

Chiltern District Council
Audit and Standards Committee- 23 January 2020

SUBJECT:	<i>Section 106 Financial Report</i>
REPORT OF:	<i>Councillor Peter Martin, Portfolio Holder for Planning & Economic Development, Chiltern District Council</i>
RESPONSIBLE OFFICER	<i>Cathy Gallagher, Interim Head of Planning & Economic Development</i>
REPORT AUTHOR	<i>Darran Eggleton / Minnie Ngaluafe</i>
WARD/S AFFECTED	<i>All</i>

1. Summary

- 1.1 This report seeks to provide clarity about the Councils' position in relation to financial contributions required by section 106 planning agreements. The report sets out the current financial status of developer contributions including monies collected, money outstanding, and the claw back options for outstanding payments.
- 1.2 The report reiterates the importance of section 106 agreements as an important revenue stream and to enable the Council to ensure developers make financial contributions to the district and county wide infrastructure and services.
- 1.3 The report provides an account update on:
- Financial contributions received in the last 3 financial years,
 - Financial contributions that are not yet due to be paid (trigger date not yet passed)
 - Overdue contributions (ie. trigger date has passed but no payment made) and what actions the Council has taken to retrieve the contributions.

RECOMMENDATION

To note the report.

2. Purpose of Report

- 2.1 To update Members and clarify the overall status of S106 financial obligations and to provide a transparent account on the financial status of section 106 agreements with a summary of financial sums received, due and overdue, and what actions are being taken to collect overdue sums. Furthermore, the report highlights that actions are taken to tighten the monitoring process.

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3. Content of Report

Background

- 3.1 Planning obligations under Section 106 of the Town and Country Planning Act 1990 are commonly known as S106 agreements. They provide a formal legal mechanism to secure measures that help make development proposals acceptable in planning terms.
- 3.2 Under S106 agreements developers and landowners are legally obliged to make the required financial contributions. The agreement sets out obligations laid on the developer in terms of what contributions are to be made and at what stage of the development those payments are to be made. For the Council, the agreement sets out what the financial contribution is to be spent on and the timeframe for when the obligation is to be made.
- 3.3 Under s106 agreements, developers are normally required to notify the Council when they reach key stages of a development and in response, where these stages trigger a financial obligation, the Council will invoice for the due amount (indexed linked) and where late payment is involved, to secure late payment.
- 3.4 The signing of an agreement does not guarantee the funds. As S106 agreements are to mitigate impacts of development, they are only paid if a development occurs and the triggers have been reached. A proportion of planning permissions are never implemented. As a result, a proportion of expected contributions agreed never come to fruition. Where a development does proceed, contributions will be paid at key stages such as a certain level of occupation, commencement and completion.

Monitoring process – past and present

- 3.5 Historically the Council has not had a central system for monitoring S106 agreements. However, there are a number of different teams involved in the S106s process such as Planning, Housing, Finance, Land Charges and Legal Services. Primarily, the monitoring of s106 planning obligations sits within Planning, which involves record keeping, liaising with developers/applicants and recording the receipts of financial obligations. Housing and Finance in relation to financial obligations also maintain their own records.
- 3.6 Section 106 agreements are monitored by the Planning department with responsibility for the monitoring and collection of the financial contributions sitting with the Planning Enforcement team.
- 3.7 In October 2019, the Council employed an Officer with direct responsibility for monitoring and enforcement of section 106 agreements. Since then the Enforcement team has put in place a procedural manual for the monitoring of S106 planning obligations, compliance enquiries and the collection of outstanding financial contributions.
- 3.8 Some of the measures that are now in place for monitoring of s106 for both Chiltern District Council and South Bucks District Councils are listed below; however, it is

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acknowledged that work is still required to strengthen this and ensure a robust and transparent system is in place, to reduce the risk of not capturing the trigger dates and collecting financial obligations on time.

- Procedural process with step by step guide, formalising the monitoring of s106s
- Consolidate and reconcile the records held by different departments, Finance, Housing Legal so there is a centralised monitoring spreadsheet maintained by the Enforcement Team for the two districts with the aim that it will be accessible to Finance and Housing.
- Proactively work with the departments involved in s106 such as Finance, Housing, Legal Services, Building Control
- Where there were discrepancies between records held by Finance, Housing and Planning, to verify the actual position.
- Agree with Finance on a procedure of raising invoices and sharing of information
- Establish a recovery collection process, see 3.9.1 for details.
- Interrogating internal monthly reports from Building Control to identify when development has commenced.

