



1. **PURPOSE OF REPORT**

To inform members of the Scrutiny Commission of the position in respect of the Section 106 contributions that have not been spent within the 5 year period that contain a 5 year claw back clause and therefore are at risk of being clawed back by the developer, and those that are over 4 years old but not beyond the 5 years threshold.

2. **RECOMMENDATION**

That the report be noted.

3. **BACKGROUND TO THE REPORT**

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, i.e. towards play and open space, libraries, education facilities etc. The contribution request has to be in accordance with the Community Infrastructure Levy Regulations 2010. In addition, any contribution requested prior to the 27 March 2012 had to be in accordance with Circular 05/2005 Planning Obligations,.

This can be done through the entering into of a Section 106 agreement or the acceptance of a s.106 Unilateral Undertaking both of which identify the amount of contribution and when the contributions need to be paid, i.e. on the commencement of development or first occupation.

The latter option has no claw-back period. However, the money must be used for the purposes identified otherwise the developer may be entitled to claw the money back.

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 clearly no need for the facility.

The contributions are closely monitored through a database set-up on a parish basis and are available to the parish councils on request. This enables parish councils to clearly see what funds may come forward, to help them plan for improvements in their area. Open invitations have been sent to all parish council clerks with regard to receiving a presentation on understanding the full S106 process.

Whilst the database is complex, owing to the amount of information held, it helps to identify what money the development may bring in, when development has commenced, and monies outstanding. It also indicates where money has been committed through the Green Space Strategy.

When analysing the database, there is one S106 agreement greater than 5 years old which contains a claw-back totaling £1.68 – Market Bosworth, there are four S106 agreements between 4 – 5 years totaling £159,239.11, and three between 3 – 4 years totaling £165,865.74 :-

- Market Bosworth Land at Beulah House Station Road £1.68 (> 5 yrs)
- Earl Shilton Land at Montgomery Road, Earl Shilton £92,921.79 (4-5 yrs)
- Earl Shilton Land off Candle Lane, Earl Shilton £43,857.32 (4-5 yrs)
- Kirkby Mallory Rear 34 Main Street Kirkby Mallory £4,480.00 (4-5 yrs)
- Hinckley 44 Westfields Road, Hinckley £17,980.00 (4-5 yrs)
- Barwell Land off the Common, Barwell £57,768.01 (3-4 yrs)
- Earl Shilton Land at 2 Oxford Street £72,200.00 (3-4 yrs)

- Congerstone Barton Road £35,897.73 (3-4 yrs)

The Section 106 Forum was set up 5 years ago and also monitors the database.

4. FINANCIAL IMPLICATIONS [CB]

Contained within the body of the report.

5. LEGAL IMPLICATIONS [EP]

The obligation as to when the monies must be repaid will depend upon the wording negotiated in the particular s.106 agreement. The two common obligations are for the Council to repay the monies:

1. after with period of 5 years – with no need for the developer to make request under the terms of the agreement
2. after 5 years but with the need for the developer to make a request, written or otherwise.

6. CORPORATE PLAN IMPLICATIONS

This document contributes to Strategic aim of the Corporate Plan ‘Safer and Healthier Borough’

7. CONSULTATION

N/A

8. RISK IMPLICATIONS

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

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.

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

Risk	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.	Close monitoring of database.	Simon Wood / Sally-ann Kempin

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

None

10. CORPORATE IMPLICATIONS

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
  - Planning Implications
  - Voluntary Sector
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Background papers: S106 Database & NPPF

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