraph 5.12.
- 5.4. The penultimate column in Tables 1 and 2 lists the project(s) on which it is proposed the funds be spent. Note that in many cases a specific project(s) has already been named within the s106 agreement based upon evidence of need.
- 5.5. Funds identified for release are either already held in a Council account or have been secured through a s106 agreement with funds due to be received when the relevant trigger detailed in the agreement is met. No project funds will be released until all supporting payments have been received from the developer and banked by the Council to allow the full costs to be covered.
- 5.6. The figures given in Table 1 may vary due to:
- Inflationary adjustments that will take place between the point at which the 106 is signed and the point at which the payment is received.
  - The majority of contributions are subject to a 5% monitoring fee which will be deducted.

#### **s106 Funds over £30,000 for Open Space Sport and Recreation Projects in Bickleigh & Cornwood; Dartington & Staverton; and Ivybridge West**

- 5.7. Consultation with the Ward Member(s) and the Portfolio Holder (taking into account the views of the relevant Town or Parish Council) will be undertaken to finalise the specific details of identified projects in Table 1.
- 5.8. In recognition that Ward Members and Town and Parish Councils might have different suggestions for projects, alternative projects to those identified in Table 1 may be substituted subject to Ward Member and Portfolio Holder agreement (as well as compliance with the s106 agreement).

#### **s106 Funds over £30,000 for Open Space Sport and Recreation Projects in Marldon & Littlehempston**

- 5.9. The available s106 funds in Marldon parish are £129,976.48 towards the provision or improvement of open space, play, sports, recreation and community facilities.
- 5.10. Marldon Parish Council has submitted an application to SHDC for £45,000 s106 funds towards the refurbishment of Torfield Play Area. The application was received on 13<sup>th</sup> October 2020.
- 5.11. Within the application from the Parish Council there is evidence of community support for the proposals in the form of e-mails to the Parish Council. Further e-mails of support have been submitted to the Council in recent weeks. However, from the questions submitted to the question time at the Executive meeting held on 22<sup>nd</sup> October 2020, it is clear that some members of the community have concerns about the project. The concerns raised relate to the following:
- Public consultation – was sufficient consultation undertaken and was it advertised sufficiently?
  - Tendering process - Was the tendering sufficient and were the contractors given the same brief?
  - Final quotation – no final confirmed quote

- Funding – no confirmed funding in place
- Feasibility – concerns over ground conditions (hard bedrock close to surface)
- Refurbishment – has due consideration been given to refurbishment and improvement of current equipment?

- 5.12. Given the concerns raised, and in order to ensure the correct use of public funds, it is recommended that the allocation of up to £45,000 towards the renewal of Torfield play area be approved subject to the Council being satisfied that Marldon Parish Council has:
- a) Undertaken an appropriate level of public consultation;
  - b) Carried out a fair, transparent and objective procurement process; and
  - c) Secured match funding for the remainder of the project.
- 5.13. It is proposed that the above points be discussed at a meeting of elected members of the Parish Council, the District Council and members of the Marldon community, facilitated by officers from the District Council.
- 5.14. Subject to 5.13, the Director for Place and Enterprise, in consultation with the Ward Member, Portfolio Holder and Head of Legal Services will be authorised to say whether the conditions set out in paragraph 5.12 have been met.
- 5.15. It is recommended that the remainder of the funds available in Marldon are allocated in accordance with a Parish OSSR Plan.
- 5.16. Parish OSSR Plans ensure that all local OSSR projects are considered and prioritised in consultation with local sports clubs, community groups and parish residents. This ensures the most effective allocation of any available s106 funds. OSSR Plans will need to be compliant with CIL Regs and should be informed by the relevant evidence base for the Joint Local Plan, namely the Playing Pitch Strategy and Open Space, Sport and Recreation Study (including Greenspace and Play Audits).
- 5.17. Consultation with the Ward Member and the Portfolio Holder (taking into account the views of the Parish Council) will be undertaken to agree details of specific projects within the OSSR plan.

