

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	Meeting:	Improving Places Select Commission
2.	Date:	Wednesday 20th February 2013
3.	Title:	Section 106 Monitoring Report
4.	Directorate:	Environment and Development Services

5. Summary

A previous report to this Commission updated Members on the way Rotherham implements Section 106 agreements as part of the Planning process, the types of obligations required and the proposed changes to be made in the way the obligations are dealt with.

This follow up report details the information collated / updated from the first meeting of the S106 corporate officer steering group assessing how recipient services engage in the S106 process, the monies required from development, monies received and spent on specific projects and the investigation of the move away from S106 toward a Community Infrastructure Levy for Rotherham.

6. Recommendations

That the contents of the report be noted

7. Proposals and Details

Information, relating to details of S106 agreements entered into by the Authority with developers who have applied for planning applications, was requested by this Commission. At the same time work was being carried out to establish a S106 officer steering group to update S106 information corporately, work with finance to develop a corporate procedure and legal re: the drafting of agreements the first meeting of which was held in December 2012

The aim of the group is to work with recipient services to monitor the progress of developments / S106 trigger points, ensure information is shared re: the implementation of the requirements from the S106, feed back financial information to financial services and discuss the further development of S106 policy to ensure consistency across the Council and ensure a smooth transfer to Community Infrastructure Levy.

The first meeting of the group established the corporate procedure and updated records of the individual services into a corporate list.

Planning Permissions issued which are subject to s106: Table 1 at Appendix 1 provides detail of each S106 which has been entered into since 2006. The requirements for the financial contributions were assessed as part of the planning application process and each of these applications was granted. The monies will not be paid IF the application is not implemented and the monies will only be due to the Council once the relevant trigger point has been reached, requiring the contribution to be paid. Therefore this list is constantly monitored and updated, noting when a development is commenced and a trigger point is reached in order that the relevant invoice can be raised. Part of the improvement of the process has included Legal Services adding a clause into all new S106 agreements requiring the developer to notify the Council when a trigger point has been reached.

Financial Contributions Received since 2006: Table 2 at Appendix 2 details information where developments have commenced and relevant trigger points reached resulting in a financial contribution being received by the Council. It is usual, but not always the case, that monies are spent within a 5 year period of being paid (it may be that a single contribution is held until further payments are made from other developments to enable wider infrastructure to be provided). Monitoring of the spend and reporting back is the responsibility of the recipient service working in conjunction with Finance.

Projects Implemented utilising s106 contributions: Table 3 at Appendix 3 details financial records which show that monies have been spent since 2006. It gives a description of the project, the amount of money spent and which service was the project lead.

A summary of the information collated is attached at Appendix 4.

Recipient Services

The Payments are required to provide for new facilities / services or improvements to facilities / service to meet the needs of residents in new developments and/or to mitigate the impact of new developments upon existing community facilities, without which the proposed development would be unacceptable.

The detail of S106 agreements therefore depends on the type and scale of development, its location and involves negotiation with the developer and the various services that provide “infrastructure” across the Borough.

Information was requested from each of the recipient services regarding their requirements, policy justification and monitoring of S106 and has been provided, in summary, below:-

Financial Services

New Financial procedures have been put in place to improve the process for S106 agreements ensuring sound financial governance.

The procedure includes:

- The implementation of a new central cost centre to record all income and expenditure relating to Section 106. This will improve the monitoring process
- The raising of an invoice will only happen when the trigger point written into the Section 106 agreement has been reached. This will enable the monitoring of payments received through the Sundry Accounts system.
- The transfer of income to the relevant Directorate only when expenditure incurred on a specific project by the Capital Finance section, this will ensure Section 106 conditions are met and assist with the monitoring of outstanding balances.
- Coordination of S106 agreements, trigger points and spend through the S106 Steering Group
- Clarification that usage of S106 will be determined by staff running the relevant service that the agreement applies to. Following recognition of money in the Council's general ledger, service staff must inform their accountants if they intend using funds for either revenue or capital purposes so that the relevant accounting entries can be made and the usage reflected in either revenue or capital monitoring.

Education

The School Organisation Unit of Children and Young Peoples Service are responsible for the monitoring of school place provision and scoping future need.

This includes birth statistics, migration both extra district and EU, parental preference and house building developments.

CYPS has to justify that, where house building is taking place, this will put pressure on existing Education provision and that the new dwellings will create a deficit of school places in order to require a S106 contribution towards school place provision.

