



REPORT of DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE

**to
OVERVIEW AND SCRUTINY COMMITTEE
27 FEBRUARY 2019**

SECTION 106 AGREEMENTS

1. PURPOSE OF THE REPORT

- 1.1 This is the six monthly report to provide Members with an update on Section 106 infrastructure projects. It sets out the progress on section 106 projects delivery by Maldon District Council, NHS England and Essex County Council.

2. RECOMMENDATION

- (i) Members are asked to give their views and comments on the information in this report.

3. SUMMARY OF KEY ISSUES

- 3.1 Overview and Scrutiny Committee on 3 October 2018, suggested an update on all projects for Section 106 funding. This report will cover the following issues;

- Update on section 106 Infrastructure Delivery Programme;
- Section 106 Policy Development.

3.2 The Maldon District Council's S106 Projects

3.2.1 Allotment (*see APPENDIX A, project A1-A6 and APPENDIX B(i) Forecasted Allotment Contributions*)

- 3.2.1.1 The Council has secured 0.46 hectare of onsite allotment in South Maldon for the local community. The Council has also secured £14,520 for allotments in South Maldon and it is estimated to be received in 2022/23. It is not feasible to create an independent allotment land for the local residents due to the small amount of contributions secured. The current proposal is to create allotment areas for school children within the school site, so they can utilise it to provide valuable education. Thorough consultation is to be carried out in 2021/22 to ensure that the local community has an input into the spending of the allotment contributions.

- 3.2.1.2 The Council has secured 0.5 hectare of onsite allotment land for the local residents in Heybridge. Monetary contribution of £11,647 is expected to be received around 2021/22 and consultations are to be conducted in 2020/21. The current proposal is similar to South Maldon; create allotment areas within school sites in Heybridge for

the children. Ultimately the consultation would indicate whether the local community and schools are interested in allotment projects in Heybridge.

3.2.1.3 There is provision of 0.5 Hectare of onsite allotment in Burnham on Crouch. The Council has secured £8000 through S106 agreement and proposes to secure approximately £4000 from site S2k North of Burnham on Crouch. The monetary contribution of £12000 will be passed to Burnham Town Council for maintenance of allotments in Burnham on Crouch. It will be transferred through the formal process of releasing the funds. The Town Council will be informed as soon as the funds become available.

3.2.2 Youth Facilities (*see APPENDIX A project YF1-YF5 and APPENDIX B(ii) Forecasted Youth Facilities' Contributions*)

3.2.2.1 The monetary contribution of £541,667 from site S2a Land South of Wycke Hill and Limebrook Way which is estimated to be received in 2021/22. The Council's Leisure and Liveability team have carried out consultation to identify the possible youth projects that are in demand by the local community.

3.2.2.2 The current proposal is to build a Community Hall onsite for activities such as yoga, fitness, youth club, judo, dance, training youth etc. as well as an onsite Adi zone – outdoor fitness and boot camp equipment for all ages, MUGA -650 sqm ball court area for 5 a side football, tennis, basketball, netball and hockey and onsite outdoor Table Tennis for all ages. A Youth shelter for poor weather conditions and to encourage social gatherings will also be provided and is very common practice in new developments. The resurfacing of tennis courts in Promenade Park will use up the remaining contributions.

3.2.2.3 The Council has also secured £203,125 in South Maldon for youth facilities from sites S2b Wycke Hill North and S2c Land East of Wycke Hill. The idea is to improve the West Maldon Community Centre but a consultation is to be carried out in 2023 to establish the local community demand and the feasibility of the project.

3.2.2.4 The Countryside Properties (developer) will be providing an onsite youth facility in Heybridge costing around £560,625. The specification will be drafted by the developer and the Council will have to approve the plan. In due course, there will be further discussion and consultation on the kind of youth facility. Contributions from site S2e North of Holloway and S2f Broad Street Green will be spent on Plantation Hall but consultation will be carried out to establish the needs of the community.

