

CHESHIRE EAST COUNCIL

REPORT TO: Sustainable Communities Scrutiny Committee

Date of Meeting: 2nd February 2012
Report of: Head of Development
Subject/Title: Section 106 Agreements
Portfolio Holder: Cllr Rachel Bailey

1.0 Report Summary

- 1.1 The purpose of this report is to update members on the current balance of S106 monies held by Cheshire East Borough Council. The report provides a spreadsheet of all S106 schemes with outstanding balances and proposals for a programme of spend to ensure service areas spend the outstanding balances, where appropriate.

2.0 Recommendation

- 2.1 That the Sustainable Communities Scrutiny Committee notes the report

3.0 Wards Affected

- 3.1 All

4.0 Local Ward Members

- 4.1 All

5.0 Background and Introduction

- 5.1 Section 106 Agreements are made under S106 of the Town and Country Planning Act 1990 (as amended). They are legally binding agreements which are negotiated between the Planning Authority and the applicant/developer and any others that may have an interest in the land. Alternatively they can be proposed independently by applicants, this is known as a 'unilateral undertaking'.
- 5.2 Section 106 Agreements are generally used to minimise the impact of development and to implement the Councils planning policies through; prescribing the nature of development (e.g. by requiring a proportion of affordable housing); securing a contribution from a developer to compensate or provide loss created by development (e.g. open space); mitigating a developments impact on the locality (e.g. contribution towards infrastructure and facilities).

- 5.3 A dedicated S106 Officer was appointed in April 2011 to monitor and review all S106 legal agreements on development to ensure obligations are fully noted and trigger points monitored, and acting to ensure that they are fully discharged and complied with in accordance with the terms of the agreement. Since appointment to the post the S106 Officer has made some immediate improvements to the area of work resulting in improvement in efficiency of the S106 process generally.
- 5.4 Two working groups have been set up as a result of a S106 Workshop which was organised by Legal services. A Process Working Group will look at processes and procedures with a view to streamlining procedures, processes and communication between the service areas, creating clear process, audit and accountability from pre-application through to modification or discharge of the agreements. The Spending Working Group will look to progress spend and how we deal with receipt of monies, to clarify when interest can be added to balances, identify where match funding can be found, examine expected forthcoming income but have regard that the relevant permissions may never be implemented so money should not be relied upon.

6.0 S106 Monies currently held by the Cheshire East Borough Council

- 6.1 The Council currently holds a total of £4,900,989.90 in the S106 account, £3,277,582.25 of the total figure is identified as non-time limited funds and £1,623,407.64 is identified as funds time limited for expenditure. This equates to £4,305,188.15 in capital and £595,801.74 in revenue. The main capital categories are related to Greenspaces, Highways and Housing but the majority of capital relates to public open space and recreation uses and facilities.
- 6.2 The spreadsheet presented at Appendix 1 reflects the level of resource currently available. Whilst the spreadsheet accurately reflects the balance of monies held by the Council the information relating to the development linked to the S106 and allocated spend has been found to be inaccurate in some cases. Therefore, it should be noted that this is a working document and work is being progressed by both the S106 Officer and the accountants for Places in terms of updating the information and rectifying errors as and when appropriate. Work is ongoing to review all legacy 106 agreements to ensure all the resources due are captured and recorded on the attached spreadsheet.
- 6.3 The spreadsheet is maintained by the Councils Finance department, and is circulated to all Places budget holders and People finance team on a quarterly basis. It is disseminated to officers within the respective teams so that they are aware of the monies

available for spend and project managers are appointed where appropriate to ensure the funds are spent against agreed priorities.

- 6.4 Members will note that there are a small number of sums on the spreadsheet that are time limited and should be spent this year; these sums are highlighted in red. A programme manager has already been allocated to each of these sums and spend is being progressed.

7.0 S106 Income and expenditure since LGR

- 7.1 The table below illustrates S106 income received from developers, expenditure of S106 monies by the Council and the S106 monies returned to the developer.

