

East Herts Council Report

Audit and Governance Committee

Date of meeting: Wednesday 29 November 2023

Report by: Councillor Vicky Glover-Ward – Executive Member for Planning and Growth

Report title: Section 106 Update Report & 2022/23 Infrastructure Funding Statement

Ward(s) affected: (All Wards);

Summary – This report provides Officers and Committee Members with an update on East Herts Council Section 106 contributions and the '2022/23 Infrastructure Funding Statement' prior to its publication, along with information on the current Internal Audit of Section 106 and the additional work undertaken by the Section 106 Programme Manager.

RECOMMENDATIONS FOR Audit and Governance Committee:

- a) To note and comment on the contents of this report and the '2022/23 Infrastructure Funding Statement' attached as Appendix A.

1.0 Proposal(s)

- 1.1 As above.

2.0 Background

- 2.1 Since September 2019, the Section 106 Programme Manager has compiled an annual update report to provide information on East Herts Council Section 106 financial contributions collection and allocation, including any changes to legislative

and reporting requirements, and the annual Infrastructure Funding Statement prior to its publication on the East Herts Council website. Copies of these previous reports can be found on the council's website and are listed as background papers at the end of this report.

- 2.2 This report, which is presented annually to the Audit & Governance Committee in November, provides this year's update along with a copy of the '2022/23 Infrastructure Funding Statement' – attached as Appendix A.

3.0 Reason(s)

- 3.1 To ensure transparency, and compliance with current Legislation, details are provided below on the '2022/23 Infrastructure Funding Statement' prior to its publication on the council's website. Further information is also provided on the ongoing work of the Section 106 Programme Manager to secure financial contributions and identify projects for inclusion in new Section 106 agreements along with an update on the Internal Audit of Section 106 currently being undertaken.
- 3.2 Members should also note that in line with the council's key priorities, work continues to be undertaken with fellow Officers and external organisations to promote sustainability and secure this approach in any new Section 106 contribution obligations or funding bids to assist with the council's aim of being carbon neutral by 2030.

Information on Section 106 contribution identification, collection, and allocation:

- 3.3 The Section 106 Programme Manager continues to ensure that all Section 106 agreements and individual contribution obligations are identified and updated on the 'Master Section

106 Contributions Spreadsheet'. This ensures that a single central record is maintained on past, current and future contributions due to East Herts Council. This information is updated on the Development Management module of the Uniform IDOX system and shared with the Group Accountant responsible for Section 106 to ensure financial oversight of income and allocations.

- 3.4 General information on Section 106, copies of the annual Infrastructure Funding Statement and how to apply for funding for projects is available to the public on a dedicated [Section 106 funding](#) webpage.
- 3.5 New Section 106 Agreements and Contributions - Members will be aware that Section 106 contributions cannot be an income source for the council, as to be included in any new Section 106 Agreement all identified contribution uses must conform with the three tests set out in Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010 and be:
 - a) necessary to make the development acceptable in planning terms,
 - b) directly related to the development and
 - c) fairly and reasonably related in scale and kind to the development.
- 3.6 The Section 106 Programme Manager continues to work pro-actively with senior Planning Officers on the Section 106 requirements from forthcoming developments. As planning applications progress to approval, work is undertaken with individual senior Planning Officers, developers and interested parties to ensure that all potential contribution obligations are appropriate, compliant, and sustainable, and have identified allocation uses. This can involve significant negotiations and in

some cases viability reports which can result in changes to Affordable Housing requirements and/or individual financial contributions.