3.2.2.5 In Burnham-on-Crouch the Council has received £79,099 for youth facility which is to be utilised in improving the BMX bike circuit and improvements to tennis courts. There is approximately £166,000 to be received in around 2021/22 for youth facilities in Burnham-on-Crouch. Consultation is to be carried out immediately to obtain the relevant information to support the project.

3.2.3 LEAPs (Locally Equipped Areas of Play) & NEAPs (Neighbourhood Equipped Areas of Play) (*See APPENDIX A, project L&N1-L&N7 and APPENDIX B(iii) Forecasted LEAPs & NEAPs contributions*)

3.2.3.1 The Council has secured 3 Locally Equipped Areas of Play (LEAPs) and 1 Neighbourhood Equipped Play Area (NEAP) in south Maldon for the local residents.

There is also a monetary contribution of £34,560 from site S2b Wycke Hill North which is estimated to be received by 2022/23. The Council will carry out consultation in 2021/22 to identify the kind of improvements proposed by the community on play areas in West Maldon.

3.2.3.2 Consultation is being carried out on improvements to Promenade Park: a contribution of £52,830 has been allocated for the project. The project will upgrade the northwest of the park to form a modern LEAP. This project will also be funded by the Council's Capital Programme. This project will be implemented in 2019 and all preparation works are taking place.

3.2.3.3 Officers are still negotiating with the Countryside Properties site S2d North of Heybridge for the onsite provision of 3 LEAPs and 2 NEAPs instead of 5 LEAPs and a NEAP. Play areas will be used by the local residents in Heybridge. There are additional monetary contributions of £28,224 from site S2e North of Holloway and S2f Broad Street Green, which is estimated to be received in 2021/22. The Council aims to improve the Oak Tree Meadows play areas with the contribution. Consultation is scheduled for 2021/22 to obtain information on local communities demand for the play area.

3.2.3.4 Site S2i Chandlers and Creeksea will be providing 3 LEAPs onsite for the local residents. Site S2j Land south of Green Lane will provide a LEAP onsite in 2019. There are no monetary contributions for play areas in Burnham-on-Crouch.

3.2.4 **Ecology** (*See APPENDIX A, Project E1*)

3.2.4.1 A contribution of £44,025 from Land West of Fambridge Road, North Fambridge will be provided to the Essex Wildlife Trust to maintain the Blue House Farm. The contribution is estimated to be received around 2021/22. Officers are discussing with the Trust the need for an action plan for the maintenance of Blue House Farm.

3.2.5 **Affordable Housing Commuted Sum** (*See APPENDIX A, project AF1*)

3.2.5.1 The Council have received £406,425 as commuted sum for affordable housing. The Housing team is in discussion with a potential seller about acquiring land to provide social housing for the District. Officers will be reporting the progress of negotiations but it will be kept confidential until the Council has reached a meaningful agreement.

3.2.6 **The Essex County Council – Plume School Expansion**

3.2.6.1 The Maldon District Council has provided details of the anticipated income (**see APPENDIX B(iv) Forecasted Education Contributions**) for the Plume School expansion to Essex County Council and the Plume Academy to support discussions on commencing the expansion work at a meeting between the partners. The cumulative anticipated S106 income demonstrates (**see APPENDIX B (iv) Forecasted Education Contributions**) that most of the funds will be available in 2022/23 and 2024/25.

3.2.6.2 Essex County Council and the Plume Academy had forecasted that the peak time for student numbers will be around 2022/23 for lower school and 2024/25 for upper school. Based on this information it is provisionally agreed that by 2022/23 the lower

school expansion work will be undertaken and the aim is to start upper school expansion by 2024/25.

