

This Report will be made public on 18 February 2019

Report Number **DCL/18/33**

To: Planning and Licensing Committee
Date: 26 February 2019
Status: Non key decision
Responsible Officer: Llywelyn Lloyd, Chief Planning Officer

SUBJECT: PLANNING CONTRIBUTIONS SECURED THROUGH SECTION 106 AGREEMENTS AND COMMUNITY INFRASTRUCTURE LEVY

SUMMARY:

Some planning decisions are subject to Section 106 (S106) legal agreements that require developers to make financial contributions to the Council and Kent County Council (KCC) to provide for on and off site infrastructure to mitigate the impact of the development.

Some developments for which planning permission is granted are also subject to the Community Infrastructure Levy (CIL). Although separate to the S106 process the purpose of CIL payments is also to ensure developers make an appropriate financial contribution to mitigate the impact of the development on local infrastructure.

The adequacy and effectiveness of the procedures and controls relating to S106 agreements was reviewed by the East Kent Audit Partnership in 2014 the resulting report recommended that the position regarding planning obligations that involve financial contributions should be reported to members on an annual basis. With the introduction of CIL in 2016 the report now also includes CIL contributions.

REASONS FOR RECOMMENDATIONS:

The Committee is asked to note the recommendations set out below so that there is a clear and transparent record regarding financial contributions required and received by the Council as a result of the planning process.

RECOMMENDATIONS:

1. To receive and note report DCL/18/33
2. To receive and note Appendix 1.

1. BACKGROUND

- 1.1 The objective of the East Kent Audit Partnership review in 2014 was to provide assurance on the adequacy and effectiveness of the procedures and controls established to ensure all Section 106 agreements are correctly administered and adequate monitoring is undertaken of monies held. These procedures and controls are reviewed by the East Kent Audit Partnership every 4 years with the current review nearing completion.
- 1.2 Two of the key recommendations of the 2014 report were that Section 106 obligations should be recorded and monitored regularly to ensure that the Council is receiving all of the monies due under the legal agreements and that an update report should be provided to the then Development Control Committee at least on an annual basis. The last report to the now Planning and Licensing Committee was in January 2018 and it was resolved that a S106 report, incorporating the CIL report will be reported to the Planning and Licensing Committee within the January of each year as an established agenda item, so as to ensure the recommendations of the audit report are met and that information relating to the collection and allocation of monies from S106 legal agreements and CIL is publically available.
- 1.3 The Council's Community Infrastructure Levy (CIL) scheme was adopted in August 2016. The monies due and received under CIL payments are monitored to ensure the Council receives all the monies due.
- 1.4 The basis for collecting contributions is planning policy SS5 of the Council's adopted Core Strategy Local Plan, as well as other policies within the Local Plan relating to requirements for open and play space provision. The aim of S106 contributions is to mitigate the impact of development on local services such as local schools and social care facilities etc and to ensure that, where provision is not made on site. off site mitigation is provided. S106 contributions for these services can only be sought on major residential schemes of 10 units or more, whereas under the Council's adopted CIL charging schedule CIL payments are required for all new housing schemes subject to exemptions and also some retail developments. It is important to note that S106 contributions can only be required to mitigate the impact of development, whereas CIL contributions are collected to fund wider infrastructure requirements across the district.
- 1.5 Changes introduced by the Community Infrastructure Levy Regulations 2010 and the introduction of a CIL in Shepway have reduced the amount of contributions which are now collected through the S106 process, as in many cases monies are now collected through CIL instead, or such collection is no longer allowed by the regulations. However, affordable housing is still required to be delivered through S106 agreements as well as infrastructure that is specifically required as a result of the development, for example a new school or on or off site play and open space, which still has to be funded or delivered through S106 agreements.
- 1.6 Bi-monthly meetings are held between the Development Management Manger and the Finance Officer to reconcile the records relating to S106 monies paid in, paid out and the balance held. Similar meetings are being set up with regard to CIL monies between the Strategic Policy Officer and the Finance Officer.

