

Corporate Governance and Standards Committee Report

Ward(s) affected: n/a

Report of Director of Service Delivery

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## Section 106 Monitoring Report

### Executive Summary

This report provides the Committee with a schedule showing the details of Section 106 contributions that have been secured, received, and spent as at the date of the report. In cases where the contribution has not yet been spent this report also shows whether the contribution has been committed to a project.

Section 106 Agreements can be used to secure financial contributions towards infrastructure. The Council will only seek contributions where a proposed development creates additional need or exacerbates an existing deficiency and where it complies with the three tests set out in the Community Infrastructure Levy Regulations 2010 (as amended).

Section 106 Agreements are recorded and monitored using a module of the main planning database called Acolaid, from the signing of the agreement to spending the contributions. The Council's Finance team also keep a monitor of income and spend of developer contributions.

Detailed information on Section 106 contributions towards infrastructure are in the Section 106 Monitoring Report appended to this document. The information has been split into three main sections, S106 Funds Available, S106 Pending Funds and S106 Spent Funds.

### Recommendation to Committee

That the Section 106 Monitoring Report be noted.

#### Reason(s) for Recommendation:

To ensure that the Committee is informed of the extent to which S106 funds are available, pending, and spent/committed.

**Is the report (or part of it) exempt from publication? No**

## **1. Purpose of Report**

- 1.1 This report provides the Committee with a schedule showing the details of Section 106 contributions that have been secured, received, and spent. In cases where the contribution has not yet been spent this report also shows whether the contribution has been committed to a project.

## **2. Strategic Priorities**

- 2.1 This is a factual report which sets out the status of Section 106 contributions as at the date of the report. As such, it is not considered that this report has any direct impact on the strategic priorities of the Council.

## **3. Background**

- 3.1 Section 106 of The Town and County Planning Act 1990 allows for legal agreements to be entered into to mitigate the impacts of a proposed development. Legal agreements are also commonly referred to as Section 106 or S.106 Agreements.

- 3.2 Section 106 Agreements can be used to secure financial contributions towards infrastructure. The Council will only seek contributions where a proposed development creates additional need or exacerbates an existing deficiency and where it complies with the three tests set out in the Community Infrastructure Levy Regulations 2010 (as amended):

A planning obligation may legally only constitute a reason for granting planning permission for the development if the obligation is:

- a) Necessary to make the development acceptable in planning terms
- b) Directly related to the development; and
- c) Fairly and reasonably related in scale and kind to the development

- 3.3 Section 106 Agreements are recorded and monitored using a module of the main planning database called Acolaid, from the signing of the agreement to spending the contributions. The Council's Finance team also keep a monitor of income and spend of developer contributions.

- 3.4 Many of the Section 106 contributions are collected on behalf of other organisations such as Surrey County Council, Clinical Commissioning Groups, Surrey Police, etc. These contributions are passed on to the organisations in accordance with provisions of the relevant Section 106 Agreement. The contributions that GBC are responsible for spending are allocated and spent by the relevant spending officer or team.

- 3.5 The Council's "Planning Contributions Supplementary Planning Document 2017" identifies the contributions that are likely to be required by Guildford Borough Council and Surrey County Council.

- 3.6 As well as securing contributions towards infrastructure improvements, Section 106 Agreements are used to secure mitigation in relation to Special Protection Areas (SPA). A financial contribution towards Suitable Alternative Natural

Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) is required when a development proposes a net increase in residential units within 5km of the SPA.

