

TEWKESBURY BOROUGH COUNCIL

Report to:	Executive Committee
Date of Meeting:	11 July 2018
Subject:	Section 106 - Allocation of Funds for Community Infrastructure
Report of:	Andy Sanders, Community and Economic Development Manager
Corporate Lead:	Annette Roberts, Head of Development Services
Lead Member:	Lead Member for Built Environment
Number of Appendices:	One

Executive Summary:

There are a number of agreements made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) (S106) that require the payment of financial contributions towards a range of facilities, including community infrastructure. For a range of reasons, in some instances, the terms upon which these financial contributions can be subsequently spent are not sufficiently specific. Consequently, the allocation of certain S106 funds can be subject to prolonged discussions.

This report proposes a clear decision making mechanism in these scenarios to ensure the funds are allocated appropriately. The introduction of such a process will provide a clear and transparent process for applications for funds (from Parish and Town Councils and the voluntary and community sector) to be allocated for purposes which are in accordance with the S106, with an appropriate level of Member input.

Recommendation:

That the process set out in Paragraph 3 be ADOPTED for the distribution of S106 funds where the S106 Agreement does not explicitly specify where the funding should be directed.

Reasons for Recommendation:

- To provide a clear and transparent process for the allocation of S106 funds.
- To ensure that the allocation of S106 funds are in accordance with the necessary legal tests and are allocated in a timely manner to properly contribute towards meeting the needs of the new populations and growing communities.

Resource Implications:

As outlined within the report. The Council will hold and administer the S106 funds once received from the developer/landowner.

Legal Implications:

Ensuring compliance with S106 Town and Country Planning Act 1990 (as amended) and CIL Regulations.

Risk Management Implications:

This process will help ensure that S106 funds are spent within the claw back period.

Performance Management Follow-up:

Financial management is reported through the quarterly performance tracker.

Environmental Implications:

S106 funds can be negotiated to provide for environmental improvements within the community.

1.0 INTRODUCTION/BACKGROUND

- 1.1 Through the Development Management process, planning obligations are entered into by virtue of Section 106 of the Town and Country Planning Act 1990 (as amended), These obligations are usually in the form of a legal agreement with or a unilateral undertaking in favour of the local planning authority and are commonly referred to as S106 Agreements. A planning obligation can only do one of four things as follows: -
- (a) restrict the development or use of land in any specified way;
 - (b) require specific operations or activities to be carried out in, on, under or over the land;
 - (c) require the land to be used in any specified way; or
 - (d) require a sum or sums to be paid to a local planning authority on a specified date or dates or periodically.

Planning obligations bind the land itself, rather than the person or organisation that develops the land, and are key considerations that will have to be taken into account by any future owner because, if the S106 is not complied with, it is enforceable against the person that entered into the obligation and any subsequent owner.

- 1.2 The general premise of the use of planning obligations is to make acceptable development which would otherwise be unacceptable in planning terms. The common uses of planning obligations are to secure affordable housing, and to specify the type and timing of this housing; and to secure financial contributions to provide infrastructure. They are focused on site specific mitigation regarding the impact of development.

S106 Agreements which contain financial payments are often referred to as 'developer contributions'. This report relates solely to developer contributions for the provision of community facilities. Such facilities can be provided on the development site itself; or off-site for the new population to utilise. Examples include; open space, playing pitches, sports facilities, village halls, dog bins, play areas and the public realm.

- 1.3** The legal tests for when a S106 can be used are set out in Regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010 as amended. The tests are that they are:
- 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.

- 1.4** Specific beneficiaries and the financial amounts within the S106 Agreement are evidenced in a number of ways, for example:

- Council Planning Policy.
- Sport England Facility Calculator.
- Emerging Sports, Social and Open Spaces Study/Playing Pitch Policy.
- Fields in Trust Guidance.
- Neighbourhood Development Plans.
- Joint Core Strategy Infrastructure Development Plan.

The Borough Council is the accountable body for allocating the spending of S106 monies that relate to: public open space; sport and recreational facilities; and the public realm.

