

## **East Herts Council Report**

### **Audit & Governance Committee**

**Date of meeting: 9 November 2021**

**Report by: Councillor Jan Goodeve – Executive Member for Planning & Growth**

**Report title: Annual Infrastructure Funding Statement Report 2020 – 21**

**Ward(s) affected: All**

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### **Summary**

- This report provides Committee Members with information on the 'Infrastructure Funding Statement Report 2020/21', an update on the collection and allocation of Section 106 contributions and the additional work undertaken by the Infrastructure Contributions & Spend Manager over the last year.

### **RECOMMENDATIONS FOR AUDIT AND GOVERNANCE COMMITTEE:**

- (a) To note and comment on the annual 'Infrastructure Funding Statement 2020/21' report, the update on the collection and allocation of Section 106 financial contributions and the work of the Infrastructure Contributions and Spend Manager.**

#### **1.0 Proposal(s)**

1.1 As above.

#### **2.0 Background**

- 2.1 On 24 September 2019, the Performance Audit and Governance Oversight Committee received a report on Section 106 agreements contribution collection and allocation, and an interim update on the Internal Audit Report follow up. A copy of this [report](#) is available on the council's website .
- 2.2 The follow up progress report in November 2020 provided information on Section 106 policy and practise at East Herts, along with information on the initial 'Infrastructure Funding Statement 2019/20'. A copy of this [report](#) is available on the council's website.
- 2.3 Members requested a further update report on Section 106 to come to Committee in Autumn 2021 – this report provides that information below.

### **3.0 Reason(s)**

- 3.1 This report provides information on the second 'Infrastructure Funding Statement 2020/21' prior to publication on the council's website, along with an update on the identification, collection and allocation of Section 106 contributions and the additional work undertaken by the Infrastructure Contributions & Spend Manager.
- 3.2 Members should also note that in line with the council's key priorities, work is being undertaken with fellow Officers and external organisations to promote sustainability and secure this approach in any new Section 106 funding bids to assist with the aim of being carbon neutral by 2030.

### **Infrastructure Funding Statement 2020/21**

- 3.3 As per the Community Infrastructure Levy (Amendment) (England) (No 2) Regulations 2019) East Herts Council is required to produce and publish an annual 'Infrastructure

Funding Statement’.

- 3.4 The ‘Infrastructure Funding Statement 2020/21’ report and the three (3) required CVS files have been compiled by the Infrastructure Contributions & Spend Manager in line with the Legislation requirements and will be published on the dedicated [Infrastructure Funding Statement webpage](#) in December 2021.
- 3.5 The ‘Infrastructure Funding Statement 2020/21’ report provides a summary of the Section 106 legal agreements signed, along with detailed information on contribution income and expenditure for the financial year 2020/21.
- 3.6 Members are invited to comment on the ‘Infrastructure Funding Statement 2020/21’ report attached as Appendix A

**Update on Section 106 contribution identification, collection and allocation:**

- 3.7 Details are provided below on the work undertaken by the Infrastructure Contributions & Spend Manager to identify projects for inclusion in new Section 106 agreements, the ongoing collection of triggered contributions and the allocation of received financial contributions.
- 3.8 The Infrastructure Contributions and Spend Manager continues to ensure that all Section 106 agreements are identified and updated on the ‘Master Section 106 Contributions Spreadsheet’ to ensure a single central record is maintained on held and future contributions, and this information is updated on the Development Management module of the Uniform IDOX system.
- 3.9 Information on Section 106 agreements, the annual Infrastructure Funding Statement and how to apply for funding for projects is now available on a dedicated [Section](#)

[106 funding](#) webpage.

- 3.10 Members should also note that in line with the council's key priorities, work is being undertaken with fellow Officers and external organisations to promote sustainability and carbon reduction, and to secure this approach in any new Section 106 funding bids.
- 3.11 New Section 106 Agreements and Contributions - Members will be aware that Section 106 contributions cannot be seen as an income source for the council, as all identified contribution uses have to conform with the three (3) tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 to be included in any new Section 106 Agreement.
- 3.12 The Infrastructure Contributions & Spend Manager continues to work with Planning Officers on potential new Section 106 Agreements from forthcoming developments and work is undertaken with developers to ensure that all potential contribution obligations are appropriate and sustainable.
- 3.13 To assist with this, a list of potential projects for inclusion in future Section 106 agreements has been created with input from Officers, Members, Town and Parish Councils along with many local groups and organisations. This ensures that any projects / groups identified for inclusion in new Section 106 agreements are an appropriate and sustainable use of the received contributions, and that all parties are happy with them.
- 3.14 To facilitate the funding of council projects, Officers are consulted on their potential projects and future funding requirements. This information is collated and used to assist Planning Officers with their pre-app discussions with

developers. Officers are also advised of the anticipated timescale for the receipt of identified contributions to allow for capital programme planning and staffing allocation.