Considerations for draft Head of Terms: Pupil yield from developments is calculated on 3 pupils per year group per 100 houses. This equates to 0.03 pupils per year group per dwelling. To calculate a primary contribution, the pupil value per dwelling is calculated at £2342, based on 7 years groups in a Primary School. To calculate a secondary contribution the pupil value per dwelling is calculated at £2521 based on 5 years groups in a Secondary School.

As an example: Should a development of 100 houses meet the criteria for requiring an education contribution then the calculation below is used:

The pupil yield from 100 dwellings is 3 pupils per year group (this would equate to $3 \times 7 = 21$ for Primary and $3 \times 5 = 15$ for Secondary.) A location factor is applied as 0.91 which accounts for variances in building costs in the UK.

Education Contribution would be £234,200 for Primary and £252,100 for Secondary

Section 106 contributions for Education were previously considered for developments of 50+ dwellings, this has recently been reduced to all developments for 10+ dwellings.

The pupil yield from 10 dwellings is 0.3 pupils per year group (this would equate to $0.3 \times 7 = 2.1$ for Primary and $0.3 \times 5 = 1.5$ for Secondary.)

Education Contribution would be £23,420 for Primary and £25,210 for Secondary.

This is a national formula recommended by the DCSF but now superseded by the DfE. This formula has stood since 2008.

Current custom and practice in Rotherham is not to request a Section 106 education contribution for flats. However a more robust procedure is to be introduced, modeled on other local authority policies where contribution requests are based on the number of bedrooms new dwellings will have and not based on type of dwelling.

Detailed factors to be considered in individual locations are: Is the expansion of school possible? Can the catchment area school be expanded? e.g. Physically, DfE profile, standards & attainment, parental preference/popularity, Governing bodies appetite for expansion? Would it be more sensible/feasible to expand a neighbouring school within the Learning Community? e.g. Physically, DfE profile, standards & attainment, parental preference/popularity. Governing bodies appetite for expansion.

In relation to future planning School Organisation has recently completed a mapping exercise across the whole borough in relation to the Local Plan and the impact on Education Provision.

Contributions Received since 2006

The Local Education Authority has received a small amount of section 106 contributions from developers over the past 6 years. Rotherham has, in the previous decade, been carrying a surplus in school places therefore there has not been the justification for an education contribution for school places.

However in relation to the figures detailed in the table 2: A sum of £50,000 has been received for a school places contribution in the Bramley area. Part of this has been spent on improving the road and pathways for children to access school, the remainder will be spent at Bramley Sunnyside and Infant Junior Schools where the admission number has been increased by 10 places per year group.

A sum of £159,570 has recently been received for a contribution in the Rawmarsh area. Pupil place projections indicate that the number of surplus places are declining and there will be a need in the next few years. Site suitability and demand for individual school places will determine which school will be expanded in the locality.

Future Contributions: There are 2 major areas of development which have significant school places contributions, Brampton/Wath and Waverley.

In the Brampton/Wath area this will fund the expansion of 4 schools in the locality. Significant expansions are planned for 2 schools, likely to be Wath CE Primary School and West Melton Primary school and a smaller expansion at the Brampton schools subject to agreement. £65,000 has just been received in relation to this contribution.

The Waverley section 106 agreement includes a £11.2m contribution for 2 x two form entry primary schools. The first trigger point for the release of funding for the first school is when the 400th dwelling is occupied and then the 550th dwelling which will complete the new school. The planning for the new school is underway and also for the interim arrangements (extra capacity at Brinsworth Howarth Primary) until the new school is constructed. The funding for the second school at Waverley is released when the 1550th and 1750th house is occupied. This is not expected for 10-15 years.

In addition a sum of £58,550 is required from the Churchfields development at Wickersley. This will help to fund an extension at Listerdale Primary School subject to agreement by governors.

Monitoring Arrangements

- Once funding has been received into the central code.
- Incoming funding attributed to a CYPS code.
- CYPS seek approval for capital project from Cabinet/Cabinet Member.
- Capital project is developed and programmed.

Planning are informed throughout the project.

Highways

The Council, as Highway Authority, has a statutory duty to manage the highway network to ensure that all road users can travel in a safe and expeditious manner whilst promoting economic development. Planning applications for developments with the potential to generate significant travel demand are required to be supported by a Transportation Assessment which outlines, amongst other things, the likely traffic impact of the proposal on the highway network and measures to mitigate this impact. A contribution towards such mitigation can be secured by means of a S106 Agreement, Contributions are beneficial where the Council already has a programmed highway scheme such that the developer contribution can be more precisely quantified and the construction of the work has more certainty.

It is more usual for Transportation and Highways to safeguard off site highway mitigation works by means of a planning condition and an agreement under S278 Highways Act, 1980 – where the Highway Authority carried out the works at the Developers expense or the developer carries out required works subject to the approval of the Highway Authority.

