

**CABINET - 6 JULY 2018****SECTION 106 (DEVELOPER) CONTRIBUTIONS****JOINT REPORT OF THE CHIEF EXECUTIVE AND DIRECTOR OF CORPORATE RESOURCES****PART A****Purpose of the Report**

1. The purpose of this report is to advise the Cabinet with regard to the nature of repayments of funding received under Section 106 developer contributions (also referred to as planning obligations) by the County Council.
2. The report has been provided in response to recent media coverage regarding repayment of S106 funding, to provide context for members, some further explanation concerning the repayments made from 2013/14 to 2017/18, and to suggest measures that might be employed to minimise the need for repayments in the future.

Recommendations

3. It is recommended that -
 - (a) The position with regard to repayment of Section 106 funding be noted;
 - (b) The further work outlined in paragraph 28 of this report to improve the processing of Section 106 agreements be supported;
 - (c) It be noted that a further report will be submitted to the Cabinet in Autumn 2018.

Reasons for Recommendation

4. To note the Council's position with regard to the requirements for Section 106 funding and the circumstances in which it might need to be repaid, and to ensure that the maximum amount of funding is being retained.

Timetable for Decisions (including Scrutiny)

5. A further report will be submitted to the Cabinet in Autumn 2018.

Policy Framework and Previous Decisions

6. The County Council's developer contributions policy - the Leicestershire Planning Obligations Policy - was adopted by the County Council in December 2014 (replacing the Statement of Requirements for Developer Contributions in Leicestershire). The Policy explains the level and type of infrastructure which would be expected to address the impacts of development in order to make it acceptable in planning terms. It also sets out the standard requirements to mitigate the impacts of new development and for local communities to see how new development is making a positive contribution to services and infrastructure in their area. The Policy is currently under review and a report on this is expected to be submitted to the Cabinet in the autumn.
7. In April 2018 the Cabinet considered a report on developer contributions for County Council services, noting work undertaken to address concerns that the Authority was receiving an appropriate level of funding to meet demand arising from developments (that being the latest of a series of reports on the matter).

Resource Implications

8. There are no direct financial implications arising from this report. However, the Leicestershire Planning Obligations Policy is crucial to ensuring that the infrastructure requirements arising from new developments around the County are funded from developers rather than having to be financed from public money.
9. Over the last 5 years over £42m has been received from developers through this process to be spent on current and future developments.
10. Over this same period, £0.9m of payments received in preceding years (the earliest of which relates to an agreement from 2001) have needed to be repaid to developers. The reasons why repayments arise are described later in this report.

Circulation under the Local Issues Alert Procedure

11. None.

Officer(s) to Contact

Chris Tambini, Director of Corporate Resources
Tel: 0116 305 6199 Email: chris.tambini@leics.gov.uk

Anthony Cross, Head of Law
Chief Executive's Dept.
Tel: 0116 305 6169 Email: anthony.cross@leics.gov.uk

Lonek Wojtulewicz
Head of Planning and Natural and Historic Environment, Chief Executive's Dept.
Tel: 0116 305 7040 Email: lonek.wojtulewicz@leics.gov.uk

PART B

Background

12. New development primarily approved at district council level (residential and commercial) can have an effect on infrastructure and services. Where this occurs, the County Council (as part of its statutory function) seeks to ensure that developers mitigate that impact, by making or enabling the necessary provision to improve existing or provide new infrastructure. This is achieved by working within the legislative framework that sees the developer agreeing to provide developer contributions, against a requirement that the contributions requested do not make the development unviable. This supports the creation of sustainable communities by enabling development to take place and mitigating the impacts to help make it acceptable in planning terms.
13. To comply with the legislation developer contributions are termed planning obligations. These are secured through legal deeds called S106 agreements, the usual parties to which would be the landowner, developer, district council and the County Council.
14. As Leicestershire faces major growth over the next 5 to 10 years the County Council's Planning Obligations Policy is being reviewed to ensure it enables the necessary and proper provision of infrastructure which will be needed to support this.

Community Infrastructure Levy Regulations

15. The introduction of the Community Infrastructure Levy (CIL) regulations in 2010 placed three tests on the justification for a planning obligation - it may only constitute a reason for granting planning permission for the development if it is:
 - 1) Necessary to make the development acceptable in planning terms.
 - 2) Directly related to the development.
 - 3) Fairly and reasonably related in scale and kind to the development.
16. Moreover, since the CIL Regulations were introduced, restrictions have been placed on the use through pooling of developer contributions. This, in effect, allows no more than five separate planning obligations to be pooled to deliver a project (e.g. a piece of infrastructure).

Section 106 Agreements

17. Normally, a S106 agreement is completed with the developer at the same time the planning permission is issued. These are used to cover matters that cannot lawfully be covered by planning conditions, including the payment of financial contributions or contributions towards measures that provide wider benefits that mitigate the impact of the development. This may be some time before work on the development actually starts, provided the start of the work

on site is in accordance with planning conditions. It may therefore be a number of years before the contributions in favour of the County Council are due for payment.

