

Chichester District Council

THE CABINET

5 February 2019

Revisions to the Section 106 and CIL Protocol

1. Contacts

Report Author

Karen Dower - Principal Planning Officer (Infrastructure)
Telephone: 01243 521049 E-mail: kdower@chichester.gov.uk

Cabinet Member

Susan Taylor - Cabinet Member for Planning Services
Telephone: 01243 514034 E-mail: sttaylor@chichester.gov.uk

2. Recommendations

- 2.1 **That the Cabinet approves the revisions to the Section 106 and CIL Protocol as set out in the appendix to the agenda report.**
- 2.2 **That the Cabinet delegates to the Grants and Concessions Panel authority to decide how to distribute the existing and any future 'orphaned' section 106 interest by adding it to the New Homes Bonus (Parish Allocations) Scheme.**

3. Background

- 3.1 In accordance with the current Section 106 and CIL Protocol, the interest earned from individual financial contributions secured via Section 106 agreements (S106) attached to planning permissions granted by the Council as the Local Planning Authority is apportioned to each S106 agreement. A recent review has identified a sum of £23,018.32 earned interest which relates to historic S106 contributions that have been spent. The interest was not spent on the project it related to and is therefore deemed 'orphaned'. Such interest has been gradually accruing as the current protocol does not contain any information about how it should be spent.
- 3.2 The accrual of interest is not an issue for CIL as that is handled under a different regulatory regime and interest remains with the CIL funds collected.

4. Outcomes to be Achieved

- 4.1 The main outcome is to ensure that the interest earned on S106 receipts does not remain unspent, and is used to help provide community infrastructure.
- 4.2 The achievement of this outcome will be reported through the bi-annual report to the Corporate Governance and Audit Committee and through the Council's

5. Proposal

5.1 The proposal covers two matters:

- (i) Use of interest arising from section 106 contributions and
- (ii) How the already orphaned interest should be spent.

The suggested approach will involve a revision to paragraph 22 of the S106 and CIL Protocol. Other minor amendments to the text of the Protocol are also proposed to reflect the current situation now that the CIL has been implemented.

5.2 It is proposed to amend the wording of paragraph 22 and add a new paragraph 23 (with the proposed changes shown in bold text) as set out below:

*Any S106 monies and CIL receipts that have been received and have not been spent, are invested in interest bearing accounts with the rest of the Council's investment portfolio in accordance with the Treasury Management Strategy until funds are required. The interest will be added to the balance each year as currently the case for S106. **The interest will be ring fenced for use with the associated S106 contribution and for infrastructure in general with respect to CIL. Should any interest accrued remain after the S106 contribution has been expended, it will be retained in a separate Infrastructure Reserve and used each year to supplement the new Homes Bonus (Parish Allocations) scheme. The interest earned on CIL receipts will be held in a separate CIL reserve to fund infrastructure projects.***

Requests to spend the funds held in the Infrastructure Reserves will be in accordance with the requirements of the Council's Financial Standing Orders.

5.3 This proposal will ensure that the interest earned from unspent section 106 receipts is either spent in conjunction with the principal sum secured by the section 106 agreement or is spent on other relevant community infrastructure projects agreed by the Grants and Concessions Panel rather than being left to accrue. The proposed changes to the protocol are set out in the appendix and shown as track changes.

6. Alternatives Considered

6.1 The alternatives include retaining the protocol in its present form with regard to the spending arrangements of the interest accrued through the unspent section 106 and CIL monies (as set out in italics in paragraph 5.2 of this report above). This will not however provide the necessary clarity regarding 'orphaned' interest or returning future unspent ('orphaned') interest to the Council's general fund reserves for use on other Council services.

7. Resource and Legal Implications

- 7.1 There is no legal requirement to accrue interest on S106 balances unless it is specified in the S106 agreement. Unless there is a specific clause in the S106 agreement, the interest earned can be treated as Council income, and therefore allocated to any spending priority the Council chooses.
- 7.2 The resources involved in transferring the 'orphaned' S106 interest to the New Homes Bonus (Parish Allocations) scheme would involve minimal staff and Member time to administer the funds, rather than creating a bespoke process for a relatively small and potentially one-off allocation of additional monies.

8. Consultation

- 8.1 The identification and potential allocation of 'orphaned' interest has been supported by some Members, and the Chairman of the Grants and Concessions Panel (GCP) is also supportive of the approach. The GCP will be discussing the specifics of allocation at their meeting on 30 January 2019.

9. Community Impact and Corporate Risks

- 9.1 There are no risks as a result of this proposal, but there will be a positive impact on the community as it will provide more funds for infrastructure schemes.

10. Other Implications

	Yes	No
Crime and Disorder		✓
Climate Change		✓
Human Rights and Equality Impact		✓
Safeguarding and Early Help		✓
General Data Protection Regulations (GDPR)		✓
Health and Wellbeing		✓
Other		✓

11. Appendices

- 11.1 Proposed revised Section 106 and CIL Protocol.

12. Background Papers

- 12.1 None.