

Chichester District Council

CORPORATE GOVERNANCE & AUDIT COMMITTEE 24 October 2019

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.**
- 2.2 To note the changes to the CIL regulations from 1 September 2019 detailed in paragraph 7.3 below.**
- 2.3 To note the receipt of West Sussex County Council S106 data that was unavailable for inclusion in the S106 Annual Monitoring Report in July 2019.**

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 of 19 January 2016. Under the protocol the Committee is due to receive 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.
- 3.4 Members will recall that when the S106 and CIL Annual Monitoring Report was considered by this committee in July 2019, West Sussex County Council had been unable to supply data relating to S106 contributions they had received in relation to S106 agreements within Chichester District. This data has recently been received and is attached as appendix 2.

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 date 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. An (*) following the date denotes the 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.

5.2 The 'Remaining and Unallocated Excluding (EXC) Interest' column has been colour coded as follows

- a) Green: Funds allocated prior to expiry and awaiting project delivery. Funds are considered safe even if the spending deadline has expired as the S106 agreement provides for the Council to retain these monies in this circumstance.
- b) Amber: Either a notional deadline has passed or a spending deadline is approaching and the funds have not been allocated. Spending Officers need to take action to ensure that funds are allocated as soon as possible to ensure they do not have to be returned.
- c) Red: A spending deadline (other than notional) has passed and the funds will need to be returned, unless the developer agrees that the Council can retain them. There are currently no contributions falling in this category.

6. Outstanding receipts

6.1 At the time of writing all contributions reaching their triggers have been paid, with the exception of £700 due for Reptile Mitigation under FB/15/02331/FUL Land to the rear of Romans Mead Estate, Mosse Gardens, Fishbourne. This is the 4th of 5 annual instalments and the invoice was raised in May 2019. The S106 Officer is currently pursuing payment.

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 (CIL) 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 The CIL regulations have been amended from 1 September 2019 and the Committee's attention is drawn to two important changes:

- a) A requirement on all Local Authorities to publish, from December 2020 and annually thereafter, an 'Infrastructure Funding Statement' (IFS) detailing both CIL and S106 monies received and the infrastructure they

have been spent on. The IFS will be hosted on a new Government website. Officers are currently working through the detailed requirements of the legislation, but given the thoroughness and transparency of our existing reporting under the S106 and CIL protocol, we do not believe this will be too onerous.

- b) A S106 monitoring fee can now be charged under the CIL Regulations as a planning obligation. At present CDC charge a monitoring fee by virtue of its powers under S111 of the Local Government Act 1972 and S1 of the Localism Act 2011. For new agreements the fee will be charged under the CIL Regulations however, there will be no change to the scale of fees (as indexed) that was agreed by Cabinet on 6 December 2016 and published on our website.

7.4 Staffing implications – no additional requirements.

7.5 IT requirements – no additional requirements.

7.6 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 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 situations.
- 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
Crime & Disorder:		✓
Climate Change and Biodiversity:		✓
Human Rights and Equality Impact:		✓
Safeguarding and Early Help:		✓
General Data Protection Regulations (GDPR)		✓
Health & Wellbeing		✓
Other (Please specify):		✓

11. Appendices

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

11.2 Appendix 2: West Sussex County Council S106 data

12. Background Papers

12.1 None