3.9 For information, the invoicing process for section 106 payments is a 3 stage process.

Stage 1 CDC calculates the invoice value (including indexation, fees & any fines) and send draft value to the developer

Stage 2 Developer to agree the invoice value.

Stage 3 invoice raised and issued

3.10 The Council's follow-up process is automatically instigated once the debt is 30 working days old from the statement date, and the first statement reminder notice is issued when the debt is 44 working days overdue. Once the debt becomes 52 working days overdue, the officer issuing the statement, in liaison with the Service Head, should decide on the next step.

For payments that are not overdue; payment days as follows:

- 30 days to make payment
- 14 days for first reminder if remain unpaid
- 7 days to pay with second reminder

For payments that are overdue:

- 14 days to pay
- 7 days to pay if a reminder is sent.

3.11 As of 1 September 2019, the amendments to The Community Infrastructure Levy Regulations (CIL) 2010 removed the pooling mechanism that restricted the number of contributions from section 106 agreements to just 5 per infrastructure project or type. Local planning authorities are now permitted to collect more than five contributions to fund the same infrastructure.

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4.0 Contributions summary

4.1 Table 1 below provides an overview of the S106 financial contributions received over the past 4 years together with the payments due but not triggered as well as those which are overdue. A breakdown of the due and overdue payments can be found at further below together with a narrative.

Table 1 – Overview of s106 contributions ‘received’, ‘due’ and ‘overdue’.

	Received				Due but not triggered	Overdue
	2016/17	2017/18	2018/19	2019-date		
CDC	£178,833.00	£450,755.78	£132,143.00	£189,815.15	£259,618.00	£25,000

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4.2 Chiltern District Council’s Section 106 financial obligations predominantly relate to affordable housing contributions. It should be noted that unlike South Bucks District Council, CDC does not seek affordable housing contribution fees. It should also be noted that financial contributions for other infrastructure such as education, highways, and open space to name a few are rare. As such, the financial tables for Chiltern are affordable housing contributions only.

4.3 Table 2 below provides the financial summary for the last 4 financial years. It should be taken into consideration that some developments may not necessarily get built out in which case there will be no financial contributions. Additionally, to take into account that some developments can take longer to build out and the trigger dates, when payments are due, are at different stages of the development. To give an example, payments may be due at commencement, completion, first or second anniversary of the date of commencement.

Table 2: Receipts for CDC in the last 3 financial year

Financial Year	Received
2019 to date	£189,815.15
2018/2019	£132,143.00
2017/2018	£450,755.78
2016/2017	£178,833.00
Total	£951,546.93

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Table 3: Amount due but not yet triggered – CDC

Amount due	Obligation	Due Date	Note/Action	Site
£209,618	Affordable Housing contribution	April 2020 – see note	The trigger date is 2 nd anniversary of commencement	117 High Street, GM – Former Police Station 2016/2408/FA
£50,000	Affordable Housing contribution	Upon Completion	Actively working with developer and various departments to establish completion.	Woodchester, Knotty Green CH/2016/0914
		Total Amount due	£259,618.00	

Table 4: Amount overdue for CDC

Amount Overdue	Planning Obligation	Note/Action	Site
£25,000	Affordable Housing contribution	Stage 1 of invoice process complete. Actively pursuing Developer in relation to the calculation of indexed linked before an invoice is raised.	Newbury House, Knottocks Drive, Beaconsfield. CH/2015/2062
		Total Amount overdue	£25,000

5. Corporate Implications

Financial

The District growth requires additional and improved community infrastructure. Financial contributions received from S106 agreements are used to support a range of environmental improvements, physical infrastructure and affordable housing. It is therefore important to have a robust S106 monitoring system ensuring the availability of capital from S106 agreements, and that those contributions are collected and spent effectively for their intended purpose.

Legal

The new CIL Regulation 2019 introduces a new reporting requirement that all receiving authorities will now have to provide infrastructure funding statements to be published once a year, the first of which is due by 31 December 2020. The Infrastructure Funding Statement report is to detail s106 financial and non-financial obligations which may also include details of section 278 agreements.

Links to Council Policy Objectives

The section 106 monies contribute to our objective to invest in the district's future by creating the right conditions for economic growth so that businesses, residents and workers can prosper by directly addressing matters in our control that fetter growth, such as housing supply and provision of affordable housing.

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Background	<ol style="list-style-type: none">1. S106 Monitoring Spreadsheet2. Record held by Finance3. Housing s106 spreadsheet
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