**Table 1: s106 Funds over £30,000 for Open Space Sport and Recreation Projects in Bickleigh & Cornwood; Dartington & Staverton; and Ivybridge West**

Parish	Site & Related Planning Application	Ward	Financial Contribution or Contribution Remaining	Status	Purpose of s106 funds	Proposed project(s)	Spend or commit by
Bickleigh	Allern Lane, Tamerton Foliot 04/1129/15/F (APP/K1128/W/16/3167179)	Bickleigh & Cornwood	£103,029.56	Funds received	Towards improvements to football pitches at Aylesbury Crescent and the Roborough Sports Ground	Aylesbury Crescent (Plymouth City Council area) and the Roborough Sports Ground	13/02/2025
Dartington	Brimhay Bungalows 14/0142/15/F	Dartington & Staverton	£44,752.50	Funds received	Improvements to either Gidley Meadows play area, a new MUGA at Meadowbrook or drainage improvements to Dorothy Elmhist Recreation Field	Gidley Meadows Play Area (c.£15,000 to be matched with SHDC capital)  MUGA at Meadowbrook  Drainage at Dorothy Elmhist Recreation Field	No time limit
Ivybridge West	Land at Woodland Road (Phase 2) 3954/17/FUL	Ivybridge West	£35,000	£97,231.11 received to date, remaining 50% on occupation of 75% of dwellings.	Towards the extension of Ivybridge Cemetery	Extension of Ivybridge Cemetery	1 <sup>st</sup> instalment to be spent by 15/05/2030
			£166,705		Towards the purchase of additional land for pitches in Ivybridge; and/or Clubhouse Extension and pitch improvements for Ivybridge Football Club at Erme Valley Playing Fields; and/or Improvements to and extension of changing facilities for Ivybridge Rugby Club; and/or Upgrade of All Weather Pitch with Community Use Agreement at Ivybridge College.	Purchase of additional land for pitches in Ivybridge  Clubhouse Extension and pitch improvements for Ivybridge Football Club at Erme Valley Playing Fields (Clubhouse extension c.£94,000)  Improvements to and extension of changing facilities for Ivybridge Rugby Club  Upgrade of All Weather Pitch with Community Use Agreement at Ivybridge College (£50,000)	

**Table 2: s106 Funds over £30,000 for Open Space Sport and Recreation Projects in Marldon and Littlehempston**

Parish	Site & Related Planning Application	Ward	Financial Contribution or Contribution Remaining	Status	Purpose of s106 funds	Proposed project(s)	Spend or commit by
Marldon	Moorview 34/2184/13/O	Marldon & Littlehempston	£129,976.48	Funds received	Towards the provision or improvement of open space, play, sports, recreation and community facilities	Tor Field Play Area - up to £45,000. Subject to the conditions set out in section 4.2, Appendix 1.  Remainder TBC via OSSR Plan	07/07/2027

## 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 1990 to support projects that mitigate the impact of development.</p> <p>The Council has an obligation to spend the funds in accordance with the terms of the agreement.</p> <p>Under the Community Infrastructure Levy (CIL) (Amendment) (England) (No.2) Regulations 2019 there are clear constraints on the collection and use of s106 funds. The purposes to which the funds are applied must be:</p> <ul style="list-style-type: none"> <li>• Necessary to make the development acceptable in planning terms;</li> <li>• Directly related to the development; and</li> <li>• Fairly and reasonably related in scale and kind to the development.</li> </ul> <p>The Council has powers to promote wellbeing under the General Powers of Competence in the Localism Act 2011.</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>Proposals for expenditure over £30,000 are set out in section 5.</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>It is noted that in delivering a project, any organisation is expected to follow its own Financial Procedure Rules (including procurement).</p>
Risk	Y	<p>There is a risk of funds not being spent in accordance with the s106 agreement. To address this, where any s106 funds are passed to community groups to develop and deliver projects,</p>

		<p>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>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. In addition the development of town/parish Open Space, Sport and Recreation Plans (where relevant) ensures that priorities are known and that projects can be readily progressed.</p> <p>There is a risk of funds not being allocated in accordance with community aspirations and that community benefits may not be secured for the long term. The development of town/parish Open Space, Sport and Recreation Plans (where relevant) ensures that the town/parish priorities are known. All plans for expenditure will be agreed with Ward Councillors and Town/Parish Councils and will need to comply with the s106 agreement and pooling restrictions. 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> <p>It is noted that in delivering a project, any organisation is expected to follow its own Financial Procedure Rules (including procurement) and the District Council may ask for evidence that these have been followed (e.g. as a condition of grant, or in assessing a project proposal).</p>
Supporting Corporate Strategy	Y	The allocation of s106 funds supports the Corporate themes of Communities and Wellbeing.
Climate Change – Carbon/Biodiversity Impact		Projects need to take into account climate change and biodiversity impact, minimising impacts as far as possible.

Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	Projects need to address accessibility issues to ensure access to all wherever reasonable and practicable.
Safeguarding	N	N/A
Community Safety, Crime and Disorder	N	N/A
Health, Safety and Wellbeing	Y	Enhancements to Open Space, Sport and Recreation facilities are closely linked with improved health and wellbeing.
Other implications	N	

### **Supporting Information**

#### **Appendices:**

None

#### **Background Papers:**

None