

East Herts Council Report

Audit and Governance Committee

Date of meeting: Wednesday 27 November 2024

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

Report title: Section 106 Update Report and 2023/24 Infrastructure Funding Statement

Ward(s) affected: (All Wards);

Summary – This report provides an update on East Herts Section 106 contribution identification, collection and allocation, plus information and feedback from the 2023 Internal Audit of East Herts Section 106 and the additional work undertaken by the Section 106 Programme Manager, along with the '2023/24 Infrastructure Funding Statement' prior to its publication.

RECOMMENDATIONS FOR Audit & Governance Committee:

- a) To note and comment on the contents of this report, the '2023/24 Infrastructure Funding Statement' (Appendix A) and the SIAS Internal Audit Report (Appendix B).

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 identification, 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 the '2023/24 Infrastructure Funding Statement' (attached as Appendix A) and feedback from the Internal Audit of East Herts Section 106 undertaken by SIAS in 2023 with a copy of the final report attached as Appendix B.

3.0 Reason(s)

- 3.1 To ensure transparency, and compliance with current Legislation, details are provided below on the '2023/24 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 and an update on the report and recommendations from the Internal Audit of Section 106 undertaken in Summer 2023.

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

- 3.2 East Herts Council has a good track record of securing developer contributions to help mitigate the impacts of new development across the District. However, Members will be aware that Section 106 contributions cannot be an income source for the council as developer contributions can only be sought where they meet the legal tests and are appropriate, compliant, and sustainable, and have identified allocation uses.
- 3.3 Detailed information on Section 106 legislation and the legal tests was provided in previous reports – copies of these can be found on the council's website and are listed as background papers at the end of this report.
- 3.4 All Section 106 agreements and individual contribution obligations are identified and updated on the 'Master Section 106 Contributions Spreadsheet' monthly by the Section 106 Programme Manager. 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.

- 3.5 To ensure that the council secures financial contributions obligations from forthcoming major developments, the Section 106 Programme Manager continues to work pro-actively with Planning Officers and developers. This can involve significant negotiations and there may be instances in which proposed contributions do not meet the legal tests or where they are not allowed by Planning Inspectors or are amended through negotiations with developers due to the development being financially unviable. The Section 106 Programme Manager continues to support Planning Officers in Planning Inquiries where planning applications have been taken to Appeal by the developer and where the proposed Section 106 contributions have been challenged.
- 3.6 Further information on the planning obligations and financial contributions 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.
- 3.7 Potential changes to Planning Legislation - Members will be aware that the Government has recently proposed changes to Planning Legislation which are now subject to consultation before any legislative changes are enacted. Members will be updated on any new legislation or any changes affecting Section 106 as and when these are known. However, it should be noted that currently all East Herts contributions and obligations are sought and calculated in accordance with the current Legislation, 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 Identifying projects and uses for Section 106 contribution funding -

General information on Section 106 and how to apply or put forward a potential project for funding is available on a dedicated [Section 106 funding](#) webpage. The Section 106 Programme Manager continues to collate an internal list of potential projects which is updated with input from Officers, Members, Town and Parish Councils along with many other local groups and organisations along with information from the Expressions of Interest forms submitted via the Section 106 Funding webpage. This information is used to assist Planning Officers with their pre-app discussions and in the Section 106 agreement negotiations with developers.

- 3.9 This approach 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.
- 3.10 With regard to the use of Section 106 by the council, Members should note that the council has forward funded some major capital infrastructure projects on the understanding that the borrowing requirement is repaid from identified Section 106 contributions. For example, the Fitness Gyms, Studio Space and Swimming Pools contributions from major developments in Bishop's Stortford are being used to help repay the new Grange Paddocks Leisure Centre borrowing obligations. This approach has also been taken for the refurbishment of Hartham Leisure Centre and to assist with the match funding requirements of other major projects such as the Lottery funded Castle Park Project in Bishop's Stortford.
- 3.11 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. For example, the Section 106 funded installation

of solar panels and associated battery storage at Gilston Village Hall in December 2023 has now generated 5.63MWh of electricity with 1,093kg CO2 saved, the equivalent to planting 66 trees. This project was the latest of the Section 106 funded improvements suggested from the sustainability report generated by the coordinated work undertaken with the council's Climate Change and Sustainability Projects Officers and the village hall committee.

2023/24 Infrastructure Funding Statement – see Appendix A

- 3.12 The fifth annual 'Infrastructure Funding Statement' for the financial year 2023/24 and the three associated 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 2024. It should be noted that the three CSV files are not mandatory but will continue to be updated annually for information only.
- 3.13 The '2023/24 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 2023/24. 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 '2023/24 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](#).