3.2.7 **The NHS England – Health Care Projects** *(See APPENDIX A, project H1-H9 and APPENDIX B(v) Forecasted Health Care Contributions)*

3.2.7.1 Trinity Medical Practice improvements project is for digitalisation of records to increase the clinical capacity. The storage of clinical notes at the practice is currently having a detrimental impact on the ability to deliver adequate clinical services from already extremely constrained premises. The majority of notes were being stored off site at a cost to the practice. This project will carry out the scanning of all records; it will increase clinical capacity by means of the digitalisation of records which will enable greater utilisation of available space within the current practice premises. If the practice was to host all patients notes within the current practice premises it would take two clinical rooms out of use to utilise as a secure storage area.

3.2.7.2 The Maldon District Council has considered the project and approved the release of £30,001.44 to fund the improvement project. The Council has acquired all relevant information from NHS England as per S106 agreement and also completed S106 Funding Form to indemnify the Council for any breach that the party causes.

3.2.7.3 The funds are coming from Scotts Hill development, Southminster. This project meets the criteria sets out in the S106 agreement dated 11 June 2013. There is also an additional project being prepared by NHS England to increase the clinical space in the Trinity Medical Practice.

3.2.7.4 Officers are in regular communication with NHS England on sharing updated information such as S106 income received, due to receive and the purpose of these contributions (see **APPENDIX A Project H1-H9**). Maldon District Council is making sure that NHS England has all our S106 projects in their overall project plan for Essex.

3.2.7.5 Currently the following projects have been included for the District –

Locality	Project Type	Brief Description	Strategic Objective	Priority	Delivery Year
<i>Maldon St Peters</i>	<i>New Build</i>	<i>Replacement of community hospital which is now in critical state of repair. Co-location of primary care.</i>	<i>Provision of community services improvement of Primary care services.</i>	<i>Essential</i>	<i>2023</i>
<i>Maldon Heybridge</i>	<i>New Build</i>	<i>Relocation of 4 GP practices.</i>	<i>Population growth, community not currently catered for.</i>	<i>Essential</i>	<i>2020/21</i>

<i>Southminster Surgery (William Fisher)</i>	<i>New build</i>	<i>Replacement for undersized premises on expiry of lease</i>	<i>Lease running out site not capable of redevelopment.</i>	<i>Critical</i>	<i>2019/20 (dependent on fundability - single handed GP)</i>
<i>The Trinity Medical Practice Mayland</i>	<i>Records storage</i>	<i>Need to relocate records to accommodate additional GP.</i>	<i>Safety of records.</i>	<i>Critical</i>	<i>2018</i>

3.3 S106 Policy Development

- 3.3.1 The Government has carried out Technical Consultation on draft Community Infrastructure Levy (CIL) Regulation which proposes significant changes to reporting Section 106 obligation and the use of S106 & CIL contributions. The Government has decided to lift pooling restriction in all areas. Once enacted, the local authority will be able to secure contributions towards an item of infrastructure, regardless of how many planning obligations have already contributed to it.
- 3.3.2 The Regulations will allow the local authority to use both the CIL and section 106 to fund the same item of infrastructure. The Government proposes to remove CIL Regulation 123 which will give local authorities greater flexibility for funding infrastructure. Regulation 122 will allow the Local authority to apply a S106 monitoring fee, provided the sum paid fairly and reasonably relates in scale in kind to the development. However, the three planning obligation tests would still apply to Section 106 agreements meaning that contributions would need to be spent in the locality of the development. CIL could therefore be used to address District-wide infrastructure matters and/or help ‘top-up’ the pot for larger pieces of infrastructure where developer contributions are insufficient to deliver the project.
- 3.3.3 The Government propose that the Council publish an annual Infrastructure Funding Statement by 31 December each year. The report should state what has happened with the contributions received and how these contributions have been applied. The report should state the amount of contributions due to be received and how they are going to be applied in the following years. The Infrastructure Funding Statement will make the S106 and CIL process more transparent for residents and developers and will be available on the Council’s website.
- 3.3.4 **The matters to be included in the Infrastructure Funding Statement for each reported year are –**
- The total monies received for section 106 agreements
 - Details of non-monetary contributions secured under section 106 agreements
 - Total number of affordable housing units will be provided
 - The number of school places for pupils which will be provided and the category of school at which they will be provided
 - Provisions of infrastructure to be provided through highways agreement under section 278 of the Highways Act 1980