Policy / justification

Road safety has always been a material consideration in the planning process. The National Planning Policy Framework reaffirms this and promotes sustainable transport as does the Local Transport Plan 3 and the Sheffield City Region Transport Strategy. The Traffic Management Act 2004 imposes a statutory duty on each Highway Authority to secure the expeditious movement of traffic on its highway network and to facilitate the same on the networks of other authorities.

Payments made in last 6 years

S106 payments towards highway improvements over the last 6 years include an £850k contribution towards improvement of the double roundabout at Poplar Way/Sheffield Parkway, Catcliffe.

These works have created increased highway capacity thereby enabling major employment generating development to go ahead at the nearby Advanced Manufacturing Park and major housing development at the Waverley New Community. Accessibility to employment opportunities in the Templeborough area should also be improved by a contribution of £50k towards pedestrian crossing facilities which are to be provided in Sheffield Road.

A further contribution of £24.5k to create a pedestrian/cycle link between Magna Way and Sheffield Road has also not yet been expended as the scheme requires additional finance.

Greenspaces

The Unitary Development Plan used the National Playing Fields Association standard of 6 acres (2.4 hectares) of open space per 1000 people to determine

green space requirements on larger housing applications. This was intended as an interim measure, pending development of local standards. In practice, assessment of need for new open space and play facilities associated with development has been made on a case by case basis, taking into account local circumstances, including the current availability of open space and play areas within the vicinity, and scope to improve the quality and capacity of this to meet increased demand through investment.

Policy / justification for S106.

There is currently no formal policy for the calculation of S106 contributions for open space and play. However, the adopted Green Space Strategy (2010) included a recommendation that planning policy or guidance should be introduced to help achieve proposed standards of green space provision through developer contributions, in line with the following principles:-

- New green spaces should only be required where there would otherwise be a gap in provision as defined by proposed accessibility standards
- Where new houses are already served by existing green spaces, then there should be a financial contribution, determined by the number of residential units being developed, to enhance existing green spaces in accordance with proposed quality standards.
- Contributions should also include a commuted sum equivalent to the cost of maintaining new green space or enhancements to existing green space for an agreed period.

Further work is required to develop such policy, but in the mean time these principles are being followed informally to guide discussions with applicants about possible open space contributions at the pre-application stage where appropriate.

Monitoring arrangements.

Where a S106 contribution is received by Leisure and Green Spaces, Finance Service supply capital budget reports at quarterly intervals to support monitoring of spend. In practice, however, some contributions are allocated to third parties, for example Parish Councils, rather than RMBC.

Payments received and pending

Payments totaling £253,305 were received over the period 2006 to 2012, through 6 S106 agreements. Of this, £237,106 has been spent to date on the following projects:-

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| • Play and sports facilities improvements, Kilnhurst Rec. | £44,300 |
| • Signage at Victoria Gardens, Kilnhurst | £1,310 |
| • Contribution to cost of new play area at Barkers Park | £21,750 |
| • New play area at Greenlands Park, North Anston | £85,000 |
| • Improvements at Flash Lane Rec (spent by Bramley PC) | £80,000 |
| • Landscape improvements at Rosehill Park, Rawmarsh | £2,881 |
| • Landscape improvements at Herringthorpe Valley Park | £1,820 |

A further £4,390 is scheduled for payment towards a new play area at Albany Road, Kilnhurst before the end of the current financial year. £11,555 is earmarked for green space improvements in Bramley. Wentworth Valley Area Assembly are currently exploring whether this might be used as a contribution to a new skate park

that the Parish Council wishes to install. If this is unachievable, then the money is expected to be used for new outdoor gym equipment at Bramley Park.

Payments amounting to £250,891 are still to be received in respect of seven further S106 agreements. Of these, £26,196 is expected to be allocated to Wales Parish Council, and £26,000 to the Wildlife Trust for Sheffield and Rotherham.

In relation specifically to Public Art:

Payments made via S106 over 6 years:

- Laughton Common White City £35,000 for activities and £10,000 for maintenance for a set period till 2017

5 sculptures around the village (one is awaiting installation) and three custom designed powder-coated steel and oak seats for the new Heritage Court space.

- Kiveton Park Desire £35,000 for activities and £10,000 for maintenance for a set period till 2017 (five years after completion.)

3 small sculptures in the Desire estate based on outlines of local people, and a large Core ten steel sculpture for the nearby former Kiveton Colliery site on the theme of the Pit Pony.

