

REPORT 2

HARBOROUGH DISTRICT COUNCIL

REPORT TO THE CABINET MEETING OF 10th May 2021

PUBLIC REPORT: Y / ~~N~~

EXEMPT REPORT: ~~Y~~ / N

| | |
|-------------------------------|---|
| Report Title | Section 106 Policy |
| KEY DECISION | Y |
| Report Author | Andrew Tyrer, Planning Obligations Officer |
| Purpose of Report | To seek approval of the Cabinet for the proposed revisions to the current S106 practices (the 'end to end' process) and particularly the streamlining of the grant application awards process, to make improvements, where efficiencies can be made to the benefit of local communities. |
| Reason for Decision | To obtain Cabinet approval to: Resolve to recommend to Council to adopt the revised process for S106 grant application awards. |
| Portfolio (holder) | Cllr Bateman – Portfolio Holder for Planning and Infrastructure |
| Corporate Priorities | <p>HDC's 'Corporate Plan 2019-2021' and the related 'Corporate Delivery Plan 2019-2021' set out the Council's aspirations for the district over the next three years, what it's priorities are and how it will deliver them.</p> <p>There are three priorities:</p> <p><i>The place:</i> An enterprising and vibrant place. CO1, CO3, CO4</p> <p><i>The people:</i> A healthy, inclusive and vibrant community. CO5, CO6, CO7,</p> <p><i>The council:</i> Innovative, proactive and efficient. CO8</p> |
| Financial Implications | S106 planning obligations provide appropriate and necessary mitigation of the impacts of new developments. The contributions/obligations are justified and compliant with the provisions of the Community Infrastructure Levy (CIL) Regulations. The S106 Policy will also ensure that investment priorities are targeted where there is a need for infrastructure, particularly for the benefit of local communities. |

| | |
|-------------------------------------|--|
| Risk Management Implications | The risk would be the potential breach of the CIL Regulations in the Council not meeting its duties/requirements to spend planning obligations appropriately and in a timely manner to benefit local communities and the issue may also arise by being out of compliance with the requirement set by the Government |
| Environmental Implications | None associated with this report. Any new (built) community facilities will be located where the demand is greatest, and most users can reach using sustainable transport. Any new (built) community facilities will be required to meet current building standards and best practice with regard to construction, energy saving and carbon footprint. |
| Legal Implications | S106 planning obligations/developer contributions are regulated by section 106 of the Town and Country Planning Act 1990 (As Amended) and 122 of the Community Infrastructure Levy Regulations 2010. When considering planning proposals, development contributions and planning obligations can mitigate the impacts of a new development. |
| Equality Implications | S106 Planning obligations are necessary to make development acceptable in planning terms, resulting in sustainable development which provides for social, economic and environmental well-being. Planning obligations often provide for community facilities which can benefit the following groups, for example, the vulnerable, senior citizens, children, those caring for others and people with disabilities. |
| Data Protection Implications | None directly as far as this report is concerned. |
| Consultation | The Scrutiny Task Panel and the Communities Scrutiny Panel were given the opportunity to consider and comment on the proposed reforms and streamlining of the S106 process(es) at their meeting on 25 th March 2021. |
| Options | <p>Option 1 – approval of the streamlined S106 grant(s) awards application process would simplify, improve and speed up the delivery of community facilities contributions to benefit local communities.</p> <p>Option 2 – retaining the current s106 grant(s) awards application process would be contrary to the principles of the BC25 Challenge to improve the delivery of services and set new standards and processes for the delivery of community facilities contributions to benefit local communities.</p> |

| | |
|--------------------------|--|
| | |
| Background Papers | <p>Previous reports:</p> <p>Report to the Communities Scrutiny Panel – S106 Policy – 25th March 2021</p> <p>Report to the Scrutiny Task Panel – S106 Policy 11th March 2021</p> <p>Report to the Scrutiny Task Panel – S106 Policy 8th October 2020</p> |
| Appendices | <ol style="list-style-type: none"> 1. Appendix A - S106 End to End Flowchart 2. Appendix B - Application for S106 Funding |
| Recommendation | <p>Resolve to recommend to Council to:</p> <ol style="list-style-type: none"> 1. Approve the new S106 end to end process flow chart set out at Appendix A. 2. Approve the revised S106 Policy Grant award application process as set out in Section 3, ‘Grant Application Awards’, Paragraph 3.1 below. 3. Approve the new simplified S106 application form for S106 funding set out at Appendix B. 4. To approve the revised S106 Policy Grant application process being given effect to from Monday 2nd August 2021. |

