

Agenda Item 6

Development Control Committee

2 June 2009

SAT/KAL



Section 106 Developer Contributions

Summary

The purpose of this report is to bring Development Control Committee up to date with the management of financial resources secured by Section 106 (s.106) planning obligations and an update of the Action Plan agreed with Internal Audit following the first financial year of the Section 106 Monitoring Officer post.

Recommendation

That the contents of this report to be noted

a) Reasons for Recommendation

To ensure that the Council is operating a transparent and comprehensive framework for monitoring financial obligations. Without adequate co-ordination commuted sums could be spent on inappropriate schemes and not on priorities identified within the Council's various plans and strategies. Without an adequate and co-ordinated system for monitoring Section 106 Agreements and any subsequent commuted sums it is possible that should deadlines expire, secured sums would have to be returned (plus interest) to the developers and required community facilities/affordable housing would not be provided.

b) Alternative Options

N/A

c) Risk Considerations

The risk associated with not monitoring legal agreements relating to planning applications is that the Council could be criticised for not operating a transparent and comprehensive framework for monitoring such financial and non-financial obligations. Without adequate co-ordination Commuted Sums could be spent on inappropriate schemes and not on priorities identified within the Council's various plans and strategies or it is possible that should deadlines expire, secured sums would have to be returned (plus interest) to the developers and required facilities would not be provided.

d) Policy and Budgetary Considerations

The improvement of the Section 106 Agreement system forms part of the Development Control Improvement Plan adopted in September 2004 and agreed with the former Office of the Deputy Prime Minister. It also assists in delivering the Council's priorities such as the provision of affordable housing and other community infrastructure.

There are no financial consequences for the District Council's budgets from the proposed plans within this report, as the monies have already been received from developers under S.106 agreements. However, at the end of March 2009 we held £2,146,529.77 in the Section 106 budget, this sum would normally attract in the region of £95,000.00 of interest per annum based on our current investment rates, although this will be less in the future because

of lower interest rates. In previous years, interest earned by the Council has been used to support all services and future budgets are being put together on this basis. Any spend would affect future interest accrued and therefore future budgets.

e) Date for Review of Decision

May 2010

1.0 Introduction

- 1.1 A Section 106 Monitoring Officer was recruited in January of 2008. This new post was created in response to an identified corporate need to improve the Council's monitoring of Section 106 agreements. This, alongside, 22 further recommendations were agreed following an Internal Audit Review in 2007. A summary of the agreed actions and update are attached to this report. The post holder is working with all Council departments to set up a new system for the closer monitoring of legal agreements associated with planning permissions.

2.0 Background

- 2.1 The planning system aims to ensure that the impact of new development on local services and facilities (such as the need for additional play space, educational facilities and road improvements) is addressed as a part of the planning process. This is achieved through the system of planning obligations, under Section 106 of the Town and Country Planning Act 1990.
- 2.2 Planning obligations or 'Section 106 agreements' are legal agreements negotiated by the local planning authority with the developer (or landowner) of a proposed development. They identify the specific local facilities, services or improvements necessary to make the development acceptable in planning terms. Where it is not possible to provide such facilities on-site, Section 106 agreements can specify that developers make financial contributions, or 'commuted sums', to the local authority to enable it to provide the required facilities/services outside the site.
- 2.3 Any developer contributions, or 'commuted sums', received by the District Council are managed by it, in accordance with District Audit guidelines. The Council then uses these sums to provide or improve the required facilities or services.
- 2.4 The County Council also receives commuted sums for services that it provides, such as education and libraries, and is responsible for their management and expenditure. These payments are made directly to the County Council.
- 2.5 We now ensure that all applicable applications submit a signed Unilateral Undertaking (UU) prior to receiving planning permission and in devising a standard template we have saved our Legal Team a tremendous amount of work. A Unilateral Undertaking contains an offer by the applicant for monies or works (if appropriate) and is not the subject of negotiation as a Section 106 Agreement is. It is nevertheless binding on the applicant/landowner when implementing the relevant planning permission.
- 2.6 A standard £50.00 fee to register and monitor new Unilateral Undertakings has been implemented. On the basis that the credit crunch will reduce the number of applications requiring a UU in the next financial year, we would expect an income of £5,000.00. In addition, each Open Space contribution requires an administration fee to

manage project delivery, community involvement and other associated costs of 1% of the overall sum, with a minimum fee of £150.00 and a maximum fee of £500.00. The administration fee helps to pay for any community consultation in play area design or for studies and tools needed in order to justify the need for contributions.

