

## **S106 AND CIL UPDATE REPORT**

Report of the: Director of Finance & Resources  
Contact: Lesley Shields  
Urgent Decision?(yes/no) No  
If yes, reason urgent decision required: N/A  
Annexes/Appendices (attached): None  
Other available papers (not attached): None

### **REPORT SUMMARY**

**This report provides an update on the funds held under Section 106 (S106) planning agreements and CIL (Community Infrastructure Levy).**

<b><u>RECOMMENDATION (S)</u></b>	<i>Notes</i>
<p><b>That the Panel</b></p> <p><b>(1) Notes the current position on S106 funds held by the authority</b></p> <p><b>(2) Notes the current position on CIL funds held by the authority</b></p> <p><b>(3) Supports the use of S106 funds for the increase in the Poole Road Recreation Ground Play Equipment scheme (£8,500).</b></p>	

## **1 Implications for the Council's Key Priorities, Service Plans and Sustainable Community Strategy**

1.1 The Capital Strategy Statement was approved by the Council on 11 February 2016 as Appendix 10 to the Budget Report. Section 106 and CIL funding supports the achievement of Key Priorities in the Corporate Plan where investment can be funded from developer contributions and CIL receipts.

## **2 Current Position**

### **S106**

2.1 The Council currently holds funds from S106 agreements totalling approximately £3.8 million. From this balance £2 million is committed within the capital programme for such items as affordable housing or

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earmarked for schemes awaiting further approval. Included within this balance is £236,000 that needs to be transferred to Surrey County Council and other organisations as they are responsible for utilising these funds.

- 2.2 Of the £1.6 million uncommitted £690,000 is being held for West Park community facilities.
- 2.3 The current position of Section 106 funds held as at the end of September 2016 is summarised below:-

	£'000	£'000
<b>Section 106 funds held as at 1 April 2016</b>		<b>3,360</b>
Section 106 Receipts received in 2016/17		460
Section 106 Payments Made in 2016/17		(10)
<b>Balance of S106 Funds held as 31 September 2016</b>		<b>3,810</b>
Less:		
Funds held due to SCC and other organisations	(236)	
Funds committed and approved for specific schemes in or before 2016/17	(2,018)	
		(2,254)
<b>Unallocated S106 funds as at 30 September 2016</b>		<b>1,556</b>

- 2.4 The unallocated funds can be broken down further with £859,000 earmarked against future expenditure awaiting further approval or requiring further negotiation with developer to amend terms of agreement.

	£'000	£'000
<b>Unallocated S106 funds as at 30 September 2016</b>		<b>1,556</b>
Funds awaiting further approval		0
<b>Available Uncommitted S106 Funds</b>		<b>1,556</b>
Horton Chapel-West Park and Hospital Cluster Site Contributions	(774)	
Affordable Housing	(145)	
68-72 Salisbury Road, Bellway Homes – for use on planting at front of the development	(1)	
TS Foxhounds – Use for footpaths on Longmead Estate (needs further approval)	(20)	
Monitoring Fee	(103)	
Earmarked Funds		(1,043)
<b>Available S106 Funds</b>		<b>513</b>

## CIL

- 2.5 The Council introduced CIL on 1 July 2014. CIL is the main way in which the Council now collects contributions from developers for infrastructure provision to support new development in the Borough.
- 2.6 The Council currently holds funds from CIL totalling approximately £2.8 million. From this balance £806,000 is committed within the capital programme for such items as PlanE and revenue to fund delivery of the Local Plan in 2016/17 and 2017/18.
- 2.7 CIL is broken down into three pots.
- 5% is held as a monitoring fee. This can be used to finance monitoring of the CIL scheme – Currently £62,246 held as uncommitted.
  - 15% of the remaining 95% is held to be spent on priorities agreed with the local community in areas where the development has taken place – Currently £405,401 held as uncommitted.
  - The remaining balance is held for infrastructure provision to support new development in the Borough. This can be accessed by both the County Council and the Borough Council – Currently £1,571,263 held as uncommitted.

### **3 S106 Agreements with Expiry Dates**

- 3.1 Some developers' contributions are time limited. Under the terms of the S106 agreement, if the contribution has not been spent in line with the conditions applied in the agreement, the Council is liable to return the contribution to the developer. The Council currently holds no S106 agreements that have reached their expiry dates.
- 3.2 The agreements written under the Developer Contribution Supplementary Planning Document (SPD) tend not to have time limits outlined within the legal agreements. This leaves a handful of contributions that have expiry dates. The table below shows the agreements that are within expiry dates and whether they have been earmarked for a specific project.

