



SOUTH
KESTEVEN
DISTRICT
COUNCIL



Planning Committee


7 December 2023

Report of Councillor Phil Dilks
Cabinet Member for Housing and Planning

Annual Infrastructure Funding Statement (2022-2023) and Section 106 Update (as of November 2023)

Report Author

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Purpose of Report

To provide an update on Section 106 planning obligations and review the content of the Infrastructure Funding Statement (2022-2023) before its publication.

Recommendations

It is recommended the Planning Committee:

- 1. Reviews the publication of the Infrastructure Funding Statement (Appendix A) before its publication.**
- 2. Agrees to receive a report regarding the review of Section 106 processes and practices in six months.**

Decision Information

Does the report contain any exempt or confidential information not for publication?

N/A

What are the relevant corporate priorities?

- Growth and our economy
- Housing that meets the needs of all residents
- 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: (insert name and job title)

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: (insert name and job title)

Risk and Mitigation

- 1.4 The Annual Infrastructure Funding Statement provides factual information. It does not make formal financial commitments The Infrastructure Funding Statement is

subject to annual review which mitigates any residual risk. There are no specific risks to consider.

2. Background to the Report

- 2.1 The planning process supports the delivery of the Council's economic growth and sustainable neighbourhood ambitions as identified in the Corporate Plan (2020-2023). This includes housing and commercial development as identified in the Council's Local Plan. It is important to ensure planning delivers environments and developments which respond to the Council's climate change agenda, whilst providing sufficient and sustainable infrastructure to mitigate the impact of the development.
- 2.2 Planning obligations are legal agreements between developers and Local Authorities, used to mitigate the impacts of a proposed development where it is not possible to do so by condition. Such agreements are legally binding and may include obligations to directly provide infrastructure or other mitigation, or to provide a contribution towards improvements. Obligations can also be used to restrict the use of the land in a particular way. Typically, these agreements are used to secure infrastructure such as affordable housing, highways improvements, education provision and leisure facilities such as open space and play parks.
- 2.3 When planning obligations are negotiated, it is necessary to ensure the Planning Authority consider the requirements of the Community Infrastructure Levy Regulations (2010) (CIL Regulations), the National Planning Policy Framework (NPPF) and the Local Plan.
- 2.4 Regulation 122 of the CIL Regulations sets out the three legal tests that must be complied with when entering into a planning obligation. Essentially, any obligation must be;
 - (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.
- 2.5 The NPPF reiterates these tests and confirms planning obligations should only be used where it is not possible to address unacceptable impacts through a condition. All planning obligations are registered against the land and must be complied with by whoever develops/owns the land.
- 2.6 South Kesteven District Council's (SKDC) requirements for planning obligations are set out in the Council's Local Plan and the adopted Planning Obligations Supplementary Planning Document (June 2012) (SPD). Planning Officers will

negotiate planning obligations based on policy requirements and to mitigate any adverse impacts of a development proposal.

- 2.7 It is often the case, Lincolnshire County Council (LCC) will be a party to these agreements where the mitigation relates to highways and education, for example. In these cases, LCC will be responsible for monitoring and collecting contributions or ensuring on-site provision in relation to those obligations. In most other cases, SKDC is the accountable body for the collection and spending of any contributions or ensuring on-site delivery/general compliance with the Obligations. Any financial contributions collected must be spent in accordance with the terms set out in the agreement which was negotiated before planning permission was collected.
- 2.8 For other contributions, such as those collected on behalf of the National Health Service (NHS), the Council must wait for those bodies to identify suitable projects the contribution can be spent on before releasing the funds. This is because SKDC remains the accountable body and must be satisfied the contributions are being spent in accordance with the requirements of the legal agreement.
- 2.9 Financial contributions are usually subject to indexation, meaning the amount ultimately collected goes up or down according to the financial indexes. Additionally, there are usually penalty payments for overdue payments. Unspent contributions should be paid back to the developer and there will often be clauses within the planning obligation to this effect.

