

SCRUTINY COMMISSION – 27 OCTOBER 2011

REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION) RE: S106 DEVELOPER CONTRIBUTIONS

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 enable planning permission to be granted, where it would otherwise be refused, to pay 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 Circular 05/2005 Planning Obligations and the Community Infrastructure Levy Regulations 2010.

This can be done in several ways. A Section 106 agreement can be prepared which identifies 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 is one S106 agreements between 4 – 5 years totaling £9,928.00, and four between 3 – 4 years totaling £199,027.12 :-

- | | | |
|-------------------|---------------------------------------|----------------------|
| • Market Bosworth | Land at Beulah House Station Road | £1.68 (> 5 yrs) |
| • Burbage | Land at 29 Britannia Road, Burbage | £9,928.00 (4-5 yrs) |
| • Barwell | Land off the Common, Barwell | £57,768.01 (3-4 yrs) |
| • Earl Shilton | Land at Montgomery Road, Earl Shilton | £92,921.79 (3-4 yrs) |
| • Earl Shilton | Land off Candle Lane, Earl Shilton | £43,857.32 (3-4 yrs) |

- Kirkby Mallory Rear 34 Main Street Kirkby Mallory £4,480.00 (3-4 yrs)

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

4. FINANCIAL IMPLICATIONS [DB]

There are none relating to this Council arising directly from this report. Section 106 contribution from developers are designed to provide resources to councils to improve infrastructure to meet the demands placed on it by new developments. All the contributions outlined above are in respect of play and open space provision and are due to the parish council detailed. Failure to use the contribution within the specified time limit would mean that resources available to improve infrastructure are not used as they could be.

5. LEGAL IMPLICATIONS [AB]

None Raised directly by this report

6. CORPORATE PLAN IMPLICATIONS

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

7. CONSULTATION

None

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 [Sharon Stacey, ext 5636]
- Environmental implications [Jane Neachell, ext 5968]
- ICT implications [Paul Langham, ext 5995]
- Asset Management implications [Malcolm Evans, ext 5614]
- Human Resources implications [Julie Stay, ext 5688]
- Planning Implications [Simon Wood, ext 5692]
- Voluntary Sector [VAHB]

Background papers: S106 Database & Circular 05/5

Contact Officer: Sally-ann Kempin ext 5654