

Chichester District Council

CORPORATE GOVERNANCE AND AUDIT COMMITTEE

30 June 2011

Section 106 Agreements Approaching Expenditure Targets

1. Contacts

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2. Recommendation

- 2.1. That the Corporate Governance and Audit Committee approves the contents of this report concerning section 106 agreements nearing their expenditure date (as set out in section 5 of this report).
- 2.2. That the Corporate Governance and Audit Committee approves the suggested structure and outline for a planned section 106 protocol (as set out in section 6 of this report).

3. Background

- 3.1. Section 106 agreements nearing expiry date need additional monitoring and input from officers and managers of the departments concerned with spending section 106 money.
- 3.2. The Executive Board at its meeting of 5 October 2010 resolved that the Corporate Governance and Audit Committee (CGAC) be asked to review every six months a list of section 106 payments which mature within the next nine months.
- 3.3. The section 106 draft Planned Protocol under consideration is thought to be a necessary corporate tool for ensuring timely payment and expenditure of section 106 planning obligations.

4. Outcomes to be achieved

- 4.1. The main outcomes for the community, environment and the Council, are improvements and greater clarity in the way money obtained from section 106 agreements is monitored and spent.

- 4.2. This will be achieved by providing reports to CGAC on a twice-yearly basis about the current position of those contributions that will reach (or have reached) their target expenditure date within 9 months of the report date.
- 4.3. A protocol mapping out the whole of the section 106 process from planning to delivery is being developed to assist the monitoring process and ensure all parties are aware of their responsibilities.
- 4.4. The Section 106 Monitoring Officer and the Design and Implementation Manager will monitor the outcomes.

5. Section 106 Funds received approaching their expenditure date

- 5.1. Financial contributions received in respect of section 106 agreements and their expiry date are set out in the tables attached at appendix 1: section 106 funds received, and expenditure targets
- 5.2. Targets for expenditure of section 106 contributions can be included in the signed section 106 agreements, and where this is the case these are the dates we use to monitor the expenditure of sums received.
- 5.3. The section 106 agreements entered into by the Council often do not specify target dates for expenditure. However, a developer is able to apply to vary the terms of a section 106 agreement after five years if they feel it is no longer reasonable/applicable. Therefore, even where there is no formal timescale for spending the contribution within the agreement, we have for monitoring purposes, in common with other authorities, introduced our own targets based on five years from receipt of the contributions. This is because the triggers for payments to be made are often linked to key stages of the development, such as first occupation of a dwelling, which may occur some time after an agreement is signed. A developer making an application to vary an agreement will need to justify the application and the Council is not obliged to accept these reasons, although there will be rights to appeal in event of refusal of permission.
- 5.4. Following recommendations from CGAC on 16 September 2010, the Executive Board on 5 October 2010 resolved that the CGAC be asked to review every six months a list of section 106 payments which mature within the next nine months.
- 5.5. A draft exception report was proposed for regular review by the CGAC. A number of suggestions were made as to the inclusion of (a) information on the repayment clauses within the legal agreement, (b) explanation commentary generally, and (c) an explanation of the definition of allocated, spent and outstanding monies.
- 5.6. The Cabinet will give approval for section 106 expenditure on projects valued at a figure to be agreed later in 2011. The director of the appropriate department in conjunction with the Cabinet member and nominated ward member will make decisions regarding how lesser amounts will be spent.

6. Section 106 Procedural Protocol

- 6.1. An all encompassing protocol that maps out the whole of the section 106 process from inception to final spend is being developed. The issue of setting appropriate and realistic timescales for expenditure of each type of contribution

will be included. This will be subject to legal advice and consultation on an agreed approach. See 2ppendix 2: Section 106 Draft Outline/Framework for the Procedural Protocol.

7. The current position on those contributions that will reach (or have reached) their target expenditure date by end of March 2012

7.1. Public Open Space Spend

02/02481/FUL (Rowes Garage Chichester)	
Details	Current Situation
Received: £121,000	Allocated to Chichester Skate Park. Works have started and £8,417.00 has been spent on gas with the remaining contribution of £34,776.00 estimated to be spent by end of financial year. To be confirmed by Sarah Peyman.
Spent: £86,224	
Target date for spend: 6 February 2009 (not specified in agreement).	
Amount Outstanding: £34,776	

04/03271/FUL (Land at Walcot North Walls Chichester)	
Details	Current Situation
Received: £3,181	Allocated for a new garden area in Priory Park. Expenditure held back awaiting approval of funds for Parks Improvement Plan which was approved by Executive Board in January 2011. Projects have been identified and awaiting CMT/Cabinet approval to place orders. Project likely to be completed in autumn 2011.
Spent: £0	
Target date for spend: 15 June 2011 (not specified in agreement).	
Amount Outstanding: £3,181	

05/00876/FUL (St George's Hall Cleveland Road)	
Details	Current Situation
Received: £3,051	Allocated to fund new seating and signage at Florence Park. Expenditure held back awaiting approval of funds for Parks Improvement Plan which was approved by Executive Board in January 2011. Projects have been identified and awaiting CMT/Cabinet approval to place orders. Project likely to be completed in autumn 2011.
Spent: £0	
Target date for spend: 2 October 2011 (not specified in agreement).	
Amount Outstanding: £3,051	

7.2. Communities Spend

05/04813/FUL (Brisbane House The Fairway Midhurst)	
Details	Current Situation
Received: £7,500	Funds no longer to be transferred to Leisure as anticipated. New discussions with parish in progress
Spent: £5,000	
Target date for spend: 5 April 2011 (not specified in agreement).	
Amount Outstanding: £2,500	

8. Resource and legal implications

- 8.1. Section 106 of the Town and Country Planning Act 1990 (as amended) permits local planning authorities to enter into agreements with applicants for planning permission to regulate the use and development of land. This may involve the payment of a financial contribution for off site works.
- 8.2. The Community Infrastructure Regulations 2010 that came in to force on 6 April 2010 set out new statutory tests on what can reasonably be sought under section 106 replacing the Circular 05/2005 guidance.
- 8.3. Staffing implications – there is a requirement for a Section 106 Monitoring Officer and Design and Implementation Manager to oversee the process.
- 8.4. IT requirements – ongoing maintenance of the section 106 access database by the Section 106 Monitoring Officer and further investigation into an appropriate section 106 monitoring module to link with IDOX.

9. Consultation

- 9.1. Internal Chichester District Council officers involved with the section 106 process were consulted.

10. Community impact and corporate risks

- 10.1. Improved monitoring of how section 106 contributions are spent will improve the leisure, amenity, health and well-being of local communities.
- 10.2. The risks that the proposal will not deliver projects and schemes paid for using section 106 funds should be small. Delays have been caused in the past by a failure to decide how to spend funds either by officers or parishes. In some cases delays have been caused while awaiting CMT/Cabinet approval, as shown in sections 7.1 and 7.2 above.
- 10.3. Provided allocation of funds has taken place, the risk of having to return funds to a developer is considered minimal.

11. Appendices

- 11.1. Appendix 1: Section 106 Funds received, and expenditure targets.

11.2. Appendix 2: Section 106 Draft Outline/Framework for the Procedural Protocol.

12. Background Papers

- 12.1. Section 106 Task and Finish Group Final Report for the Overview and Scrutiny Committee 1 July 2011.
- 12.2. Briefing Note – Section 106 Monitoring: Section 106 Funds received approaching their expenditure date.
- 12.3. ODPM Circular 05/2005 - Planning Obligations - Government Guidance on Section 106 Agreements
- 12.4. The Community Infrastructure Regulations (Amendment) Regulations 2011