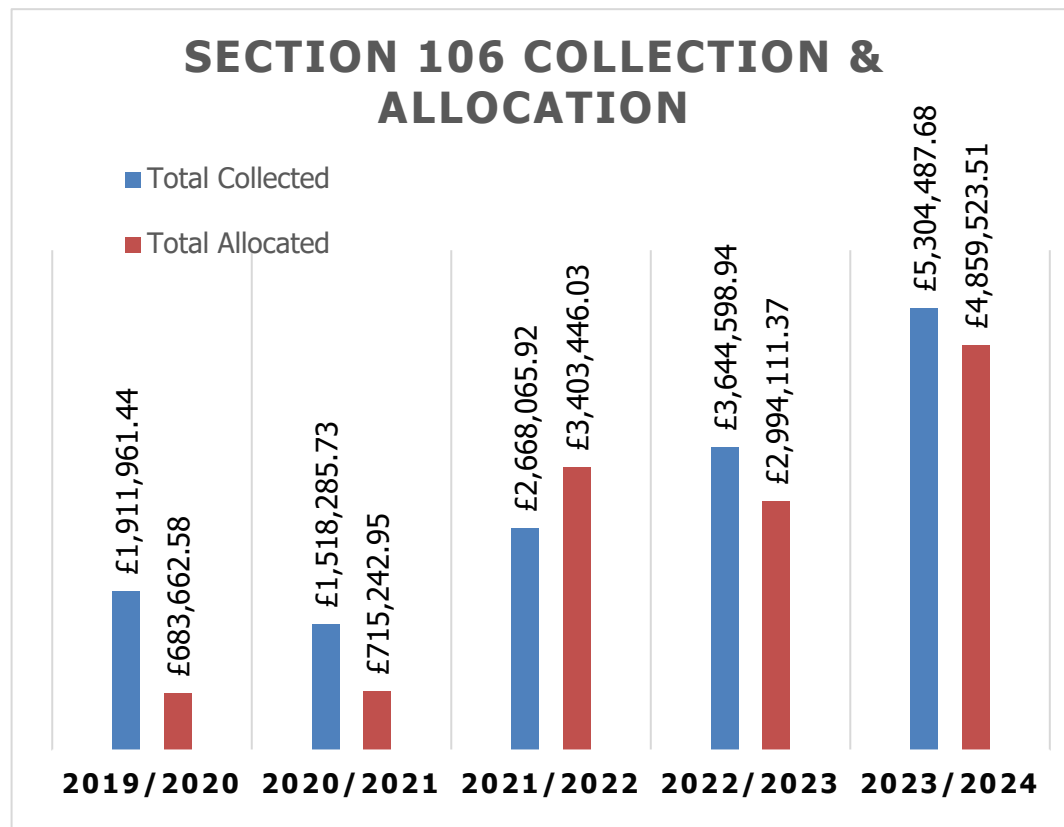
Update on Section 106 contributions in 2023/24

- 3.16 A snapshot of the financial highlights from the '2023/24 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 Council Section 106 financial contributions has been collected since April 1996 in the Section 106 Master Spreadsheet – an internal document for Officer use only.
- 3.18 However, this spreadsheet is used to inform the annual Infrastructure Funding Statement and the ongoing work of the Section 106 Programme Manager in the collection and allocation of financial contributions.
- 3.19 Members should note the following information on the total Section 106 contribution receipt & expenditure from 01/04/1996 up to 31/03/2024 – see page 7 of the '2023/24 Infrastructure Funding Statement' for further details:
- Received contributions - £23,719,718.52
 - Spent contributions - £16,692,700.17
 - Unspent contributions - £7,027,018.35
 - Allocated contributions* - £6,857,789.49
 - Unallocated contributions**- £169,228.86
- 3.20 *Allocated contributions include contributions identified for future allocation/transfer to Revenue Budgets for ongoing maintenance, Capital Budgets for major projects, 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).
- 3.21 **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 on page 8 of the '2023/24 Infrastructure Funding Statement'.
- 3.22 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.

3.23 Section 106 contribution collection & allocation over the last five financial years - The graph below provides information on the total Section 106 contributions collected and allocated by East Herts Council over the last five financial years:



3.24 Members should note that the 2023/24 figures include:

- £5,304,487.68 collected from eighty-six contributions triggered from eleven individual Section 106 Agreements.
- £4,859,523.51 allocated to twenty-one individual projects or uses from seventy held contributions from twenty-nine

individual Section 106 Agreements.

- 3.25 Further detailed information on the breakdown of the 2023/24 contributions collected and the contributions allocated, along with details of the individual projects funded, is provided in the '2023/24 Infrastructure Funding Statement'.

Future Section 106 income and allocation

- 3.26 Currently Section 106 contributions collected and allocated for spend / transfer in this financial year (01/04/2024 to end of September 2024) include:
- £2,124,089.18 collected from thirty-four contributions triggered from seven separate developments.
 - £524,205.96 has been identified to date for allocation / transfer in 2024/25*.
- 3.27 *This figure includes contributions identified for internal transfer to help fund council operations, approved funding of community projects and the transfer of contributions collected by the council on behalf of the NHS Hertfordshire & West Essex Integrated Care Board.
- 3.28 These are interim figures and detailed information on the individual Section 106 contributions collected and allocated will be provided in the '2024/25 Infrastructure Funding Statement' and the Section 106 Update Report presented to the Audit & Governance Committee in November 2025.
- 3.29 Members should note that work is also ongoing with community groups and organisations, as well as the Town and Parish Councils, to identify any current and future contributions available to them. Detailed information, including bespoke spreadsheets, is shared with potential recipients and collaboration continues to identify future funding requirements and help inform new Section 106 agreements.