- 3.7 The SANG contribution is allocated to one of the Council's strategic SANG sites and is used for the delivery, maintenance, and management of the allocated SANG. The contribution is used for initial capital enhancement, maintenance, and replacement of infrastructure for 125 years and the costs of managing the SANG.
- 3.8 The SAMM contribution is secured on behalf of Natural England and is for the SAMM measures which include wardens, signage, leaflets, and education materials for the purpose of avoiding recreational impact to the SPA. SAMM Contributions are passed on to Natural England quarterly.
- 3.9 SANG and SAMM contributions are not allocated and spent in the same way as infrastructure contributions and as such have not been included in the S106 Monitoring schedule appended to this report. As at 31 December 2021, there was £11,507,643 in the SANG reserve and £222,189.59 in SAMM contributions was passed on to Natural England.
- 3.10 In addition to any financial contributions, legal and monitoring fees are also recorded. Legal fees begin at £750 and increase according to the complexity of the Section 106 Agreement and is towards the Council's costs incurred in the negotiation, preparation, and execution of the Agreement. The monitoring fee is £750 per trigger (e.g. Commencement or Occupation) and is towards the Council's costs incurred in monitoring and ensuring compliance of the Section 106 Agreement. The following table shows the total legal and monitoring fees received in 2020-21.

<b>S106 Fee Received 2020/21</b>	<b>£</b>
Legal Fees	£45,431
Monitoring Fees	£62,520

- 3.11 Detailed information on Section 106 contributions towards infrastructure are in the Section 106 Monitoring Report appended to this document. The information has been split into three main sections, S106 Funds Available, S106 Pending Funds and S106 Spent Funds.
- 3.12 **Available Funds**  
Available Funds section of the appended report provides details of Section 106 contributions that have been received and not yet spent. This section also shows whether the unspent contribution has been committed to a project or if a project has not yet been identified.
- 3.13 In some cases, the Section 106 Agreement will place a restriction on when the contribution must be spent by, this varies but can often be 5, 10 or 15 years from receipt of the contribution. Following this period, the developer may request the return of any unspent contributions. It should be noted that contributions that are allocated, committed, or earmarked for a project would be considered as spent and as such are not at risk of being returned.

3.14 The funds that are showing as uncommitted have been colour coded according to their spend by period, where such a restriction exists. The colour coding is as follows,

- Blue, this contribution does not have any spend by restrictions,
- Green, this contribution is well within its spend by period,
- Amber, this contribution has 180 days until the expiry of its spend by period,
- Red, the spend by period has already expired.

3.15 Where the funds are showing as uncommitted and are red (i.e. the spend by period has expired) these funds are potentially at risk of being returned if the developer requests the return of any unspent Section 106 contributions. The following table shows the total funds by purpose type that are uncommitted and are red and also how much is for GBC and SCC/other organisations.

Purpose:	Uncommitted/Red:
Environmental Improvement Contribution	£87,196.80
Highways Improvement Contribution	£10,081.21
Other Contribution	£182,838.98
Surrey CC Other Contribution	£9,345.51
<b>Grand Total Uncommitted &amp; At Risk:</b>	<b>£289,462.50</b>
<b>Of which SCC/Other:</b>	<b>£19,426.72</b>
<b>Of which GBC:</b>	<b>£270,035.78</b>

3.16 As per the above table there is £19,426.72 which is currently showing as potentially at risk of being returned and that are contributions for Surrey County Council. Regular updates are sent to Surrey County Council notifying them of any new funds and requesting details of the spend projects. Surrey County Council are currently reviewing the latest update with the intention of prioritising the expenditure of funds that are beyond the spend by dates.

3.17 GBC is the spend authority for the remaining £270,035.78 and these uncommitted funds will be followed up with the relevant spend officers or teams to get the funds committed to appropriate spend projects.

3.18 Available Funds Example:

Records: Available Funds Key: Red = At risk of refund Amber = 180 days until risk of refund Green = Not at risk Blue = Cannot expire

