

This Report will be made public on 15 March 2021

Report Number **DCL/20/47**

To: Planning and Licensing Committee
Date: 23 March 2021
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 legal agreements requiring 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, under Section 106 of the Town and Country Planning Act 1990 (as amended).

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 first reviewed by the East Kent Audit Partnership in 2014 with a follow up review in 2018/19. The original report recommended that the position regarding planning obligations that involve financial contributions should be reported to members on an annual basis. Following the introduction of CIL in 2016 the report now also includes CIL contributions.

REASONS FOR RECOMMENDATIONS:

The Committee is asked to agree 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/20/47.**
- 2. To receive and note Appendix 2.**
- 3. To receive and note Appendix 3.**

1. BACKGROUND

- 1.1 The objective of the East Kent Audit Partnership reviews 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 four years.
- 1.2 Two of the key recommendations of the original 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 on at least an annual basis.
- 1.3 At the January 2018 meeting of the now Planning and Licensing Committee it was resolved that a S106 report incorporating the CIL report would 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. Unfortunately a report was not presented to Members in January 2020 due to the introduction of new IT platform across the Council in January which required new processes for S106 and CIL and the subsequent transfer of data.
- 1.4 The Council's 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.
- 1.5 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.
- 1.6 The latest revisions to the CIL regulations made via the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019, require that from December 2020 local authorities must publish an Infrastructure Funding Statement (IFS), and information should be drawn from this. The IFS is to provide a summary of all financial and non-financial developer contributions relating to Section 106 Legal Agreements (S106) and the Community Infrastructure Levy (CIL) within Folkestone & Hythe

District for a given financial year. It should also identify infrastructure needs, the total cost of that infrastructure and the choices that the authority has made about how the collected contributions will be used.

- 1.7 A draft copy of the Council's first IFS is attached to this report at Appendix 1.

2. REVIEW OF MONIES HELD

S106 Monies

- 2.1 The table below summarises the S106 contributions received and paid out for all S106 agreements since 1st April 2015.

	Received	Paid Out	
	£	£	£
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	606,627	-610,570	
2019/20	664,292	-792,054	
2020/21 (to 18th December 2020)	249,339	-182,005	
Total	5,086,324	-4,118,789	967,535
Balance at 18 December 2020			2,484,985

- 2.2 The balance of S106 income as at 31st December 2020 of £2,484,985 is held for the following purposes:

PURPOSE	£	£
Kent County Council		
Social Care	5,049	
Libraries	4,020	
Education	149,295	
Community Learning	1,441	
Other	14,343	
Total KCC		174,149
NHS		156,896
Folkestone & Hythe District Council		
Affordable housing	1,262,740	
Open space & play	281,931	
Other community use	609,269	
Total FHDC		2,153,940
Total S106 held		2,484,985

- 2.3 The table at **Appendix 2** is an extract from the monitoring spreadsheet and shows the current live planning permissions that have contributions due and those planning permission on which contributions have been paid and the Council is still holding the monies pending release.

CIL Monies

- 2.4 The table at **Appendix 3** shows the total CIL receipts and transfers to Town and Parish Councils up to 29th September 2020.
- 2.5 The Council is responsible for making the final decision on the allocation of funding raised through CIL. The District Council formally adopted a Community Infrastructure Levy Governance Framework at Cabinet on 24th June 2020. The purpose of the governance framework in place is to ensure the deployment of CIL income follows clear and appropriate processes.
- 2.6 Further details on how monies received from CIL are allocated and spent are contained in the draft IFS appended at **Appendix 1**.

3. HUMAN RIGHTS

- 3.1 In reaching a decision on a planning matter the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

4. PUBLIC SECTOR EQUALITY DUTY

- 4.1 In assessing this planning matter regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.
- 4.2 It is considered that the proposed enforcement action would not conflict with objectives of the Duty.

5. RISK MANAGEMENT ISSUES

5.1 These are set out in the East Kent Audit Partnership's report and are not relevant to this report, which is for information purposes only.

6. LEGAL/FINANCIAL AND OTHER CONTROL/POLICY ISSUES

6.1 Legal Officer Comments (NM)

This report ensures the Council as Local Planning Authority is transparent in how it collects and spends the funds received under s106 contributions and CIL. There are no legal implications other than as set out in the report.

6.2 Finance Officer Comments (LK)

The financial information contained in Section 2 of the report has been prepared by Financial Services. There are no financial implications arising directly from this report.

6.3 Equalities & Diversity Officer Comments (GE)

There are no equalities implications directly arising from this report. Consideration for human rights and the Public Sector Equality Duty are set out within the main body of the report.

CONTACT OFFICER AND BACKGROUND DOCUMENTS

Councillors with any questions arising from this report should contact the following officer prior to the meeting.

Lisette Patching
CIL and Enforcement Team Leader
01303 853448
lisette.patching@folkestone-hythe.gov.uk

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

None.