<b>S106 Ref</b>	<b>S106 Agreement</b>	<b>Restrictions</b>	<b>Cost £</b>	<b>Use</b>	<b>Deadline for Contribution</b>
45	Epsom Station	Monitoring Fee	4,097	Unallocated	17/07/2018
52	72-74 Temple Road	Open Space facilities in the vicinity of the development	6,396	Unallocated	20/03/2017

<b>S106 Ref</b>	<b>S106 Agreement</b>	<b>Restrictions</b>	<b>Cost £</b>	<b>Use</b>	<b>Deadline for Contribution</b>
65	137 & 139 Chessington Road, Ewell	Provision and/or improvement of public open space in Epsom & Ewell	3,299	Unallocated	14/04/2018
<b>Total</b>			<b>13,793</b>		

#### 4 Current Uncommitted S106 Contributions Held over £10,000

- 4.1 Of the £1,556,000 of uncommitted s106 funds, the majority, £1,381,000, is from large contributions (in excess of £10,000). The following significant contributions remain uncommitted against schemes. However, some funds have schemes earmarked against them but have yet to be formally approved.

<b>S106 Ref</b>	<b>S106 Agreement</b>	<b>Restrictions</b>	<b>Contribution £</b>	<b>Current Status</b>
3	TS Foxhound, 1a Blenheim Road, Epsom	Improvements to the open space which adjoins the site and lies between Blenheim Road, Longmead Road and Hook Road	20,000	Officers are negotiating with the developer to agree the use of the contribution to renew paths on the Longmead Estate
32	Wilberforce Court, Heathcote Rd, Epsom	Various under SPD	37,781	No use currently identified
62	West Park	Community facilities, monitoring and environmental improvements	781,714	£693,639 Earmarked for Horton Chapel
63	Magistrates & County Court Site, The Parade	Green infrastructure within the borough	22,765	No use currently identified
88	468 Chessington Road	Various under SPD	14,638	No use currently identified
100	2C Danetree Road West Ewell	Various under SPD	10,443	No use currently identified

<b>S106 Ref</b>	<b>S106 Agreement</b>	<b>Restrictions</b>	<b>Contribution £</b>	<b>Current Status</b>
105	379 - 393 Kingston Road, Ewell	Various under SPD	31,979	No use currently identified
110	Land rear of 23 Stoneleigh Broadway	Various under SPD	13,704	No use currently identified
122	The Lintons Centre, Lintons Lane	Various under SPD	184,090	No use currently identified
128	Pine Lodge, Horton Lane	Various under SPD	34,176	No use currently identified
136	Heron Court, Alexandra Road, Epsom	Various under SPD	145,470	Earmarked for affordable housing
	Hospital Cluster	Works to the Hospital Cluster site	83,983	Earmarked for Horton Chapel
<b>Total</b>			<b>1,380,810</b>	

## 5 Poole Road Recreation Ground Play Equipment

5.1 At the meeting on 17 March 2015, former Leisure Committee approved in principle to support a project to replace the multi-play equipment at Poole Road Recreation Ground. The funding for this project from S106 contributions (in the sum of £18,000) was supported by the Panel (ref: meeting on 1 December 2015). Subsequently, having consulted with residents, officers would like to revise the scheme to incorporate a slide. This increases the cost of the project by £8,500.

5.2 This report seeks approval to fund this increased project cost from the following S106 funds.

<b>Received</b>	<b>Address</b>	<b>Conditions</b>	<b>£</b>	<b>Previous use of s106</b>
01/11/2013	429 Kingston Road	Provision of open space facilities within the Borough	<b>2,041.02</b>	Park information boards

Received	Address	Conditions	£	Previous use of s106
14/09/2010	87-87 Amis Avenue	Provision of open space facilities within the Borough	<b>1,036.70</b>	Flood works at Clarendon Park
31/10/2013	137-139 Chessington Road Ewell	Provision or improvement of public open space within the Borough	<b>3,299.99</b>	Playground equipment at Pemberley Chase. Poole Road Playground
16/04/2012	7 High Street Ewell	Provision of open space facilities within the Borough	<b>1361.57</b>	Park information boards
15/03/2010	25 High Street Epsom	Provision of open space facilities within the Borough	<b>760.72</b>	Parks Bench Replacement
			<b>8,500.00</b>	

