

	<p align="center">REPORT TO PLANNING & DEVELOPMENT COMMITTEE TO BE HELD ON 8 MARCH 2018 & CABINET ON 13 MARCH 2018</p>
	<p>Key Decision NO Forward Plan Ref No N/A</p>
<p>Corporate Priorities</p> <p>Quality Environments Prosperous Safe and Healthy</p>	<p>Cabinet Portfolio Cllr J Plant Holder</p>

REPORT OF DIRECTOR (RB) – PSM/18/52

WARDS AFFECTED: ALL

SUBJECT: UPDATE ON SECTION 106 PLANNING OBLIGATIONS

RECOMMENDATION (S):

The updated information on Section 106 (S106) planning obligations be received and noted.

REASON FOR RECOMMENDATION (S):

The monitoring of S106 planning obligations and the reporting of that information to Members is required to ensure that the process is transparent. Continued reporting of this information and the availability of reports on the Council’s website enables the process of collecting, allocating and spending of commuted sums to be transparent and the Council more accountable to the electorate.

HIGHLIGHTED RISKS:

1. The risk associated with not monitoring legal obligations relating to planning applications is that the Council could be criticised for not operating a transparent and comprehensive framework for monitoring such obligations.
2. Without adequate co-ordination commuted sums could be spent on inappropriate schemes and not on priorities identified within the Council’s various plans and strategies. It is also possible that sums could go uncollected or should deadlines expire, commuted sums would have to be returned (plus interest) to the developers and required community facilities / affordable housing would not be provided.

1. INTRODUCTION

Section 106 Planning Obligations

- 1.1 In 2002, the Development & Regulation Committee approved a protocol for monitoring planning obligations negotiated under Section 106 of the Town & Country Planning Act 1990. It was intended to meet the concerns of District Audit that a more transparent and comprehensive framework for monitoring financial and non-financial obligations was required. It would also ensure that the process is accountable and would allow ready access to information by the public and members.
- 1.2 It was also agreed that as part of the process an annual report on progress with the implementation of planning obligations would be prepared for consideration by members. The report is intended as an up to date statement of the current position and changes which have occurred since the last report 13 months ago. The detailed position, especially for financial contributions is set out in the tables in Appendices 1-3, while the Assessment section of this report provides a commentary.
- 1.3 On this occasion the contents report will also first be considered by the Overview and Scrutiny Board at its meeting on 8 March 2018. This report includes a brief analysis of the processes involved and an opportunity for members to discuss any issues arising.
- 1.4 Table 1 in Appendix 1 provides an overall picture for financial contributions, according to their current status and broken down in terms of the type of infrastructure provided. Tables 2a - 7 then break this down for the main types of infrastructure within the context of the last 5 years. Finally, Tables 6a – 13 in Appendix 3 summarise the current position on individual S106 planning obligations according to category. Unless they have been completed since the last report, these tables do not normally include obligations which have been fully executed by the developer, Council or other party – for example where a commuted sum has been received in full and the monies have been subsequently spent on a project in accordance with the terms of the S106 obligation. The report concentrates on those obligations which relate to commuted sums and/or affordable housing provision. It does not normally list other non-financial obligations which contain ongoing restrictions or specific requirements imposed on developers.

2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY STRATEGY

- 2.1 Planning obligations help the Council to achieve 3 of its 4 Key Aims; namely:
 - Quality Environments
 - Prosperous

- Safe and Healthy

They also contribute to 'Accessible Communities' which is an additional priority referred to in the Community Strategy.

3. BACKGROUND AND ISSUES

Section 106 Planning Obligations

3.1 Section 106 of the Town and Country Planning Act 1990 allows Local Planning Authorities to impose restrictions or requirements on land, including the payment of monies towards infrastructure. Collectively, these are known as planning obligations and may take the form of a Section 106 agreement between a developer/landowner, the Council and possibly other parties, or alternatively, a unilateral undertaking provided by the developer alone. Obligations form part of a planning permission, but are only used when planning conditions are unsuitable, in part because of their complexity and the delay they can add to the planning process. Since 2010 it has been a legal requirement that that planning obligations may only constitute a reason for granting planning permission for the development if the obligation is: -

- (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

3.2 The two most commonplace scenarios where planning obligations are: (i) to secure monies for infrastructure required in connection with new development; or (ii) to provide affordable housing. The Planning Act 2008 made provision that most financial contributions can be secured by the Community Infrastructure Levy (CIL) and it was the clear intention that in due course this would become the usual means of securing funding for off-site infrastructure (excluding affordable housing). The Council has at the current time decided not to introduce CIL, since across much of the Borough it would not be viable. The Act stipulated that from 1 April 2015 that any pooled contribution arising from the Section 106 route could only be applied up to a maximum of 5 obligations (except for affordable housing). This now limits the flexibility in spending these funds, so it is best practice now to identify a particular project in the s106 obligation, rather than expenditure merely being ring-fenced to a more generic and pooled type of expenditure. The government has recently indicated it may at some point lift these pooling restrictions in areas where CIL is unviable, but for the time-being they remain in place.

