



REPORT of INTERIM DIRECTOR OF RESOURCES

**to
OVERVIEW AND SCRUTINY COMMITTEE
8 FEBRUARY 2017**

SECTION 106 PROCESS AND THE MONITORING OF AGREEMENTS AND THE COLLECTION OF PLANNING CONTRIBUTIONS

1. PURPOSE OF THE REPORT

- 1.1 To present Members with information about the Section 106 (S106) process in connection with planning applications including details of monies currently held by the Council.

2. RECOMMENDATION

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

3. SUMMARY OF KEY ISSUES

3.1 Background

- 3.1.1 The Overview and Scrutiny Committee raised questions during a discussion at its meeting on 5 October 2016 regarding S106 monies received as part of planning application approval. In response, the Chief Executive agreed to "...provide an update on Section 106 monies, the contributions collected and how they were managed" (Minute No. 604 refers).
- 3.1.2 In line with this request a report was presented to the Planning and Licensing Committee on 19 January 2017. This report was to inform Members of the processes involved in the monitoring of S106 legal agreements and provides information about planning contributions currently being held by the Council.
- 3.1.3 In August 2015, the S106 Officer started in post, a role which was introduced by the Council on the basis of the anticipated significant increase in monitoring which will be required relating to the strategic sites in particular, as well as involvement in the implementation of the Community Infrastructure Levy within the District (the latter is currently delayed by the Local Plan examination process). The financial contributions from the strategic sites in particular will contribute to the securing of infrastructure as defined within the Infrastructure Delivery Plan and this role are key to delivering the developers' obligations.

- 3.1.4 The S106 process starts at the pre-application stage when a prospective applicant / developer meets with Officers to discuss a scheme, and when the proposal is submitted the draft Heads of Terms will normally form part of the submission documents. The draft Heads of Terms will then form the basis for negotiation with the applicant in respect of the S106 agreement. As far as the strategic sites are concerned, the basis for the financial contributions stems from the Infrastructure Delivery Plan as amended in May 2014. The contributions in respect of all other sites are normally limited to affordable housing, healthcare, education, and bespoke contributions for a site, e.g. a site in Farnbridge where contributions were required to offset the impact of the development on the ecologically important site nearby.
- 3.1.5 One of the main responsibilities of the monitoring process involves the timely collection of financial contributions ensuring that any payments are subjected to indexation for the stated period. Once payments are received it is important to ensure the money is spent within the agreed timeframe and in line with the terms of the S106 Agreement. This is normally within ten years from receipt, but there can be exceptions to this depending on what has been negotiated. The table attached at **APPENDIX A** indicates payments received since 2012 with details of the date each needs to be used by and the purpose for which the contribution is to be used, as well as details of how some of the contributions have been used. Specifically **APPENDIX D** contains photographs of examples of improvements made as a result of the contributions received for improvements to Mayland Parish Hall (Lawling Park Hall) and playground equipment in Southminster.
- 3.1.6 The strategic sites will be the main sources of income from planning contributions for the foreseeable future and of these there are three sites with decisions and S106 agreements, one of which is nearing completion of development. Four more sites have resolutions to grant permission and three of these have S106 agreements nearing completion, and the remaining three are the subject of S106 negotiations and applications which have not yet been considered by a Committee. The table at **APPENDIX B** sets out the position in respect of the strategic sites.
- 3.1.7 There are a number of sites which are currently being developed and where payments have been made to the Council (see table at **APPENDIX A**), whilst there are a number with S106 agreements where development has yet to commence. The tables at **APPENDIX C** list sites under construction where financial contributions and/or affordable housing have been provided, and sites with extant permissions and subject to a legal agreement but where work has yet to commence.
- 3.1.8 The S106 Officer's role is to ensure that the Council receives payments in line with the relevant trigger points which can vary from commencement to first occupation of a dwelling and later occupations. When payments are made they are invariably subject to indexation and late payments may also be subject to additional interest payments dependent on the terms of the S106 Agreement. The Officer also monitors all other aspects of legal agreements and liaises with council officers, Essex County Council Officers and developers as required.
- 3.1.9 The process regarding the negotiations and monitoring of S106 Agreements set out in this report shows that the decision to establish a dedicated post is sound and critical to ensuring that developers are held to their obligations in the S106 Agreements.

- 3.1.10 It is also essential for the Council to ensure that once contributions have been received they are allocated to the most appropriate projects and spent within the timescales set out in the S106 Agreement. To that end the Interim Director of Resources has commenced discussions with the S106 Officer and the Senior Principal Planner - Major Applications (Strategic Sites) on the need to create a Corporate Working Group to complement and communicate the role that the S106 Officer carries out, in conjunction with mechanisms to ensure that appropriate projects are identified and implemented to spend S106 monies within the stated timescales set out in the respective S106 legal agreements. It is envisaged that the Working Group would include officers of this Council as well as identified partner organisations such as Essex County Council. It is recognised that a focussed approach is required in this respect.
- 3.1.11 To date there has been no need to return any monies received as planning contributions because either Maldon District Council or Essex County Council or any other beneficiary has been unable to spend the contributions within the timescale given.

4. IMPACT ON CORPORATE GOALS

- 4.1 The work of the Overview and Scrutiny Committee supports the corporate goal of “Delivering good quality, cost effective and valued services”.

5. IMPLICATIONS

- (i) **Impact on Customers** – Scrutiny work may aid improvements to service to the public by the Council and external authorities.
- (ii) **Impact on Equalities** – None identified.
- (iii) **Impact on Risk** – Recommendations arising from scrutiny could assist in mitigating corporate risks.
- (iv) **Impact on Resources (financial)** – Officer time in preparing the reports and supporting information.
- (v) **Impact on Resources (human)** – Recommendations from scrutiny could impact on the role of the S106 officer.
- (vi) **Impact on the Environment** – None identified.

Background Papers: None.

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