- 3.7 It should be noted that all East Herts contributions and obligations are sought and calculated in accordance with the current Local Plan and specific Supplementary Planning Documents (SPD's) requirements. These, along with the associated calculation spreadsheets, can be found on the [Planning Policy Supplementary Planning Documents](#) webpages.
- 3.8 Further information on the planning obligations and contribution requirements typically required from developments meeting the threshold can be found on the [Making a Planning Application](#) webpage, which also has a template Section 106 Agreement.
- 3.9 Committee Members should note that the Section 106 Programme Manager will be providing a briefing on Section 106 in East Herts to all Members on 7th December 2023.
- 3.10 To assist with the identification of new contribution uses and project allocations, 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 other local groups and organisations. This ensures that any projects / groups identified for funding and inclusion in new Section 106 agreements comply with the legislation requirements and will provide a sustainable use of the received contributions, and that all parties are happy with the outcome.
- 3.11 To facilitate the funding of council projects, fellow Officers are consulted on their potential projects and associated future funding requirements. This information is collated and used to

assist Planning Officers with their pre-app discussions and the Section 106 agreement negotiations with developers. Officers are also advised of the anticipated timescale for the receipt of identified Section 106 contributions to allow for capital programme planning and staffing allocation.

2022/23 Infrastructure Funding Statement

- 3.12 The fourth annual 'Infrastructure Funding Statement' for the financial year 2022/23 and the three required CSV files have been compiled by the Section 106 Programme Manager in line with the Legislation requirements of the Community Infrastructure Levy (Amendment) (England) (No 2) Regulations 2019) and will be published on the dedicated [Infrastructure Funding Statement webpage](#) in December 2023.
- 3.13 The '2022/23 Infrastructure Funding Statement' provides a summary of new Section 106 legal agreements signed, along with detailed information on financial contribution income and expenditure, and projects funded in the financial year 2022/23. In line with the Legislation, it also includes information on Section 106 financial contribution collection and allocation for previous financial years.
- 3.14 Members are invited to comment on the '2022/23 Infrastructure Funding Statement' attached as Appendix A.
- 3.15 Members should note that Hertfordshire County Council produce their own Annual infrastructure Funding Statement which provides information on the Section 106 contributions due directly to them - this is available on the [Hertfordshire County Council website](#).

Update on Section 106 contributions in 2022/23

- 3.16 A snapshot of the financial highlights from the '2022/23

Infrastructure Funding Statement' is provided below.

3.17 Total Section 106 income & expenditure – As previously noted, detailed information on the collection and allocation of East Herts Section 106 financial contributions has been collected since April 1996 in the Master Spreadsheet. Members should note the following information on the total received Section 106 income & expenditure from 01/04/1996 up to 31/03/2023:

- Received contributions - £18,415,230.84
- Spent contributions - £11,833,176.66
- Unspent contributions - £6,582,054.18
 - Allocated contributions* - £6,360,828.52
 - Unallocated contributions**- £221,225.66

