



Hinckley & Bosworth
Borough Council

A Borough to be proud of

FORWARD TIMETABLE OF CONSULTATION AND DECISION MAKING

SCRUTINY COMMISSION 28 MARCH 2018

WARDS AFFECTED: ALL WARDS

S106 CONTRIBUTIONS UPDATE

Report of Director (Environment and Planning)

1. PURPOSE OF REPORT

- 1.1 To update Scrutiny Commission on S106 contributions received and spent in the 2017 calendar year.
- 1.2 To update members of the outcomes of the recent audit on section 106 procedures, including improvements to processes
- 1.3 To update members on secured contributions for 2017, contributions currently held and contributions successfully requested

2. RECOMMENDATION

- 2.1 That the progress in securing S106 contributions as set out in this report be noted.
- 2.2 That Scrutiny recognises that contrary to the 10th October 2017 report to Leicestershire County Council Cabinet, the Council does secure considerable contributions towards education and other LCC functions often at the expense of Affordable Housing contributions.

3. BACKGROUND TO THE REPORT

- 3.1 When implementing certain types of planning permissions (most notably major residential schemes), developers are required to make financial contributions towards providing or improving local infrastructure. These contributions are used to mitigate the impact of the development on local community facilities and can be requested where supported by planning policies. Contributions secured for HBBC include the improvement of local parks (play and open space), police and health facilities. Table 1, below, sets out a summary of the financial contributions secured by planning permissions during 2017 for which HBBC are responsible to collect upon triggers being met. Table 2 gives a summary of financial contributions secured for

which Leicestershire County Council is responsible. Table 3 provides a summary of the total financial contributions that have been received and available to spend on relevant projects, in accordance with the relevant S106 agreement. In addition to financial contributions for infrastructure there is also a requirement to seek affordable housing provision to meet demand and to deliver on central government commitments to solving the housing crisis.

Table 1: HBBC value of s106 contributions secured (not yet received) by planning permissions issued during 2017

Off site open space (capital and maintenance)	£ 412,334.10
On site open space (provision of neap)	£ 102,000.00
On site open space (maintenance)	£ 188,121.50
Health facilities/improvements	£ 281,049.52
Police infrastructure	£ 112,966.00
Public Realm	£ 258,500.00
Total	£1,354,971.12

Table 2: LCC value of s106 contributions secured by planning permissions issued during 2017

Education	£ 2,900,202.49
Bus pass contribution	£ 21,000.00
Bus stop improvements	£ 188,121.50
Civic amenities	£ 17,336.00
Highways contributions	£ 281,049.52
Library	£ 11,473.00
Total	£ 3,419,182.51

Table 3: Total contributions held and available to currently spend

Total for play and open space (on and off site) Note: Amount already committed £426,548.00	£1,541,206.79
Off-site affordable housing commuted sums	£ 502,508.26
Health facilities	£ 602,712.62
Police infrastructure	£ 130,411.38
Town Centre infrastructure	£ 305,459.28
Canal & River Trust	£ 51,673.30
Total	£2,707,423.63

- 3.2 An audit of Section 106 contributions was recently completed in December 2017 by Deloitte and we have now received a draft Audit Report. The report identifies that the current processes and procedures are more than satisfactory and there are only three areas that could be improved. These are;
- i) Provision of regular aged debt reports
 - ii) Consistent use of new coding system
 - iii) Ensuring indexation is calculated in a timely manner
- 3.3 Some S106 agreements require the Council to pay back monies that remain unspent after a certain period of time (typically 5 years); usually the onus would be on the developer to request that the money be repaid. The improvements made to the section 106 process ensure that pro-active work takes place with the relevant bodies to ensure all contributions are spent in accordance with the details in the relevant S106 agreement. Regular discussions take place with relevant bodies i.e. Parish

Councils; to identify projects in their areas to ensure that contributions can be spent promptly.

- 3.4 Draft section 106 agreements are now checked by the Compliance & Monitoring Officer and obligations adjusted accordingly to enable successful implementation.
- 3.5 Historic reconciliation has now been successfully completed. We continue to reconcile with finance on a regular basis to ensure that accounts records replicate s106 records.
- 3.6 Table 4 below shows contributions (totalling £905,443.50) that have approximately two years left to be spent. Each Parish Council has been informed of the timescales as part of their quarterly updates & separately;

