

**FINANCIAL CONTRIBUTIONS TOWARDS PLAY AND OPEN SPACE
REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY
DIRECTION)**



Hinckley & Bosworth
Borough Council

A Borough to be proud of

WARDS AFFECTED: ALLWARDS

1. **PURPOSE OF REPORT**

- 1.1 To update and inform members of the Scrutiny Commission of the position in respect of the monies towards play and open space that have been received and spent over the last 10 years via planning condition and Section 106 Agreement or Unilateral Undertaking.

2. **RECOMMENDATION**

- 2.1 The report is noted.

3. **BACKGROUND TO THE REPORT**

- 3.1 Developers / applicants can be requested to make financial contributions to make a planning application acceptable, where it would otherwise be refused, towards infrastructure needed as a consequence of their development, e.g. towards play and open space, libraries, education facilities etc. The contribution request has to meet the three statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. In addition, any contribution requested prior to the 27 March 2010 had to meet the tests in Circular 05/2005: Planning Obligations.
- 3.2 This can be done through entering into an agreement or the acceptance of a Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 both of which identify the amount of contribution and when the contributions need to be paid, e.g. on the commencement of development or first occupation. Historically, monies were also secured through the imposition of a planning condition. This has secured over £0.5m in S106 receipts as detailed below. However, legal advice regarding the imposition of the condition considered that its imposition may be challengeable. There are some instances where developments have been commenced and monies requested by planning condition have not been recovered. This has been only a small proportion against the level of funding secured by this method (see below).
- 3.3 Over the last 10 years (since December 2003) the Local Authority has received £552,150.75 towards play and open space across the Borough through the imposition of a planning condition; of these monies a total of £345,274.75 has been spent on play and open space by the parish councils and the Borough Council. This should be read in the context of the amount that the Local Authority has not been able to recover due to the developers challenging the use of the condition, this totals £18,642.00.
- 3.4 The total amount secured towards play and open space by way of Section 106 agreement or Unilateral Undertaken is significantly higher, with the amount received over the last 10 years totalling £4,219,039.91 across the Borough; of these monies a total of £2,137,601.47 has been spent on play and open space by the Parishes and the Borough Council, the remaining money is held by the Borough Council for expenditure by either the Parish or Town Councils or the Green Spaces Team of the Borough Council.

- 3.5 The use of either a Unilateral Undertaking or planning condition has no claw-back period. Section 106 agreements have a claw-back period normally of 5 years, on the basis that if the infrastructure improvements are not in place by then, there is no need for the facility. The period for claw-back is currently under review.
- 3.6 The contributions are monitored through a database set up on a parish basis and are available to the parish councils on request as well as being available on-line and being circulated to all parishes on a quarterly basis. This enables parish councils to clearly see what funds may come forward to help them plan for improvements in their area.
- 3.7 The database is complex, owing to the amount of information held. Over recent months the Planning and Finance Services have been working together to ensure the records align. This process has highlighted a few anomalies which are currently being investigated. Work is also underway to bring the Finance and Planning database together into one database.
- 3.8 The database shows 3 payments that are nearing the 5 year claw-back, these are as follows:

Parish	Site	Contribution £	5 year date
Earl Shilton	South of Breach Lane	44,730.00	11.08.14
Hinckley	Mill Hill Business Centre	46,217.73	12.10.14
Carlton	83 Main Street	11,867.90	15.06.15

- 3.9 In addition to the above 3, we are currently holding £43,857.32 from the development of land off Candle Lane, Earl Shilton, this can now be paid to the Town Council for the maintenance of off-site play and open space. A further £19,196.35 is being held from the development of 13 Hill Street, Barwell, this has passed the 5 year claw back date but the developer went into liquidation a number of years ago and therefore is unlikely to be clawed back so is available for expenditure.
- 3.10 The last Scrutiny Report reported that discussions were underway with David Wilson Homes regarding the contribution towards community facilities from the Montgomery Road, Earl Shilton development. The contribution, totalling £150,000.00 was received on 22 January 2008 and therefore reached the 5 year claw-back period on 22 January 2013. Despite the Borough Council's and the Town Council's best efforts, David Wilson Homes would not agree to an extension of time and requested the return of the monies plus interest as provided for under the terms of the Section 106 Agreement. David Wilson Homes submitted their claim to arbitration and the Borough Council has in the last week conceded the claim as there was no legal case for pursuing a defence of the claim. David Wilson Homes' solicitors will submit their claim for costs, estimated to be in the region of £10,000.

4. FINANCIAL IMPLICATIONS (KP)

- 4.1 Contained in the body of the report

5. LEGAL IMPLICATION (MR)

- 5.1 The report sets out the relevant legal provisions relating to the subject matter of the report.

6. CORPORATE PLAN IMPLICATIONS

- 6.1 This document contributes to Aim 1 of the Corporate Plan – Creating a vibrant place to work and live.

7. **CONSULTATION**

7.1 None

8. **RISK IMPLICATIONS**

8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

8.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

8.3 The following significant risks associated with this report / decisions were identified from this assessment:

Management of Significant (Net Red) Risks		
Risk Description	Mitigating Actions	Owner
If monies are paid within the timescale but not used for the purpose identified or not used at all, then these may be clawed back by the developer / applicant.	Monitoring of database Quarterly reports to all Parish Councils highlighting contributions at risk of being clawed back in the near future	Nic Thomas / Tracy Miller

9. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

9.1 The effective monitoring of the database enables parish councils to clearly see what funds may come forward, to help them plan for improvements in their area.

10. **CORPORATE IMPLICATIONS**

10.1 By submitting this report, the report author has taken the following into account:

- Community Safety Implications
- Environmental Implications
- ICT Implications
- Asset Management Implications
- Human Resources Implications
- Voluntary Sector Implications

Background papers: Section 106 Database

Contact Officer: Tracy Miller, Development Control Manager, ext 5809