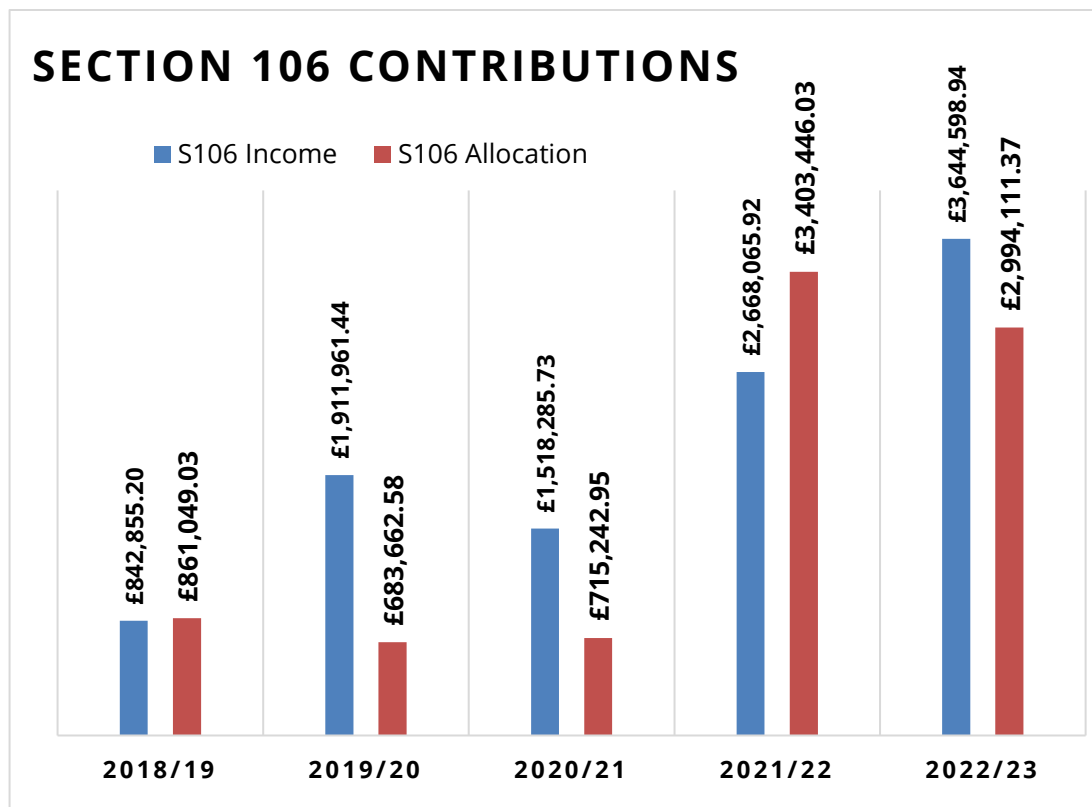
3.18 *Allocated contributions include contributions identified for future allocation/transfer to Revenue Budgets for ongoing maintenance, Capital Budgets for major projects, Affordable Housing, specific named uses / projects and for transfer to external bodies (e.g., health contributions collected for the NHS Hertfordshire and West Essex Integrated Care Board).

3.19 **Unallocated contributions are classed as unallocated because they do not have a specific project named in the contribution wording. Work is ongoing to identify projects to fit with these contributions and these are available for internal and external funding application bids with certain caveats. Further information on these unallocated contributions is available in the '2022/23 Infrastructure Funding Statement'.

3.20 Members should be aware that legal advice has confirmed that all Section 106 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. Any deviation or non-conforming use may be subject to challenge and potential reclaim by the developer. All funding payment transfers are subject to the signing of a Use Agreement form to allow the council to reclaim any unspent or miss-used contributions should this be necessary.

3.21 Section 106 Income & Allocation over the last five financial years - The graph below provides information on the total Section 106 contributions received and allocated by East Herts Council over the last five financial years:



3.22 Members should note that the 2022/23 figures include:

- £3,644,598.94 collected from forty-nine contributions triggered from eleven individual Section 106 Agreements.

- £2,994,111.37 allocated to fourteen individual projects or uses from fifty-five received contributions from thirty individual Section 106 Agreements.

Future Section 106 income and allocation

3.23 Information on the collection and allocation of Section 106 contributions for the current financial year (2023/24) will be provided in the next Infrastructure Funding Statement and the Report to Audit & Governance Committee in November 2024.

3.24 Currently Section 106 contributions collected and allocated for spend / transfer in this financial year (01/04/2023 to September 2023) include:

- £1,025,351.48 collected to date as contributions triggered from seven separate developments.
- £794,938.64 identified for allocation / transfer in 2023/24*.

3.25 *This includes the transfer of £351,237.07 health contributions collected by the council on behalf of the NHS Hertfordshire and West Essex Integrated Care Board (formerly the CCG) for surgery expansions in Sawbridgeworth and Hertford. £364,611.07 has been allocated to the funding of projects in accordance with the individual contribution wording requirements. £65,988.60 of grounds maintenance contributions have been allocated to support the ongoing costs of the council in the current financial year as part of a planned drawdown of received funding.

3.26 In addition, £3,829.44 of monitoring contributions and £13,156.46 of recycling and refuse contributions have been received to date and will be allocated to internal budgets at the end of the financial year. More information on these

individual allocations will be published in the next Infrastructure Funding Statement.