Purpose Type	Project Details (10)	Uncommitted	Committed	Spent
Purpose Number: 1 - Highway improvement contribution	1 Bus Strategy & bus infrastructure improvements	£0.00	£0.00	£354,119.96
	2 Towards passenger transport feasibility study to determine improvements within vicinity of the site	£0.00	£0.00	£194,273.94
	3 Funds Awaiting Allocation	£398,938.97	£0.00	£0.00
Purpose Number: 2 - Early Education (SCC)	4 Funds Awaiting Allocation	£55,874.67	£0.00	£0.00
Purpose Number: 3 - Primary education contribution (SCC)	5 Funds Awaiting Allocation	£1,446,087.52	£0.00	£0.00
Purpose Number: 4 - Secondary education contribution (SCC)	6 Funds Awaiting Allocation	£1,072,065.50	£0.00	£0.00
Purpose Number: 5 - Tertiary Education (SCC)	7 Funds Awaiting Allocation	£90,000.00	£0.00	£0.00
Purpose Number: 6 - Other contribution: Ash Road Bridge Contribution.	8 Ash Road Bridge	£0.00	£824,631.71	£0.00
Purpose Number: 7 - Police	9 Funds Awaiting Allocation	£9,000.00	£0.00	£0.00
Purpose Number: 8 - Surrey CC Other: Libraries Contribution.	10 Funds Awaiting Allocation	£111,705.18	£0.00	£0.00
<b>Totals:</b>		<b>£3,113,671.84</b>	<b>£824,631.71</b>	<b>£548,393.90</b>

This contribution falls under the 'Other' purpose type and is described as the Ash Road Bridge Contribution. The full contribution is shown as committed to the Ash Road Bridge Project.

In this example the contribution was received towards Highway Improvements. The contribution has been partially spent on projects 1 and 2. The remaining £398,938.97 held by GBC has not yet been committed to a project and is coloured green as it is within the spend by period and as such not at risk of being returned.

### 3.19 Pending Funds

The Pending Funds section of the report provides details of the contributions that have been secured by Section 106 Agreements signed since 1 April 2019 but have not yet been paid.

3.20 The Section 106 Agreement will set out the trigger point for payment of each contribution which can vary but most often are at commencement or occupation of the development.

3.21 It should be noted that these contributions will not be received if the planning permission expires before the development is implemented.

### 3.22 Pending Funds Example:

Records: Pending Funds

18/P/02308 P: Ash W: Ash South & Tongham Section 106 Signed Agreement Date: 18/02/2020		Land at May and Juniper Cottages, Ash Green Road, Ash Green, Guildford, GU12 6JH	
Purpose Type:	Amount Due:	Payment Trigger Condition:	
Purpose Number: 1 - Early Education (SCC)	£67,305.00	On commencement	
Purpose Number: 2 - Primary education contribution (SCC)	£273,636.94	On commencement	
Purpose Number: 3 - Other contribution	Footbridge Contribution. £50,000.00	Prior to occupation of not more than 50 Dwellings	
Purpose Number: 4 - Healthcare	£50,000.00	On commencement	
Purpose Number: 5 - Highway improvement contribution	£110,000.00	Prior to first Occupation	
Purpose Number: 6 - Secondary education contribution (SCC)	£295,578.56	Prior to first occupation	
Purpose Number: 7 - Public art contribution	£25,000.00	On commencement	
Purpose Number: 8 - Recreational open space contribution	£100,000.00	Prior to first Occupation	
Purpose Number: 9 - Other contribution	Road Bridge. £500,000.00	Prior to first Occupation	
	Road Bridge. £500,000.00	Prior to Occupation of 50 dwellings	
Purpose Number: 10 - Travel Plan (SCC)	£25,000.00	Prior to first Occupation	
Purpose Number: 11 - Highway improvement contribution	£5,000.00	On commencement	
<b>Total:</b>		£1,981,140.50	

This contribution has been secured towards Early Education and is due on commencement of the planning permission

This contribution falls under the 'Other' purpose type and is described as secured towards the Road Bridge project.

The contribution will be paid in two equal payments prior to first occupation of the planning permission development and prior to occupation of 50 dwellings.

3.24 Contributions passed on to other organisations such as Surrey County Council are considered as spent and are shown here.