- 2.7 On a cautionary note, we have already seen a reduction in applicable applications by 20% in comparison to the same time period last year. Most contributions are not payable until 'prior to occupation' and the financial climate is likely to influence when a developer will implement their planning permission. This will make it difficult to predict the timing of S106 receipts.
- 2.8 The Government has been considering changes to the current system of negotiation in order to improve certainty for developers and to improve the efficiency of the development process. Sections 46 and 47 of the Planning and Compulsory Purchase Act 2004 provide new powers to make regulations to implement changes to the planning obligations system. The Government is currently taking its proposals for a Community Infrastructure Levy (CIL) through Parliament which if enacted would reform the Section 106 system. Please see attached reports on CIL

3.0 Monitoring and Spend Arrangements

- 3.1 The new post of Section 106 Monitoring Officer has been established to negotiate with and monitor developments that generate Section 106 contributions, to keep a new Section 106 database up to date, invoice developers and support the community in identifying a Community Interest List and facilitate the participative budgeting spend process.
- 3.2 Under the present system the Council receives financial contributions from developers through the Section 106 process. Financial Services maintain income and expenditure accounts and the S106 Monitoring Officer facilitates and monitors expenditure. All spend requests come via Strategic Management Team on a simple application form identifying Ward Member support and are reported to the Asset Management Forum. Please find attached an overview of all receipts and spend in the last financial year.
- 3.3 As the local authority, one of our key roles in this process is to identify and prioritise 'needs' within our District and to consider these alongside present and proposed developer contributions. For example, there might be a lack of play equipment in a residential area; no community hall where one is needed; or a very limited amount of affordable housing for key workers.
- 3.4 As part of this process, we maintain a **Community Interest List**. This is a database containing 'needs' or 'wishes' that have been identified by councillors, parish councils, residents' associations and other interested groups, often recorded in the Parish or Town Plan. Planning officers refer to this list when they are negotiating Section 106 obligations with developers.
- 3.5 Wherever possible projects will be identified and prioritised by directly involving local people and parish/town councils in making decisions on the spending and priorities for the Section 106 budget. This will be via a process called Participative Budgeting.
- 3.6 'Participative Budgeting processes can be defined by geographical area (whether that's neighbourhood or larger) or by theme. This means engaging residents and community groups representative of all parts of the community to discuss and vote on spending priorities, make spending proposals, and vote on them, as well giving

local people a role in the scrutiny and monitoring of the process and results to inform subsequent Participative Budgeting decisions.’ The Participative Budgeting Unit.

4.0 Section 106 contributions received

- 4.1 Over £605,000.00 has been generated by Section 106 agreements over the last financial year, currently held in suspense accounts by the District Council. The expenditure of the majority of this is non-discretionary and will be spent on specific items or areas of work.
- 4.2 One of the reasons for this report is to identify areas of Section 106 funding where there is some limited discretion about their spending (the two main areas being open space provision and the provision of off-site affordable housing).
- 4.3 The Open Space definition caters for Play Areas and Formal Recreation opportunities as per the definitions set out within ‘The Six-Acre Standard’ published by the National Playing Fields Association (2001). Over the last year the District Council has collected £386,680.10 for open space which has (in the main) been split according to the calculator that determined the original amount.
- 4.4 We are now working closely with Town and Parish Councils to identify sites for spend and to involve a community involvement process so that the end result achieves what the local community requires.

5.0 Conclusions

- 5.1 Over the last year 121 agreements have been agreed and are being monitored by Development Control. The majority of these are via the new standardised template for Unilateral Undertakings which are submitted at the same time as the planning application.
- 5.2 The Council has a legal obligation to spend the commuted sums currently held in suspense accounts in accordance with the relevant Section 106 agreements. In terms of governance the greatest responsibility is that the Council ensures that the developer meets the obligations set out in the legal agreement, and that the Council similarly fulfils its own requirements. In the case of financial contributions this will be to ensure that is spent for the purpose set out with the agreement, in accordance with Government guidance and policy and in accordance with the legal constraints applied by the agreement.

Legal Implications

The report summarises the statutory framework, including the proposed reform of the current system with the introduction of the Community Infrastructure Levy. In the present economic climate, where the Council may be faced with requests from developers to modify already negotiated s106 contributions, the level of receipts should be kept under scrutiny; where necessary, viability assessments should be asked for before any variation of contributions is agreed.

Financial Implications

There are no financial implications arising from the recommendation. The financial situation regarding the S106 receipts held by EDDC is stated in the report.