Infrastructure Delivery Officer

- 2.10 During a restructure of the Planning Department (Winter 2022/2023), the role of Infrastructure Delivery Officer was created, replacing a more administrative monitoring role. Following a competitive recruitment process, the role was successfully recruited to in September 2023. The role involves monitoring and recording obligations as well as liaising with stakeholders to ensure any financial contributions are appropriately spent. This is a positive and important role for the Council, highlighting the contribution both planning and planning obligations play in shaping our communities and delivering the Council's growth aspirations.
- 2.11 Currently the Infrastructure Delivery Officer (IDO) is working with the Assistant Director of Planning & Growth, Development Management and Enforcement Officers to review the current processes and practices to identify opportunities for improvement. Clarity around authorising the release of funds to a third party e.g. NHS or Town/Parish Council and what information is required to support a bid from the third party, are areas which have already been identified for improvement.
- 2.12 The IDO is also reviewing the ledger to check for compliance with planning obligations and has been chasing up developers where contributions have been overdue. The onus is on the developer to ensure they comply with the planning

obligations, however good practice means the Council will also monitor the situation.

- 2.13 The Council can charge fees for the work undertaken to monitor planning obligations on a cost recovery basis and work is currently being undertaken to prepare an up-to-date charging schedule. This is scheduled to be reported to February 2024 Finance and Economic Overview and Scrutiny Committee, before being presented to Full Council for adoption.
- 2.14 This is happening in parallel with an audit of the Council's S106 processes and practices, scheduled for February 2024.

Affordable Housing

- 2.15 The provision of affordable housing is secured through planning obligations. This can either be on-site provision or a contribution towards the provision of affordable housing elsewhere.
- 2.16 Where a contribution has been secured, this can be used towards the provision of affordable housing including purchasing property on the open market or on Capital projects to create affordable housing. The planning team work closely with housing colleagues regularly to discuss matters relating to the delivery of affordable housing including spending contributions held by the Council.
- 2.17 Table 7 in the Infrastructure Funding Statement (IFS) (**Appendix A**, page 17) appended to this report identifies that in 2022/23 a total of £285,396.08 was spent on the provision of affordable housing. Tables 9 and 10 in the IFS also identifies that the Council holds in excess of £1.67 million in contributions to be spent on the provision of affordable dwellings.
- 2.18 It should be noted that whilst the Council can deliver affordable housing itself, other organisations or Registered providers are also responsible for providing affordable housing.

Infrastructure Funding Statement

- 2.19 Local authorities are required to produce an Infrastructure Funding Statement (IFS) on an annual basis. The Community Infrastructure Levy Regulations 2010 (CIL Regulations) require that from the financial year 2019/2020 onwards, any local authority that has received developer obligation (either through Section 106 planning obligations or the Community Infrastructure Levy (CIL)) must publish an IFS by 31 December each year.
- 2.20 The Infrastructure Funding Statement report at **Appendix A** covers the financial year 1 April 2022 to 31 March 2023. This is the fourth Infrastructure Funding Statement produced by South Kesteven District Council. Members were last

presented with an IFS (for 2021-2022) at 21 February 2023 Finance, Economic Development and Corporate Services Overview and Scrutiny Committee.

- 2.21 The regulations set out the Infrastructure Funding Statement should comprise of:
- a) A statement of the infrastructure projects or types of infrastructure which the charging authority intends will be, or may be, wholly or partly funded by CIL.
 - b) A CIL report, in relation to the previous financial year, which includes matters specified within the regulations.
 - c) A planning obligations report, in relation to the reported year, which includes matters specified within the regulations. This is referred to as the 'Section 106 report'.
- 2.22 South Kesteven District Council has not adopted the Community Infrastructure Levy (CIL) funding mechanism and seeks developer contributions through legal agreements known as S106 Agreements (also known as "planning obligations"). Therefore, the IFS only sets out information on the monetary (and non-monetary) contributions sought through Section 106 Agreements.
- 2.23 The Infrastructure Funding Statement focuses on what has happened in the reported year. There are four main categories of data reported:
- Obligations which have been entered into the reported year;
 - Money received in any year and not spent;
 - Monies that have been allocated but not spent during the reported year;
 - Money that has been spent during the reported year.
- 2.24 As identified in the IFS, the total funds held by SKDC on 31 March 2023 was £3,575,719.46.
- 2.25 The tables below set out the headline monetary and non-monetary figures, which are also included within the Infrastructure Funding Statement document at **Appendix A**.

