

SALISBURY CITY COUNCIL

Subject : Management of Section 106 Funding
Committee : Finance and Governance Committee
Date : 02 November 2020
Author : Estelle Sherry, Responsible Finance Officer

1. Report Summary

- 1.1. This report describes Section 106 monies, their application and receipt by the Council, and introduces a proposal to revise the manner in which these monies will be administered and accounted for with effect from 1 April 2021.
- 1.2. This revision is necessary to enable the Council to effectively discharge its legal responsibilities following the introduction of Side Agreements during 2020/21 alongside planning obligations arising from Section 106 Agreements.

2. Background

- 2.1. Under Section 106 of the Town and Country Planning Act 1990, when granting planning permission for a development, local planning authorities often impose planning obligations on the party promoting the development. These obligations are usually contained in Section 106 Agreements or Planning Agreements which are separate legal agreements that sit alongside the planning permission. Such agreements will, generally, bind the land to which the planning permission relates – so anyone who owns that land will be bound by the obligations.
- 2.2. There are various types of planning obligations contained within Section 106 Agreements; frequently encountered obligations which are applicable to parish councils, include:
 - the provision of affordable housing;
 - a financial contribution towards social, education or recreational facilities;
 - the construction of recreational facilities – such as a playground;
 - a requirement to include renewable energy sources within the development.
- 2.3. The local planning authority which covers Salisbury City Council (SCC) is Wiltshire Council (WC), and it is with the latter that Section 106 Agreements are made with developers.
- 2.4. On 19 August 2020, the Responsible Finance Officer (RFO) and City Clerk (CC) met with the Chairman and Vice Chairman of this Committee, plus the Leader of the Council, to discuss the Council's current Section 106 financial position, its current obligations and spending plan, recent side agreements with Wiltshire Council (WC), and the future proposed management of current/future Section 106 funds.
- 2.5. The Chairman and Vice Chairman agreed that this Committee should consider a revised budgetary management regime for SCC's Section 106 funds and so this report has been brought forward to this Committee

3. Section 106 Transfers

- 3.1. As a condition of the Asset Transfer, which took place on 1 April 2017, various areas of land and property were transferred to SCC by WC, and alongside these

- assets, Section 106 development funding covering 33 separate planning obligations totalling £581,471.28 was also transferred.
- 3.2. Subsequently to this, in 2019/20, WC transferred a further £40,666 of Section 106 monies covering a further 8 separate planning obligations.
 - 3.3. With effect from 2020/21, WC have determined that any Section 106 monies to be transferred to SCC must be accompanied by a Side Agreement; such Side Agreements are intended to “allow SCC to receive a transfer of the Contribution {in full / in part} from the Section 106 Agreement in relation to the provision of {the obligation}”.
 - 3.4. In addition to providing a legal tool for the transfer of the monies, the Side Agreements place a number of obligations on SCC, most notably to:
 - Obtain prior approval for any proposed use of monies from the WC District Planning Officer / Head of Development Services;
 - Use the Contribution only for the Purpose and to the reasonable satisfaction of Wiltshire Council;
 - Complete the works to the reasonable satisfaction of Wiltshire Council;
 - Maintain the works to the reasonable satisfaction of Wiltshire Council;
 - Permit in perpetuity public access to any land that has benefitted from the use of the Contribution;
 - Within 10 working days of any reasonable written request by WC to provide information on the amount of the Contribution held, the amount expended and the purposes on which it has been expended.
 - 3.5. Throughout the first two quarters of 2020/21, SCC has been negotiating with WC in respect of four Section 106 Obligations and their associated Side Agreements. These Side Agreements are currently with WC for final drafting and signature by WC.
 - 3.6. The side agreements represent a change on how these funds are managed administratively. The CC and RFO recognised that these changes provided an opportunity for the Council to further review their financial management of the Section 106 funds and details of this are shown below.