## 6 Banstead Sustainable Transport Package

- 6.1 This is a package of transport improvements being promoted by Surrey County Council – focussing upon bus, cycling and pedestrian links between the two settlements. These improvements are the subject of a current funding bid to the Local Enterprise Partnership. The Borough Council was originally an active partner in the bid and had initially agreed to make a contribution towards the delivery of the scheme. To this end, the Borough Council's Strategy & Resources Committee had notionally agreed to make a contribution of £250,000 towards the cost of the scheme.
- 6.2 The contribution would have been drawn from the Community Infrastructure Levy and is included as part of the committed CIL total in paragraph 2.6. above.
- 6.3 The release of the contribution was subject to it being demonstrated that the scheme would help to deliver new development in the Borough; specifically within Epsom Town Centre. This has not happened and the Borough has consequently withdrawn its contribution to the scheme. On that basis, the £250,000 notionally committed to this scheme is now returned to the wider CIL fund and is available as a contribution towards other suitable infrastructure projects, bringing the committed CIL total down from £806,000 to £556,000.

## 7 Financial and Manpower Implications

- 7.1 Section 106 and CIL receipts provide an opportunity for additional investment. There may be no budget impact on new schemes so long as schemes funded do not result in additional on-going running costs. Some may even reduce future maintenance liabilities.
- 7.2 The relevant policy committee will need to ensure that there are no additional resource implications for new schemes that would have an adverse impact on budgets for other services.
- 7.3 **Chief Finance Officer's comments:** *All financial implications are reflected in the body of this report.*

## 8 Legal Implications (including implications for matters relating to equality)

### S106

- 8.1 Agreement under Section 106 of the Town and Country Planning Act 1990 comprises an agreement often associated with the grant of planning permission which confers a benefit to the community, e.g. where a housing development is to be permitted, the applicant or developer agrees to build or pay for a new school or additional leisure facilities for the community.
- 8.2 Section 106 states:
- (1) *A local planning authority may enter into an agreement with any person interested in land in their area for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement.*
  - (2) *Any such agreement may contain such incidental and consequential provisions (including financial ones) as appear to the local planning authority to be necessary or expedient for the purposes of the agreement.*
  - (3) *An agreement made under this section with any person interested in land may be enforced by the local planning authority against persons deriving title under that person in respect of that land as if the local planning authority were possessed of adjacent land and as if the agreement had been expressed to be made for the benefit of such land.*
  - (4) *Nothing in this section or in any agreement made under it shall be construed (a) as restricting the exercise, in relation to land which is the subject of any such agreement, of any powers exercisable by any Minister or authority under this Act so long as those powers are exercised in accordance with the provisions of the development plan, or in accordance with any directions*

*which may have been given by the Secretary of State as to the provisions to be included in such a plan; or (b) as requiring the exercise of any such powers otherwise than as mentioned in paragraph (a)*

## **CIL**

- 8.3 CIL is a local tax on new development that local authorities can choose to introduce to help fund infrastructure in their area. CIL provides a relatively straightforward mechanism for collecting contributions from new developments. This is guided by the Community Infrastructure Levy Regulations 2010 and subsequent Amending Regulations.
- 8.4 The Council maintains an Infrastructure Delivery Plan (IDP) and a draft Regulation 123 list, the latter identifying the types of community infrastructure that the Council envisages using CIL funding for. The IDP identifies the infrastructure improvements required to support growth and demonstrates that there is a sufficient 'infrastructure funding gap' to justify the need to collect CIL.
- 8.5 The establishment of CIL requires partnership working with infrastructure providers and partnership working is fundamental to the success and delivery of the objectives of the Borough.
- 8.6 Section 106 agreements will continue to be used where on-site community infrastructure is required. They will also continue to be used to secure affordable housing.
- 8.7 **Monitoring Officer's comments:** *No additional comments for the purposes of this report*

## **9 Risk Assessment**

- 9.1 This report forms part of on-going work on s106 planning agreements and CIL receipts that will lead to better management of expenditure funded from these monies.
- 9.2 The main risks at present are that investment funded from agreements is not properly prioritised, that investment is not made in a timely manner or that receipts are not claimed against agreements.

## **10 Conclusion and Recommendations**

- 10.1 The report gives details of the current position of S106 funding.
- 10.2 The report gives details of the current position of CIL receipts.
- 10.3 This report seeks approval for S106 funding to be applied to the:



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- Additional project for works to Poole Road recreation Ground play equipment.
- 10.4 This report gives details of the de-commitment of CIL receipts for the Banstead Sustainable Transport Package.
- 10.5 Officers will continue to prioritise the investigation of opportunities to apply time-barred funds within the deadline and conditions of the agreement as appropriate.

**WARD(S) AFFECTED: All**