

PAPER NO. 7

REPORT TO THE EXECUTIVE MEETING OF 11 JANUARY 2016

Meeting: Executive

Date: 11 January 2016

Subject: Review of S106 governance for Community Facilities and Off-site Recreation

Report of: Community Partnerships Manager

Portfolio Holder: Cllr Rosita Page, Communities Portfolio Holder

Status: For Approval

Relevant Ward(s): Not applicable

1 Purpose of the Report

1.1 To agree revised governance arrangements for the management of s106 funding for Community Facilities and Off-Site Recreation where this is held by the Council on behalf of communities.

2 Recommendations:

2.1 **That Executive delegates decision making for the allocation of s106 funding for community facilities and off-site recreation to an Executive Sub-Committee.**

2.2 **Subject to approving recommendation 2.1 above to set up a sub-committee as outlined in paragraph 4.7.**

2.3 **That the local ward member(s) should be consulted by the Council as part of the allocation process.**

3 Summary of Reasons for the Recommendations

3.1 To improve the efficiency and flexibility in the allocation of s106 funding by replacing the current Member Grant Panel making recommendations to the Executive with a single Executive Sub-Committee with decision making powers.

3.2 To ensure effective governance of s106 monies held by the Council, including the role of Ward Members for their local knowledge.

3.3 To manage risk to the Council by ensuring decisions on allocations are informed by the latest legislation and policy.

4 Key Facts

4.1 Under S106 of the Town and Country Planning Act 1990, as amended, contributions can be sought from developers to fund the costs of providing community and social infrastructure, the need for which has arisen as a result of a new development taking place. This might include affordable housing, open spaces or community facilities and is commonly known as 'Section 106'.

4.2 S106 monies can only be spent on capital projects for which the new development has, at least in part, created a demand. S106 cannot therefore be used to make up for existing deficiencies in facilities.

4.3 Exactly what projects can be funded using s106 monies is determined by the detail set out in individual agreements between the Council and Developers. It is now the case that S106 agreements are linked to specific planning permissions. Developer contributions gained from this source can only be spent on infrastructure directly related to the relevant planning permission.

4.4 S106 agreements may cover on site provision of community infrastructure or more commonly a commuted sum for smaller housing developments that could not viably have their own facilities. The commuted sum would then be spent on new/upgraded nearby facilities. Once a commuted sum is secured through the planning process the Council collects this money from the developer at the agreed trigger point and then holds this money until a suitable project comes forward.

4.5 There is currently around £1 million in s106 for Community Facilities and Off-site Recreation held in Council reserves although this changes regularly with money being paid in from developers as trigger points are reached and the Council allocating funding for community projects. So far this year £605,000 has been applied for by community groups.

4.6 S106 funding for Community Facilities and Off-site Recreation is currently allocated to projects via the Member Grants Panel. The Member Grants Panel receives a report from Officers on applications received which are then discussed and voted on. Projects supported by the Member Grants Panel are then forwarded to Executive to make the final decision. This process takes approximately 13 weeks from the receipt of applications to confirming the decision. The steps are set out below;

Stage	Week
Application received and evaluated by officers	1,2,3
Report and recommendation for Member Grant Panel drafted	4
Report circulated to Member Grant Panel	5
Member Grant Panel discussion and recommendations to Executive agreed	6
Report and recommendations for Executive drafted	7,8
Report circulated to Executive	9
Executive considered Member recommendations	10
Call in period	11

Applicants notified of decision and receive Terms and Conditions letters	12
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Streamlining the allocation process

- 4.7 It is proposed to streamline the governance through creating a new Executive Sub-Committee which would have delegated decision making power and would comprise of 3 Executive Members, of which quorate will be 2 Executive Members, supported by 3 Non-Executive Members. Non-Executive Members will not have voting rights. This committee would take the place of the existing Member Grants Panel which makes recommendations to the Executive. This would reduce decision making time by a third and cut administration and the number of reports required. It is recommended that the Executive sub-committee is held a minimum of twice a year.
- 4.8 To ensure effective Member engagement it is also proposed that local Ward Members must be consulted on applications within their Ward so that local intelligence can be fed into the decision making process. The steps in this proposed process would be;