- Total monies which were spent during the reported year
- Summary of the items of infrastructure to which monies have been applied
- The amount of such monies spent on each item
- The amount of such monies applied to repay money borrowed, any interest, with details of the infrastructure items which that money was used to provide
- Monies applied in respect of monitoring in relation to the delivery of planning obligation
- Total monies received during any year and retained at the end of the reported year
- Estimated contributions to be received for the next 2 years

3.4 **APPENDIX A - Project and S106 Information**

- 3.4.1 Contains information such as project reference, where the contribution is coming from, what the contribution is for, current project in relation to the contribution (categorised as financial and non -financial contribution), contribution triggers for payment, amount of contribution due and received. It provides the background information for project planning and the location of the project. It provides the project leaders with the purpose of the contribution as stated in the legal agreement to ensure that the contribution is spent locally and for the correct infrastructure type.

3.5 **APPENDIX B – S106 Income Forecast**

- 3.5.1 Housing trajectory and section 106 triggers for each site have helped to plot the estimated time of receiving future payments. It is a live document and needs updating regularly to ensure accurate information is shared amongst officers in Maldon District Council, NHS England and Essex County Council. This document is likely to change depending on how quickly or slowly developers are building houses. It provides a platform to plan ahead and inspire NHS England and ECC to schedule the delivery of projects. This document also reflects the change with the housing numbers as it impacts on the education contribution.

4. **CONCLUSION**

- 4.1 The majority of the S106 projects due to start in 2021/22 are being planned so that the consultation is undertaken prior to receiving the monetary contributions and to ensure that officers are prepared with all background works to implement a project. Liaising with NHS England and Essex County Council with updated information on the money received, anticipated income and the purpose of these contributions is an essential part of this process.
- 4.2 There will be a dedicated officer in the NHS to monitor all S106 contributions in Essex and it is in our interest to ensure that the officer has all relevant information to plan for Health Care projects within the District. It is paramount that the Council keeps up to date information to encourage NHS England and Essex County Council to initiate projects such as highways, education and health care within the District.

5. IMPACT ON CORPORATE GOALS

- 5.1 The Work of the Overview and Scrutiny Committee supports the corporate goal of “Delivering good quality, cost effective and valued service”.

6. IMPLICATIONS

- (i) **Impact on Customers** – Scrutiny work may aid in improvements to service to the public by the Council and external authorities.
- (ii) **Impact on Equalities** – On and off site infrastructures will be provided through Section 106 to meet known national standard and will be available to all communities.
- (iii) **Impact on Risk – Most S106 agreements are** time limited by the developer in terms of allocating and spending the contribution. If a developer pays a contribution and the Council fails to provide the facilities within the time period specified the Council runs the risk that the developer might seek to clawback the contribution. The nearest clawback periods run until 2021 and programming has started to ensure that the risk of clawback is minimised.

Delays in getting projects underway as soon as possible after the contributions are received also lead to risks. Once the S106 contributions have been received they are not protected against cost inflation which can lead to insufficient funding to provide facilities in full. Therefore, the programme of works needs to be closely aligned to the receipt of the contributions and all the Maldon District Council’s projects need to be delivered on time to minimise the Council’s potential financial exposure.

- (iv) **Impact on Resources (financial and Human)** – The negotiation of Section 106 agreements is part of the planning services core budget. The developer pays the Council’s costs in drafting and completing the agreement. Where the Council delivers a project it needs to fully reflect the use of S106 and other funds for the on-going maintenance. For larger schemes the Council requires a local management organisation to be set up by the developer to avoid additional burden on the Council.
- (v) **Impact on the Environment** – Section 106 agreements are our current method for securing developer contributions to compensate and mitigate the impact of development on the local environment

Background Papers: None

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