- 3.27 The Section 106 Programme Manager is currently collating information on identified future Section 106 contributions, by area and individual contribution use, which are to be allocated to support Council projects and services. This information will be used to help inform the council's financial projections and budgets.
- 3.28 Work is also ongoing with the Town and Parish Councils to identify any current and future contributions available to them. Detailed information, including bespoke spreadsheets, have been shared and collaboration to identify future funding requirements continues.

Update on Internal Audit of Section 106 – September 2023

3.29 As of May 2023, Internal Audit (BDO LLP on behalf of SIAS), have been undertaking an audit of Section 106 at East Herts Council. This audit aims to provide an assurance opinion and the Auditors are currently assessing the adequacy and effectiveness of the governance, risk management and internal control activities in the following areas:

- a) **Governance Arrangements**
- b) **Policies and Procedure**
- c) **Collection of Section 106 funds**
- d) **Release of Section 106 funds**
- e) **Reporting and Monitoring**

3.30 A meeting between the Auditor and the Section 106 Programme Manager took place in July to go through the above identified areas and look at specific randomly selected

examples to provide assurance that all policies and procedures were being complied with.

- 3.31 The final audit report is expected later this year, but the interim feedback has been incredibly positive. A copy of the final report will be shared with the Executive Member for Planning & Growth on receipt and reported to the Council's Audit & Governance Committee in 2024.
- 3.32 Going forward, Internal Audit will seek assurance that any recommendations made in the final audit report have been implemented. This will be accomplished in terms of an agreed protocol with the council and information on this will be provided to Members via the November 2024 Audit & Governance Committee.

Section 106 income generation and information requests

- 3.33 Monitoring Fee Income - following a change in the legislation in 2019, the inclusion of a Monitoring Fee contribution in new Section 106 Agreements has generated significant income totalling £30,780.25 to date. This is transferred internally at the end of each financial year into the planning budget to help fund the council's monitoring costs. This Monitoring Fee income is itemised per financial year below:
- 2019/20 - £3,100.00 (one contribution payment)
 - 2020/21 - £9,336.99 (three contribution payments)
 - 2021/22 - £14,513.82 (six contribution payments)
 - 2022/23 - £0.00 (no contribution payments triggered)
 - 2023/24 - £3,829.44 – two contribution payments to date
- 3.34 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 this increased to £94.00 per enquiry response in April 2022. This income is itemised per financial year below:

- 2019/20 – £2,229.00
- 2020/21 – £2,693.00
- 2021/22 - £4,809.30
- 2022/23 – £3,290.00
- 2023/24 – £1,222.00 (thirteen confirmations to date)

3.35 Section 106 information requests - In the previous 12 months the Section 106 Programme Manager has responded to ten Freedom of Information (FOI) requests and two Member inquiries (via “Infreemation”) regarding Section 106 contributions collection and allocation.

4.0 Options

4.1 Members are invited to note and comment on the contents of this report, the ‘2022/23 Infrastructure Funding Statement’ and the ongoing work of the Section 106 Programme Manager

5.0 Risks

5.1 The ‘2022/23 Infrastructure Funding Statement’ must be published on the East Herts Council website before 31/12/2023. To not do so would be 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 ‘2022/23 Infrastructure Funding Statement’ 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 payable to the council are identified, collected, RAG rated and allocated to be used within the period stated within the individual Section 106 agreements. This allocation period is usually 10 years from the date of actual receipt of the financial contribution, but several new agreements now stipulate five years from receipt.

6.0 Implications/Consultations

- 6.1 Feedback on this report and the '2022/23 Infrastructure Funding Statement' was sought from senior Planning Officers, Head of Communications, Strategy and Policy, Deputy Chief Executive and the Executive Member for Planning & Growth.

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 & 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 19/11/2021 – Audit & Governance Committee – [Section 106 Update Report](#)

7.4 15/11/2022 -Audit & Governance Committee – [Section 106 Update Report](#)

7.5 **Appendix A** – Infrastructure Funding Statement 2022/23.

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