1 Introduction

- 1.1 Since October 2020, Officers have been working up proposals to reform and review key parts of the current S106 processes operated by the Council. This has included the S106 ‘end to end’ process and the grant applications awards process. The key proposal is the streamlined process for the allocation of S106 contributions to parish councils and community groups through the proposed reforms to improve and simplify the grants application awards process for the allocation of these particular funds.
- 1.2 The Council has embarked on Budget Challenge BC25 which is a fundamental review of all Council services to find savings required to balance the Medium-Term Financial Strategy (MTFS); the forecast budget gap, as approved by Council in February 2020, stands at £1.9m in 2021/22; increasing to £2.6m by 2024/25. The review examines every aspect of the council including alternative ways of delivering services, automation and setting new service standards. In addition to examining all the council’s services, several cross-cutting reviews are

being undertaken including the S106 Policy processes which are the subject of this report.

2. Key Facts

- 2.1 At the Task Group meetings of 8th October 2020 and 11th March 2021 and the Scrutiny Panel of 25th March 2021, officers outlined the main legal background under Section 106 of the Town and Country Planning Act 1990 and the legal tests set out in Section 122 of the CIL Regulations 2010 (as amended):
 - 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.

- 2.2 The Task Group and Panel meetings were informed that S106 requirements should be driven by the impact of specific development(s) and the need to deliver Local Plan policies. Notwithstanding this, the main areas of the proposed streamlining of the S106 process would include internal consultation at pre planning application stages and the collation of any results at the formal planning application stage from engagement undertaken at that stage.

- 2.3 Development Management (DM) team officers would consult with and inform Members about any proposed planning obligations requirements, at pre-application stage. At formal planning application stage, if planning permission was approved, the Council's legal officer would draw up a required legal agreement on behalf of the Council or work with a third party's legal team to do so. Once a signed copy was available it would be issued for information to relevant Ward Member(s) by the DM planning application case officer, via email.

- 2.4 Following on from the October meeting, there has been further progress in relation to S106 matters - the draft Planning Obligations Supplementary Planning Document (SPD) has been prepared, and Cabinet approved it for a period of external consultation. The draft SPD includes a proposed indemnity agreement. This is to ensure contributions spent and used by a third party, accord with the purposes in an individual S106 agreement.

- 2.5 In response to comments from the Task Group, the proposed 'end to end' flow chart was revised further (see **Appendix A**). It was suggested any further streamlining of the main S106 processes arising from the Scrutiny work, for example relating to the 'end to end' flowchart, could be incorporated into the revisions of the (draft) Planning Obligations SPD prior to its formal adoption.

3.0 Grant Application Awards

- 3.1 The second and main part of the scrutiny review was the examination of the processes for awarding S106 community facility grants both within the council and to external

parish councils or other organisations. Part of the process has involved the proposed streamlined grant award application form (see **Appendix B**). The streamlined grant award application form will be accompanied by guidance notes to assist users of the form to complete it in the best way possible. In summary the new proposals are:

To passport money direct to communities where possible

- HDC will seek to passport S106 funding directly to a parish or other organisation where it is reasonably determined that no one else could spend the particular developer contribution.
- Organisations will be required to sign an Indemnity Agreement to accept passported s106 funding. This enables HDC to legally recover any monies not spent appropriately and in line with the specific s106 agreement in question.
- If the S106 sum in question is greater than £50,000 additional safeguards may be agreed between HDC and the nominated organisation. This is a control mechanism to manage risk for HDC and the applicant organisation.

