

REPORT TO THE COMMUNITIES SCRUTINY PANEL – S106 POLICY
ON 25th MARCH 2021

Status: For information and comment
Title: Section 106 Policy
Originator: Andrew Tyrer, Planning Obligations Officer
Where from: Originator
Where to next: Cabinet

Objective: For Members to consider the proposed reforms to the S106 practices – the S106 ‘end to end’ process and particularly the grant application award process, to enable it to be streamlined, provide improvements, where efficiencies can be made to the benefit of local communities.

- 1.1 For members of the Panel to consider the actions which came out of the Scrutiny Task Group meetings of 8th October 2020 and 11th March 2021 in relation to how S106 policy operates.
- 1.2 For the Panel to consider the further work of officers in respect of the proposed reforms to the S106 process operated by Harborough District Council, including reforms to the S106 ‘end to end’ process and the grant application award.
- 1.3 For the Panel to consider and discuss with officers the S106 Policy proposed reforms to the processes and where efficiencies in the process can be made for the benefit of communities.

2 Background

- 2.1 Officers have prepared a PowerPoint presentation to allow the Panel to consider the proposed reforms particularly the grant applications award process. This will be delivered in the Panel meeting. There will be an opportunity at the end of the presentation for the Panel to discuss the proposed reforms. The key proposal in this presentation is the streamlined process for the allocation of contributions to parishes and community groups, through the proposed reforms.
- 2.3 Members are asked to consider the work that officers have undertaken, based on the actions which came out of the Task Group meetings on 8th October 2020 and 11th March 2021. The second meeting considered the

improvements to the S106 process and the allocation of contributions to parish councils and community groups.

- 2.4 The Council is currently embarking 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) of £4m. 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 departments, several cross-cutting reviews are being undertaken, including the S106 processes.

3 Key S106 Matters & Work Undertaken

- 3.1 At the Task Group meetings of 8th October 2020 and 11th 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.

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

- 3.3 Development Management (DM) team officers would consult to inform Members about any proposed planning obligations requirements, at pre-application stage. At formal planning application, 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.

- 3.4 Following on from the October meeting, there has been further progress in relation to S106 matters - the draft Planning Obligations Supplementary Planning Document (SP) was 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.

- 3.5 An 'end to end' flowchart of the S106 process was discussed at the Task Group meeting in October 2020 and is included in the Draft Planning Obligations SPD. In response to comments from the Task Group, the 'end to end' flow chart has been revised further (see **Appendix A**). It is 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 further revisions of the draft Planning Obligations SPD prior to its formal adoption.

4. Grant Application Awards

4.1 The second and main part of the scrutiny review has been examining 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**).

4.2 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

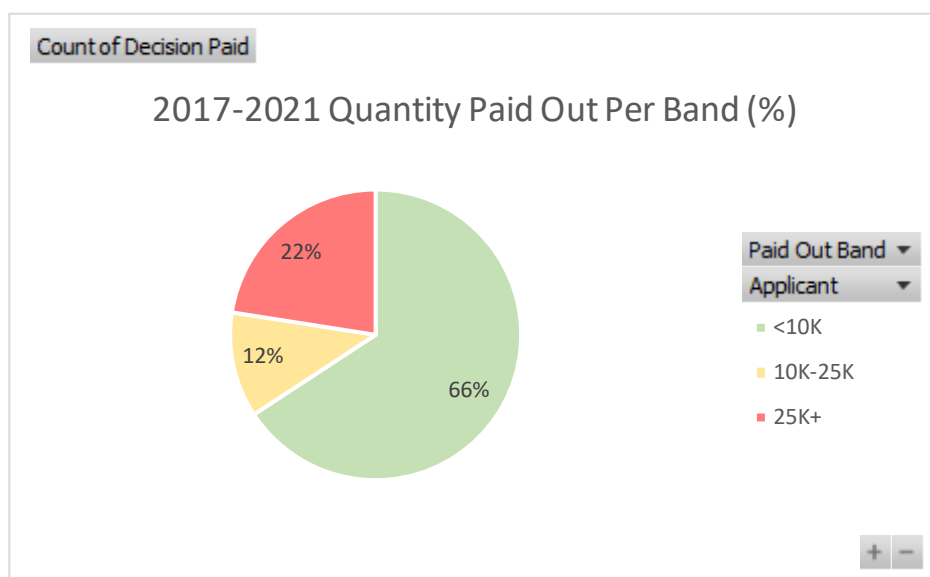
- All grant applicants will be required to fill out an application.
- Grants up to £25,000 will be decided by Officers, in consultation with the relevant Cabinet Member.

