

Chichester District Council

CORPORATE GOVERNANCE & AUDIT COMMITTEE

30 June 2015

S.106 Monitoring Annual Report

1. Contacts

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2. Executive Summary

1. Total contributions secured by new S106 agreements signed between 1 April 2014 and 31 March 2015 was £1,696,022.
2. The value of contributions received from S106 Agreements between 1 April 2014 and 31 March 2015 was £914,898.
3. The total expenditure on projects funded from S106 Contributions between 1 April 2014 and 31 March 2015 was £538,667.

3. Recommendations:

That the Committee notes

- 3.1 The income and expenditure between 1 April 2014 and 31 March 2015 in respect of S106 contributions.**
- 3.2 Note the information on agreements within 2 years of expenditure target date as set out in Appendix 4.**
- 3.3 Note details of non-financial obligations as set out in Appendix 5**
- 3.4 Note the current situation with respect to the implementation of the Community Infrastructure Levy (CIL) set out in Section 8.**

4. Background

- 4.1 The S106 Protocol, approved by Corporate Governance and Audit Committee (CGAC) on 15 September 2011 and updated in June 2013, details reporting arrangements for the monitoring of S106 Agreements. In accordance with this protocol CGAC receives an Annual Report in June each year detailing new agreements signed, income received and monies spent for the previous financial year, to include an update on non-financial obligations and information on those S106 agreements due to expire within two years. Members are reminded that some non-financial obligations are operational and do not have expiry or trigger dates.
- 4.2 Officers from West Sussex County Council (WSCC) and the South Downs National Park Authority (SDNPA) will also be in attendance at the meeting to respond to Members enquiries.

5. Outcomes to be achieved

- 5.1 Effective monitoring of Section 106 Agreements.

6. S106 Progress & Developers' Infrastructure Contributions

6.1 New Section 106 Agreements completed 2014/15

Financial obligations secured by way of Agreement between 1 April 2014 and 31 March 2015 are outlined at Appendix 1 and provide a total of £1,696,022 from 88 new S106 Agreements completed comprising:-

- 71 Unilateral Undertakings, mainly comprising Chichester Harbour recreational disturbance mitigation contributions from smaller developments
- 17 bilateral S106 Agreements
- 87 contained financial contributions to CDC.
- 1 contained only non-financial obligations to CDC.

6.2 Contributions due to be paid to CDC (including those from 2014/15 agreements detailed above)

There are S106 contributions expected from signed Agreements where the trigger point for collection of monies has not yet been reached for a development that has commenced, or for developments that have not yet started. It is important to note that the exact amount of money expected is not known until the relevant trigger date is received. Changes affecting these figures include indexation that can increase the sum due. In addition, a developer can apply to renegotiate the terms of an Agreement including the level of obligations due after a period of 5 years from completion has passed. Such applications are reported to the Planning Committee. Table 1 shows the contributions expected by CDC, and those unspent, broken down by service.

Table 1: Expected Contributions by Service

As of 20 May 2015		
Contribution Type	To be received	Received and Unspent
Affordable Housing	£1,674,200	£1,355,688
CCTV	£0	£11,352
Chichester Harbour	£85,000	£185,510
Community Facilities	£3,334,118	£917,647
Ecology Mitigation	£77,000	£0
Interest	£0	£85,577
Sport and Leisure	£1,738,160	£417,091
Public Open Space	£841,862	£235,875
Park and Ride	£0	£106,221
Primary Care Trust	£148,880	£0
Public Art	£329,342	£73,862
Recreation Disturbance	£121,202	£0
Sussex Police	£34,367	£0
Sustainable Transport	£0	£42,753
Transport	£100,000	£0
Waste and Recycling	£29,458	£9,332
	£8,513,589	£3,440,907

6.3 Contributions received during 2014/15 Financial Year

Appendix 2 sets out details of contributions received by Chichester District Council between 1 April 2014 and 31 March 2015 amounting to £914,898.

6.4 Agreements completed between 2003 and 2015

The number of agreements completed in 2014/15 and the expected total receipts, can be compared with previous years as shown in the following table:

Table 2: Completed Agreements by year

Year	Number of new agreements signed including West Sussex CC	No of new agreements with financial contributions to CDC	Total contributions expected by CDC from new agreements
2014 - 2015	88	87	£1,696,022
2013 - 2014	35	26	£3,387,627
2012 - 2013	15	8	£461,876
2011 - 2012	9	4	£678,734
2010 - 2011	16	7	£1,496,345
2009 – 2008	24	10	£2,345,165

The financial value of new S106 agreements can be seen to fluctuate annually. The trend between 2008/09 and 2012/13 was downwards which was attributable to the economic climate. The financial year 2013/14 shows a significant increase which is likely to be due to the economic situation improving and a significant increase in the number of applications for major housing schemes being submitted to the Council. There was also a peak in 2009/10 due to the Graylingwell development which resulted in a large income figure for that year.

