

Corporate Governance & Standards Committee Report

Ward(s) affected: All

Report of Joint Strategic Director of Place

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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 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 keep a monitor of income and spend of developer contributions. As at 31 March 2022, there was a balance of £3,798,626 for GBC S106 contributions and £11,574,658 for the SPA Reserves as well as £8,278,877 for Surrey County Council (SCC) & other relevant bodies; these sums being developer contributions that have been received but not spent or passed to relevant bodies.

The first S106 Monitoring Report was submitted to the Committee in April 2022 and the Committee requested various changes to the report which have now been implemented. Those changes include;

- Grouping the report by Ward
- Add descriptions for all purpose types

- Additional section of the report showing the 'at risk funds', this is now the first section of the report headed 'Expired Funds'
- Removal of the 01/04/2019 date criterion from the Pending Funds section.

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 four main sections, S106 Expired Funds, S106 Funds Available, S106 Pending Funds and S106 Spent Funds.

Recommendation to Committee

That the Section 106 Monitoring Report be noted.

Reason 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 details of Section 106 contributions secured, received, and spent. In cases where the contribution has not yet been spent this report 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 this report has any 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 proposed development. Legal agreements are also commonly referred to as Section 106 or S106 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 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 (SCC), 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 GBC is responsible for spending are allocated and spent by the relevant spending officer or team.
- 3.5 The Council's Planning Contribution 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 (SPAs). 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 five strategic SANG sites, which are Chantry Woods, Lakeside Nature Reserve, Effingham Common, Riverside Nature Reserve and Parsonage Watermeadows, and is used for the delivery, maintenance, and management of the allocated SANG and cannot be used towards a different SANG or infrastructure improvements. The contribution is used for initial capital enhancement, maintenance, and replacement of infrastructure for 125 years and the costs of managing the SANG. The SPA tariff is set by the Thames Basin Heath SPA Avoidance Strategy 2017 and the tariff is updated annually.
- 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 have not been included in the S106 Monitoring schedule appended to this report. At 31 March 2022, there was £11,574,658 in the SPA reserve, which is the total across the five strategic SANGS 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 recorded. Legal fees begin at £772.50 and increase according to the complexity of the Section 106 Agreement and towards the Council's costs incurred in the negotiation, preparation, and execution of the Agreement. The monitoring fee is £772.50 per trigger (e.g. Commencement or Occupation) and towards the Council's costs incurred in monitoring and ensuring compliance with the Section 106 Agreement. The following table shows the total legal and monitoring fees received in 2021-22.

S106 Fee Received 2021-22	
Legal Fees	£46,181
Monitoring Fees	£31,395

- 3.11 Detailed information on Section 106 contributions towards infrastructure is set out in the Section 106 Monitoring Report appended to this document. The information has been split into four main sections, S106 Expired Funds, S106 Funds Available, S106 Pending Funds and S106 Spent Funds.

Changes requested by the Committee

- 3.12 The first S106 Monitoring Report was submitted to the Committee in April 2022 and the Committee requested various changes to the report which have now been implemented, those changes include:
- Grouping the report by Ward
 - Add descriptions for all purpose types
 - Additional section of the report showing the at-risk funds, this is now the first section of the report headed 'Expired Funds'
 - Removal of the 01/04/2019 date criterion from the Pending Funds section.
- 3.13 The Committee also expressed that they would like the local ward Councillors to be kept informed of the status of the S106 contributions in their respective wards; therefore, individual ward reports have been created, showing the same level of detail as the main S106 Monitoring Report. The individual ward reports can be run annually and emailed to the ward Councillors. An example of one of the Individual Ward Reports is attached as **Appendix 2**.

Expired Funds

- 3.14 The first section of the attached S106 Monitoring Report (**Appendix 1**) 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.
- 3.15 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 £196,365.05 that is uncommitted with an expired spend by date.
- 3.16 As per the summary table there are currently no contributions for SCC that are potentially at risk of being returned. SCC were provided with details of contributions that were previously at risk and have provided confirmation of the relevant spend projects which means that those contributions are now committed to a project.
- 3.17 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.
- 3.18 GBC is the spend authority for the £196,365.05. These uncommitted funds are discussed with relevant spend officers or teams to ensure the funds are committed to appropriate spend projects. Regular six monthly spend meetings are held with relevant officers to ensure funds are allocated and spent in accordance with the provisions of the S106 Agreement.
- 3.19 The contributions within GBC's responsibility are towards the following purposes, Environmental Improvements, CCTV and Drainage.
- 3.20 The engineers' team has been provided with details of the relevant CCTV and Drainage contributions for consideration. Where appropriate the CCTV contributions will be considered for any town centre CCTV improvements.
- 3.21 Due to restructure changes over the last two years some of the spend officers and teams have changed and as a result there is no longer a dedicated team for the spending of environmental improvements. We are considering whether other teams would be able to lead on this or whether some of the contributions may be suitable for the Parishes to spend.