3.3 The Council has adopted Supplementary Planning Documents setting out the detailed guidance on thresholds, financial formulae and means of securing: (i) affordable housing, (ii) education, and; (iii) green space (including play and sports facilities); all in connection with residential development. Other areas, such as transport and health are not currently

subject to formulae for calculating commuted sums. Transport accounts for the majority of commuted sums which are not directly calculated with reference to supplementary guidance, but these amounts are normally determined in respect to the cost of providing specific highway infrastructure in the vicinity of the development site, relative to its scale.

- 3.4 The Borough Council is most often responsible for the expenditure of monies relating to affordable housing, public open space, play, sport (and occasionally transport). The County Council normally spends or has a key determining role in the expenditure of transport and education funds. Subject to suitable safeguards, monies may also be spent by other organisations, such as Parish Councils, statutory infrastructure providers or community groups. The Planning Service oversees and monitors S106 obligations, but it is Cabinet or other statutory bodies who decide how monies are spent. This is not the function of this report.

4. CONSULTATION

- 4.1 Consultation has not been necessary with respect to the ongoing monitoring process. It has, however, been prepared with input from other service areas, including Environment and Countryside, Housing and Finance.

5. ASSESSMENT

- 5.1 Section 106 obligations completed since February 2017 have continued to result in a range of contributions towards infrastructure or community facilities required as a direct result of the proposed development. Most frequently, these obligations require payment of a commuted sum to be spent off-site. Table 1 in Appendix 1 shows the value of these funds. If all developments with planning permission, and subject to s106 obligations, were to be implemented, this would raise more than £5.5 million. In addition to almost £3.2 million, which has already been received, this could result in total potential funds of more than £8.7 million. These figures should be treated with considerable caution since payments will not be triggered if a developer decides not to proceed with a scheme. The government has also in recent years made it easier for developers to reduce contributions after planning permission has been granted if it can be demonstrated that they affect the overall viability of a scheme.

Affordable Housing

- 5.2 Planning obligations are an important mechanism for securing and retaining affordable housing. They are normally used to provide either a proportion of on-site provision on new residential developments or a commuted sum towards off-site provision. Not all affordable units are secured by this route. Where the planning applicant is a Registered Provider of social housing, then a planning obligation may not always be necessary since they are governed by other regulatory safeguards to ensure retention of affordable stock. Where

existing housing is acquired by a Registered Provider this normally falls outside the planning process

- 5.3 The Affordable Housing SPD sets out the Council's policy for considering the level of provision within new residential schemes, and where applicable, the amount of off-site contribution required. On larger residential schemes of 11+ units, provision of between 10% and 30% provision is normally expected - the higher requirements applying to more buoyant housing market areas, such as Whitby. Normally, affordable units should be provided on site, but on occasions a commuted sum is accepted in its place, as for example, the McCarthy & Stone scheme at Newby Farm Road. Between, 2012 and 2016 commuted sums were also collected on smaller residential schemes of 1 to 10 dwellings, but government policy now prevents this and the SPD has also been amended accordingly.
- 5.4 On-site provision of affordable dwellings continues and the overall picture is summarised in Table 2a with detailed cases set out in Table 8a. The number of completions, totalling 157 units, (including 60 at Middle Deepdale, 50 off Helredale Gardens, Whitby and the final 19 affordable houses at nearby Eskdale Park) is above the average for recent years.
- 5.5 The figures in the second column of Table 8a have to be treated with some caution as the way of calculating the number of unimplemented permissions has been altered, so that they no longer include outline permissions where the number of affordable units has not been fixed. The picture is further complicated by the fact that there are 95 affordable units at Sneaton Castle Farm, Whitby, which were secured by planning condition rather than through S106 obligation, so are excluded from the Table.
- 5.6 More clear trends emerge in respect of the number of new affordable units granted permission, which since 2013 has been in a downward direction. Of the 88 units identified, 36 would be at Beacon Road, Seamer and 48 at Middle Deepdale, consisting of two reserved matters scheme. These figures exclude outline permissions where precise total numbers are not yet known, such Cayton Village Caravan Park, where 15% has been agreed. The reasons for the overall downward trend are explored in paragraph 5.9 below.
- 5.7 Table 2b in the appendices summarises those cases where payment of a commuted sum for off-site affordable housing has been agreed and Table 8b provides individual details. No new commuted sums have been secured since the last report and this reflects the change in government policy reported above. Nonetheless, on occasions there will still be larger sites where on site provision is substituted by payments towards affordable provision. An example, of this the £210,487 received this year in respect of the McCarthy & Stone development at Newby Farm Road.
- 5.8 It is not a function of this report to determine how commuted sums are spent. The normal procedure for this is the relevant Service Unit to make a request through the Capital Bid Process as part of the Financial Strategy. There is greater flexibility on the expenditure affordable housing contributions than

