

**Report to:** STRATEGIC PLANNING AND CAPITAL MONITORING PANEL

**Date:** 12 March 2018

**Reporting Officer:** Robin Monk, Director of Place

**Subject:** SECTION 106 AGREEMENTS AND DEVELOPER CONTRIBUTIONS

**Report summary:** The report summarises the current position with regard to receipts received from section 106 (s106) Agreements and Developer Contributions, new s106 Agreements made and any requests to draw down funding.

The report also provides a summary of the final audit report relating to Planning Obligations which has identified a number of actions which need to be taken including provision of additional resources to assist with effective monitoring of Section 106 Agreements and Developer Contributions.

**Recommendations:** To note the contents of this report.

**Links to community strategy:** Successfully implementing schemes funded through s106 Agreements support a number of Community Strategy priorities including supportive communities, a safe environment, a prosperous society, learning community and attractive borough.

**Policy implications:** Works completed through obligations contribute to mitigating the impact of developments in three policy areas contained within the Councils adopted Unitary Development Plan, namely policy H5 Open Space Provision, H6 Education and Community Facilities and T13 Transport Investment.

**Financial implications:** It is important that regular monitoring is undertaken to ensure that monies are paid to the Council when due; as per the individual S106 agreements. The S106 contributions and Developer Contributions must be spent within the agreed timescales and on the purposes specified within the individual agreements. A summary position of the S106 contributions and developer contributions is included in the report.

**Legal implications:** None arising directly from the report, but Agreements must comply with the requirements of section 106 of the Town and Country Planning Act 1990 and the Community Infrastructure Levy Regulations.

**Risk Management:** Developers will be entitled to claw back any contributions if they are not spent within timescales as per the agreements made.

Contributions may not be received on time or at all without adequate monitoring. Any specific conditions included with agreements must also be considered to minimise the risk of developer challenges.

In accordance with Audit recommendations additional resources are being secured which will include specific requirements to monitor and track Section 106 payments and

expenditure.

**Access to information:**

The background papers can be obtained from the author of the report, Calum Mountifield by



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## 1. INTRODUCTION

- 1.1 This report summarises the financial position at 31 January 2018 with regard to receipts for Section 106 (s106) Agreements and Developer Contributions and makes comments for each service area. This is followed by a section on new agreements made and requests to draw down funding.
- 1.2 In addition the report provides an update on actions flowing from the Audit report which reviewed the council's procedures in respect of S106 legal agreements and Developer Contributions.

## 2. AGREEMENTS UPDATE

- 2.1 The summary position statement at 31 January 2018 for s106 Agreements and Developer Contributions is as follows:

### Section 106 Agreement Funds:

Section 106		Community Services	Engineering Services	Services for Children & Young People	Other	Total
		£000	£000	£000	£000	£000
S106 - Applied - Budget Transferred to Service Area	Balance Transferred Previous Years (2006/07 - 2016/17)	817	1,632	1,250	16	3,715
	<b>Total</b>	<b>817</b>	<b>1,632</b>	<b>1,250</b>	<b>16</b>	<b>3,715</b>
S106 - Not yet earmarked	Brought Forward from 2016/17	(210)	(31)	(242)	0	(483)
	Received Periods 1 - 3					0
	Received Periods 4 - 7					0
	Received Periods 8 - 10					0
	Received Periods 10 - Outturn					0
	Transferred to Service Area					0
	<b>Total</b>	<b>(210)</b>	<b>(31)</b>	<b>(242)</b>	<b>0</b>	<b>(483)</b>
S106 - Not yet reached trigger point		<b>(679)</b>	<b>(122)</b>	<b>(982)</b>	<b>(13)</b>	<b>(1,796)</b>

- 2.2 The current position for s106 Agreements is £483,000 in credit as at 31 January 2018.

#### Services for Children and Young People

- The balance of unallocated s106 funds stands at £242,000.

- 2.3 **Community Services (Operations and greenspace)**  
 o The balance of unallocated s106 funds stands at £210,000.
- 2.4 **Engineering Services**  
 o The balance of unallocated s106 funds stands at £31,000.

