

EAST HERTS COUNCIL

PERFORMANCE AUDIT AND GOVERNANCE OVERVIEW COMMITTEE –
24 SEPTEMBER 2019

REPORT BY HELEN STANDEN – DEPUTY CHIEF EXECUTIVE

UPDATE ON SECTION 106 AGREEMENTS

WARD(S) AFFECTED: All

Purpose/Summary of Report

- To provide an update report to Performance, Audit and Governance Oversight Committee members on Section 106 Agreements

<u>RECOMMENDATION FOR PERFORMANCE AUDIT AND GOVERNANCE OVERSIGHT COMMITTEE: That:</u>	
(A)	Members review the update report and are invited to comment

1.0 Background

1.1 Members will be aware that East Herts Council as the planning authority is responsible for the creation of Sec106 Agreements, and is accountable for the allocation of received financial contributions (payments from developers to fund social/ community/ infrastructure projects as part of new developments).

1.2 The Council therefore must ensure that:

- The funding is allocated and spent on projects and/or facilities that are in line with the stipulations of the relevant Section 106 Agreement,
- The process is transparent and fair to all,
- Any projects supported are necessary, viable, will deliver the required social and community benefits, and will be well managed.

1.3 The Performance Audit and Governance Oversight Committee on 22 January 2019 received an initial report on Section 106 Agreements at East Herts, which identified the following actions:

- Recruitment of S106 Officer
- Establish a regular report format
- Appoint a Member 'S106 Champion'
- Develop an effective mechanism for members and officers to further develop and input to the project plan list

1.4 In addition to this report, an Internal Audit Report on Section 106 Spending Arrangements, (published in November 2018 and circulated to PAGO members with the 22 January report), made several recommendations and a follow up Audit scheduled.

1.5 To take the actions of the January report forward and act on the Audit recommendations a dedicated Sec106 role to oversee the Sec106 contributions has been established – Infrastructure Contributions & Spend Manager role made permanent in July 2019 following an initial four month secondment.

2 Report

2.1 In August 2019, the follow up Internal Audit follow up took place and updates on the five actions points from the initial audit report provided. The Council is now awaiting the conclusions from the Auditor and the draft report is expected shortly – it will be shared with Members at a later date.

- 2.2 The following points provide an update of the current position of received Sec106 contributions and actions taken by the Infrastructure Contributions & Spend Manager to date:
- 2.3 A review of all received financial contributions from 1996 to date has been undertaken to create a Master Received Contributions Spreadsheet. This spreadsheet has information confirming the planning application, location, obligation wording, timescale for allocation and RAG rating for each unallocated contribution, in line with one of the Audit recommendations. Additional columns identify current and future project information and spending to ensure that all financial contribution information is located on one spreadsheet. See **Exempt Report** within **Essential Reference Paper "B" - Master Received Contributions Spreadsheet**.
- 2.4 Using this Master Received Contributions Spreadsheet, significant work has taken place to identify and confirm agreement wording to allow distribution of unspent contributions to internal projects and other external bodies for community use, as well as transferring funding to named recipients and identify ongoing revenue payments.
- 2.5 Officers within the Council have been consulted on potential projects / funding needs. These potential allocations have been identified for the current and next financial year (2019/20 and 2020/21) on the Master spreadsheet to ensure that funds are not double allocated or missed.
- 2.6 Identification of funds received on behalf of specific named projects has identified financial contributions received by EHC on behalf of the NHS for the funding of specific named projects. Transfer of this funding has been agreed with NHS East & North Hertfordshire Clinical Commissioning Group as the body now responsible for the identified works. In addition, funds have been transferred to Canal & River Trust in line with the specific Sec106 contribution wording.

- 2.7 Work is ongoing with the Legal Team and Housing Officers to ensure that all financial contributions due in lieu of affordable housing are identified and received (with indexation and late payment fees if applicable), as a further outstanding obligations have been identified.
- 2.8 For the current financial year (April 2019 to date), funding has been allocated to identified projects and named recipients, with further project funding allocated for the coming financial year 2020/21. The Sec106 funds remaining include already allocated funding such as financial contributions received by the Council in lieu of affordable housing, capital funding for specific named projects, and revenue funding allocated for parks and open space maintenance over specified period – normally ten (10) years following adoption.
- 2.9 The remaining unallocated contributions are available for future project funding bids from both internal and external bidders (note: each allocation will be subject to the wording of the individual Sec106 Agreement). New internal and external funding bid application forms for specific project funding have been devised to facilitate a fair and transparent audit trail of Sec106 funding allocation. See Essential Reference Papers “C” and “D” - external and internal Sec106 funding bids application forms
- 2.10 To publicise the availability of this Sec106 funding to potential external organisations a new webpage has been created and will go ‘live’ when the new East Herts website is launched. This explains what Sec106 is and provides advice on how to bid for funding, with a simple online expression of interest form for initial enquiries. It also has information on the Bishop’s Stortford North Sports Development Fund that is being finalised to allocate the Sec106 contributions ring fenced for this. (See Executive Report of 11 September 2018 - ‘Bishop’s Stortford North – Allocation of S106 Funding for Sports Investments’ for further information on the project and funding).

