

# Annual Section 106 Monitoring Report



<b>Report to:</b>	Cabinet
<b>Date:</b>	12 September 2024
<b>Portfolio Holder:</b>	Councillor Alastair Gunn, Portfolio Holder for HGGT and Planning
<b>Lead Officer:</b>	Tanusha Waters, Assistant Director – Planning and Environment (01279) 446595
<b>Contributing Officers:</b>	Caroline Hardy, Forward Planning Officer (01279) 446562 Vicky Forgione, Principal Forward Planning Officer (01279) 446878
<b>Key Decision:</b>	No
<b>Forward Plan:</b>	Forward Plan number I017160
<b>Call In:</b>	This item is subject to call in procedures
<b>Corporate Mission:</b>	Secure Investment for Harlow's Future
<b>Wards Affected:</b>	None specifically

## Executive Summary

- A** This report provides information in respect of Section 106 (S106) planning contributions for the period 2023/24 as reported in the Infrastructure Funding Statement. This includes monetary contributions collected from developers, contributions agreed in S106 agreements but yet to be collected and what has been spent from contributions. Planning contributions help to mitigate the impact of unacceptable development to make it acceptable in planning terms. This can either be monetary or non-monetary, provided on a development site or off-site. The Forward Planning Team monitor S106 contributions and report it annually through the Infrastructure Funding Statement (IFS) which is attached in Appendix A to the report.

## **Recommended that:**

- A** Cabinet agrees to formally publish the Infrastructure Funding Statement in accordance with The Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019.
- B** Cabinet agrees the risks identified under paragraph 16 of the report and will work within their respective areas to identify suitable projects in line with the Head of terms attached to the S106 agreement

## **Reason for decision**

- A** To inform members of the developer contributions that have been received or are likely to be received by the council and projects contributions have been spent on/allocated to.
- B** To support the development and funding of existing and future capital projects within the respective portfolio holder areas.

## **Other Options**

- A** Not to prepare the IFS. However, it is a statutory requirement that the document be prepared each year to provide residents and Members with information on developer contributions.

## **Background**

1. Planning obligations, also known as developer contributions, help to mitigate the impact of unacceptable development to make it acceptable in planning terms. For example, new residential developments place additional pressure on existing social, physical and economic infrastructure in the surrounding area. Planning obligations aim to balance this extra pressure with improvements to the surrounding area to ensure that a development makes a positive contribution to the local area.
2. Planning obligations are legal obligations and seek contributions, either monetary or non-monetary from a developer or landowner. An obligation can only be sought if it meets the following tests: a) it is necessary to make the development acceptable in planning terms; b) it is directly related to the development; and c) it is fairly and reasonably related in scale and kind to the development.
3. Planning obligations can be made via a Section 106 agreement (S106) entered into by a person with an interest in the land and the local planning authority; or via a unilateral undertaking entered into by a person with an interest in the land without the local planning authority. The obligations may be provided by the developers “in kind” – that is, where the developer builds or provides directly the matters necessary to fulfil the

obligation. This might be to build a certain number of affordable homes on-site, for example. Alternatively, planning obligations can be met in the form of financial payments to the council to provide off-site infrastructure works or contributions towards providing affordable housing elsewhere in the district. In some cases, it can be a combination of both on-site provision and off-site financial contributions.

4. It is important that the council monitors S106 agreements to ensure contributions are being paid by the developer at the right stage in their development scheme, to ensure it is spent correctly and within certain timeframes and therefore deliver the right infrastructure to support that development and the town. It also helps the council coordinate its future capital projects and help fund existing projects.
5. The council annually produces an Infrastructure Funding Statement (IFS) which local planning authorities are required to publish by 31 December each year. These were made a statutory obligation since 2019 and must include the following:
  - a) Developer contributions received in the reporting year;
  - b) Developer contributions secured in the reporting year;
  - c) Developer contributions spent in the reporting year;
  - d) Developer contributions held at the beginning of the reporting year and at the end of the reporting year; and
  - e) Projects/infrastructure items/schemes which developer contributions have been received/secured/spent on including costs.
6. It must also include information on non-monetary schemes that have been agreed through a planning obligation such as affordable housing units and where planning obligations have been used for commuted sums (long term maintenance), monitoring purposes and any repayments for borrowing money.

#### **Infrastructure Funding Statement 2023/24**

7. The information below provides a summary of S106 information reported in the IFS (Appendix A) for the monitoring period 1 April 2023 to 31 March 2024. The IFS only monitors contributions that are collected by Harlow as local planning authority and either spent by the authority or passed to third parties and spent (e.g. health providers). It does not monitor contributions collected and spent by Essex County Council. This is set out in the Essex County Council IFS.