**Developer Contributions (Secured prior to Infrastructure Levy Regulations):**

Developer Contributions	Green Space Contribution	Community Education Contribution	Integrated Transport Contribution	4% Administration Charge	Totals
	£000	£000	£000	£000	£000
Brought Forward from 2016/17	(191)	(80)	(23)	0	(294)
Received Periods 1 - 3	(1)	0	0	0	(1)
Received Periods 4 - 7	0	0	0	0	0
Received Periods 8 - 10	0	0	0	0	0
Received Periods 10 - Outturn	0	0	0	0	0
Transferred to Service Area	0	0	0	0	0
Approved at previous SCP for release at year end	147	0	0	0	147
<b>Total</b>	<b>(44)</b>	<b>(80)</b>	<b>(23)</b>	<b>0</b>	<b>(148)</b>

- 2.5 The current position for Developer Contributions as at 15 February 2018 was £294,000 in credit, less approved allocations of £147,000 leaving a balance of £148,000.
- 2.6 **Services for Children and Young People.**  
 o The balance of available contributions stands at £80,000.
- 2.7 **Community Services (Operations and greenspace)**  
 o The balance of available contributions stands at £44,000.
- 2.8 **Integrated Transport**  
 o The balance of available contributions stands at £23,000.

**New Section 106 Agreements**

- 2.9 A Section 106 agreement has been made (9 November 2017) for an application relating to Land at Scout Green, Manchester Road, Mossley, planning reference 16/01126/OUT. The outline planning application seeks consent for the demolition of buildings and erection of up to 41 dwellings and 6 live/work units with associated car parking and access arrangements. A green space contribution has been agreed for improvements to Egmont Street link path and infrastructure through Scout Green, replacement of teen play kit at Egmont Street Playing Fields and associated safety surfacing together with replacement of junior play kit at Egmont Street Playing fields and associated safety surfacing. An education contribution has been agreed for the extension of St George's C of E Primary School, Mossley. The sums for these contributions will be calculated at reserved matters stage, using a formula based on size and number of dwellings in the final development. There will also be an access plan submitted at reserved matters stage, with a sum to be agreed for future maintenance of the bridge.
- 2.10 There are a number of resolutions where planning permission has been granted subject to agreements being entered in to which are currently being processed and finalised. When

formally entered in to and active these agreements will be reported to a future meeting of the Strategic Planning and Capital Monitoring Panel.

### **Requests to draw down funding**

- 2.11 No new requests to draw down funding have been made since the previous report to the Panel.

## **3. AUDIT REVIEW**

- 3.1 Following a review of Planning Obligations within the Development Management service, and the publication of the final audit report in April 2017, work has been on-going to monitor and review historic legal agreements and Developer Contributions by a newly appointed officer.
- 3.2 The initial task has been to review the progress and status of schemes where Section 106 agreements have been signed and payments may be outstanding. These schemes make up the figure of £2,006,000 reported in the previous report as 'S106 – Not yet reached trigger point'. This figure increased following the submission of reserved matters applications for schemes which confirmed number of units, so final amounts could be calculated. The review found whether schemes had met trigger points and payments were outstanding, whether they were approaching trigger points and payments would soon be due or whether schemes had not yet commenced development so would be some way off payment. There were also schemes where Section 106 agreements had been signed but planning permissions were never implemented and have since lapsed, so have been removed from the list as being yet to meet triggers.
- 3.3 The review found that these schemes were at different points in the Section 106 process, and as such will require different actions going forward to make sure outstanding monies are collected, and schemes are monitored to make sure future payments are collected promptly, to minimise risks as outlined in the 2015 audit report. An overview of these schemes is shown in the table below, and explained in the following section. Following the removal of schemes where permission had lapsed, there were 36 individual schemes.

