

# **Chichester District Council**

## **CORPORATE GOVERNANCE & AUDIT COMMITTEE    24 November 2015**

### **S106 Exceptions Report and Update on the Implementation of Community Infrastructure Levy (CIL)**

#### **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 expiry date for expenditure need additional monitoring and input from officers and managers of the services concerned with spending S106 money. This is in accordance with the Section 106 Protocol approved by Corporate Governance and Audit Committee at its meeting of 15th September 2011. Under the protocol the Committee is due to receive an exceptions report each November detailing all contributions due to be spent within a two-year deadline.
- 3.2. The report also identifies, under Section 6, 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 refers to financial contributions only. Non-financial obligations are included in the full report to Corporate Governance and Audit Committee in June each year.

#### **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 S106 agreements is monitored and spent.
- 4.2. That S106 Financial 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.
- 4.3. The Planning Obligations Monitoring and Implementation Officer and Conservation and Design Manager will monitor the outcomes.

## **5. The updated position on those contributions received that will reach their target expenditure by end of November 2017**

- 5.1. This report outlines those contributions that need additional monitoring. The first section of Appendix 1 to this report shows those contributions reaching their target expenditure date within the next two years. This is in line with the recommendation from the Overview & Scrutiny Committee, as agreed by Cabinet on 8 September 2011 now incorporated into the Protocol. The second section of Appendix 1 identifies the contributions where spending targets are now overdue.
- 5.2. Definitions used in the report are as follows:
- (a) Received: financial obligation received from the developer by cheque or BACS, usually following the issue of an invoice by CDC.
  - (b) Allocated: formal approval of fund allocation by the Corporate Management Team (CMT)
  - (c) Spent: outgoing expenditure already approved and undertaken
  - (d) Remaining: money/monies unspent and held by CDC
- 5.3 All the expenditure targets concerned are the notional 5 year targets that we apply for monitoring purposes rather than specifically written into the agreements. This is because the applicant can seek to vary an agreement, independently of or through a further planning application, after 5 years.
- 5.4 With respect to the matter of Farr's Field bus shelter, a sum of £25,000 was secured, at the request of West Sussex County Council, and not the District Council, for the provision of a bus shelter near the site. In the past, before the "Total Access Demand" (TAD) methodology was introduced. West Sussex County Council, in response to planning consultations, used to ask for contributions towards bus shelter provision but relied on the District Council to consult on and deliver the bus shelter, and then maintain the shelter in the future. Problems arose in negotiations with WSCC to find a suitable location for the bus shelter in the Farr's Field area, meaning it has not been possible to fulfil the obligation and spend the contribution for its intended purpose. The agreement was specific in requiring that the bus shelter be installed within 5 years of the receipt of the obligation and the funds were paid to the Council on 29 January 2008 so the specific target for expenditure has long passed. Therefore, following consultation with the developer arrangements are being made for the funds to be returned.
- 5.5 Other contributions
- None of the contributions received for Affordable Housing; Waste and Recycling or Recreation Disturbance Mitigation reach their expenditure date by the end of November 2017.

## **6. Outstanding receipts**

- 6.1. At the time of writing there are three outstanding contributions, which total £68,745 for Community Facilities, Sport and Leisure and Recreation

Disturbance contributions in respect of the Land north of Chaucer Drive development in West Wittering. As this site has reached a trigger date for payment, the developers have been invoiced and payment is expected shortly.

## **7. Update on Implementation of the 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 proposed 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 9 June 2015. After raising a number of post hearing questions, which the Council replied to and which were subject to consultation by interested parties, the Examiner indicated that his report would be issued to the Council shortly. 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 early next year.
- 7.3 Officers are continuing to work on the processes and procedures associated with the implementation of CIL including the acquisition of Exacom, a dedicated web based system to facilitate the management, collection and enforcement of CIL and S106 obligations, that is compatible with the Council's existing planning application system, Uniform/IDOX. The software will be installed and tested in the coming months along with customisation of templates. There are also a number of training sessions for officers arranged in preparation for implementation of CIL. We are also ensuring the Council's Uniform and CIVICA Systems are ready. A dedicated CIL Officer has been 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 up to 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. The document has been amended as a result of the consultation responses. The revised document will be reported to Cabinet, together with a pre-adoption statement at the same time as the Community Infrastructure Levy Charging Schedule is to be adopted.

- 7.5 The new CIL Officer was the S106 Planning Obligations Monitoring Officer and so this post is currently vacant with monitoring of existing agreements being undertaken jointly between the new CIL Officer and the Conservation and Design Manager. Approval has now been given to fill the S106 Monitoring Officer post for a fixed term of 2 years and recruitment will be undertaken over the coming weeks. Appointment of a new officer will ensure that current S106 agreements and funds received will continue to be closely monitored.

## **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 into 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 – Authorisation for recruitment of a new S106 Monitoring Officer has been approved as stated in paragraph 7.5 above.
- 8.4. IT requirements – as detailed in 7.3 above.
- 8.5. Property implications - none

## **9. Consultation**

- 9.1. Internal CDC officers involved with the S.106 process were consulted, and the matters set out in Appendix 1 have been agreed by the S.106 Officer Monitoring and Liaison Group for referral to SLT and CGAC.

## **10. Community impact and corporate risks**

- 10.1. Improved monitoring of how S.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 S.106 funds should be small.
- 10.3. Provided allocation of funds has taken place, the risk of having to return funds to a developer is considered minimal.
- 10.4. There is a potential risk of non-payment by developers or a risk that developers may seek to re-negotiate agreements reducing potential income. There are procedures in place for dealing with these potential situations.

## **11. Other Implications**

	Yes	No
<b>Crime &amp; Disorder:</b>		✓

<b>Climate Change:</b>		✓
<b>Human Rights and Equality Impact:</b>		✓
<b>Safeguarding:</b>		✓

## **12. Appendices**

12.1. Appendix 1: Expiry dates within 2 years and expiry dates overdue

## **13. Background Papers**

13.1. None