



SOUTH
KESTEVEN
DISTRICT
COUNCIL



Finance, Economic Development and Corporate Services Overview and Scrutiny Committee


21 February 2023

Report of Councillor Nick Robins
Portfolio Holder for Planning and
Planning Policy

Section 106 (Planning Obligations) Agreement Monitoring Update Report

Report Author

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Purpose of Report

To provide an overview of the Section 106 (planning obligation) process, an update on recruitment and the recent Infrastructure Funding Statement.

Recommendation

It is recommended the Finance, Economic Development and Corporate Services Overview and Scrutiny Committee:

- 1. Agrees to receive proposals on a new charging framework for the monitoring of Section 106 allocations, at a future meeting.**

Decision Information

Does the report contain any exempt or confidential information not for publication?

No

What are the relevant corporate priorities?

- Growth and our economy
- Housing that meets the needs of all residents
- Healthy and strong communities
- Clean and sustainable environment
- High performing Council

Which wards are impacted?

All Wards

1. Implications

Taking into consideration implications relating to finance and procurement, legal and governance, risk and mitigation, health and safety, diversity and inclusion, safeguarding, staffing, community safety, mental health and wellbeing and the impact on the Council's declaration of a climate change emergency, the following implications have been identified:

Finance and Procurement

- 1.1 The expenditure relates to Section 106 (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.
- 1.2 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.

Completed by: Richard Wyles, Chief Finance Officer

Legal and Governance

- 1.3 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.

Completed by: Graham Watts, Assistant Director of Governance and Monitoring Officer

Risk and Mitigation

- 1.4 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 the requirements of the S106 agreements are adhered to.
- 1.5 There is a risk of funds not being collected in accordance with the s106 agreement. A key objective of the Infrastructure Delivery Officer is to ensure all monies are collected.
- 1.6 Some s106 agreements have 'clawback' clauses allowing the developers to be repaid the money if it is not spent within a certain timeframe. There is therefore a risk of communities losing out if money is not spent within specific timeframes. Careful monitoring by the Infrastructure Delivery Officer will prevent this from happening.
- 1.7 There is a risk of funds not being spent in accordance with community aspirations and community benefits may not be secured for the long term. Any recipients of grant offers will need to hold necessary powers and have suitable organisational structures in place. Where necessary, Community Use Agreements will be implemented to secure long term community use of facilities funded by s106 contributions.

2. Background to the Report

- 2.1 The planning system plays a key role in the delivery of outcomes to support economic growth and sustainable neighbourhood across South Kesteven. This includes housing and commercial development as identified in the Council's Local Plan. This, along with the delivery of environments and development that respond to the Council's climate change and quality agenda are key to achieving the priorities in the Council's Corporate Plan (2020-2023).
- 2.2 Planning Obligations, also known as Section 106 Agreements (s106), can be requested under the Town and County Planning Act (1990) (as amended) and are legal agreements used to mitigate the impact of a proposed development where it is not possible to do so by condition. Such agreements are legally binding and are entered into between a local planning authority and the owner and developers of land on which planning permission is sought. Such agreements may include obligations to undertake work and obligations to make a payment. Typically, they are used to secure infrastructure such as affordable housing, highways improvements, education contributions and leisure facilities such as open space and play parks. The obligations are focused on site specific mitigation of the impact of the development.
- 2.3 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.

- 2.4 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 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.
- 2.5 Planning Obligations either require the provision of infrastructure directly on the site itself or they can require a contribution or commuted sum towards provision elsewhere. They can also be used to restrict the use of the land in a particular way. These agreements run with the land and are legally binding.
- 2.6 South Kesteven District Council's requirements for Section 106 agreements are set out in the Council's Local Plan and the adopted Planning Obligations Supplementary Planning Document (June 2012). Planning officers will negotiate planning obligations based on policy requirements and to mitigate any adverse impacts of a development proposal.
- 2.7 Lincolnshire County Council (LCC) will often be a party to these agreements. In these instances, contributions for matters such as Highways and Education will be monitored, collected and spent by directly by LCC. In most other circumstances, South Kesteven District Council is the accountable body for the collection and spending of any contributions. Any funds collected must be spent in accordance with the terms of the legal agreement 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.
- 2.8 Following the meeting of the Governance and Audit Committee on 21 October 2021, it has been confirmed the reporting of performance in relation to S106 monitoring be considered by this Committee.

Infrastructure Funding Statement

- 2.9 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. The most recent IFS was published in December 2022 (**Appendix A**).
- 2.10 The IFS summarises the Council's position in relation to Section 106 funds the Council holds, what funds have been spent in the Reporting Period and what has secured for the future. In particular, the Committee should note the high level summaries on (**Appendix A**) pages 5-6 (tables 1-3).