Update on 2023 Internal Audit of Section 106

- 3.30 In May 2023, Internal Audit (BDO LLP on behalf of SIAS),

undertook an audit of Section 106 at East Herts Council with the final report issued in December 2023 - a copy of this report is attached as Appendix B.

3.31 This audit provided an assurance opinion and assessment of 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

3.32 Based on the work performed during this audit the final report provided an overall **substantial assurance** that there are effective controls in operation for those elements of the risk management processes covered by the review.

3.33 The Audit Report concluded that there is a robust framework in place for the collection and allocation of S106 funds and the council has adequate policies and procedures in place to govern these processes and has developed template documentation to maintain consistency e.g., demand notices and application forms. It also confirmed that there are clear reporting lines in place to ensure that the Leadership Team and the Audit & Governance Committee are informed of Section 106 activity and to enable transparency of the work completed by the Section 106 Programme Manager and the Finance Team.

3.34 Only one minor recommendation was suggested – creating a checklist for the contribution collection and allocation process. This has been implemented and has proved to be particularly useful in providing an audit trail of contribution payment triggers, receipts and payment acknowledgements. In addition, information on the Section 106 funding applications received in this financial year has been collated in a single spreadsheet which provides an overview of the applicants, the allocated amount and

dates of the approvals sign offs, and greatly assists with the monitoring of the funding allocation process.

Section 106 income generation and information requests

3.35 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 £42,674.96 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 - £8,543.65 (four contribution payments)
- 2024/25 - £7,180.50 (two contributions triggered to date (as of 30/09/2024))

3.36 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 – £1,786.00
- 2024/25 - £1,974.00 to date (30/09/2024)

3.37 Section 106 information requests - In the previous 12 months the Section 106 Programme Manager has responded to 16 Freedom of Information (FOI) requests and one Member inquiry (via

“Infreemation”) regarding Section 106 funding.

4.0 Options

- 4.1 Members are invited to note and comment on the contents of this report, the '2023/24 Infrastructure Funding Statement' prior to its publication, the SIAS Internal Audit Report and ongoing work of the section 106 Programme Manager.

5.0 Risks

- 5.1 The '2023/24 Infrastructure Funding Statement' must be published on the East Herts Council website before 31/12/2024. 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 '2023/24 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 is allocation period is usually 10 years from the date of actual receipt of the financial contribution, but some new agreements now stipulate five years from receipt.

6.0 Implications/Consultations

- 6.1 Feedback on this report and the '2023/24 Infrastructure Funding Statement' was sought from Head of Planning & Building Control, Planning Policy Officers, Head of Communications, Strategy and Policy, Deputy Chief Executive and the Executive Member for Planning & Growth.

Community Safety

There are no community safety implications arising from this report.

Data Protection

There are no data protection implications arising from this report.

Equalities

There are no direct equality, diversity, or inclusion implications in this report. All funding allocations go through a fair and proper process and an Equalities Impact Assessment (EqIA) will be carried out in accordance with The Equality Act 2010 as required.

Environmental Sustainability

All Section 106 funding allocations consider the environmental sustainability of the proposed contribution use to contribute to meeting the Council's key environmental and sustainability objectives.

Financial

All Section 106 financial contributions collected by East Herts Council are allocated and used in accordance with the individual contribution wording requirements of the associated Legal Agreement.

All Section 106 contributions for East Herts Council's own use are allocated as per the associated contribution wording. These identified contributions support specific named projects and help repay the council's capital project borrowing costs. Revenue contributions are used to support existing maintenance budgets, refuse and recycling contributions contribute to the cost to the council for container provision in new developments and monitoring contributions are used to support Officer costs.

Health and Safety

There are no health and safety implications arising from this report.

Human Resources

There are no human resources implications arising from this report.

Human Rights

There are no human rights implications arising from this report.

Legal

All Section 106 contributions are identified, collected and allocated in accordance with Section 106 of the Town & Country Planning Act 1990 and Regulation 122 of the Community Infrastructure Levy Regulations 2010.

The Infrastructure Funding Statement is produced in accordance with the Community Infrastructure Levy (Amendment) (England) (No 2) Regulations 2019.

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 09/11/2021 – Audit & Governance Committee – [Section 106 Update Report](#)
- 7.4 15/11/2022 -Audit & Governance Committee – [Section 106 Update Report](#)
- 7.5 29/11/2023 – Audit & Governance Committee – [Section 106 Update Report](#)
- 7.6 **Appendix A** - Infrastructure Funding Statement 2023/24.
- 7.7 **Appendix B** - SIAS Final Internal Audit Report – East Herts Council S106 Agreements 2023/24 – December 2023

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