



**REPORT of
DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE**

**to
PERFORMANCE, GOVERNANCE AND AUDIT COMMITTEE
18 NOVEMBER 2021**

**SECTION 106 6-MONTHLY UPDATE AND INFRASTRUCTURE FUNDING STATEMENT
2021**

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to provide Members with the 6-monthly update on the monitoring of Section 106 planning obligations and to seek approval of the Maldon District Infrastructure Funding Statement 2021, in accordance with the Council's legal duties.

2. RECOMMENDATIONS

- (i) That the Committee considers the 6-monthly update on Section 106 planning obligations.
- (ii) That the Committee approves the Maldon District Council Infrastructure Funding Statement 2020-2021 for publication and government submission as set out in **APPENDIX 1**.

3. BACKGROUND

- 3.1 Section 106 of the Town & Country Planning Act 1990 provides a legal mechanism for local planning authorities to secure contributions from developers which can be put towards the costs of providing community and social infrastructure, the need for which has arisen directly as a result of the new development taking place.
- 3.2 Section 106 (S106) agreements typically form part of a planning permission and often require a developer to make a financial contribution towards local facilities such as schools, open space, health facilities, as well as securing provision for affordable housing when it is required by the Local Development Plan (LDP).
- 3.3 By law, there are clear rules on the constraints on the collection and use of S106 funding. They may only constitute a reason for granting planning permission for the development if the obligation is:
- a. Necessary to make the development acceptable in planning terms.
 - b. Directly related to the development; and
 - c. Fairly and reasonably related in scale and kind to the development.
- 3.4 It is important to note that S106 contributions may only be spent on new facilities or improvements to facilities where the new development has, *at least in part*, contributed to the need for that facility or will have an impact on existing facilities. This means that funding will normally be invested in facilities based in the same locality or catchment area in which the contributing development is located unless it is contributing to the funding of strategic infrastructure.

3.5 Between April 2015 and September 2019, there were restrictions imposed on all English Local Planning Authorities by the government which affected their ability to pool S106 contributions. Only 5 contributions could be pooled to be spent on the same infrastructure project. This meant that where S106 agreements might have referred to improvements to facilities within a locality during this four-year period, agreements typically named a specific project(s). Whilst the pooling restrictions were lifted on 1 September 2019 for new agreements, this does still impact on what some contributions negotiated during this time period can now be used for in the Maldon District. New obligations must also meet the tests set out in 3.3.

3.6 S106 planning obligations will continue to be monitored to ensure compliance and to track their progress

4. SECTION 106 UPDATE

4.1 Since the June 2021 Performance, Governance and Audit Committee (PGA) update on S106, officers have completed the reconciliation process and undertaken site visits that were previously not possible due to Covid-19 restrictions. It is now possible to confirm that the district records are up to date.

4.2 Site visits to developments across the District have confirmed that some new development has now commenced, where it was previously unstarted. This has resulted in some payment triggers being met and S106 liabilities are now being sought from the relevant developers. As part of our efforts to work more closely with Essex County Council (ECC) that also monitors S106 contributions in the District, we have also shared the new commencement information with its infrastructure teams to ensure any relevant payments owed to ECC are charged for promptly.

4.3 Since the last update to PGA in June 2021, the Council has been in receipt of just under £140k of S106 payments as shown below. A further £45,780 is awaiting payment to the council. Payments will have also been collected by ECC in the last 6 months and MDC's records will be updated as the income becomes available.

Application Ref	Development	Use	Amount (£)
14/00845/OUT	Land west of Cemetery Chapel, Southminster Road, Burnham on Crouch	Health Payment (index addition)	3,042.29
14/00356/FUL	Land between Chandlers and Creeksea Lane, Maldon Road, Burnham on Crouch	Health Payment	29,647.06
14/00356/FUL	Land between Chandlers and Creeksea Lane, Maldon Road, Burnham on Crouch	Youth facilities	107,058.82
TOTAL			139,748.17

- 4.4 Since the June update, the following S106 expenditure has been made to third party projects to mitigate the harm caused by development:

Application Ref	Use	Payee	Amount (£)
14/01016/OUT	Allotments support	Burnham on Crouch Town Council	8,000
16/00093/FUL	Ecology (Blue House Farm Reserve)	Essex Wildlife Trust	49,808.45
TOTAL			57,808.45