other s106 monies. Firstly, there are no restrictions limiting the pooling of sums. Secondly, the fact that obligations must reasonably relate to development means that a play area, for example, could only normally be funded by an S106 sum if it is in walking distance of the scheme from which the money is raised. By contrast, housing market areas cover a much wider geographical area – hence the only locational restriction contained within most affordable housing obligations is to the effect that spending should be towards securing affordable housing in the Borough.

- 5.9 A combination of factors have reduced the number of affordable units granted planning permission and the ability to secure funding through the planning process. In addition to reduced funding to Registered Providers, these factors include the government restrictions on when affordable provision may be secured. The impact on the viability of private sector led schemes in the Borough has become increasingly important. Not only have the percentages of affordable provision been reduced in the SPD, but government policy allows further deduction where affordable housing (or other s106 costs) are demonstrated to affect overall viability. Expenditure of S106 funds over the last year has been targeted to ensure that the Council is adequately equipped to maximise affordable housing contributions. Therefore Cabinet agreed to the release of some of the smaller sums received (totalling £71,000) to cover staff costs in Housing Services to help secure new affordable units and in Planning Services, so that officers have the in-house expertise to verify the highly technical financial data submitted by developers in their viability assessments. This has generated results, with officers negotiating substantial uplifts in affordable housing provision/contributions (e.g. at Newby Farm Road), thus demonstrating this investment has been beneficial.

Public Open Space/Play Equipment/Sports Facilities

- 5.10 The Green Spaces SPD gives guidance as to whether such facilities should be provided on or off site. This only occurs if there is a recognised need, taking account of the Green Space Audit and Playing Pitch Strategy. While on-site provision would usually be expected on larger residential schemes, there is not an overriding presumption that this is in preference to an off-site commuted sum. For smaller developments on-site provision may not be practical and even on larger developments greater community benefit may be gained by improving existing or creating new facilities, possibly in the form of pooled contributions, which may also attract matching funding.

On-Site Provision/ Improvement and Maintenance

- 5.11 The process of ensuring provision of open space/play areas to an adequate standard, its adoption by the Council and procuring payment of commuted sums can be a drawn out process involving several Service Areas. Consequently, Section 106 obligations have tended not to be used in recent years and the cases summarised in Tables 3A and 7A in the appendix were mainly agreed some time ago. However, there are exceptions, notably Middle Deepdale, which will secure on-site open space, play provision and

maintenance sums of circa £486,000. Where monies in Table 9A have only been partially spent this reflects the fact that payments cover maintenance, which is phased over a number of years (normally 10). This explains why not all the sums collected have been spent yet. Where a site is listed in this table, it does not necessarily mean that transfer to Borough Council would occur, but measures are in place to ensure that the open space is provided and there are arrangements in place for future maintenance. The most significant addition to the list since the last report is the obligation securing open space and play facilities adjacent to Scarborough and Ayton Roads, Seamer, in connection with the development north of Beacon Road.

Off-Site Provision/ Improvement

- 5.12 Individual sums received in this category may often not be sufficient to fund a meaningful project alone. The pooling of contributions has historically been the approach adopted for the spending of these funds, subject to the legal requirement that expenditure directly relates to the development. Where there are several smaller developments within the same geographical area it allowed the sums to be accumulated and reach a critical mass for a particular project, as well as being used to attract matching funding. Since April 2015 the scope for pooling has been curtailed so that a maximum of 5 obligations (completed since 2010) can be used towards a project or type of project. As a consequence, S106 obligations normally now identify a particular project on which the monies will be spent.
- 5.13 Table 3B shows global figures for off-site open space, play and sports facilities, while Table 9B provides details of individual cases. Since the last report, the £271,640 negotiated is less than the previous period, but above the average of recent years. The most substantial amounts negotiated relate to £143,026 in connection with the Beacon Road development, McCain Foods (£54,500 towards sports facilities), as well as sums derived from schemes at Bramcote School and Town Farm, Cloughton.
- 5.14 The amount of monies (£391,934) received for off-site open space sports and play facilities since the last report is considerably greater than previous years, more than doubling the funds available for expenditure to £692,375. The largest sums received arise from Eskdale Park, Whitby (£148,146), Sneaton Castle Farm, Whitby (£97,888), McCain Foods (£50,000) and Southdene, Filey (£38,010).
- 5.15 Expenditure for projects is allocated by Cabinet through the Capital Bid Process and approved by Cabinet. Therefore, where projects are identified in the fifth column of Table 9B, those in italics are provisionally agreed, whereas those underlined are confirmed projects as part of the Capital Bid Process or the planning obligation specifically identifies a project for expenditure. Expenditure of almost £30,000 has been made since the last report with the main recipient projects being a play area at Manham Hill, Eastfield and improvements to the pond area at Valley Gardens Scarborough. Forthcoming projects where larger scale expenditure may