Type of transaction	Financial Year		
	2011/12	2010/11	2009/10
Income	265, 643	604,000	1,260
Expenditure	143, 417	2, 058,000	2,000
S106 money returned	0	250,000	0

- 7.2 The table above shows that in financial year 2010/11 the sum of £250,000 was returned. This figure relates to a development at Moss Lane in Macclesfield and the associated S106 Agreement dated 10th October 2002. The agreement secured numerous benefits including affordable housing, highway improvements, and open spaces both on and off site provision. Monies were paid back to the developer in respect of “The Greenways” under clause 5.13(c) of the agreement. The creation period for “The Greenways” was specifically stated within the S106 agreement as being 7 years from the completion date of the S106 agreement. Unfortunately, “The Greenways” did not come to fruition and the developer requested the sum back.
- 7.3 Income is dependent on the implementation of the planning permission and then the appropriate trigger being met and effectively monitored.
- 7.4 If an S106 agreement specifies interest, then interest will be calculated on those deposits left unused at year end. This is done at LIBID rates (London Interbank Bid Rates) as recommended by our Corporate Finance section who invest the Authority's surplus cash balances. S106 agreements which specify interest then have their interest calculated and transferred from this pot annually to specific S106 agreements on the Balance sheet any S106 receipts that do not specify interest form part of the Authority's cash balances on which interest is receivable

but this will remain in the Authority's Interest received account, increasing the Authority's cash reserves.

8.0 Examples of expenditure and delivering benefits to the community

- 8.1 All monies that are secured through S106 agreements are specific to a particular development and in the majority of cases already allocated to a particular project or use through the precise wording of the agreement. In the unlikely case that the agreement does not specify the use of the monies, the S106 officer reverts to the legislation and guidance for S106's, the relevant committee resolution and the Planning Officers report to understand/ascertain what the monies were envisaged for. It's imperative that officers and Members understand that the monies are generally specified for use with very little scope for interpretation.
- 8.2 The table presented at Appendix 2 illustrates to Members the types of projects being delivered in different areas with regards to Leisure and Green space provision, this table is not exhaustive.
- 8.3 The S106 Officer has undertaken separate projects with the Town and Parish Council's directly. For example a project with Sandbach Town Council and Borough Councillors has been undertaken to ascertain what monies are available for spend in Sandbach, we meet on a regular basis to review what monies are available and general discussion on where extant permissions and developments are up to assist with monitoring of the agreements for that area and improve accessibility of information relating to S106's. An initial report is produced by the S106 Officer and then updated and progressed at each meeting. This has been particularly successful in finding and allocating money to both Elworth and Sandbach parks to benefit the wider community which are ongoing projects. A similar approach has been undertaken with Middlewich Town Council, Macclesfield Economic Forum and Holmes Chapel.
- 8.4 The table below illustrates how the S106 Officer has found resource to assist in the future delivery of projects and accessibility of funding.

Area	Monies found	Project to be funded/ Proposed
Elworth	£151,823	Regeneration of Elworth Park
Malkins Bank	£41,000	Renew existing play area

Middlewich	£78, 930.82	Public open space Provision
Crewe	£57, 215.95	CCTV
Macclesfield	£24,000	CCTV
Holmes Chapel	£5, 000	Public Open Space
Sandbach	In excess of £100,000	Sandbach Park

9.0 Programme to expend S106 monies

- 9.1 Service areas are notified of relevant clauses when S106 Agreements are signed through a completion memo from Legal and they are again notified when monies are received but it is not always possible to predict when monies will be received and there is sometimes the need to seek match funding to bring a scheme to fruition.
- 9.2 A S106 Spending Working Group has been set up, the first meeting of which took place on 13th January 2012. The outcome of the first meeting was to divide the spreadsheet at Appendix 1 into service areas and then each individual balance is to be reviewed in terms of allocating a project manager responsible for spending the money and forecasting when the money will be spent.
- 9.3 The S106 officer has been working with the relevant service areas i.e. Housing, Highways and Greenspaces to provide the information (exact wording of the S106) they need to progress projects. For example, Greenspaces and Highways Officers go through the master spreadsheet from finance then all officers involved in the spending of S106 consult the S106 Officer who confirms whether the proposed spend is in accordance with the associated S106 agreement.
- 9.4 Since appointment the S106 officer has carried out work to improve the process of allocating and spending the S106 contributions and will continue to provide information to the service areas to ensure they have the information required for budget and expenditure purposes.
- 9.5 The outstanding S106 monies in the Borough that remain unspent are provided in Appendix 1. It is proposed that each financial year, reports are produced on progress on the balance and spend of S106 monies are reported to the Scrutiny Committee and Strategic Planning Board.

- 9.6 Section 106 agreements will be replaced on the adoption of the new Local Plan (2014) by a Community Infrastructure Levy (CIL). The CIL will raise funds to support a range of infrastructure priorities identified in our Infrastructure Plan which will sit alongside the new Core Strategy and Site Allocations documents.

The background papers including the individual S106 Agreements relating to this report can be inspected by contacting the report writer:

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