

Report to the Resources Select Committee



**Epping Forest
District Council**

Portfolio: Finance

Subject: Review and usage of Section 106 monies

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Recommendations

That members consider the current position on section 106 funding and any further opportunities, whilst bearing in mind potential conflicts of interest.

Executive Summary

The report provides information on the Section 106 process and monitoring arrangements. The Council has and will receive substantial amounts from such agreements for affordable housing and other infrastructure purposes.

Reasons for proposed action

Members are asked to note the report and comment as appropriate

Other options for action

No other options applicable.

Report

1. The Council derives its revenue funding from a number of sources for example the General Fund receives money from Central Government, the Council Tax, Business Rates, various fees and charges and other grants and contributions. The Housing Revenue Account (HRA) receives money from Housing Rents, various fees and charges and other non-dwelling rents.
2. Capital expenditure is funded slightly differently, from Capital Receipts, various grants and contributions and with regard to HRA schemes, also from revenue resources which in effect means Housing Rents etc.
3. Grants and Contributions make up a fairly modest proportion of capital funding, this includes section 106 and similar income which the Council receives as part of agreements made when planning permission is granted for development schemes. These monies can be provided for a variety of different purposes and will be based upon requirements identified as part of the planning process. The types of project can range from education, highways, leisure, health and affordable housing provision. In some cases the money is provided to the County Council or the National Health Service and in other cases to this Council or indeed Parish Council's.

4. If a developer is developing land for housing purposes there is a requirement in most cases, where there is a development of 15 or more properties, to provide 40% affordable housing on site. Sometimes however this is not viable and the Council will accept a financial contribution to provide affordable housing in the area. Prior to the house building programme this money was used by the General Fund and passed to housing associations, however this money is currently being used by the HRA. Having said that the house building programme is under review and may not continue beyond phase 3.
5. The Section 106 agreements themselves can vary, most have financial requirements but some have non-financial requirements. Sometimes at the developers behest a repayment clause is included where the money has to be spent for the agreed purpose within a specific timescale. If this timescale is not met the money becomes repayable and the provider is entitled to apply for the money to be returned to them. It is important that as part of the development process proper consideration is given to what infrastructure is required and needs funding. As an example on occasions funding has been provided for highways works and the County Council has struggled to spend the money as no clear project was identified during the planning approval process.
6. There is also an officer group that monitors section 106 agreements on a quarterly basis. The group monitors progress on all agreements ensuring that funds are applied to the appropriate projects and are spent within agreed timescales. There have been 113 section 106 agreements entered into since 2001 and whilst the early ones have been concluded there are still a significant number that have obligations outstanding and some go back a number of years.
7. There are also other legal documents which provide for financial payments to be made to the Council known as a Deed of Unilateral Undertaking. The Council is not a party to the Deed but under the legislation (S106 Town and Country Planning Act 1990, as amended) is able to enforce the undertaking given if necessary. As the Council is not a party it does not make any commitment to returning the monies if not spent, so the party making the payment has no ability to enforce repayment against the Council. Having said that the Council must spend the monies for the purpose given or be open to possible challenge by way of Judicial Review.
8. As at 31st March 2016 the Council held £363,000 in various section 106 contributions; this is a considerable reduction on the previous year as all affordable housing monies including those provided during 2015/16 were spent on the Council's house building programme in that year.
9. The amount is made up of £248,000 related to leisure initiatives and the remaining £115,000 was due and subsequently paid to NHS England or parish council's. In 2016/17 further affordable housing monies have been received with other amounts expected in the near future.
10. The Governance Select Committee previously received an annual report setting out the section 106 agreements entered into however that committee felt that the report was not something that could be properly scrutinised and therefore was something that should be put to the District Development Management Committee. The next report is scheduled for the summer of 2017 and will cover the financial year 2016/17.
11. It is possible that Section 106 agreements will be replaced by the Community Infrastructure Levy or CIL, This is being evaluated as part the Local Plan process by a consultant who is doing the groundwork to assess whether or not we should put a CIL in place, however we will not be able to do this until the Local Plan has been adopted currently expected by the end of 2018. The work on this is being paid for from the Local Plan DDF budget.

12. Section 106 agreements are an important tool for Council's to ensure that developers provide funding for the infrastructure and affordable housing that is necessary as a result of the developments being undertaken.

Consultations Undertaken

Consultations with a number of other officers but in particular the Assistant Director of Governance with responsibility for Section 106 agreements.

Resource Implications

The report refers to section 106 funding which can be used for a variety of infrastructure projects. This funding becomes available as a result of negotiations with developers as part of the planning process. Much of the funding is already allocated but there is potential for further funding for projects depending on the outcome of these negotiations.

Legal and Governance Implications

All sums paid to the Council referred to above will be the subject of a legal agreement which stipulates when and how much is payable to the Council. The agreements themselves are monitored by officers to ensure that the obligations therein are adhered to. There is also the possibility for conflicts of interest where an organisation that has provided finance to the Council subsequently seeks planning permission for something or might become subject to planning enforcement action.

Safer, Cleaner, Greener Implications

Nothing specifically identified, though agreements entered into will consider the environmental impact of the proposed use of the money.

Background Papers

Various agreements held in legal Services and working papers held in Accountancy.

Impact Assessments

Risk Management

In negotiating the agreements it is important that the projects for which funding is sought are thought through properly as there is a risk that having secured funding it is then not spent within the required timescale and has to be returned to the developer. There is also a risk of using this money for capital projects that then leave unfunded revenue consequences.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?	No
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Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?	No
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What equality implications were identified through the Equality Impact Assessment process?
None

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?

N/A