Affordable housing

The S106 Affordable Housing Policy is set at 25% of all new homes to be brought forward as Affordable Housing on new housing developments of either 15 units or more or 0.5 hectares in size. This policy position was adopted in August 2008 after extensive research by the University of the West of England to test its financial viability. This viability appraisal was updated in 2011 to reflect the changing housing markets and advice provided demonstrated that the 25% affordable requirement was viable in Rotherham

However, if a Developer cites viability as a reason not to deliver 25% Affordable Housing then it is outlined within the policy that an Independent viability appraisal will be required to be undertaken to support that view and to determine what level of Affordable Housing should be delivered.

The normal method of securing Affordable Housing within new developments is via on site delivery. Only in exceptional circumstances (e.g. the conversion of a listed building) would we look to accept a Commuted sum instead.

Since 2007/08 the following Commuted sum payments in lieu of Affordable Housing have been paid or are held in the Council's accounts;

Aston Ward - £145,364.32

This money is as yet unspent but as been earmarked to bring empty properties back into use as Affordable Housing within the ward.

In 2010 a payment of £230,000 of Commuted sums monies were made to Great Places Housing Association. This was to enable the delivery of 10 new affordable

homes on a Taylor Wimpey development at High Street at Swallownest (RB2008/0053)

Swinton Ward - £60,000

£22,000 of this money is the residual amount left over from a 1997 payments from Beazer Homes (who are no longer a trading company). The remainder is interest accrued. This money had been earmarked for development of 17 older persons bungalows at Cadman Street but this scheme will not be delivered. As yet this money is not earmarked for a project.

Wath Ward - £66,000

This payment is due in this financial year. It is a payment in lieu of the delivery of 1 x 3 bed unit on site at the Harron Homes developments at Kingsbrook Park. The proposed unit was unacceptable as there were overhead cables from an electricity pylon directly over the back garden. As yet this money has not been earmarked for a project.

In addition to financial contribution the Number of affordable units provided via S106 requirements is detailed below:

Year	No. of residential units completed
2006 / 07	30
2007 / 08	32
2008 / 09	18
2009 / 10	41
2010 / 11	30
2011 / 12	51
2012 / 13	70

Monitoring: -

The Affordable Housing Officer monitors the amount of Commuted sums to Housing Services and the number of units provided. There are bi annual meetings with Finance to keep track of monies received, interest accrued and the amounts allocated to projects and spent. The adopted procedure for spending Commuted Sums is as follows: Firstly the Local Ward Members are consulted on the proposed project and their approval sought. A report is then written for the Director of Housing & Neighbourhoods, who signs off the proposed spend. Arrangements for the payment are made with the finance department.

Libraries

The Council has a duty to provide a Library and Information Service:

“It shall be the duty of every library authority to provide a comprehensive and efficient library service for all persons desiring to make use thereof”. The duty arises in relation to persons who are resident, work in or are in full time education in the borough. (Public Libraries & Museums Act 1964, section 7)”

Recently a review of the Library & Information Service has been undertaken to identify proposals for future service delivery. These proposals are based on an assessment of local need for the service and take into account the statutory requirement for the service and available resources. They are informed by the Library Strategy 2011-15, which aims to deliver a modern, vibrant library service and have been subject to an equalities assessment. They also take into consideration the 11 areas which have been prioritised as part of the areas of deprivation policy of RMBC.

After consideration of all the data available, the Library review concluded that there is a need for access to a library service in every community in Rotherham. However, we also recognise that every community is different so have considered if the service could be delivered differently in some places, as appropriate, within the overall aim of delivering a modern, vibrant and efficient library service across the Borough, bearing in mind the resources available.

Decisions made at Cabinet 21 November 2012 following the Library Review Consultation Feedback Report have in summary meant that from April 2012, 15 of 16 existing library buildings as well as mobile services will remain open and will deliver a modern vibrant Library service across the borough in partnership with the Councils Customer Services and other internal and external partners.

Policy / justification for S106

Public Libraries are part of necessary infrastructure for future needs of the borough and it is a duty of the Authority to provide a comprehensive and efficient service. Libraries provide free access to reading, information and learning, literacy skills, free access to the internet, IT literacy skills, assisted digital access to enable all to access employment opportunities and the governments digital by default agenda. Each planning application is considered on its merits and national formulae is available to calculate the contribution from a new development which would create a pressure on the existing library service for example the new community at Waverley.

Projects/ areas benefitted during the 6 year period - monies not yet expended

Brinsworth £120k – Library contribution required to provide for necessary infrastructure. This contribution from the developer is to help fund the building of a new library facility to serve additional residents in the area. The service is currently working in partnership with Brinsworth Parish Council on a bid to the Arts Council to create an extension on their site which could act as a new library and Arts space.

