

# Guildford Borough Council

Report to: Corporate Governance Standards Committee

Date: 29 November 2023

Ward(s) affected: All Wards

Report of Strategic Director: Place

Author: Claire Upton-Brown (Executive Head of Planning Development)

Tel: 01483 444316

Email: Claire.Upton-Brown@guildford.gov.uk

Lead Councillor responsible: George Potter

Tel: 07411 005115

Email: George.Potter@guildford.gov.uk

Report Status: Open

## Section 106 Monitoring Report

### 1. Executive Summary

- 1.1 At its meeting on 27 July 2023, this Committee considered a Section 106 Monitoring report, which provided a schedule showing the details of Section 106 contributions that have been secured, received and spent as of the date of the report.
- 1.2 The Committee raised concerns about the following matters:
  - lack of member and parish council involvement in decisions to re-prioritise 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 the Wisley Airfield site.
- 1.3 The Committee agreed that a further report would come to this meeting to respond to some of the specific questions raised to enable the Committee to have a better understanding of how Section

106 monies are held and are being spent. This report provides further details to the above questions. The Executive Head of Planning Development invites questions relating to specific details contained in individual Section 106 Agreements to be addressed to her directly either before or after the meeting.

## **2. Recommendation to Committee**

2.1 That the Committee notes the contents of the report.

## **3. Reason for Recommendation:**

3.1. To ensure that the Committee is informed of the measures to be implemented to address concerns raised at the 27 July 2023 meeting.

## **4. Exemption from publication**

4.1 No

## **5. Purpose of Report**

5.1 The purpose of this report is to update the Committee on specific matters raised at its meeting of the 27 July 2023 and to enable the Committee to better understand how Section 106 monies are held and measure to ensure that monies are spent.

## **6. Strategic Priorities**

6.1 It is not considered that 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 Agreement, contributes towards strategic priorities, and plays an important role in shaping our communities.

## **7. Background**

7.1 Section 106 of The Town and County Planning Act 1990 allows for legal agreements to be entered into for the purpose of securing 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 require 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. 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 will be explored.
- 7.4 Many Section 106 contributions relate to infrastructure that other organisations have 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. The contributions that this Council is responsible for spending are allocated and spent by the relevant spending Service, all of which is monitored.
- 7.5 At the July Committee 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 now need to be specific and these are clearly described within the Section 106 Agreement. Accordingly, there will be a diminishing number of cases where reprofile of spend will be required. However, going forward officers will ensure that, in circumstances where reprofiling of spend within an area is needed, this will be done with input from the

relevant parish council, the local ward member(s) and the Portfolio Holder.

- 7.6 The Committee was advised at the July meeting that in circumstances where contributions are made for education, transport or healthcare infrastructure, such contributions are forwarded to the relevant body responsible for delivering this infrastructure (SCC in the case of education and transport and the Integrated Care Board in the case of healthcare).
- 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. this Council) to ensure that any contributions requested meet the CIL tests set out above and through the drafting of the Section 106 Agreement are secured early enough in any development to enable delivery of the infrastructure as demand occurs. There was concern raised that the Council was simply collecting a sum of money that was then transferred to another body to be spent how they chose. 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 is an ongoing discussion with both SCC and the ICB to ensure that a more robust arrangement can be developed to give assurance to the Council, in its capacity as local planning authority, that the requirements of the planning permission are being met. It is suggested that this forms the subject of a future report once these arrangements have been formalised.
- 7.9 The final matter that was raised at the July Committee related to the robustness of negotiations on Section 106 Agreements relating to larger developments with a specific reference to Wisley. As the Committee will be aware, Wisley is the subject of a Public Inquiry with the Hearing dates running throughout November. Significant resource has been focused on the negotiation of the content of the

Section 106 Agreement, clauses within the Agreement and triggers for the delivery of infrastructure and payments of contributions. The Committee is advised that ensuring that Section 106 Agreements are as robust as possible is a key priority to ensure that sustainable development is delivered within the Borough.

## **8. 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 may be needed sooner and therefore may be funded from other routes.

## **9. Financial Implications**

- 9.1 Where this Council is the spending authority, responsibility for budgeting and monitoring contributions and expenditure is undertaken 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.

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.

## **10. Legal Implications**

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

## **11. Human Resource Implications**

11.1 No HR implications apply in respect of this report and no specific comments from the Lead Specialist - HR when assessing this report.

## **12. 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.

## **13. 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.

## **14. Conclusion**

14.1 This report has been submitted in response to a series of questions raised at the July Committee meeting; it sets out actions that are being taken to ensure the timely delivery of infrastructure needed to make developments sustainable.

## **15. Background Papers**

None

## **16. Appendices**

None