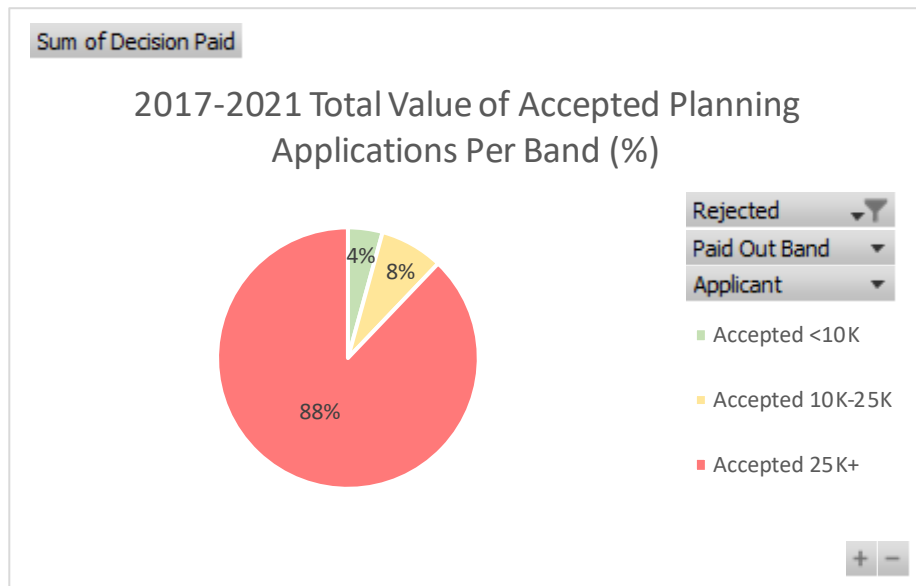
- Cabinet Sub-Committee will be notified of Officer decisions via email and given 5 working days to request a 'call in' of a decision to Cabinet Sub-Committee. Any Member on the Sub-Committee can request a 'call in' but at least two Cabinet Members need to support a 'call in' request.
- Grants above £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.

4.3 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 been taken to the grants sub-committee these cover 88% of the value of the award made.





5 Equality Analysis Implications/Outcomes

- 5.1 S106 planning obligations sought through legal agreements are subject to Local Plan policies which have been considered as part of a Due Regard Analysis.
- 5.2 No further equality implications have been identified as part of this report.

6 Legal Issues

- 6.1 Developer Contributions are regulated by [S106 of the Town and Country Planning Act](#); [Section 122 of the Community Infrastructure Levy Regulations 2010](#); Further information can be found in the [Planning Practice Guidance for Planning Obligations](#).

Information Issued Under Sensitive Issue Procedure: N

Appendices:

- **Appendix: A - S106 'End to End' revised flowchart**
- **Appendix: B - Application form for S106 funding**

- **Appendix C – Notes from the Scrutiny Task Panel – 8th October 2020**
- **Appendix D – Notes from the Scrutiny Task Panel – 11th March 2021**
- **Appendix E – Section 106 Policy Presentation Slides**

Background Paper(s):-

- **Report to the Scrutiny Task Panel – S106 Policy – 11th March 2021**
- **Report to the Scrutiny Task Panel – S106 Policy – 8th October 2020**