Stage	Week
Application received, evaluated by officers and sent to Ward Members for comment	1,2,3
Report and recommendation for Executive Sub-Committee drafted	4
Report circulated to Executive Sub-Committee	5
Executive Sub-Committee considers report and makes decision	6
Call in period	7
Applicants notified of decision and receive Terms and Conditions letters	8

Changes to S106 Legislation and Policy

- 4.9 Another driver to review the allocation process is to ensure the Council is effectively managing risk around S106 following recent changes to legislation and planning policy. These changes have tightened the scope of S106 and correspondingly reduced the discretion available to the Council in allocating funding.
- 4.10 This includes introducing legal tests for when you can use a s106 agreement as set out in regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010 as amended. The tests are:
- necessary to make the development acceptable in planning terms
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
- 4.11 Also since April 2015 there are restrictions on the pooling of S106 obligations. Now, local authorities can no longer pool more than five s106 obligations together (dating back to March 2010) to pay for a single infrastructure project or type of infrastructure.
- 4.12 As well as changes to policy developers are also tightening their approach. Increasingly this means challenging Councils on evidence of need at the determination stage, as well as how the money is allocated and evidence of

project completion. The Council is liable for any incorrect use of s106 funding or if it cannot evidence how the money was spent, may be forced to repay this money to the developer.

- 4.13 These changes have therefore significantly increased the risk to the Council. To manage this risk it is important that money held by the Council is allocated to projects transparently and inline with legal and policy tests. For this reason all applications will be evaluated by Officers and a justifiable recommendation made to Members on whether the project complies with the CIL test and pooling restriction. Appropriate records of decisions, justifications, project monitoring and completion will be archived, as they currently are for future reference.

5 Legal Issues

- 5.1 The Council is responsible for S106 funding which it holds on behalf of communities. The Council have a legal obligation, as a signatory on the S106 legal agreement, to ensure that financial allocations, made through the grant process, are done so appropriately and justifiably.
- 5.2 Developers have the right to request evidence of S106 allocation, the justification of the allocation and evidence of project delivery.

6 Resource Issues

- 6.1 The management of s106 funding for Community Facilities and Off-site Recreation is met from existing resources. The allocation process is managed by the Parish Liaison Officer in consultation with other Officers in Development Control, Planning Policy and Legal.

7 Equality Analysis Implications/Outcomes

- 7.1 Equality is addressed within the application criteria and guidance notes. This includes a mandatory question in the Application asking how the project will be accessible to all in the community. This includes prompts to explain what positive steps they are taking to address equal access e.g. is the new facility for members of the applicant organisation only or is it restricted in anyway. Another prompts asks which user groups or ethnic groups would benefit from the project.

8. Risk Management Implications

- 8.1 The Council can manage the risk to the authority through ensuring decisions are always in line with legislation and planning policy, and that allocations, justification for allocations and evidence of project completion are available for scrutiny and archived in case of future challenge.

9 Consultation

9.1 Internal consultation between Council Services (Development Control, Planning Policy and Legal) as well as the Portfolio Holder was carried out as part of this report.

10. Options

10.1 **Do nothing.** (Keep the process as set out in 4.6). This process is seen by members and officers as increasingly bureaucratic and is not consistent with the legal and policy tests in S106 framework.

10.2 **Delegate decisions to Officers.** This would mean no direct member involvement in the allocation process but could include Member consultation. This option would have minimal administration and allocations would be made by Officers applying the legal and policy tests.

11 Background Papers

11.1 S106 obligations overview (Planning Advisory Service)

Previous report(s):

Information Issued Under Sensitive Issue Procedure: N

Ward Members Notified: N/A