Thurcroft £10k, - This contribution was calculated purely on the basis of marketing to new housing residents and follow up community engagement activities for the existing library.

The Waverley development has also secured funding for library facilities to be provided on site.

South Yorkshire Passenger Transport Executive (SYPTTE)

RMBC and SYPTE work collaboratively throughout both the forward planning process and development management, as means of including public transport within the decision making process.

Each planning application is considered on its own merits with the aim of controlling car use, relieving congestion, improving air quality and promoting social inclusion etc. Given the variety of applications and specific issues related to public transport a blanket formulation of developer contribution is not realistic or justifiable.

Requirements such as incentivised travel tickets, improvements to bus services and facilities and public transport friendly site design (direct walking routes to access points and reducing car parking) can all help achieve the following;

- Mitigating the detrimental impacts of added car use as a result of development;
- Ensuring sustainable travel behaviour is encouraged and accessible; and,
- Designing for sustainable development.

Processes

Developer contributions are paid directly to SYPTE for them to manage and monitor.

Bus Services: are procured in 2 ways.

- If the developer wants to go through an SYPTE tender, then SYPTE would invite bids from a number of competing bus operators. Once the contract is let the monies are transferred to the bus operator for delivery
- Otherwise the developer can liaise directly with the provider – detail of the service to be provided is then required to ensure the necessary service provision. This is accompanied by an agreement between all parties which is then appended to the agreement.

TravelMaster (public transport pass): when the developer has been required to provide TravelMasters, they will contact SYPTE directly and procure the TravelMasters as and when the residents begin to occupy the site. This is sometimes done on a phased basis on a large site.

Provision of Bus Shelters: SYPTE set out the requirements for the procurement and installation of a bus stop (also includes improvements, removals and relocations). SYPTE cost the works, send out an invoice back the developer, receive the funds and then carry out the works.

Other issues:

Viability

It is essential that s106 requirements are based on adopted policy or strong and transparent justification for infrastructure contributions. The contributions must mean the 3 tests:

1. Necessary to make the proposed development acceptable
2. Directly related to the development

3. Fairly and reasonably related in scale and kind to the development

If the requirements are unrealistic the developer may challenge the authority's stance or it may mean that a development, which would bring positive benefits to the area, becomes unviable and is therefore not implemented. The Government has recently produced guidance encouraging Local Planning Authorities (LPA) to negotiate on s106 – as current market conditions are having an impact on the viability and the deliverability of sites. If developers can demonstrate, through independent “open book” viability assessment, that the scheme would not come forward with the current financial requirements LPAs are advised to be sufficiently flexible to work to assist to bring forward planned development.

In relation to future development, set out through the Local Plan process, the Council has commissioned a "whole plan viability assessment" for the Core Strategy. This is a requirement of the National Planning Policy Framework. The assessment has looked at the range of policies in the Core Strategy and the infrastructure which will be required to support new homes e.g. new schools, roads, libraries etc and the requirements they will place on developers to contribute monies or community facilities. The main message from the study is that the amount of money a development can provide towards infrastructure, affordable housing, community benefit etc. is a finite "pot". This is particularly relevant in the current harsh economic climate. The Council will have to prioritise what it asks for from developers for S106 contributions in the short term. In the longer term the Council will have to set charging rates for the CIL at a realistic level otherwise we risk stifling development in the Borough to the detriment of providing new homes and jobs and in meeting regeneration aims.

The Council has completed work on assessing the viability of its Local Plan policies and a future CIL. We have also secured a place on the Planning Advisory Service's free CIL direct support programme. Over the coming months, members will receive reports on aspects of the CIL work and we hope to be able to consult on a Preliminary Draft Charging Schedule for CIL later this year. It will be necessary for the S106 officer steering group to evolve to become an officer and member steering group - a more formal meeting to provide a corporate / members steer to guide preparation of a "draft charging schedule" and consultation on same

If the Charging schedule is adopted by the Council the Group will monitor charges levied and income received, report on how monies are spent, decide on proportion spent in localities and oversee the whole process.

8. Finance

Finance has reviewed the process and provided an updated corporate procedure and will work with the Corporate steering group and recipient services to ensure this is effectively implemented ensuring sound financial governance around s106 payments.

9. Risks and Uncertainties

Risk has been reduced by the adoption of the procedure and the setting up of the S106 steering group.

10. Policy and Performance Agenda Implications

The work is part of the development of the Local Plan and related Infrastructure Delivery

11. Background Papers and Consultation

Legislation: Section 106 of the Town and Country Planning Act 1990 & Section 12(1) of the Planning and Compensation Act 1991.

Guidance : Circular 05/2005

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