The relationship between the numbers of agreements and expected contributions reflects the scale of the developments involved..

6.5 S106 Payments received by each spending department

Details of receipts and expenditure are shown in Appendix 3 including data from WSCC and SDNPA.

6.6 S106 Monitoring Contributions

Government Circular 05/2005 (Para B50) advises Local Authorities to carefully monitor all legal agreements. Since 2008 the Council has charged a 5% monitoring fee for recording and monitoring of S.106 Agreements. During the financial year 2014/15 the Council collected £23,362 in monitoring fees. A small number of current agreements pre-date this arrangement and do not include the monitoring fee, therefore money collected from them in this time period will be the original contribution only.

However, following a legal challenge in the case of Oxfordshire County Council v Secretary of State for Communities and Local Government (2015) the High Court held that administration fees and monitoring fees imposed as planning obligations under Section 106 of the Act, were not necessary to make the development acceptable in planning terms and thus failed the tests in regulation 122 of the CIL Regulations 2010. Accordingly, an Inspector's decision letter which, effectively, removed such clauses from a section 106 agreement, was upheld.

6.7 SDNPA

The Section 106 protocol operated by the SDNPA and CDC applies to S106 Agreements relating to schemes within the South Downs National Park signed on or after 1 April 2011. Currently there are 9 Agreements that are being monitored by the SDNPA and details of the contributions due can be found in Appendix 3. While these will be monitored by SDNPA, CDC expects to be informed when funding has been received in relation to the services provided.

6.8 S106 agreements nearing their expenditure target date

Financial obligations nearing their expenditure target date, as specified in the agreements or the 5 year target applied for monitoring purposes, need additional monitoring and input from officers and managers of the departments concerned with spending S106 contributions.

Appendix 4 shows those contributions reaching their expenditure target date within the next two years by Ward along with those that have reached their spending deadline. This is in line with the S106 Protocol. No contributions have been returned to developers during the last financial year.

7. Update on Implementation of the Community Infrastructure Levy (CIL)

- 7.1 Consultation on the CIL Draft Charging Schedule (DCS) ended on 5 January 2015. This generated a number of representations mainly related to the viability assessment and resulting CIL DCS rates with a number requesting that the Council activates the discretionary relief for exceptional circumstances which is available within the CIL Regulations to partially address some of these concerns.
- 7.2 An independent examination in public by a planning inspector appointed by the Planning Inspectorate was held on 9th June 2015. If the Council's DCS is found to meet the requirements of the Planning Act 2008 in relation to legal compliance and viability, it is expected that the CIL will be adopted later this year.
- 7.3 Officers are continuing to work on the processes and procedures associated with the implementation of CIL including training and ensuring the Council's Uniform and CIVICA Systems are ready. A dedicated CIL Officer is being appointed to address CIL collection and monitoring. The post will be funded from CIL receipts as, under the CIL Regulations, the Council is allowed to retain 5% of the CIL revenues for the purpose of monitoring and administering CIL

7.4 How CIL will affect planning obligations

Developer contributions are currently collected through Section 106 (Planning Obligations). Planning regulations state that there should be no 'double charging' for infrastructure through CIL and Section 106, so once adopted, the majority of developer contributions will be secured via CIL. However, S.106 planning obligations will continue to play a key role in relation to affordable housing and certain site specific requirements. A Planning Obligations and Affordable Housing Supplementary Planning Document (SPD) has been prepared to show how S106 planning obligations, planning conditions, and Highways S278 agreements will work together as a set of tools to help achieve sustainable development. This has also been through a formal consultation process and it is intended that this SPD will be adopted by the Council alongside the adoption of the CIL.

8. Community impact and corporate risks

- 8.1 Improved monitoring of S106 contributions will improve the leisure, amenity, health and well-being of local communities.
- 8.2 The risks that development will not provide the infrastructure required to make it acceptable in planning terms is reduced.
- 8.3 The risk of returning unused contributions is reduced.

9. Other Implications

Are there any implications for the following?		
	Yes	No
Crime & Disorder:		✓
Climate Change:		✓
Human Rights and Equality Impact:		✓
Other (Please specify):		✓

10. Appendices

- 11.1 Appendix 1 – Details of new S106 Agreements signed between 1 April 2014 and 31 March 2015
- 11.2 Appendix 2 – Details of income received between 1 April 2014 and 31 March 2015
- 11.3 Appendix 3 - Receipts and Expenditure by Service (including WSCC and SDNP)
- 11.4 Appendix 4 – Unspent contributions approaching or beyond target expenditure date.
- 11.5 Appendix 5 – Current S106 Agreements by Ward showing Non-Financial Obligations