- 3.15 Significant work is undertaken with Legal prior to the confirmation of the new Section 106 agreements, to ensure that the individual contribution wording allows for a spread of projects to ensure resilience and that the funding is available for the potential applicants.
- 3.16 All current Section 106 agreements and associated developments are actively monitored to ensure that contribution trigger points are identified and the contributions are collected on time. As a consequence of this proactive engagement with developers no late payment fees were charged in the last financial year.
- 3.17 The Infrastructure Funding Statement 2020/21 (Appendix A) provides detailed information on the collection and allocation of Section 106 contributions including successful submitted funding applications, internal capital spends, revenue maintenance spends and transfers of specific contributions to the recycling budget and planning monitoring budget for the 2020/21 financial year.
- 3.18 The complex background work required to create the Infrastructure Funding Statement document and the associated CVS files, as required by the CIL Legislation, has identified the following financial highlights:
- 3.19 Total received Section 106 income & expenditure from 01/04/1996 up to 31/03/2021:
  - Received contributions - £12,102,565.98
  - Spent contributions - £5,435,619.26

- Allocated contributions\* - £6,101,413.39
- Unallocated contributions\*- £565,533.33

3.20 \*Allocated contributions include contributions identified for future allocation/transfer to Revenue budgets for ongoing maintenance, Capital budgets for major projects, Affordable Housing, specific named uses / projects and for transfer to external bodies (e.g. NHS).

3.21 \*Unallocated contributions are available for internal and external funding application bids, but Legal advice has confirmed these contributions can only be allocated in accordance with the specified contribution use wording in the individual legal agreement and within the vicinity of the associated development.

3.22 Although the Infrastructure Funding Statement provides further detailed information, Members should note the following figures for the financial year 2020/21:

- £1,518,285.73 collected from contributions triggered from thirty-six (36) contributions from thirteen (13) individual Section 106 Agreements.
- £715,242.95 allocated to individual projects or uses from twenty (27) individual received contributions.

3.23 Update on Section 106 in 2021/22 to date – the information below provides a snapshot on the current amount of collected Section 106 contributions triggered and collected to date in the current financial year (from 01/04/2021 to date (September 2021)). Information is also given below on the contributions identified and allocated for spend / transfer in this financial year to date.

- £1,261,137.52 has been collected to date as contributions

triggered from ten (10) separate developments.

- £1,652,730.42 identified for allocation / transfer in 2021/22 to date\*.

3.24 \*More detailed information on the actual allocations will be provided in the next Infrastructure Funding Statement for the financial year 2021/22 (this year) which will be published in December 2022.

3.25 Allocated Section 106 funding in 2021/22 – As members will be aware, the council is legally bound to allocate / use received Section 106 contributions in accordance with the individual contribution wording as any deviation or non-conforming use may be subject to challenge and potential reclaim by the developer.

3.26 Significant work is ongoing to confirm the allocation of received Section 106 contributions for identified purposes / projects and organisations use. This currently includes collaborative work with Ware and Buntingford Town Councils on major sports projects and with fellow EHC Officers on the use of contributions for environmental bio-diversity and sustainability projects.

3.27 However, Section 106 funding applications are currently being signed off for the following projects:

- Bishop's Stortford Rugby Football Club - £150,000 towards the 'New Changing Rooms Project'.
- Standon and Puckeridge Lawn Tennis Club - £16,600 towards the provision of a new toilet block.
- Aspenden Parish Council - £17,403.11 towards the play area refurbishment.
- Ware Town Council - £86,615.74 towards the 'New Skate

Park Project’.

- Hunsdon Parish Council - £2,164.90 towards improvements to the village hall

- 3.28 To ensure the appropriate use of Section 106 funding - once paid out following a successful funding bid - a new funding use agreement form has been devised with the Planning Lawyer. This provides an audit trail that ensures the contribution is only used for the identified funding purpose and allows for clawback by the council should this not be the case.
- 3.29 Members should note that major council capital projects also have Section 106 contributions allocated to them, and work is ongoing with Officers to identify all potential Section 106 funding available to support future council projects. As identified in the ‘Infrastructure Funding Statement 2020/21’ council projects funded in 2020/21 include Hartham Leisure Centre (£286,900.03), Grange Paddocks Leisure Centre (£19,863.39), Hartham Common new play area (£52,538.73) and the revamp of the Trinity play area in Bishop’s Stortford (£69,863.39).
- 3.30 Further Section 106 funding has been identified and allocated for both Hartham and Grange Paddocks Leisure Centres Capital projects and will be used to offset council borrowing when the contributions are triggered for payment. Section 106 contributions have also been identified and allocated for Pinehurst Community Centre in Hertford and the Parsonage Lane play area in Bishop’s Stortford - these will be added into the Capital Programme for future planned use.
- 3.31 In addition to funding council capital projects, specific Section 106 contributions are used to fund the provision of refuse and recycling containers to new properties on the associated



developments. In 2020/21 a total of £9,109.41 was collected and allocated to the Waste budgets for this provision. In this financial year £50,248.30 has been collected to date.