3.22 Most of the Expired Funds are from older agreements which tend to be less flexible in relation to where contributions must be spent. As previously mentioned, spend meetings will be arranged to work through these funds and ensure they are spent appropriately.

Available Funds

3.23 Available Funds section of the appended report provides details of Section 106 contributions that have been received and not yet spent. This section shows whether the unspent contribution has been committed to a project or if a project has not yet been identified. And as requested by the Committee, this section has been shown by ward. The committed and uncommitted sub totals are shown alongside the ward heading.

3.24 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.

3.25 Funds showing as uncommitted have been colour coded according to the 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 the spend by period,
- Amber, this contribution has 180 days until the expiry of the spend by period,
- Red, the spend by period has expired.

3.26 Funds received through S106 Agreements must be spent in accordance with the provisions of the related S106 Agreement and must be spent on the infrastructure type or specific project set out in the S106 Agreement.

3.27 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

17/PI/02592 P: Ash W: Ash South & Tongham Section 106 Signed Agreement Date: 29/03/2019				
Land south of, Ash Lodge Drive, Ash, Guildford				
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 - Travel Plan (SCC)	7 Funds Awaiting Allocation	£20,000.00	£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
Totals:		£3,113,671.84	£824,631.71	£548,393.90

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.

- 3.28 The Pending Funds section of the report provides details of the contributions that have been secured by Section 106 Agreements but have not yet been paid.
- 3.29 Previously this section of the report showed Section 106 Agreements signed since 1 April 2019; however, at the request of the Committee this date criterion has been removed and as such some older Agreements will now be shown in the Pending Funds section of the report.
- 3.30 Some older Section 106 Agreements will likely be superseded by newer planning permissions and Agreements. There are also a couple of Agreements that will remain pending as the development has technically been implemented but not built out to a point that triggers the payment of the S106 contributions, these applications are extant and could be continued to be built out at any time.
- 3.31 The Section 106 Agreement will set out the trigger point for payment of each contribution which can vary but is most often at commencement or occupation of the development.
- 3.32 It should be noted that these contributions will not be received if the planning permission expires before the development is implemented.
- 3.33 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)	£273,535.94	On commencement	
Purpose Number: 3 - Other contribution Footbridge Contribution.	£50,000.00	Prior to occupation of not more than 90 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. Road Bridge.	£500,000.00 £500,000.00	Prior to first Occupation Prior to Occupation of 50 dwellings	
Purpose Number: 10 - Travel Plan (SCC)	£2,500.00	Prior to first Occupation	
Purpose Number: 11 - Highway improvement contribution	£5,000.00	On commencement	
Total:		£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.

Spend History

- 3.34 The final section of the report shows contributions spent in the last 12 months and the project that they were spent on. This is shown on a rolling 12-month basis; therefore, it will always show 12 months from the date of the report.
- 3.35 Contributions passed on to other organisations such as Surrey County Council are considered as spent and are shown here:
- 3.36 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	Travel Plan Monitoring	£6,645.03
Land at Guildford College Campus, Stoke Road, Guildford, GU1 1EZ			
17/P/00529	P: Tongham W: Ash South & Tongham	Hotspots Scheme (A31/A331)	£79,502.08
Land adjacent to The Granary, Grange Road, Tongham, GU10 1DJ			
17/P/02158	P: Ash W: Ash South & Tongham	Travel Plan Monitoring	£4,904.95
Land north of, Grange Road, Ash, GU12			
19/P/01210	P: West Horsley W: Clandon & Horsley	Notice Boards, West Horsley PC	£7,301.60
20 The Street, West Horsley, Leatherhead, KT24 6AX			
October		Month Total: £110,000.00	
Application Details:		Project Details:	Spent:
20/P/01271	P: Onslow W: Onslow	Sustainable transport measures to provide a toucan crossing at the junction of Midleton Road/Woodbridge Road	£110,000.00
3, 4, 5 & 9 Midleton Industrial Estate Road, Guildford, GU2 8XW			

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 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 paragraphs 3.14 to 3.22 above, there is £196,365.05 currently uncommitted and 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 Financial Procedure Rules, 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 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 March 2022 for both the S106 balance sheet and the SPA (SANGs) Reserve;

BALANCES as at 31 March 2022	
	£
s106 - GBC	3,798,626
SPA Reserves	11,574,658
s106 - SCC/Other	8,278,877

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 Monitoring Report for 6 October 2022 Committee
Appendix 2: Example of Individual Ward Report (24/08/22)