- 1.7 In 2016 an officer S106 and CIL working group was established. This meets bi-monthly and is led by the Corporate Director for Customer, Support and Specialist and includes officers from Planning, Legal, Finance, Housing and Property Services. The working group ensures that funds held by the Council are appropriately distributed and allocated in accordance with s106 requirements.

2. REVIEW OF MONIES HELD

- 2.1 The table below summarises the income received and payments made for all S106 agreements since 1st April 2015.

	Receipts	Payments	
	£	£	£
Balance at 31 March 2015			-1,517,450
2015/16	-549,567	622,805	
2016/17	-965,564	441,127	
2017/18	-2,050,935	1,470,228	
2018/19 (to 31 December 2018)	-450,620	119,348	
Total	-4,016,686	2,653,508	-1,363,178
Balance at 31 December 2018			-2,880,628

- 2.2 The balance of S106 income at 31 December 2018 of £2,880,628 is held for the following purposes:

	£	£
Kent County Council		
Social Care	126,641	
Libraries	32,339	
Education	307,364	
Community Learning	3,008	
Youth Services	11,561	
Transport related	60,060	
Other	380	
Total KCC		541,353
Other third parties	95,994	95,994
Folkestone & Hythe District Council		
Affordable housing	1,629,069	
Open space & play	247,151	
Other community use	367,061	
Total FHDC		2,243,281
Total S106 held		2,880,628

2.3 The table below summarises the income received under CIL since 1st August 2016. One of the purposes of CIL, particularly related to the neighbourhood proportion, is to incentivise communities to accept growth. The levy places a responsibility on the Council to pass a 'meaningful proportion' of CIL receipts to parish/town councils twice a year. Government Regulations enacted on 25th April 2013 require that the meaningful proportion should be 25% of CIL receipts where a Neighbourhood Plan is in place and 15% in other areas (capped at £100 per dwelling). The local meaningful proportion does not have to be spent purely on infrastructure but may be used to fund other measures as long as they address demand placed by development in the area. Where possible the Council and town and parish councils are encouraged to identify agreed priorities for infrastructure in order that both CIL and the 'local proportion' is focused on delivering these priorities.

Site / scheme	Planning ref	Total CIL liability	Total CIL received	Notes
5 Dunstall Gardens St Marys Bay Romney Marsh	Y16/0933/SH	£2,685	£2,685	
Charlier House 8 - 12 Stade Street Hythe	Y16/0987/SH	£13,300	£13,300	
Land Adjoining Acorns Barnhurst Lane Hawkinge	Y17/0594/SH	£9,704	£9,704	
47 Kingsway Dymchurch Romney	Y17/0830/SH	£4,678.5	£4,678.5	
Sea Close Canongate Road Hythe Kent	Y17/1385/SH	£25,162	£25,162	
Ingles Meadow Ingles Road Folkestone	Y17/0710/SH	£42,141.97	£10,535.49	Payment by instalments agreed
69A Seabrook Road Hythe Kent CT21 5QW	Y17/1022/SH	£104,000	£52,000	Payment by instalments agreed
		TOTAL	118,064.99	

2.4 Appendix 1 is an extract from the monitoring spreadsheet and shows the applications on which S106 contributions have been sought, the amounts received and, where applicable, what they have been spent on, since January 2015.

3. RISK MANAGEMENT ISSUES

- 3.1 There are set out in the East Kent Audit Partnership's reports and are not relevant to this report which is for information purposes only.

4. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

4.1 Legal Officer's Comments (DK)

There are no legal implications arising directly out of this report. The Council's CIL payments received must be implemented in accordance with the Community Infrastructure Levy Regulations 2010 (as amended) and applicable guidance notes.

4.2 Finance Officer's Comments (LH)

All the financial information covered in the report has been produced with Finance.

4.3 Diversities and Equalities Implications (GE)

There are no equalities implications directly arising from this report.

5. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

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The following background documents have been relied upon in the preparation of this report:

None

Appendices:

Appendix 1 – Table of S106 Financial Contributions