



SOUTH
KESTEVEN
DISTRICT
COUNCIL

Governance and Audit Committee

20 October 2021

Report of: Councillor Nick Robins
Cabinet Member for Planning and
Planning Policy



Section 106 Monitoring Update Report

The purpose of this report is to update the Governance and Audit Committee on the status of Section 106 Funds and the monitoring of contributions and other requirements from Section 106 agreements for this year, as requested by the Committee in February and June 2021.

Report Author

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Corporate Priority:	Decision type:	Wards:
Growth	Administrative	All Wards
Reviewed by:	Emma Whittaker (Assistant Director of Planning)	12 October 2021
Approved by:	Nicola M ^c Coy-Brown (Director of Growth and Culture)	12 October 2021
Signed off by:	Councillor Nick Robins (Cabinet Member for Planning and Planning Policy)	13 October 2021

Recommendation to the decision makers

1. That the Governance and Audit Committee notes the contents of this report.

1. The Background to the Report

- 1.1** The planning process supports the delivery of key objectives for the District including delivering key development sites as allocated in the Local Plan. This includes delivery of key housing and employment sites which is key to achieving the priorities set out in the Corporate Plan (2020-2023).
- 1.2** Planning obligations can be requested under Section 106 of the Town and Country Planning Act 1990 (as amended) and are legal agreements which help to make a proposed development acceptable in planning terms, that would not otherwise be acceptable. The obligations are focused toward site specific mitigation of the impact of development.
- 1.3** When planning obligations are negotiated, it is necessary to ensure that Planning Officers consider the requirements of the Community Infrastructure Levy Regulations (2010) (CIL Regulations), the National Planning Policy Framework (NPPF) and the Local Plan. Regulation 122 of the CIL Regulations stipulates that a planning obligation can only be a reason for granting planning permission where it meets all the following three tests:
 - (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
- 1.4** The NPPF reiterates these tests and confirms that planning obligations should only be used where it is not possible to address unacceptable impacts through a condition. The NPPF also confirms that where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable and it is for the applicant to demonstrate otherwise.
- 1.5** Planning Obligations can require the provision of infrastructure either on site or through the provision of a commuted sum. They can also be used to require a development to be carried out in a particular way. Typically, they will be used to provide affordable housing, recreational facilities, education provision and highways works.
- 1.6** Planning Obligations run with the land and are legally binding and enforceable.
- 1.7** South Kesteven District Council's requirements for Section 106 planning obligations are set out in the Council's adopted Local Plan, with additional guidance available in the Planning Obligations Supplementary Planning Document (June 2012).
- 1.8** The 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 Council must therefore allocate all funds in accordance with the S106 legal agreement that the Council will have already entered into with the landowner or developer prior to the grant of the planning permission. Unspent contributions should be paid back to developers and there will often be clauses within planning obligations to this effect.
- 1.9** Legal agreements can include the County Council as a party to the agreement where, for example, developer contributions are required for education, highways and transportation, civic amenity and library facilities.
- 1.10** In accordance with requirements set out in the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019, the Council is required to publish an

Infrastructure Funding Statement (IFS); the first IFS was published in December 2020 and should be updated annually.

- 1.11 The IFS summarises the Council's position in relation to Section 106 funds that the Council holds, what funds have been spent in the Reporting Period and what has secured for the future. A link to the *South Kesteven District Council Infrastructure Funding Statement 2019/2020* can be found in the background documents section of this report.

2. Current Position

- 2.1 This Report provides an update on the current Section 106 funds and monitoring activity up to 30 September 2021.

- 2.2 Since the publication of the Infrastructure Funding Statement, monitoring of contributions due, received and spent has continued with the following having been recorded in the period 1 December 2020 to 30 September 2021:

- **£460,080.39** has been received from developers in payment for contributions.
- **£100,107.58** has been requested from developers as certain S106 trigger points have been met for the development.
- **£358,148.53** is due to be distributed to local bodies to spend on community projects.
- **£107,662.14** is due to be spent by SKDC to deliver community projects in the District.
- **£45,339.42** has recently been approved to be paid to the NHS to provide, extend, improve or alter health facilities within Bourne. We are advised that it will be used against the Bourne Galletly Practice.

- 2.3 A schedule of Section 106 funds held by the Council is regularly reported to The Planning Committee and was last reported on 14 April 2021. The next update is scheduled to be presented on 28 October 2021.

- 2.4 The Planning Enforcement and Monitoring Technician is responsible for the monitoring of Section 106 Agreements, including financial obligations, the provision of Public Open spaces on new developments where land is to be offered to the Council for adoption, Affordable Housing and other non-financial obligations. Where developers fail to comply with the requirements of their planning obligations then the Council will take appropriate steps to ensure compliance. The Monitoring Officer will also monitor the funds held to ensure that they are spent appropriately and to minimise the risk of unspent funds that have to be returned to developers.

- 2.5 Officers have progressed with the recommendations of December's Section 106 Audit, which were due to be implemented before 30 April 2021. A S106 Corporate Working Group has been established which will embed professional and transparent governance into all aspects of processing S106 Agreements and their associated obligations. Work around the governance and role of the working group continues and further updates will be provided in the next update report to this Committee.

3. Consultation and Feedback Received, Including Overview and Scrutiny

- 3.1 None Received

4. Available Options Considered

- 4.1 No other options. This report is provided to Members for information.

5. Preferred Option

5.1 None Considered

6. Reasons for the Recommendation

6.1 To ensure Members have an overview of Council's Section 106 funding activity.

7. Next Steps – Communication and Implementation of the Decision

7.1 Policy and procedures will be regularly reviewed to ensure they meet with national and local requirements.

8. Financial Implications

8.1 The report sets out the current status of the amount of s106 funds held by the Council. The Council is required to publish an annual Funding Statement each year which provides total transparency of the funds received and how they are distributed and utilised.

Financial Implications reviewed by: Richard Wyles, Assistant Director of Finance and s151 Officer

9. Legal and Governance Implications

9.1 S106 agreements are secured under Section 106 of the Town and Country Planning Act 1990 (as amended) 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 which are agreed prior to the grant of planning permission.

9.2 The clear constraints on the collection and use of Section 106 funds are set out in paragraph 1.3 of this report.

Legal Implications reviewed by: Mandy Braithwaite, Legal Executive

10. Equality and Safeguarding Implications

10.1 There is a need to release the potential of the District's land and buildings to achieve measurable improvements in the area's economic prosperity, transportation networks, infrastructure and facilities; and the quality of life for all our citizens. This will include safeguarding and improving the standards of the district's amenities and improving the quality of the natural and built environment and is considered through the planning decision making process.

11. Community Safety Implications

11.1 There are no direct community safety implications resulting from this report.

12. How will the recommendations support South Kesteven District Council's declaration of a climate emergency?

12.1 Policies within the South Kesteven District Council Local Plan require that developers achieve high standards of sustainable design and construction in their schemes to mitigate against and adapt to climate change.

12.2 There are a range of tools in determining planning applications and approving development that may be used to achieve high quality developments through the planning process to both mitigate and adapt to the effects of climate change, and minimise emissions of carbon dioxide arising from development, including using planning obligations through Section 106 Agreements.

12.3 There will be a neutral effect to the Council's climate emergency declaration from this report. However, the Planning and Section 106 process has the potential to have a positive effect.

13. Background document

13.1 *South Kesteven District Council Infrastructure Funding Statement 2019/2020*, published December 2020 and available online via:

<http://www.southkesteven.gov.uk/CHttpHandler.ashx?id=27055&p=0>