2.0 CURRENT SITUATION

- 2.1** Presently, within the Constitution, the Head of Development Services has responsibility for discharging S106 obligations.
- 2.2** The majority of pre-existing S106 Agreements are very specific as to the purpose to which developer contributions for community infrastructure must be allocated. For example “a Community Facilities Contribution in the sum of £100,000 should be provided towards improvements at xxx Village Hall on the occupation of the 100th dwelling.” Here, the S106 is clear what the sum is, who the beneficiary is and the purpose the money must be used for. Consequently, when a decision must be taken to allocate the monies, because the S106 is clear, there is no difficulty.
- 2.3** However, there are a limited number of pre-existing S106 Agreements which are not explicit as to who the beneficiary must be or where the funding should be directed. The initial flexibility would have been built into the S106 to enable the community’s changing needs to have been met over a period of time. As a consequence, this can cause difficulties when a decision to allocate monies must be made as the generic nature of the purpose to which the S106 monies can be used can cause confusion within the local community. Where these scenarios have previously occurred either they have been brought to Committee for discussion, or the local Member(s) have been involved and the Parish/Town Council put forward proposals. However, this has been on an ad-hoc basis as there is no clear process set down to deliver this.
- 2.4** There are currently a number of live examples where initiating a clear process would benefit decision making and avoid ambiguity. An example of an indistinct clause would be ‘£100k towards improvements in community provision in the Parish of xxx on occupation of the 100th dwelling’. In this situation the definition of community provision is not clearly laid out so the funds could be directed towards a village hall, play area, local sports club or community centre.

3.0 PROCESS OF ALLOCATING S106 MONIES WHERE THE AGREEMENT / UNILATERAL UNDERTAKING IS VERY GENERIC

3.1 To support the decision-making process, the consultation procedure outlined below is proposed. This will help in providing possible organisations who may have a proposal for the use of S106 monies such as Parish and Town Councils, as well as the voluntary and community sector, with a clear and transparent process as to how to apply for the allocation of such monies. Essentially this process, if agreed, will involve the Head of Development Services consulting with key local/Lead Members before a decision to allocate funds in these specific circumstances is made based on information provided. The proposed process will only relate to allocation of S106 funds where there is no clear beneficiary. Where clauses are clear the decision-making process will remain unchanged and the Head of Development Services will continue to work directly with the beneficiary to spend the funds in line with the S106 Agreement/unilateral undertaking.

3.2 The proposed process will involve three stages:

1. Prior to the S106 trigger point the Council will make the local Parish and community aware of the sums involved and what the funds are specified for. A deadline will be provided for the Council to receive the relevant information for bids.
2. The community group and/or Parish/Town Council submit details of how the funds will be spent. This submission will outline the proposal generally and will also be required to include details on the following matters:
 - How the CIL tests will be met.
 - Business Case (referencing original planning report, original consultation and S106 Agreement).
 - Evidence of need for the new population, including any consultation.
 - Subject to financial checks and the relevant policies.
 - Whether any other funds have been secured.
 - Deliverability/costings.
 - How the community will be involved in agreeing the use of the funds e.g. involving children and young people in the design of play areas.
3. Within the Constitution, the authority to discharge S106 obligations rests with the Head of Development Services. Once the Council is satisfied that all relevant information has been submitted, it is proposed that the Head of Development Services will discharge this responsibility in consultation with a panel of local/Lead Members. This panel will include:

Lead Member for Community.

Lead Member for Built Environment.

Lead Member for Finance and Asset Management.

Lead Member for Health and Wellbeing.

The local Member(s).

A member of the Finance team, One Legal and the Community Development Team would be present to advise the panel.

Where a member of the panel has a connection to the applicant (e.g. sit on the Board, or Parish Council that is making an application), they will be required to declare this and not be able to sit on the panel for that decision. This may be a virtual panel with information circulated via email.

3.3 To assist the community, guidance notes will be drawn up and the Community Funding Officer's expertise in funding processes will be utilised. It will be made clear that this is not a grant process. Not all S106 Agreements contain these non-specific clauses and therefore it is not anticipated that the panel would need to meet more than quarterly. All decisions will be advertised on the Council's website.

3.4 Therefore, it is requested that the Committee endorse this process to support the effective decision-making process for allocating S106 funds in these very specific circumstances.

4.0 OTHER OPTIONS CONSIDERED

4.1 An alternative option would be to refer all such scenarios to Executive Committee, but this is likely to lengthen the process.

This process does not include contributions relating to affordable housing.

5.0 CONSULTATION

5.1 Through the S106 process, the relevant Parish and Town Council is consulted. There has been no consultation on this process.

6.0 RELEVANT COUNCIL POLICIES/STRATEGIES

6.1 JCS Infrastructure Development Plan.

Sports, Social and Open Spaces Study (yet to be adopted).

7.0 RELEVANT GOVERNMENT POLICIES

7.1 Localism Act.

8.0 RESOURCE IMPLICATIONS (Human/Property)

8.1 Administrating the application and decision-making process. It is anticipated that this will be through the Place and Community Development Team.

9.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

9.1 S106 funds provide for community infrastructure that is vital for the new community in encouraging health and wellbeing, social interaction and a sense of place.

10.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

10.1 The process will provide a clear and transparent process for the best use of S106 funds.

11.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

11.1 None.

Background Papers: None.

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Appendices: 1 – Flowchart.