<b>Section 106 Agreements</b>	<b>Total (£000)</b>
Contributions received but not yet earmarked	(483)
Development not commenced	(508)
Development commenced and being monitored	(859)
Completed schemes	(345)
Completed and pending transfer of green space to council	(84)
Permission lapsed/Removed from list	(317)

### **Section 106 payments received but not yet earmarked**

- 3.4 There are currently seven schemes where Section 106 payments have been received but are waiting to be spent by the service areas. Generally there is a five year time limit to spend Section 106 monies from the date they were received. A list of these payments and the dates they need to be spent by are currently updated and maintained in a spread sheet by finance. Each of these payments has to be spent on a specific scheme as agreed in the Section 106. There are not any schemes currently which are close to the deadline in which to spend the money, with the next being in 2019. It is important that service areas are aware of the need to spend money within these timescales. This will be achieved by arranging regular meetings with the necessary officers in planning, finance and the three service areas to provide updates of any payments.

### **Section 106 agreed and development not commenced**

- 3.5 There are a number of schemes where a Section 106 agreement has been signed but development on site has not yet commenced. This includes those where agreements were signed at outline stage, but is not included in the financial figure, as they are calculated at reserved matters stage based on the final agreed number of units. Therefore this figure will be significantly higher once reserved matters for the final number of units has been agreed, as the total figure will be calculated using a formula based on number of units.

These schemes will continue to be monitored by Planning, both in terms of site progress and updated when reserved matters applications are received.

### **Section 106 agreed and development being monitored**

- 3.6 The largest proportion of outstanding Section 106 payments is from schemes where development has commenced, but is not understood to have reached trigger points for payments. Some of these schemes are progressing and approaching trigger points for payment, while others may have commenced development but have stalled.

An invoice was raised in January 2018 to Taylor Wimpey for £380,417.00 as two of their schemes have recently passed triggers at Kings Road and Monopumps in Audenshaw, which account for a large proportion of this. The progress of these schemes will continue to be monitored by Planning Officers, as further triggers are expected to be reached over the next few months, and developers will be billed accordingly.

### **Section 106 completed schemes**

- 3.7 The review found schemes where records indicate that work has completed on site, but that final Section 106 payments are still outstanding. Invoices were raised in February 2018 for the completed schemes listed in the table below, and will be monitored and updated when payment has been received.

<b>Scheme</b>	<b>Agreement Number</b>	<b>Address</b>	<b>Outstanding</b>
10/00788/FUL	172	Ashton Road, Hyde	£78,167.50
11/00155/OUT	181	Alma Works, Furnace Street, Hyde	£90,466.23
12/00922/FUL	189	Queen Street, Ashton-under-Lyne	£30,000.00
13/00562/FUL	180	Land at Hyde Hospital, Grange Road South, Hyde	£38,450.55
15/00306/FUL	198	Land at Crowhill Road, Ashton-under-Lyne	£16,899.00

### **Section 106 Pending Greenspace Transfer**

- 3.8 There is the option for Section 106 agreements to contain a clause for developers to lay out areas of greenspace in accordance with approved plans and to an acceptable standard, after which land ownership is transferred to the council with a commuted sum for maintenance. There are some schemes where money is still outstanding pending a transfer of greenspace, however this accounts for a small proportion of the total. Additional site visits have been carried out to assess the condition and maintenance arrangements of these sites, to see if ownership could be transferred to the council.

### **Section 106 Permission Lapsed**

- 3.9 There are some Section 106 agreements which were included in the figures as being yet to meet triggers for payment, but planning records show that these permissions were not implemented and have since lapsed. Therefore these schemes will be removed from the table as being outstanding, to more accurately reflect the current position.

### **Developer Contributions**

- 3.10 The 2015 internal audit report noted that there was no proactive monitoring system in place to confirm when developments have commenced, and therefore when debtor accounts need to be raised in order to collect the income due. In contrast to Section 106 agreements, developer contributions are made under Deeds of Unilateral Undertaking, whereby contributions are generally payable on commencement of development. With the Developer Contribution Supplementary Planning Document (SPD) being revoked in April 2015 following the enactment of the Community Infrastructure Levy (CIL), the council can no longer seek contributions from residential developments of fewer than ten dwellings, and no new deeds have been signed since 2015.
- 3.11 While there is little in terms of monitoring of developer contributions as per Section 106 agreements, a review is currently on-going into developer contributions between 2007 and 2015, to ascertain whether in any cases, development had commenced and the developer was not invoiced.

## **4. RECOMMENDATION**

- 4.1 To note the contents of this report.