18. There will always be a time limit in respect of obligations provided, as it would not be reasonable to expect developers to give open-ended commitments, particularly with regard to financial payments. Usually the financial payments are required to be spent by the Authority within a stipulated period provided by the S106 agreement.
19. There are occasions when S106 funding that has been paid over to the County Council needs to be returned, for example -
 - An on-site scenario which the contribution sought to alleviate has changed or not materialised.
 - Alternative mitigation has been provided by the developer or another service/utility provider.
 - In the case of a requirement for a bus service, it is covered by a commercially viable service and does not require funding.
 - Take-up, e.g. of bus passes, is lower than expected.
 - The mitigation is no longer required.
20. A further factor may be that the final estimated cost of the infrastructure/ service will be less than the funding stated in the S106 agreement; on other occasions the contribution will not completely cover the costs and the Council will need to consider how best to fund the shortfall.
21. The County Council requests (usually via the district council) developer contributions for highways and transport, schools, libraries and civic amenity sites, and other service areas as detailed in its Planning Obligations Policy.
22. District council developer contributions cover affordable housing, open spaces, and CIL-compliant contributions requested by Leicestershire Police and the NHS.
23. The County Council has a monitoring regime which is partly funded by developer contributions and it works closely with developers and other parties to ensure compliance with developer contributions and that repayments are kept to a minimum but, as detailed below, there are a number of variables that make it difficult for every contribution to be used as planned.

Repayments 2013/14 to 2017/18

24. Over the past five years around £900,000 S106 funding has been repaid to developers. This should be considered in context of the total amount received by the Authority in this period, over £42m. More detail of the repayments, on a scheme-by-scheme basis, is given in the Appendix to this report.

25. Essentially the repayments fall into three different categories, shown in the table below -

	2013/14	2014/15	2015/16	2016/17	2017/18	Total
	£	£	£	£	£	£
Bus passes	36,161	21,558	82,941	58,917	25,091	224,668
Bus service	-	-	-	324,000	260,288	584,288
Capital works	5,354	20,000	-	-	61,283	86,637
Total	41,515	41,558	82,941	382,917	346,662	895,593

26. The largest sums returned relate to bus service contributions. This is very much a demand-led service which makes it difficult for the Council to ensure that it is used appropriately. The S106 agreement will usually be based on the provision of a completely new service, but in reality it often happens that existing services are redirected to the new development, or sometimes people will walk a short distance to use an existing service nearby. However, the Council cannot rely on this being the case, particularly given the likelihood of changes to commercial and partially subsidised services. Thus it is always possible that these monies will need to be returned.
27. The second largest amount relates to unspent bus passes. Again, the S106 agreement will rightly and justifiably ask for funding for bus passes (typically two per dwelling) with the objective being to provide sustainable travel opportunities for all occupiers of new developments. Experience shows, however, that take-up can be significantly lower.

Review of S106 Process

28. Given that almost 90% of the repayments stemmed from agreements dating back well over 10 years ago, a number of amendments to the process and to the County Council's approach to S106 negotiation have already been put in place. Measures will be considered and implemented as appropriate to ensure learning from the scenarios that have led to repayments, to include:
- Increasing use of payments received in tranches, rather than a single up-front payment, with the date of repayment being from receipt of the final tranche. For example, with regard to bus passes, funding is now received this way and the Council does not draw down on the funds until a tranche has been fully spent. Contributions are thus better managed and the risk of having to return developer contributions is reduced.
 - Extending the term of repayment from 5 years to 10 years where this is considered to be justified. Any time extension to the 5 years would be subject to agreement by the developer agreement - and this should only arise in circumstance where a major development would be constructed in a number of phases over a lengthy period.

- Continuing to ensure all infrastructure and service delivery requirements are identified at the earliest opportunity in discussions with the developer and the relevant Local Planning Authority (the district council).
 - Increasing the flexibility for using funding so that, for example, provision for bus passes could be used for bus-related promotional activity to ensure take-up is improved (noting that it would be necessary to ensure this complies with CIL Regulations).
 - Revising the wording used for S106 agreements to seek to ensure that if there are delays for which the developer may be partly or wholly responsible the repayment period may be extended.
 - Reporting to the Cabinet on the review of the Planning Obligation Policy.
29. A key driver for the County Council in feeding into S106 negotiations will be to minimise the costs of repayment to the Authority. Given the uncertainty over what will actually materialise as the development is rolled out over time this may lead to some repayments needing to be made. However, the changes to processes outlined above would help to minimise this going forwards.
30. The Government is currently considering making changes to the S106 and CIL regimes following its recent consultation. Those changes proposed easing pooling restrictions in CIL areas, viability in Local Plans, greater transparency, and the introduction of a Strategic Infrastructure Tariff and CIL linked to house prices. The County Council responded to the consultations on this and to the proposed changes to the National Planning Policy Framework at the Cabinet meeting on 1st May 2018. The outcome of the consultation is awaited.

Equality and Human Rights Implications

31. There are no equality or human rights implications arising from the recommendations in this report.

Background Papers

Leicestershire County Council Planning Obligations Policy

<https://www.leicestershire.gov.uk/environment-and-planning/planning/developer-contributions>

Report to the Cabinet on 1 May 2018 - "National Planning Policy Framework Consultation Proposals and Supporting Housing Delivery Through Developer Contributions - Consultation Response"

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5180&Ver=4>

Appendix

Section 106 Funding Repayments from 2013/14 to 2017/18