occur include South Cliff Gardens and tennis facilities in Scarborough, as well as the Eastside Project and a 3G sports pitch in Whitby.

Education

- 5.16 The threshold for securing an education contribution in the relevant SPD is normally 25 dwellings and then the County Council only requests a sum where insufficient school capacity exists. Consequently, there are fewer schemes where such a sum is sought than for some other types of infrastructure. On sites of 150+ dwellings sums can be negotiated for secondary schools, but all current sums negotiated will contribute towards primary education. Table 4 in the appendix provides an overview on these funds, while Table 10 shows details of individual obligations. Although they are derived from only a small number of sites, the sums can be quite substantial, so the total potential funding is currently in the region of £3 million, which overall is larger than the total sum for any other type of expenditure.
- 5.17 The most significant contribution negotiated since the last report relates to the Beacon Road development, which would contribute £696,795 towards Seamer & Irton Primary School. Furthermore, Lindhead School, Burniston will be the beneficiary of £43,000 arising from development at Town Farm, Cloughton, as well as the transfer of land adjoining the school, which was previously in the ownership of the applicants and has now occurred. Almost £780,000 has been received from two sites. These consist of the first of four instalments from High Mill Farm towards Newby & Scalby Primary School and the entire sum for the Sneaton Castle Farm scheme, likely to be spent on Stakesby Community Primary School, Whitby. No expenditure has taken place since the last report. This is normally the responsibility of the County Council, although monies are usually collected by the Borough Council on its behalf.

Transport

- 5.18 Commuted sums for transport are requested in response to specific impacts on local infrastructure, rather than having standard formulae/thresholds, contained in an SPD. Table 5 in the appendices provides a summary of the global picture and full details of individual obligations are shown in Table 11. The County Council, as Highway Authority, is normally responsible for most expenditure and where a case is in italics it is also responsible for collecting monies. Otherwise, the Borough Council collects the sums and keeps the County Council informed when funds are available for expenditure and when repayment dates are approaching.
- 5.19 As can be seen from Table 1, transport is the category which generates the largest potential share of s106 financial contributions after education. It should be noted that some of the highway contributions are maximum sums. Thus in some cases (e.g. West Garth, Cayton) sums have not been requested in full by the County Council.

- 5.20 The amount of monies secured and subsequently received for transport have fluctuated significantly over recent years, so it is difficult to identify clear trends. The £257,700 negotiated since February 2017 is a median figure for the periods listed, but higher than the last two years. The main bulk of this would derive from the Beacon Road scheme, contributing £159,600 towards improvements to the Scarborough Road/ Stoney Hags Road junction in Seamer. An above average amount of monies (£368,793) has been collected since the last report. The most significant sums received have been £145,000 from High Mill Farm, Scalby towards improving bus services, £140,474 from Eskdale Park and £56,681 from Sneaton Castle Farm, both in Whitby.
- 5.21 When s106 monies are received the organisation or service likely to be responsible for expenditure is informed and reminders are sent well in advance of any date when the monies have to be repaid to developers. Unfortunately, in the case of monies derived from Sainsbury in Whitby, a request has been made to repay £62,853, which was not spent on proposed cycle/pedestrian improvements to Stainsacre Lane within the allotted 5 year period which expired in January 2017, although the Highway Authority is seeking persuade to Sainsbury of the merits of its proposed scheme.
- 5.22 The most important item in the figures indicated as expenditure on transport has been £86,287 by the Borough Council on new highways at the Whitby Business Park. However, there are also a number of projects where works have been carried out or on behalf of the Highway Authority, but a formal request to the Borough Council for the transfer of the S106 funds is still awaited. Consequently, these sums remain in the unspent column. These include the Mayfield Road/Prospect Hill junction improvements in Whitby and pedestrian crossings at Helredale Road, Whitby and Seamer Road, Scarborough.