- 2.11 To facilitate the bid evaluation process going forward the Sec106 Steering Group is being re-launched, and the Infrastructure Contributions & Spend Manager has developed good working relationships with the planning, finance and legal teams.
- 2.12 In addition to allocation of received contributions, work has started to cross-reference the current list of Sec106 Agreements against the Legal Register information and minutes from Development Management Committee to create a definitive record of all signed Sec106 Agreements and their contribution obligations. This is now being used to ensure Sec106 Agreements from 2017 onwards are identified, contributions noted on the master received contributions spreadsheet and information updated on the Uniform Development Management module on the planning IDOX system.
- 2.13 However, due to the complex nature of S106 agreements, lack of consistent recording and increased workload in responding to Sec106 enquiries and administration now a dedicated Officer is in place, it is taking much longer than anticipated to finalise the definite list of Sec106 contributions and obligations and therefore work on this will be ongoing.
- 2.14 As part of this work, several outstanding Sec106 contributions from completed developments and phased contributions due from current / ongoing developments have been identified. Members should note that any outstanding financial contributions are subject to indexation and compounded late payment fees as per the individual Sec106 Agreement wording. Work is ongoing with Housing Officers to ensure that all financial contributions due in lieu of affordable housing are identified and received.
- 2.15 It should also be noted that significant income is being generated from enquiries from solicitors on completion / satisfaction of Sec106 Agreement obligations for house sales. A standard procedure for answering these enquiries and

template responses devised, and a fee charged for each enquiry (which increased to £83 in April 2019).

- 2.16 Also as part of the role, information on Sec106 contributions has also been provided for three (3) Freedom of Information Requests and to two (2) external consultations.
 - 2.17 To ensure joined up working, good working relationships with the Monitoring Officers in the County Council Growth & Infrastructure Unit have been developed to share information on all Sec106 Agreements and contribution obligations. Quarterly meetings are held with the HCC Highways Department to share information and identify potential projects for potential joint funding allocation. Additionally, knowledge and information on new and existing Sec106 Agreements is now regularly shared with the Premises and Estates Support Manager at the CCG.
 - 2.18 To publicise and facilitate the allocation of received contributions, and identify future projects for inclusion in new Sec106 Agreements, regular meetings and information sharing is taking place with the Town and Parish Councils.
 - 2.19 Regular meetings are scheduled with Cllr Jan Goodeve, who was appointed as Exe Member for Planning and Growth in May 2019, to update on current Sec106 contributions and funding allocations. Members are also providing useful information and updates on the progress of developments within their areas.
- 3 Going forward:
- 3.1 Now that significant work has been done to ensure that current received contributions have been allocated within their timescale, work will continue to create a definitive record of all current and forthcoming Sec106 Agreements and contributions due to East Herts Council.

- 3.2 Sharing of information on Sec106 funding opportunities both internally and externally will be a priority, and will enable the compilation of information on potential future projects that Senior Planners will be able to incorporate into any new Sec106 Agreements.
- 3.3 Regular updates on Sec106 funding to Members, Leadership Team and Officers will be ongoing. Note: The Infrastructure Contributions & Spend Manager is giving a Sec106 update at the September Staff Briefings.
- 3.4 Consideration will be given to top-slicing / allocating a proportion of Sec106 contributions to administration to off-set the costs of the Infrastructure Contributions and Spend Manager

Background Papers

- 22/01/2019 - Performance, Audit and Governance Scrutiny Committee - Section 106 Agreements Report
<http://democracy.eastherts.gov.uk/documents/s47509/Section%20106%20Agreements.pdf?j=18>
- 11/09/18 – Executive - Bishop’s Stortford North – Allocation of S106 Funding for Sports Investments Report
<http://democracy.eastherts.gov.uk/documents/s46069/BSN%20-%20S106%20Funding%20Allocation.pdf?j=5>

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