### 3.25 Spent History Example:

Records: Spend History

2021 Total for 2021: £2,828,872.25

November			Month Total:	£98,353.66
Application Details:	Project Details:	Spent:		
17/P/00509 P: Christchurch W: Christchurch Land at Guildford College Campus, Stoke Road, Guildford, GU1 1EZ	Travel Plan Monitoring	£6,645.03		
17/P/00529 P: Tongham W: Ash South & Tongham Land adjacent to The Granary, Grange Road, Tongham, GU10 1DJ	Hotspots Scheme (A31/A331)	£79,502.08		
17/P/02158 P: Ash W: Ash South & Tongham Land north of, Grange Road, Ash, GU12	Travel Plan Monitoring	£4,904.95		
19/P/01210 P: West Horsley W: Clandon & Horsley 20 The Street, West Horsley, Leatherhead, KT24 6AX	Notice Boards, West Horsley PC	£7,301.60		

October			Month Total:	£110,000.00
Application Details:	Project Details:	Spent:		
20/P/01271 P: Onslow W: Onslow 3, 4, 5 & 9 Midleton Industrial Estate Road, Guildford, GU2 8XW	Sustainable transport measures to provide a toucan crossing at the junction of Midleton Road/Woodbridge Road	£110,000.00		

In this instance one Section 106 contribution was spent in October 2021. The related planning permission details are shown alongside the summary details of the project that the contribution was spent on.

#### 4. Consultations

4.1 None

#### 5. Key Risks

5.1 In some cases, the contribution may become at risk of being returned to the developer if the contribution has not been spent, allocated or committed for spend by the end of the spend-by period set by the Section 106 Agreement.

5.2 The period which the contribution should be spent varies but can often be 5, 10 or 15 years from receipt of the contribution. Following this period, the developer may request the return of any unspent contributions.

5.3 It should be noted that contributions that are allocated, committed, or earmarked for a project would be considered as spent and as such are not at risk of being returned.

5.4 Pursuant to paragraph 3.15 there is currently £289,462.50 at risk of being returned should the developer request the return of any unspent contributions.

#### 6. Financial Implications

6.1 Where GBC is the spending authority we budget and monitor contributions and expenditure within our own monitoring reports. This includes:

- S106 receipts which are held on the balance sheet. Under the financial regulations, schemes that are fully funded by s106 receipts can be added to the capital programme, where they have been approved by the relevant Lead Councillor and Director in consultation with the Lead Specialist (Finance) and,
- The Council is also required, under accounting practices, to hold endowment funds received as developer planning contributions in earmarked reserves for the long-term repairs and maintenance expenditure on Special Protection Areas (SPAs) or Suitable Alternative Natural Greenspaces (SANGs), these reserves are required to fund the revenue costs of SPAs/SANGs in perpetuity.

6.2 The funds for SCC and other authorities are held on our balance sheet as a creditor but are not budgeted for and do not form part of the Capital and Investment Strategy. These amounts are passed to the relevant authorities upon receipt of a qualifying invoice.

6.3 The following table shows the balances in hand (i.e., contributions received but not spent or passed to relevant bodies) as at 31 December 2021 for both the S106 balance sheet and the SPA (SANGs) Reserve:

<b>BALANCES as at 31 December 2021</b>	<b>£</b>
s106 - GBC	4,264,855
SPA Reserves	11,507,643
s106 - SCC/Other	7,492,914

**7. Legal Implications**

7.1 There are no direct legal implications arising from this report.

**8. Human Resource Implications**

8.1 No HR implications apply.

**9. Equality and Diversity Implications**

9.1 This duty has been considered in the context of this report and it has been concluded that there are no equality and diversity implications arising.

**10. Climate Change/Sustainability Implications**

10.1 No such implications apply.

**11. Summary of Options**

11.1 This is a factual report of information which is held by the Council to the Corporate Governance and Standards Committee. No options are necessary.

**12. Conclusion**

12.1 This is a factual report of information which is held by the Council to the Corporate Governance and Standards Committee

**13. Background Papers**

None

**14. Appendices**

Appendix 1: Section 106 Committee Report showing details of Section 106 contributions that have been secured, received, and spent as of 15/03/2022