

Guildford Borough Council

Report to: **Corporate Governance Standards Committee Report**

Date: 14 November 2024

Ward(s) affected: All Wards

Report of Director: Assistant Director Planning

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Report Status: Open

Section 106 Monitoring Report

Executive Summary

1.1 The Corporate Governance and Scrutiny Committee at its meeting of the 29 November 2023 considered a report titled Section 106 Monitoring report. The report responded to concerns that the Committee had raised at the earlier meeting about the following matters;

- lack of member and parish council involvement in decisions to reprioritise spend
- substantial sums of unspent monies with a specific focus on education and health care contributions,
- the robustness of negotiations on Section 106 for larger scale development with specific reference to Wisley Airfield site.

The content of the report was noted by the Committee.

1.2 This report provides the annual update on Section 106 spends including how some unspent monies will be reallocated.

Recommendation to Executive/ Committee/ Council

2.1 That the Committee notes the contents of the report.

Reason for Recommendation:

3.1. To ensure that the Committee is informed on Section 106 spend as well as through the Annual Infrastructure Spending Statement which all planning authorities are required to published on or before 31 December each year.

Exemption from publication

4.1 No.

Purpose of Report

5.1 The purpose of this report is to update the Committee on current Section 106 contribution spends.

Strategic Priorities

6.1 It is not considered this report has any impact on the strategic priorities of the Council. It is recognised that the infrastructure delivered through developer contributions, secured via a Section 106, contribute towards strategic priorities and play an important role in shaping our communities.

Background

7.1 Section 106 of The Town and County Planning Act 1990 allows for legal agreements to be entered into to secure infrastructure that cannot be secured through a planning condition which mitigates the impacts of a proposed development. The agreement forms part of the planning permission.

7.2 A contribution can only be required if it meets the three tests set out in the Community Infrastructure Levy (CIL) Regulations 2020 which requires that the infrastructure 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

7.3 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 or the transfer of monies to other spending body such as SCC. The Council's Finance team keep a monitor of income and spend of developer contributions. It should be noted that as part of wider project to replace the Acoloid system other systems including standalone systems are being explored.

7.4 Many Section 106 contributions relate to infrastructure that other organisations are responsibility for delivery such as Surrey County Council (SCC) for education, transport and libraries, the Integrated Care Board (formerly Clinical Commissioning Groups) for Health, Surrey Police, etc. These contributions are passed to these organisations in accordance with provisions of the relevant Section 106 Agreement in accordance with specific triggers within individual Section 106s. The contributions GBC are responsible for spending are allocated and spent by the relevant spending Service. There is now a requirement for the spend to be agreed with Planning to ensure that it can be demonstrated that the contribution has been spent in accordance with meets the three tests set out in the Community Infrastructure Levy (CIL) Regulations 2020.

7.5 At previous Committee's concern was raised about the reprofiling of spend and potential lack of transparency. It is first worth clarifying that to meet the three tests set out above contributions how need to be specific and these are clearly described within the Section 106. Accordingly, there will be a diminishing number of cases where

reprofile of spend or identification of spend projects post completion of a Section 106 will be required.

- 7.6 As the Committee has been previously advised where contributions are made for education, transport or healthcare these contributions are forwarded to the relevant body responsible for delivering this infrastructure (Surrey County Council SCC in the case of education and transport and the Integrated Care Board in the case of Health ICB).
- 7.7 Whilst these other parties are responsible for the delivery of specific infrastructure it is the role of the local planning authority i.e. GBC to ensure that any contributions requested meet the CIL tests set out above and through the drafting of the Section 106 are secured early enough in any development to enable delivery of the infrastructure as demand occurs. There was concern raised that the Council were simply collecting a sum of money that was then transferred to another body to be spent how they choose. The Committee is advised that this is not the case.
- 7.8 The details of monies that have been transferred to either SCC or the ICB and remain unspent highlighted to the Committee that some infrastructure is not being delivered to the same timelines as the development that generates the need for this infrastructure. This is a matter of concern and there have been a series of discussions and a workshop with SCC specifically around education and how we work more closely to ensure that there is timely spending but more significantly that there is fully consideration to the projects that allocations are made to in the Section 106.
- 7.9 A question to Full Council at its October 2024 meeting asked for the following details:
- The date the deed was agreed.
 - The initial contribution amounts.
 - The purpose of the contribution.
 - How much has been collected from the developer (and when).

- How much has been passed to which receiving organisation (and when).
- What the receiving organisation spent the contribution on.
- The deadline for money to be spent.