*Financial contributions available to be spent as of 31 March 2024*

8. On 1 April 2023 the council held £1,515,987 of developer contributions. As of 31 March 2024, the council holds £1,726,999 of developer contributions. These have been secured from S106 agreements. This includes approximately (rounded up):
- a) £78,421 for improved sports/community related facilities at or close to Church Langley;
  - b) £16,767 for Harlow Roman Temple Management Plan;
  - c) £106,397 for public art including maintenance;
  - d) £451,737 for off-site affordable housing provision;
  - e) £1,215 for monitoring fees;
  - f) £552,359 for health and library provision from Gilden Way development;
  - g) A further £49,135 for health from former Rugby Club development and £58,543 from the Burnt Mill development;
  - h) £198,537 for education from the Burnt Mill development;
  - i) £126,306 for allotments, play areas and playing fields; and
  - j) £87,582 for pedestrian/cycle signage and highway improvements which is to be passed on to the local highway authority.

*Financial contributions collected between 1 April 2023 – 31 March 2024*

9. In the monitoring year, £257,799.59 of contributions were collected from developers. This includes:
- a) A monitoring fee (£1,200) collected from the Land at Netteswell Hall development; and
  - b) Health (£58,433.58) and education (£198,536.57) monies collected from the Burnt Mill Roundabout development.

*Financial contributions spent between 1 April 2023 – 31 March 2024*

10. A total of £125,181.66 was spent in the monitoring year including:
- a) Remaining money (£8,986.13) from the Gateway Scheme development which was spent on a Town Park Showground Lighting Project; and
  - b) Affordable Housing money (£114,325.21) from The Churchgate Hotel development was spent on the Parnall Road development (ten social homes).

*Financial contributions secured through new S106 agreements between 1 April 2023 and 31 March 2024*

11. A total of £187,040 was secured for off-site projects in Harlow from new S106 agreements made in the monitoring year. This was secured from the Netteswell Hall development and is for the following projects:
  - a) Affordable Housing (£185,000); and
  - b) Off-site Biodiversity Net Gain money (£2,040).

*Commuted Sums held as of 31 March 2024*

12. A total of £332,794 is held from developers under a commuted sum agreement. This money is from the Church Langley development and includes a 'general' Infrastructure Fund pot as well as commuted sums received in respect of specific Church Langley estates:
  - a) Church Langley Infrastructure Fund - £187,108;
  - b) Abbeydale Close - £33,375;
  - c) Albert Gardens - £17,083;
  - d) Bentley Drive - £10,205;
  - e) Hadley Grange - £14,695;
  - f) Malkin Drive - £29,891; and
  - g) Wedgewood Drive - £31,437.

**Risks**

13. It is important that the council carefully monitors S106 agreements in relation to trigger points which is the point at which money must be collected in the development build and any time limits when S106 money must be spent by.
14. Trigger points are stipulated within individual S106 agreements and can differ between them. In general, contributions are usually collected either prior to a development, before completion of a development or before occupation. In larger developments this might be phased i.e. a certain amount of contribution will be collected upon completion of a certain number of homes. Where payment has not been by a particular trigger, officers contact the developer to ensure payment is made.

15. Most monetary contributions include a time limit otherwise the money could be handed back to the developer upon request. In other words, if the council or infrastructure provider e.g. health, does not deliver or begin building a scheme in a particular timeframe stipulated in the S106 then that contribution may be lost. This is usually a time limit of five years from when the payment was first received.
16. The following developments and payments (as of 31 July) have been identified for immediate consideration:
  - a) Harlow Rugby Club: £63,983.79 which is 50% of the Neighbourhood Equipped Area of Play, Playing Field and Allotment contributions. This must be spent by the end of 2025.
17. A S106 report is prepared quarterly and presented to CLT. This provides information on what S106 money is available and what is expected to be received from developers from existing S106 agreements. The total potential S106 money available for individual infrastructure items is also provided. This helps officers appropriately plan projects and proposals and minimise the risk of returning money to developers. Regular monitoring also takes place with the Portfolio Holder for Garden Town and Planning in conjunction with the Assistant Director of Planning and Environment to review upcoming and existing agreements.

## **Implications**

### **Equalities and Diversity**

There are no diversity and equalities issues arising from the content and recommendations in this report.

### **Climate Change**

The report and decision do not impact negatively on Climate Change.

### **Finance**

The report identifies what s106 contributions have been spent, received during 2023/24 and what contributions the council currently holds as at 31 March 2024.

Author: Jacqueline Van Mellaerts, Assistant Director – Finance (Deputy Section 151 Officer)

### **Governance**

The report discharges the duties contained in The Community Infrastructure Levy (Amendment)(England) (No.2) Regulations 2019. Where s.106 monies are not spent within the time limits contained in the agreements, the money should be returned to the payee.

Author: Julie Galvin, Legal Services Manager and Monitoring Officer

## **Appendices**

Appendix A – Infrastructure Funding Statement 2023/24

## **Background Papers**

None

## **Glossary of terms/abbreviations used**

CLT – Corporate Leadership Team

IFS – Infrastructure Funding Statement

S106 – Section 106