Background Papers

- ❑ Circular 05/2005: Planning Obligations (ODPM, 2005)
 - ❑ Planning Obligations: Practice Guidance (Department of Communities and Local Government, 2006)
 - ❑ The Planning Bill – The Community Infrastructure Levy, 11 March 2008, Development Control Committee
 - ❑ The Planning Bill – The Community Infrastructure Levy, 21 October 2008, Development Control Committee
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Sulina Tallack x1549
Section 106 Monitoring Officer

Development Control Committee
May 2009

6. Action Plan

EAST DEVON DISTRICT COUNCIL INTERNAL AUDIT

	Actions	Officer responsible	Update 2008/09
1	Action agreed The Council should appoint a Section 106 Monitoring Officer	The Head of Planning and Countryside	The post was filled January 2008
2	Action agreed The Council should consider using interest earned by Section 106 Agreement income to fund the Section 106 Monitoring Officer		The post was funded from the Capital Pot rather than the interest earned.
3	Action agreed The job description for the Section 106 Monitoring Officer should include the ability to create effective links with internal and external stakeholders	The Head of Planning and Countryside	This formed a key part of the Job Description
4	Action agreed The Infrastructure delivery plan will be drawn up for each town to support additional development, taking other stakeholders into consideration	The Section 106 Monitoring Officer	This has been superceded by preparation for the CIL in which the Section 106 Monitoring Officer is working in partnership with Planning Policy and Devon County Council
5	Action agreed The Section 106 Monitoring Officer should enable the spreadsheet of agreements is accessible, but secure.	The Section 106 Monitoring Officer	Land Charges hold the overarching spreadsheet of all Section 106 Agreements and Unilateral Undertakings. Access is only provided by their permission. A working monitoring database format has been agreed but IT issues need ironing out before it can be fully implemented.

	Actions	Officer responsible	Update 2008/09
6	Action agreed Officers responsible for completing the spreadsheet should include the correct planning application date.	The Section 106 Monitoring Officer	The Section 106 Monitoring Officer has been through the historical agreements and has updated the Land Charges database to include this.
7	Action agreed The Landscape Architect and Senior Engineer (Street Scene) should review the calculator and extend this to include open spaces as well as play areas.	The Landscape Architect and Senior Engineer (Street Scene)	The calculator has been found to be accurate in the areas that it covers. We would look to extend the calculator to incorporate amenity space rather than just play and formal recreation as at present.
8	Action agreed The Section 106 Monitoring Officer should include the date of actual income receipt on the spreadsheet	The Section 106 Monitoring Officer	Finance keep a record of all S106/UU receipts. The Section 106 Monitoring Officer provides a full breakdown of what the receipt should be spent upon, trigger points and date is also recorded.
9	Action agreed The Section 106 Monitoring Officer should include all expenditure for each Section 106 Agreement on the spreadsheet	The Section 106 Monitoring Officer	This will be incorporated into the monitoring database upon implementation,
10	ActionaAgreed The Section 106 Monitoring Officer should review the existing spreadsheet and consider creating centralised documentation available Council wide to those who need to access the information.	The Section 106 Monitoring Officer	This is achievable with the new new monitoring database.
11	Action agreed The Section 106 Monitoring Officer should submit a business change request to ICT to provide a link between Section 106 documentation and the Cedar System	The Section 106 Monitoring Officer	This has been done as far as it can be within the CAPs system. New areas have been created to link S106/UU summaries for internal staff.

	Actions	Officer responsible	Update 2008/09
12	Action agreed The job description for the Section 106 Monitoring Officer should make clear the officer will be given sufficient authority in order to direct the process Council wide, without compromising authority and segregation of duties	The Head of Planning and Countryside	This has been achieved in the Job Description and the linking of the post into the Asset Management Forum. The post also sits on the key regeneration projects.
13	Action agreed The Head of Planning and Countryside should ensure segregation of duties in the distribution of funds so that there can be no question of funds being used for reasons other than that which they are intended.	The Head of Planning and Countryside	The Section 106 Monitoring Officer provides a full breakdown to finance upon receipt of funds and receipts are coded to a separate internal account.
14	Action agreed The Council needs to address corporately the current use of spreadsheet and databases. We believe a corporate solution will be forthcoming in the Data Quality Policy.	The Head of ICT	At present we have a separate Land Charges database, and Finance spreadsheet and the Monitoring Database. Each support a different function and ensure accuracy of information.
15	Action agreed The job description for the Section 106 Monitoring Officer should include effective liaison with other local authorities	The Head of Planning and Countryside	This has been the case and Section 106 Monitoring Officer and the equivalent post in Plymouth have set up a regular South West meeting of Section 106 Officers and a virtual support group.
16	Action agreed The Section 106 Monitoring Officer should consider other sectors when distributing funds, providing all projects are appropriately costed and agreed.	The Section 106 Monitoring Officer	Updated legal agreements have been drafted to ensure that other sectors are able to release funds providing that the project plans are accurate, involve community consultation and are for the benefit of the community.