7.10 Attach to this report as Appendix 1 is a summary of the all the details relating to Section106 Agreements that the Council has entered into since 2019. The information is summarised under the following headings:

7.11 **Expired Funds**

The first section of the attached S106 Monitoring Report shows a summary table of the Expired Funds followed by detailed records of each of the relevant contributions. S106 contributions are considered expired when the spend by period has expired and the contribution remains uncommitted, these are shown coloured red in the Available Funds section of the report.

7.12 The Expired Funds summary 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. As per the summary table there is currently a total of £186,838.41 that is uncommitted with an expired spend by date.

7.13 As per the summary table there are currently £88,835.80 SCC contributions for primary education that falls within this category. This contribution was identified and secured through a 2012 planning permission for application 12/P/01534 relating to Land to the south of Foreman Park and west of Foreman Park Ash. There are on-going discussions with SCC relating to how this is going to be concluded.

7.14 Whilst there have been regular updates are sent quarterly to SCC notifying it of any new funds and requesting details of the spend projects. S106 contributions are passed on to SCC on completion of the relevant works or when SCC has confirmed that it is committed to carrying out a project for the works. This process has been reviewed as

its not considered by either authority to be robust enough. Regular meetings will now be held to ensure that there more focus on timely spend. Clause within Section 106 will ensure that they comply with the CIL test.

7.15 GBC is the spend authority for the £98,002.61 of funds that fall into the category of Expired funds. These funds are a collection of relative small sums of monies collected from planning permissions submitted between 2004-2013. The contributions have either been collected for projects funded through other means or are sums so small that nothing meaningful can be delivered through the contribution. All projects fall within the definition of environmental improvement projects. The following will now happen to these contributions:

Parish	Amount	Total	Action
Ash	£320,753.51		
Ash	£88,835.80		
Ash	£103.93		
Ash	£30,178.48	£439,871.72	Identify environmental improvement project with Ward members and Parish Council to spend these monies
Ash	£1,800.03	£1,800.03	Ask Parish whether they have a project to allocated these monies to
Stoke	£12,486.04		

Stoke	£15,897.20	£28,383.24	Identify environmental improvement project with Ward members and Parish Council to spend these monies
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Available Funds

7.16 The available Funds section of the appended report provides details of Section 106 contributions that have been received and not yet spent either because there are not projects that have reached a trigger where the funds are at drawn down stage or that they are historic contributions that now need to be reallocating. It should be noted that the figures set out above are included identified in red within the available fund section.

7.17 It should be noted that contributions that are allocated or committed for a project would be considered as spent. There are a number of projects that sites with SCC or GBC where there is currently no agreed date for spend and these are the subject of ongoing discussions with relevant officers within each authority around timing of spend. The contributions that need reallocating to alterative projects are set out in the table below with an action to confirm how the funding will be reallocated.

Parish	Amount	Purpose of original allocation	Reallocation
	£17,228,58	Car Club	Insufficient to create Car Club, find resource to create Car Club

			directory for Borough
	£110,555.00	Environmental Improvement	Identify specific project with Ward members and Parish Council
	£200,610.07	Other contribution	
	£31,973.60	Public Art contribution	Identify specific project with Ward members and Parish Council, to be delivered by Parish Council
	£33,070.00	Travel Plan contribution	Transfer to SCC

Pending Funds

7.18 The Pending Funds section of the report provides details of the contributions that have been secured by Section 106 Agreements, but the development is yet to commence and/or any payment trigger reached. It should be noted that if the development does not commence then no payment will ever be paid. At an earlier meeting of this Committee concern was expressed around negotiations on contributions to the Wisley development. As part of the appeal extensive negotiations took place with the applicant with lengthy discussions as part of the Inquiry. The report confirms the mitigation/contributions secured through the Section 106.

Key Risks

8.1 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 period set out in each Section 106 Agreement. This is a matter that is being closely monitored to ensure that monies are spent within the time period. However, it must be acknowledged that there will be cases where, for other reasons, infrastructure maybe needed sooner and therefore maybe funded from other routes.

Financial Implications

9.1 Where GBC is the spending authority with responsibility for budgeting and monitoring 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,
- GBC is also required, under accounting practices, to hold endowment funds received as developer planning contributions in 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 SPA/SANGs in perpetuity.

9.2 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.

Legal Implications

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

Human Resource Implications

11.1 No HR implications apply for this report and no specific comments from the head of HR when assessing this report.

Equality and Diversity Implications

12.1 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 directly from this report.

Climate Change/Sustainability Implications

13.1 No climate change implications directly apply however the failure to deliver infrastructure needed to deliver sustainable development will have implications to both climate change and sustainability.

Conclusion

14.1 This report identifies all contributions that can or will be secured through Section 106 Agreements together with actions that are being taken to ensure the timely delivery of infrastructure needed to make developments sustainable.