4. Application of Section 106 Funds

- 4.1. Since 1 April 2017, SCC has received a total of £622,138 in Section 106 monies transferred from WC covering a total of 41 separate planning obligations. Each obligation has a specific purpose against which monies can be applied, as well as a defined deadline by which such application must be complete. Such timeframes range from a few years to several decades.
- 4.2. The time management of the use of funds is crucial; failure to spend funds in accordance with the specified purposes and within the given timeframe will result in the funds being subject to repayment to WC.
- 4.3. Appendix A provides a summary of those planning obligations and associated Section 106 monies which have been executed to date. This means SCC has discharged the obligations relating to these funds and these agreements are terminated.
- 4.4. Appendix B provides a summary of those planning obligations and associated Section 106 monies which have yet to be executed. Identification as to the types of expenditure have been noted.

5. Accounting for Section 106 Funds

- 5.1. Following the Asset Transfer, the Council included these transferred funds into the budget and took the simplistic view that these funds would form part of the funding of the overall capital programme. This was a reasonable position to take given that the funding of the capital programme would, by default, discharge many of the obligations SCC took on when it accepted the funding.
- 5.2. Up until 2019/20, SCC's balance sheet has not differentiated between usable general reserves and specified reserves. In 2019/20, such specification was introduced following liaison with WC over the introduction of Side Agreements, which place a legal duty on SCC to evidence spending compliance in respect of each specified planning obligation.
- 5.3. During 2020/21, SCC's balance sheet reserves have been renamed and re-profiled to enable Section 106 monies to be readily identifiable as specified reserves, and furthermore, to be identified as either Revenue Reserves or Capital Reserves. This work has been completed following the meeting with Chairman and Vice Chairman of this Committee. This clarity and specification within the Balance Sheet is recommended to ensure that all funds are able to be administered against approved activities and projects, and thereby accurately accounted for in line with the new Side Agreements.
- 5.4. Councillors may wish to instruct officers to alter the balance of these capital and maintenance payments, but the Council must be able to demonstrate that it has discharged or will continue to discharge its obligations with respect to the agreements.

6. 2020/21 Side Agreements and Planning Obligations

- 6.1. At the end of September 2020, following extended liaison, SCC received confirmation that four Side Agreements in respect of the Rowbarrow development have been completed, and that the Section 106 monies are ready for transfer to SCC. As at the time of writing, these funds are expected to be received during October 2020.
- 6.2. The four planning applications and Section 106 funds are detailed in Table A.

Table A – 2020/21 Section 106 Planning Obligations

APPLICATION REF	SITE ADDRESS	BALANCE £	COMMITMENT DATE
S/2005/0890-A	LAND AT DOWNTON ROAD/ROWBARROW	68,147.56	22.09.21
S/2011/0207-A	ROWBARROW PHASE 3, DOWNTON ROAD	47,600.00	22.09.21
S/1995/1302-C	LAND BETWEEN DOWNTON ROAD AND ODSTOCK ROAD	13,383.09	22.09.21
S/1995/0238-C	LAND OFF ODSTOCK ROAD, ADJOINING HERONSWOOD	67,668.22	22.09.21
		196,798.87	

- 6.3. The contribution obligations contained within the Purpose of the four Side Agreements are to “be used towards the provision of social recreational and/or indoor sporting community facilities as may be certified by the District Planning Officer as being relevant to the Proposed Development”.
- 6.4. Committee may therefore wish to consider the types of projects or proposals through which these obligations could be discharged and may wish to consider how such decisions will be made.

7. Recommendation:

It is recommended that the Committee:

- 7.1. Notes the discharge of SCC's obligations in respect to the Section 106 Agreements shown at Appendix A.
- 7.2. Notes the Section 106 monies for future application as shown at Appendix B.
- 7.3. Notes the revision to the accounting and administrative processes employed in respect to Section 106 monies.
- 7.4. Consider and agree the process by which the Section 106 funding shown in para 6 of the above report are to be allocated to ensure that the four Section 106 agreement obligations are met.

8. Background Papers: Appendices A and B (Doc 80160)

9. Implications:

- 9.1. **Financial:** As shown in this report
- 9.2. **Legal:** As shown in this report
- 9.3. **Personnel:** None in relation to this report
- 9.4. **Environmental Impact:** None in relation to this report