A new streamlined application form and guidance notes

- A new application form has been drafted based on a review of other Local Authorities to meet the brief from Members that the process should be as easy and clear as possible.
- The amount of evidence needing to be sent to HDC to support the application has been reduced and will be proportionate depending on the size of grant being requested.
- Projects over £50,000 may be subject to additional safeguards/evidence submission, determined on a case-by-case basis. These requirements will be discussed upfront with the applicant and in consultation with the relevant Cabinet Member. This is a control mechanism to manage risk for the HDC and the applicant organisation.

New thresholds to speed up decision making

- All grant applicants will be required to fill out an application form.
- Grants up to £25,000 will be delegated to Officers to decide upon, in consultation with the relevant Cabinet Member.
- Cabinet Sub-Committee will be notified of Officer decisions via email and given 5 working days to request a 'call in' of an officer decision to Cabinet Sub-Committee. Any Member on the Sub-Committee can request a 'call in' but at least two Cabinet Members would need to support a 'call in' request.
- Grants above £25,000 will continue to be decided by Cabinet Sub-Committee.
- All decisions will be published on the website.
- There is no right of appeal for unsuccessful applicants.

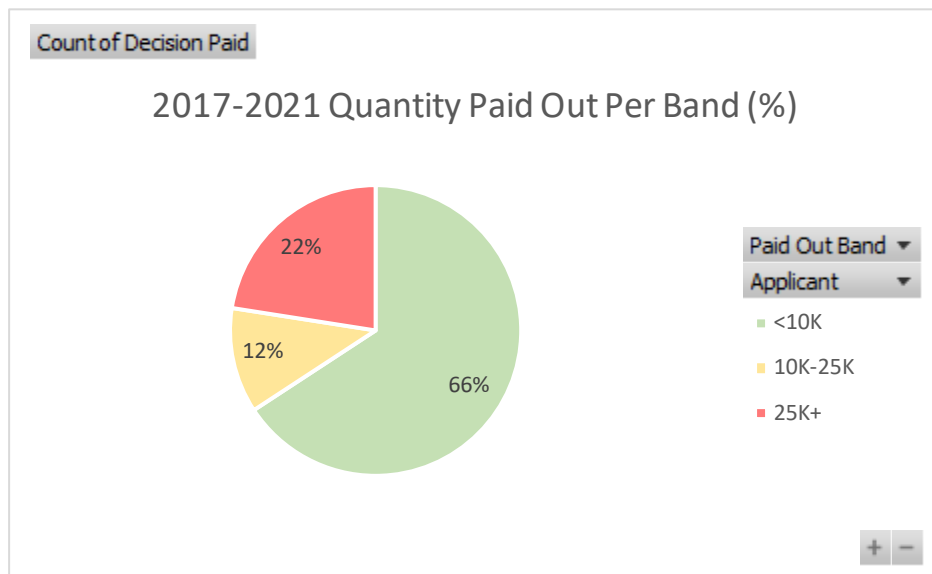
Parishes will be exempt from the need to provide some evidence

- For grants under £25,000 parishes will not need to provide proof of 3 quotes to demonstrate best value. The amount requested in the application will be accepted

on the understanding that parishes should have carried out due diligence as per their own legal requirements.

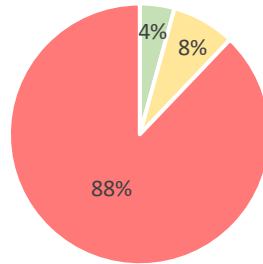
- Parishes do not need to evidence proof of any permissions either, this is on the understanding that parishes are trusted partners so can simply indicate on the application what permissions are required and if they are in place.
- HDC may audit a random selection of parish applications from time to time and will reserve the right to request proof that best value has been sought, which the parish must be able to demonstrate, or the money may have to be paid back.

3.2 An analysis of all grant applications over the past 4 years (2017/18 to 2020/21 (to date)) has been made and the analysis can be seen in the graphs below. Even though only 22% of the grant applications have been over £25k and would have to be taken to the grants sub-committee these cover 88% of the value of the award made.



Sum of Decision Paid

2017-2021 Total Value of Accepted Planning Applications Per Band (%)



Rejected

Paid Out Band

Applicant

- Accepted <10K
- Accepted 10K-25K
- Accepted 25K+

+ -