- 3.32 East Herts Council also acts as the collection authority for NHS health contributions and financial contributions due to Hertfordshire County Council from developments where the county council is the land owner. To date in this financial year (2021/22) a total of £111,551.82 has been collected on behalf of the NHS and £670,985.54 has been collected and transferred to Hertfordshire County Council.
- 3.33 Unallocated Section 106 contributions - Significant work has been undertaken to identify and allocate all unspent Section 106 contributions to potential projects that would benefit from funding and comply with the contribution use.
- 3.34 Unallocated Section 106 Maintenance Contributions have been reviewed with the Business Finance Manager responsible for Section 106. This highlighted a misclassification of a historic maintenance contribution as being spent annually and therefore the figures in the latest Infrastructure Funding Statement have been amended to show this amendment. As a result of this review a programme of drawdowns from held revenue maintenance contributions has been devised. These contributions are to be used over ten years from the date of receipt of the individual contribution. This has identified £329,676.73 for allocation and use in the 2021/22 Revenue Budget – this amount includes amalgamated contributions backdated to cover the years since receipt of the individual contributions.
- 3.35 Work is ongoing with the Environmental Sustainability Co-ordinator and the Sustainability Policy and Projects Officer to

identify contributions that could be used to support both internal and external sustainability and biodiversity projects. This collaborative approach is also being used to provide sustainability advice to potential Section 106 funding applicants.

### **Section 106 income generation and information**

3.36 Monitoring Fee Income - the inclusion of a Monitoring Fee Contribution in new Section 106 agreements, following a change in the legislation in 2019, has generated significant income totalling £19,476.20 to date, which is fed back into the planning budget. This income is itemised per financial year below:

- 2019/20 - £3,100
- 2020/21 - £9,336.99
- 2021/22 - £7,039.21(to date)

3.37 Section 106 Contribution Status Confirmation - Income continues to be generated from the provision of Section 106 status confirmation letters to solicitors and housing associations – the fee charged for the letter increased to £89.10 in 2021/22. This income is itemised per financial below:

- 2019/20 – £2,229.00
- 2020/21 – £2,693.00
- 2021/22 – £1,690.80 (to date)

3.38 Section 106 information requests - In addition, in the previous twelve months the Infrastructure Contributions & Spend Managers has responded to three (3) Freedom of Information (FOI) requests and three (3) Member inquiries (via “Infreemation”) regarding Section 106 contribution collection and allocation.

## **4.0 Options**

4.1 Members are invited to note and comment on the 'Infrastructure Funding Statement 2020/21' report, and the ongoing work of the Infrastructure Contributions & Spend Manager.

## **5.0 Risks**

5.1 The 'Infrastructure Funding Statement Report 2020/21' must be published on the East Herts website before 31/12/2021. To not do so would put the Council in contravention of the Community Infrastructure Levy (Amendment) (England) (No 2) Regulations 2019 and would be a reputational and legal risk for the Council. As the report has been written and is ready to be published this is a minor risk and the likelihood is unlikely.

5.2 The main risk of non-allocation of received Section 106 contributions within the timescale set out in the individual legal agreements is reputational as it could result in public challenge and potential reclaim by the developer.

5.3 Significant work continues to be undertaken to ensure that this will not happen and that all contributions are identified, allocated and used within the time period stated within the Section 106 agreement – this is usually 10 years from the date of actual receipt of the financial contribution.

## **6.0 Implications/Consultations**

6.1 Feedback on the 'Infrastructure Funding Statement 2020/21' was sought from Senior Planning Officers.

## **Community Safety**

No

## **Data Protection**

No

## **Equalities**

No

## **Environmental Sustainability**

No

## **Financial**

No

## **Health and Safety**

No

## **Human Resources**

No

## **Human Rights**

No

## **Legal**

No

## **Specific Wards**

No

### **7.0 Background papers, appendices and other relevant material**

7.1 24/09/2019 - Performance, Audit and Governance Scrutiny Committee - [Section 106 Agreements Update Report](#)

7.2 17/11/2020 - Audit & Governance Committee – [Section 106 Policy and Financial Contributions Update Report](#)

7.3 Appendix A – East Herts Council Annual Infrastructure Funding Statement Report 2020/21

## **Contact Member**

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