	Actions	Officer responsible	Update 2008/09
17	Action agreed The Accountancy section should include the planning application number in the budget reference.	The Financial Services Manager	The Section 106 Monitoring Officer provides this information to Finance.
18	Action agreed The Section 106 Monitoring Officer should trace all older and archived agreements in order to reconcile income expected to income received.	The Section 106 Monitoring Officer	The Section 106 Monitoring Officer has worked through all existing historical agreements to reconcile this.
19	Action agreed The Section 106 Monitoring Officer should reconcile all future income expected to income received.	The Section 106 Monitoring Officer	The monitoring database will help to achieve this
20	Action agreed The Section 106 Monitoring Officer should record all income found by tracing older agreements. The income should be utilised wherever possible to fund prioritised projects.	The Section 106 Monitoring Officer	This has been done and the Officer is working to develop and achieve the prioritised projects.
21	Action agreed The Section 106 Monitoring Officer should liaise with the Financial Services Manager to create an effective format for individual project expenditure plans. They need to have the legal and financial details of the plan for a particular project, especially if the resource is dependent on a constraint caveat, such as time.	The Section 106 Monitoring Officer	A report format has been developed to provide a clear audit trail of spend. The project brief, summary and Ward Member and community support is identified and the report is signed off by the Head of Finance and Strategic Management Team.
22	Action agreed The Landscape Architect and Senior Engineer (Street Scene) should review the Section 106 Agreement calculator to ascertain whether there is a more beneficial percentage or index to cost ongoing maintenance.	The Landscape Architect and Senior Engineer (Street Scene)	We would hope to achieve this in a full study to look at all amenity spaces.
23	Action agreed The job description for the Section 106 Monitoring Officer should make clear the officer will be given sufficient authority in order to monitor the effectiveness of use of Section 106 Agreement money.	The Head of Planning and Countryside	This has been achieved in the Job Description and supported through attendance at the Asset Management Forum and Strategic Regeneration Project Team meetings.

SMT - Section 106 Receipts Summary

Planning obligations, also known as Section 106 agreements, are legal agreements between a developer and the planning authority and any others that have an interest in the land. Legal agreements can also be made by the developer only, known as a Unilateral Agreement.

We have a total balance of ££2,146,529.77 held within the Section 106 account, collected from existing Section 106 agreements. This is broken down as follows.

Section 106 Receipts

Ottery Bridge	117,000.00
Ottery Flood Defence Mower	3,000.00
Education	13,890.00
Honiton Community Centre	500,000.00
Honiton Crossing	10,000.00
Affordable Housing	374,102.28
Landscape Maintenance	9,700.00
Play/Recreation	896,236.33
Stowford Rise Community Hall	200,000.00
Unidentified	22,601.16
TOTAL	£2,146,529.77

There are still outstanding monies tied up in existing planning conditions that should have entered into a Section 106 Agreement but I am unable to quantify this. I am instead working my way through planning applications since 2006 to see which had a relevant condition attached to them.

Spending of Section 106 Receipts

Very little of the Section 106 receipts have been spent since we started collecting in 2003 as until now there has been nobody with the responsibility to do so and the constraints are so restrictive.

In the past year the total spend from the S106 budget is £109,877.69. Spend has taken place in the following areas.

Site	Amount	Spent On	Authorised
Bystock Chase	22,056.00	Play area Truro Drive	Report to SMT
Battishorne Way, Honiton	42,323.26	Honiton Maintenance Team	Chief Exec
Heritage Court, Honiton	1,314.73		
Lilley Walk, Honiton	5,539.64		
Riverside Close, Honiton	10,315.20		
Trafalgar Road, Lypstone	7,500.00	Paid over to Lypstone P/C to provide street lighting	Chief Exec
Axminster Cattle Market	19,793.86	Paid over to Education at DCC	As per agreement, should have gone directly to DCC
	1,035.00	Legal Costs, Land Registry Searches	As per Unilateral Undertaking process
TOTAL	109,877.69		