- 4.5 Since the June update, there have been 11 new affordable homes secured through S106 to be delivered on development sites, comprising 9 x Affordable Rented and 2 x Shared Ownership properties.
- 4.6 An internal process improvement project remains underway to ensure the council's inter-departmental activities on the collection of Essex Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) payments that accompany residential planning applications is as robust as possible to support the effective and efficient charging, administration, and transfer of the funds to the Essex RAMS Partnership. This will support the delivery of the Essex RAMS SPD, adopted by the Council in August 2020.
- 4.7 Linked to the development of the LDP Review and the Council's draft Duty to Co-Operate Strategy (at the time of writing this report, which was due for adoption at Council on 4 November 2021), new working arrangements have been set up with partners including ECC and the NHS Clinical Commissioning Group. For S106, this will help ensure the council can foster an improved working relationship with other bodies collecting and/or spending S106 funding in the District. Whilst these arrangements are relatively new, there are already signs that improved dialogue is supporting the cross-checking of information held about developments in the District and the monitoring of projects which the S106 funds could contribute to.
- 4.8 In respects of MDC projects which are looking to utilise S106 funds, all were delayed during 2020/2021. Some preparatory work including feasibility and public consultation has however now been undertaken. The Council, through its Commercial Team and Service Delivery will continue these preparations during 2021/2022 with a view to project expenditure taking place in future years.

5. INFRASTRUCTURE FUNDING STATEMENT 2021

- 5.1 Maldon District Council is required by the Community Infrastructure Levy (CIL) (Amendment) (England) Regulations 2019 to publish S106 information by 31 December every year in an Infrastructure Funding Statement (IFS).
- 5.2 The first IFS was approved and published in December 2020.
- 5.3 The second IFS attached as **APPENDIX 1** covers the period 1 April 2020 to 31 March 2021.

What the Maldon District IFS does not cover

- 5.4 The IFS only relates to S106 obligations for which Maldon District Council is legally responsible for ensuring compliance. It does not cover:

- a. Where Essex County Council is the Local Planning Authority (LPA) (Minerals and Waste Applications); and/or
- b. Where MDC determined the planning application, but where ECC is signatory of the S106 to the effect that it is directly responsible for compliance of its contributions; and/or
- c. Section 278 highway work agreements between developers and ECC.

IFS 2020-2021 Summary

- 5.5 The IFS 2020-2021 is attached at **APPENDIX 1**. It has been prepared using the same format agreed following the PGA Committee in November 2020. In summary, in the 12-month requests for payment generated £121,620.15 for the S106 funds held by MDC. There were no requests for the disbursement of S106 funding. The IFS considers the effects of the pandemic on the trigger of payments and the steps being taken to restart the Health, Youth facility and public projects for which the Council has fiscal responsibility.

6. CONCLUSION

- 6.1 In light of the report above and the matters before it, the PGA Committee has the following options:

6.1.1 **Option 1** – It can discuss the report and accept the recommendations set out in Section 2 of this report.

6.1.2 **Option 2** – The Committee can discuss the report and partially accept the recommendations. It could seek officers make amendments to the IFS to address any issues which the Committee raises as a concern. If the Committee is not minded to approve the IFS, it will then have to delegate the final approval of an updated version to the Director of Strategy, Performance and Governance, in consultation with the Chairman of Performance, Governance and Audit Committee to ensure it can be published and submitted to the Government by 31 December 2021 in accordance with the legal duties.

7. IMPACT ON STRATEGIC THEMES

- 7.1 The Strategic Themes of Place seeks to ensure that the council can demonstrate that it has tried to secure investment in the District's infrastructure alongside development.

8. IMPLICATIONS

- (i) **Impact on Customers** – Monitoring S106 agreements does impact on the council's customers that are developers; as when triggers are hit, relevant liabilities must be paid.
- (ii) **Impact on Equalities** – None. The IFS is a legal statement, not a policy/service. The LDP 2017 and LDP Review are subject to the provisions of the Equality Act 2010 and the council is subject to the Public Sector Equality Duty in its decision-making.
- (iii) **Impact on Risk** – Failure to adequately monitor S106 contributions and the development that they are secured from could result in delayed payments or monies needing to be returned to developers. Failure to publish an IFS by

the end of December each year would result in the council failing its legal duties in this regard.

- (iv) **Impact on Resources (financial)** – Failure to adequately monitor S106 contributions and the development that they are secured from could result in delayed payments or monies needing to be returned to developers.
- (v) **Impact on Resources (human)** – Monitoring S106 and preparing the IFS is undertaken by the Planning Policy Team. This decision does not impact on this resource.
- (vi) **Impact on the Environment** – S106 agreements are a legal mechanism to secure obligations to mitigate the impact of development in the District, which could include payments that can mitigate any harm on the environment with investment in related opportunities.
- (vii) **Impact on Strengthening Communities** – S106 agreements are a legal mechanism to secure obligations to mitigate the impact of development in the District, which could include payments that can mitigate any harm on communities with investment in related opportunities.

Background Papers: None.

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