

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



Hinckley & Bosworth
Borough Council

A Borough to be proud of

WARDS AFFECTED: ALL WARDS

1. **PURPOSE OF REPORT**

- 1.1 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**

- 2.1 That the report be 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, 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.
- 3.2 This can be done through entering into a Section 106 agreement or the acceptance of a 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.
- 3.3 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 no need for the facility.
- 3.4 The contributions are closely monitored through a database set-up on a parish basis and are available to the parish councils on request as well as being circulated to all 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. Open invitations have been sent to all parish council clerks with regard to receiving a presentation on understanding the full s.106 process.
- 3.5 Notwithstanding the current measures, a report will be produced for the Strategic and Community Planning Officer to discuss with the Parish Council's at the bi-annual Parish Forum. The report will further highlight the s.106 contributions available to the Parish Council's and give further opportunity for discussions to be held.
- 3.6 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.

- 3.7 The Section 106 Forum was set up 5 years ago and also monitors the database.
- 3.8 The database shows two s.106 agreements where the 5 year claw-back period has expired. These agreements are for development at 44 Westfield Road, Hinckley and Montgomery Road, Earl Shilton and total £17,980.00 and £150,000.00 respectively.

44 Westfield Road, Hinckley

- 3.9 The off-site open space contribution comprises £7,930.80 in respect of the provision and/or improvement of open space in lieu of the provision of open space within the Development and £9,169.20 in respect of maintenance of such open space.
- 3.10 Payment was received 20.12.2007 and a written request to return any sums not utilised in accordance with the s.106 agreement was received from the Developer on 24.01.2013.
- 3.11 Investigations are ongoing in an attempt to satisfactorily resolve the situation.

Montgomery Road, Earl Shilton

- 3.12 The community facilities contribution comprised £80,000.00 towards either the provision of leisure facilities or of a NEAP in the locality of the Development and £70,000.00 towards the maintenance of such provision. Payment was received 22.01.2008 and a written request has been received from the Developer (David Wilson Homes) for the refund of any unexpended sums.
- 3.13 Earl Shilton Town Council (ESTC) is aware of the funds. Discussions have taken place during the last few months with ESTC and DWH. HBBC has supported, and is trying to facilitate, the release of monies towards the construction of a new sports pavilion, for which ESTC has submitted a planning application. Those discussions are continuing and the outcome will be reported in due course. Section 106 contributions from development at 2 Oxford Street and 21 Breach Lane are also to be used towards this project.

Other agreements of note

<u>Parish</u>	<u>Site</u>	<u>Contribution</u>	<u>Parish Project</u>
Earl Shilton	Land at 2 Oxford Street	£72,200.00 (4-5 yrs)	Weaver Springs
Earl Shilton	21 Breach Lane, Earl Shilton	£44,730.00 (3-4 yrs)	Weaver Springs
Hinckley	5 Mill Hill Road, Hinckley	£46,217.73 (3-4 yrs)	Hollycroft Park TBC

4. FINANCIAL IMPLICATIONS [IB]

The worst case scenario is that the £150,000 Montgomery Road contribution has to be paid back with interest. The interest cost as at the 13th March is £8,296.

There is no interest clause in the agreement for 44 Westfield Road.

Officers will carry on with negotiations with the developer to ensure that a favourable outcome can be reached in both cases.

5. LEGAL IMPLICATIONS [MR]

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 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.	Monitoring of database. Quarterly reports to all Parish Councils highlighting contributions at risk of being clawed back in the near future.	Simon Wood / Rob Morgan

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

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. Where there is a proposed new service, change of service, or a new or reviewed policy, an Equality Impact Assessment is required and has been undertaken and can be viewed here: 'non required'

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

Background papers: S106 Database & NPPF

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