Table 4: Open Space Contributions to be spent by 2020

Parish/ Relevant Body	Application Site	Contribution	Clawback date	Update
Bagworth	Land South of Maynard 12/00127/FUL Provision & Maintenance	£69,630.17	15/05/2019	Awaiting details from Parish
Burbage	Henton Engineering 10/00883/FUL Provision/Maintenance	£10,407.23	10/01/2019	Awaiting details from Parish
Burbage	Land South of Britannia Road 10/01079/FUL Provision	£ 8,019.62	16/12/2019	Awaiting details from Parish
Burbage	Britannia Road 12/00154/FUL Provision	£48,456.05	17/03/2019	Awaiting details from Parish
Burbage	Bellway Workhouse Lane 13/00147/FUL Provision/Maintenance	£64,411.12	13/07/2020	Awaiting details from Parish
Burbage	DWH Three Pots 13/00094/FUL Provision	£44,100.24	20/11/2020	Awaiting details from Parish
Desford	Bellway Newbold/Manor Road 11/00029/OUT Provision/Maintenance	£81,398.31	19/12/2019	Awaiting details from Parish
Higham	DWH - Hilary Bevin's 13/01053/FUL Provision	£82,403.92	01/06/2020	Scheme /project in progress with Parish
Hinckley	DWH/Bellway The Greens 10/00661/OUT	£150,475.20	15/05/2020	Currently in discussions with developer as elected off site and possible change to on site

Canal & River Trust	Taylor Wimpey Land Former Greyhound Stadium 12/00341/FUL	£51,673.73	09/07/2020	Part of the improvement works is complete and we are awaiting request for release. Remaining improvements are to be scheduled
Health	Bellway –Workhouse Lane 13/00147/FUL	£28,361.32	13/07/2020	Extension at Burbage due to commence soon
Health	DWH & Bellway The Greens 10/00661/OUT	£266,106.59	15/05/2020	Split between Burbage and Hinckley surgery – Burbage extension in progress Awaiting health body progress
Total		£905,443.50		

- 3.7 A total of £428,463.96 Section 106 contributions were successfully requested in 2017 towards new equipment and improvements for play & open spaces areas within the Borough. In addition to this, four areas of on site open space within new developments have been successfully transferred this year to Parish Council's, with each Parish receiving a significant associated maintenance sum. The total maintenance released for these areas was £296,200.30 which will assist the Parishes which should cover a 20 year period for both equipped and unequipped areas.

4. BALANCING COMPETING NEEDS AND VIABILITY

- 4.1 As set out in Table 1 and 2 there are a number of different and authorities who wish to secure monies towards infrastructure, in some cases however the scheme cannot viably pay all of the contributions and still be viable. The National Planning Practice Guidance is clear that viability is a material planning consideration which must be taken into account when making a decision on a planning application. In cases where the applicant states that there are issues with viability the Council requires them to submit a viability assessment. These are then assessed by an independent viability consultant. In 2017 this process was made further robust by the appointment of a panel of 3 independent assessors to rigorously assess and challenge the assertions within viability assessments.
- 4.2 In the instances where not all contributions can be paid due to viability it is down to the local planning authority to decide which contributions are the highest priority.

5. EDUCATION CONTRIBUTIONS

- 5.1 A Cabinet report dated 10th October 2017 at Leicestershire County Council set out these issues and then went on to name only HBBC as not collecting education monies on two schemes. An extract of this is set out as an Appendix to this report.
- 5.2 Disappointingly HBBC were not consulted on this report nor have they provided any comparisons across all Leicestershire Districts.
- 5.3 We understand from LCC Officers that they do not hold such information, nor information on how each authority has negotiated S106 agreements so it cannot provide comment on this.
- 5.4 HBBC have therefore undertaken its own assessment of S106 agreements which has demonstrated the high level of contributions including for education which are secured by this authority. This assessment has concentrated on the following
1. *What is the total amount over the last 5 years that we have collected for education*
 2. *How many instances over the last 3 years have we accepted a reduction in affordable housing contributions to ensure that the full education contribution can be sought.*
- 5.5 The total Education Contribution collected by HBBC for LCC for the last 5 years is **£7,432,424.14**.
- 5.6 We have then looked at all S106 agreements over the last 3 years that required both education and affordable housing contributions. This analysis shows the following
- There are **three** examples where the full education contribution was not sought however these schemes were for 100% affordable housing or above policy requirement for affordable housing and where a viability appraisal was submitted and assessed which demonstrated that the scheme could not support the contribution sought .
 - There is **one** example where the full education contribution was not sought where a viability appraisal viability appraisal was submitted and assessed which demonstrated that the scheme could not support the contribution sought. A reduced affordable housing contribution was also secured again due to viability.
 - There are **four** examples where the full education contribution has still been secured but not the full amount of affordable housing and where a viability appraisal was submitted and assessed which demonstrated that the scheme could not support the contribution sought.
- 5.7 We consider that this demonstrates that the Council secures a significant amount of education contributions and there are only four examples in 3 years where a reduction in education contributions have been required, all of which are on the basis of viability. There are however just as many examples where the full education contribution has been secured but not the full amount of affordable housing. This demonstrates that the Council considers each site on its own merits and is prioritising the contributions based on the needs in the locality.