Monetary Contributions	
Total Money to be provided through planning obligations agreed in 2022/2023	£7,225,090.80
Total money received through planning obligations in 2022/2023	£1,001.936.78
Total money received through planning obligations (whenever agreed) spent in 2022/2023	£305,902.28

Total money received through planning obligations (whenever agreed) retained in 2022/2023 (excluding “commuted sums” for longer term maintenance)	£3,398,976.45
Total money received through planning obligations (whenever agreed) retained in 2022/2023 as “commuted sums” for longer term maintenance	£176,743.01

Non-Monetary Contributions	
Total Number of affordable housing units to be provided through planning obligations agreed in 2022/2023	207 <i>(51 of which are from 100% affordable schemes).</i>
Total Number of affordable housing units which were provided through planning obligations (whenever agreed) in 2022/2023	151 <i>(dwellings completed in 2022/2023)</i>
Total number of school places for pupils to be provided through planning obligations agreed in 2022/2023	£3,205,274.00 to be provided through planning obligations agreed in 2022/2023. Number of school places is determined by the County Council.

Policy Update

- 2.26 The Council’s Local Plan is currently undergoing a review and it is expected that the draft Plan will be submitted for examination in Winter 2025; it is anticipated that it will be adopted the following year. 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.
- 2.27 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 Districts open space and leisure provision. This will inform and update the requirements for new developments that are currently identified in the adopted local plan. 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.
- 2.28 The Levelling Up and Regeneration Act (LURA) 2023 has introduced amongst other things, an Infrastructure Levy (IL), this would replace the current CIL provisions.

The new levy is intended to simplify and speed up the process based on a proportion of the development value of the land moving the system away from the current land value capture approach. This change will be introduced in phases and is likely to take 10 years to fully implement. Further details, including secondary legislation is expected and the Committee will be updated as appropriate.

3. Key Considerations

- 3.1 The preparation of an Annual Infrastructure Statement is a statutory requirement. There are no appropriate alternatives to noting the content of the document.

4. Other Options Considered

- 4.1 Effective monitoring of S106 obligations is not only good practice, it also ensures delivery of sustainable developments in accordance with the development plan and relevant planning permissions. The 'do nothing' option was therefore discounted.

5. Reasons for the Recommendations

- 5.1 Officers are undergoing a full review of the internal processes and practices to ensure greater transparency and to a robust process. Effective monitoring of planning obligations is important to ensure developments are appropriately mitigated, and the Council can achieve its sustainable growth ambitions. The preparation and publication of the Infrastructure Funding Statement is legislative requirement the Council must comply with.

6. Background Papers

- 6.1 *Local Development Scheme 2023-2026*, adopted by Cabinet on 30 May 2023 and available online at:
https://www.southkesteven.gov.uk/sites/default/files/2023-08/Local_Development_Scheme_2023-2026.pdf
- 6.2 *Section 106 (Planning Obligations) Agreement Monitoring Update Report* - Reported to Finance, Economic Development and Corporate Services Overview and Scrutiny Committee, published 21 February 2023 and available online at:
<https://moderngov.southkesteven.gov.uk/documents/s36955/S106%20Report.pdf>
- 6.3 SKDC Planning Obligations Supplementary Planning Document, available online at:
[Planning Obligations Supplementary Planning Document: June 2012 \(southkesteven.gov.uk\)](https://www.southkesteven.gov.uk/planning-obligations-supplementary-planning-document-june-2012)

7. Appendices

- 7.1 **Appendix A** - Draft Infrastructure Funding Statement