Health Infrastructure & Miscellaneous Obligations

- 5.23 Health contributions are summarised in Tables 6 and 12 in the appendices, while Tables 7 and 13 show some of the more important obligations, which do not fall into other categories. Where health sums are collected, the Borough Council will work with the Care Commissioning Group to identify how it shall be spent. A figure of £63,302 was negotiated from the scheme at Beacon Road, Seamer. A total of £54,329 was also received from developments at High Mill Farm and Newby Farm Road. In all 3 cases the monies are ring-fenced to improve local doctors' surgeries.

6. IMPLICATIONS

(a) Policy

- 6.1 The issues in this report are within the Council's planning policies.

(b) Financial

6.2 Without monitoring Section 106 sums may remain uncollected or returned to developers if not spent. Monitoring charges were introduced in 2011 to cover the costs of providing this service.

(c) Legal

6.3 If the system of planning obligations is not dealt with properly, there is a risk that developers and/or the community could mount a legal challenge to the Council's actions. District Audit would also criticise the Council if the process of negotiating for commuted sums were not transparent.

(d) Environmental

6.4 Planning obligations have positive environmental impact; for example by providing and maintaining Public Open Space and Play Areas and access to decent homes through the negotiation of affordable housing.

(e) Staffing

6.5 Monitoring is carried out by Planning Services in consultation with other service areas, such as Finance, Parks & Countryside and Housing.

(f) Crime and Disorder Act 1998

6.6 The implications for crime and disorder will be considered when the allocation of funds is determined and officers making recommendations will ensure that any proposed schemes have due regard to this issue.

(g) Health and Safety Issues

6.7 The Health and Safety implications are positive in that the allocation of funds towards health facilities, open space, recreation and play and affordable decent housing should have a beneficial impact on the health of the community.

(h) Co-operation with Health Authorities

6.8 The improvement of open space/recreation facilities and affordable housing has the potential to improve the health of the community. Where a commuted sum is negotiated for improvements to local health or medical facilities, this will be carried out with the full involvement of the relevant health body.

(i) Equality Implications

6.9 There are no implications for equality issues. Benefits from the allocation of Section 106 sums are generally community wide and not directed towards a specific group.

(j) Human Rights Act 1998

6.10 Benefits through the Section 106 process will improve the general well-being of the community and provide greater options, for example, towards recreation, play and access to affordable housing.

7. ACTION PLAN

7.1 The following actions are identified:

Objective	Target
1 Continue monitoring of Legal Agreements	Ongoing
2 Prepare Monitoring Report	Annually

Richard Bradley
Director

Author:

Hugh Smith, Major Projects Officer, Planning Services
Telephone No: 01723 383642
E-mail address: hugh.smith@scarborough.gov.uk

Background Papers:

Appendix 1 - Overall Summary Table for Current Section 106 Funds

Appendix 2 - Summary Tables for Individual Types of Infrastructure

Appendix 3 - Current Status of Individual Section 106 Planning Obligations

Risk Matrix

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
1		Section 106 Agreements are not monitored adequately.	The risks associated with not monitoring legal agreements associated with planning applications is that the Council could be criticised for not operating a transparent and comprehensive framework for monitoring such financial and non-financial obligations	The continued monitoring of information and the operating of a Section 106 Protocol ensures that the process is openly accountable and allows ready access to information by the public and members.	C3	A1	David Walker	None
2		Section 106 Sums are not spent.	Commuted sums would be returned (plus interest) to developers and required community facilities would not be provided.	Regular monitoring and action in accordance with the agreed protocols/ procedures ensures that the sums are properly allocated.	C3	A1	David Walker	None

Glossary of Terms

Risk	An event which may prevent the Council achieving its objectives
Consequences	The outcome if the risk materialised
Mitigation	The processes and procedures that are in place to reduce the risk
Current Risk Score	The likelihood and impact score with the current mitigation measures in place
Corporate Objectives	An assessment of the Corporate Objectives that are affected by the risk identified.
Target Risk Score	The likelihood and impact score that the Council is aiming to achieve
Service Unit Manager	The Service Unit or Officer responsible for managing the risk
Action Plan	The proposed actions to be implemented in order to reduce the risk to the target score

Risk Scoring

Impact	5					
	4					
	3					
	2					
	1					
		A	B	C	D	E
	Likelihood					

Likelihood:

A = Very Low
 B = Not Likely
 C = Likely
 D = Very Likely
 E = Almost Certain

Impact

1 = Low
 2 = Minor
 3 = Medium
 4 = Major
 5 = Disaster