2.11 The legislation sets out the IFS should, as a minimum contain the following information:

- details of new planning obligations which were agreed upon during the reported year
- the amount of money which was received during the reported year
- the monies which have either been allocated or expended within the reported year
- the amount of monies retained at the end of the reported year
- a breakdown of any non-monetary obligations.

2.12 The IFS sets out a detailed breakdown of the planning obligations entered into in 2021/2022, along with the affordable housing delivered across South Kesteven in the same period (**Appendix A**, table 4, page 5).

Infrastructure Delivery Officer role/Recruitment

2.13 Since the last report to the Governance and Audit Committee, a restructure of the Planning Service has taken place. A new Infrastructure Delivery Officer post has been created and a recruitment process is currently underway to fill the role. Once recruited to, a review of the processes from negotiation through to monitoring and collection, and spending and delivery of obligations will take place. The post holder will engage with the Parish and Town Councils around infrastructure need at a local level.

2.14 An Officer Working Group was set up in 2021 following an audit into s106 agreements. However, on review, further work is required around the governance and role of that Officer Working Group. The purpose of establishing an officer group, is to make it easier to co-ordinate day-to-day infrastructure planning and delivery matters and to link in with wider corporate aspirations, including the delivery of the Council's Corporate Plan.

2.15 The Council can charge fees for the work undertaken to monitor s106 agreements. Once the Infrastructure Delivery Officer post has been recruited to, work will be carried out to create a charging scheme. This will need to be on a cost recovery basis. New Fees and Charges will need to be agreed in the usual way and this Committee will be involved in establishment of a new fee setting structure.

Policy Update

2.16 The Council's Local Plan is currently undergoing a review. It is expected the draft Plan will be submitted for examination in March 2024 and anticipated to be adopted the following year.

2.17 The Council's current Supplementary Planning Document (SPD) will be updated once the next local plan has been adopted, although work on this will likely begin once the plan has been submitted for examination.

- 2.18 In the meantime up-to-date evidence and information can be used to justify planning obligations and this will be carried out on a case-by-case basis. For example, as part of the local plan review, work has been commissioned to review the District's open space and leisure provision. This will inform and update the requirements for new developments that are currently identified in the adopted local plan.
- 2.19 Whilst it will be beneficial to update the SPD, the age of the document does not prevent the Council from securing infrastructure to meet the needs of any proposed developments.
- 2.20 A new Infrastructure Levy will be introduced as part of the Levelling Up and Regeneration Bill which would largely replace the existing Community Infrastructure Levy (CIL) and s106 agreements. Whilst CIL was discretionary, local authorities will be required to charge the new levy and we will be required to prepare infrastructure delivery strategies to outline how the Council will implement the levy income. The government should be consulting on further details in relation to the proposed infrastructure levy.

3. Key Considerations

- 3.1 An updated position on staffing, recruitment and the relevant planning policy is contained within the body of the report for information and review.

4. Other Options Considered

- 4.1 The Council is required to publish the Infrastructure Funding Statement in accordance with the legislation. Therefore, the do-nothing option was discounted.

5. Reasons for the Recommendations

- 5.1 As confirmed at paragraph 2.15, the Council can charge fees (on a cost recovery basis) for the work undertaken to monitor s106 agreements. Once the Infrastructure Delivery Officer is in post, new Fees and Charges will need to be agreed. To provide elected Members with the opportunity to suggest enhancements to the extent and clarity of the information produced, it is recommended a report on establishing a new fee setting structure is presented shortly thereafter.

6. Background Papers

- 6.1 *South Kesteven District Council Infrastructure Funding Statement*, published December 2022 and available online at:
www.southkesteven.gov.uk/CHttpHandler.ashx?id=29059&p=0
- 6.2 *Section 106 Monitoring Update Report – Report to Governance and Audit Committee*, published on 20 October 2021, available online at:

<https://moderngov.southkesteven.gov.uk/documents/s31218/Section%20106%20Monitoring%20Update%20Report.pdf>

- 6.3 *Local Plan for South Kesteven Planning Obligations Supplementary Planning Obligations*, published June 201, available online at:
<http://www.southkesteven.gov.uk/CHttpHandler.ashx?id=13870#:~:text=Keep%20South%20Kesteven%20clean%2C%20green,Support%20good%20housing%20for%20all>

7. Appendices

- 7.1 Appendix A: South Kesteven District Council Infrastructure Funding Statement (December 2022)