6. EXEMPTIONS IN ACCORDANCE WITH THE ACCESS TO INFORMATION PROCEDURE RULES

6.1 This report is to be taken in open session.

7. FINANCIAL IMPLICATIONS [CS]

7.1 The finance aspects are covered in the main body of the report, however members should be aware that should contributions not be spent within the period of time set out in the agreements, developers have the option to clawback the funding.

8. LEGAL IMPLICATIONS [AR]

8.1 The Council has a contractual requirement to spend s106 monies towards identified infrastructure specified within the agreements. This is to ensure the impact of the proposed development is adequately mitigated.

8.2 It is common within s.106 agreements for the contributions to be spent within a set period of time. If this is not complied with, and there is a specific repayment clause within the agreement, then the Council has a requirement to repay any unspent monies. The wording of the repayment clauses will specifically set out any triggers for repayment, and such wording can vary. Provided such triggers are satisfied, unspent monies are to be repaid, otherwise the Council is entitled to retain the unspent s106 monies.

9. CORPORATE PLAN IMPLICATIONS

9.1 This report contributes to Aim 1 of the Corporate Plan – Creating a vibrant place to work and live.

10. CONSULTATION

10.1 None required.

11. RISK IMPLICATIONS

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

11.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. Reporting systems and databases are continuously reconciled so that they align to assist in eliminating risks. Regular reports of contributions held are provided to each Parish on regular bases to also eliminate risk of clawbacks

11.3 The following measures are in place to ensure resilience of the processes going forward which include;

- Monthly meetings between compliance and monitoring and finance officers
- Regular updates are provided to the Health, Police, Canal & River Trust and Parish Councils of contributions due, available to spend and clawback details
- The investigation of producing a joint database to record all transactions

The risks associated with work have been identified, assessed and that controls are in place to manage them effectively.

- 11.4 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
DLS 38 – Enforcement and performance successes	Ensure that processes are in place to mitigate any risks	Nicola Smith

12. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

- 12.1 The effective monitoring of S106 contributions and engagement with Parish Council's and Neighbourhood Plan Groups allows local communities to identify and prioritise improvements to local facilities and infrastructure.

13. CORPORATE IMPLICATIONS

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

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Procurement implications
- Human Resources implications
- Planning implications
- Data Protection implications
- Voluntary Sector

Background papers: None

Contact Officer: Nicola Smith
Executive Member: Councillor R G Allen

APPENDIX

Leicestershire County Council Cabinet Extract 10 October 2017

As members will be aware, there will always be a tension between developers, the planning authority and infrastructure providers such as the County Council when requesting and negotiating developer contributions. In the majority of cases the County Council has been able to demonstrate and justify the need for the contributions that it seeks. However, there are occasions where developers claim viability issues which may affect the amount of contributions they may be able, or say they can afford to pay.

Elsewhere on the agenda for this meeting the Cabinet will be considering its response to the Government's consultation "Planning for the right home in the right place" in which it highlights the complexity and uncertainty that viability assessments bring to the planning process which can result in fewer contributions for infrastructure being secured. The range and complexity of variables in assessing viability are such that the process may be viewed as not being transparent and therefore viewed with suspicion.

Recently there have been a few examples of viability claims being accepted by District Councils which are likely to lead to a reduction in the contributions received by the County Council. Two proposals in the Hinckley and Bosworth district relating to 100% affordable housing schemes (i.e. the proposed development on land adjacent to 121 Station Road, Bagworth for the erection of 10 houses and 4 flats, and the development on the Dunlop Ltd. site, Station Road, Bagworth for the erection of 61 dwellings), have reduced the potential contributions to the Authority by approximately £250,000. The funds were requested mostly for education purposes. The assessment of viability is a matter for the District/Borough Councils as the local planning authority although the County Council provides full information about its contribution requirements. As is often the case, the County Council has not been party to the viability assessments.

It should be noted that District Councils are also sometimes affected by viability claims. An example of this is the viability assessment of the Lower Bardon Grange site in North West Leicestershire which is currently being considered and which might result in a reduction in the number of affordable houses being proposed on the site (a district council responsibility), rather than the funds required by the Authority to support housing and transport infrastructure in the area.