

# Chichester District Council

**CORPORATE GOVERNANCE & AUDIT COMMITTEE 16 October 2018**

## **S106 Annual Exceptions Report**

### **1. Contacts**

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### **2. Recommendation**

- 2.1 The committee is requested to note the contents of this report concerning section 106 agreements nearing their expenditure date (as set out in Appendix 1) and to raise any concerns.**

### **3. Background**

- 3.1 Section 106 (S106) financial receipts nearing the date for expenditure need additional monitoring and input from officers and managers of the services concerned with spending the S106 funds. This is in accordance with the Section 106 and CIL Protocol approved by Corporate Governance and Audit Committee at its meeting on 19 January 2016. Under the protocol the Committee receives an exceptions report each October/November detailing all contributions due to be spent within a two-year deadline.
- 3.2 Section 6 of this report identifies the contributions that have not been received where the trigger date has been reached and provides an update on the current position with respect to securing the payment of the financial contributions due.
- 3.3 This report only makes reference to financial contributions. Non-financial obligations are included in the full report to Corporate Governance and Audit Committee in June/July each year.

### **4. Outcomes to be achieved**

- 4.1 To provide clarity in the way money obtained from S106 agreements is monitored and spent.
- 4.2 To ensure that S106 receipts are spent in accordance with the agreements and within the agreed targets to reduce the risk of developers seeking to amend agreements and/or the return of the funding.

### **5. The updated position on those contributions received that will reach their target expenditure by end of September 2020**

- 5.1 This report outlines those contributions that need additional monitoring. It is ordered by spending deadline date with those that have passed their deadline date first.

## 5.2 Definitions used in this report are as follows:

- a) Received: financial obligation received from the developer, usually following the issue of an invoice by the Council
- b) Allocated: formal approval of fund allocation given in accordance with the S106 and CIL protocol
- c) Spent: outgoing expenditure already approved and undertaken
- d) Remaining: monies unspent and held by the Council
- e) Remaining and unallocated: monies unspent and held by the Council that is yet to be allocated
- f) Spend deadline: the date specified in the S106 agreement by which the money must be spent or spending approved and allocated. An (\*) following the date denotes a 5 year notional date. This is applied for monitoring purposes in circumstances where the S106 agreement does not specify a spending deadline. This is because the applicant can seek to vary an agreement after 5 years.

5.3 Whilst a number of contributions have passed their spend deadline, in most cases monies have been allocated and will be spent shortly. The committee's attention is drawn to 11/01198/FUL, Selsey Tram, where there is £1,651.03 remaining of the Open Space Land contribution. The expiry date is notional and officers are liaising with the Parish Council to ensure this is spent as soon as possible.

## 6. Outstanding receipts

6.1 At the time of writing all contributions reaching their triggers have been paid, and there are no outstanding receipts.

## 7. Resource and legal implications

7.1 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 offsite works.

7.2 The Community Infrastructure Levy Regulations that came into force on 6 April 2010 (as amended) set out new statutory tests on what can reasonably be sought under section 106, replacing the former Circular 05/2005 guidance.

7.3 Staffing implications – no additional requirements.

7.4 IT requirements – no additional requirements.

7.5 Property Implications – none.

## 8. Consultation

8.1 Chichester District Council officers involved with the S106 process were consulted and the matters set out in Appendix 1 have been agreed by the S106 Monitoring and Liaison Group for referral to the Corporate Governance and Audit Committee.

## 9. Community and corporate risks

- 9.1 Provided funds have been allocated for a specified purpose, the risk of having to return funds to a developer is considered minimal.
- 9.2 There is a potential risk of non-payment by developers or a risk that developers may seek to re-negotiate agreements reducing anticipated income. There are procedures in place for dealing with these issues.
- 9.3 Where S106 contributions are passed to Town or Parish Councils for spending on specified projects, this is conditional that any unspent monies will be returned to the District Council within the period specified in the S106 agreement or, if the agreement is silent, within five years.

## 10. Other Implications

Are there any implications for the following?		
	Yes	No
<b>Crime &amp; Disorder:</b>		✓
<b>Climate Change and Biodiversity:</b>		✓
<b>Human Rights and Equality Impact:</b>		✓
<b>Safeguarding and Early Help:</b>		✓
<b>General Data Protection Regulations (GDPR</b>		✓
<b>Other (Please specify):</b>		✓

## 11. Appendices

- 11.1 Appendix 1: S106 Contributions approaching 2 years of their expiry

## 12. Background Papers

- 12.1 None