

## FINANCIAL CONTROL OF PLANNING AGREEMENTS

### Finance Advisory Group – 13 June 2012

Report of the: Deputy Chief Executive and Director of Corporate Resources

Status: For Information

Key Decision: No

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**Executive Summary:** This report updates Members on the processes undertaken in ensuring robust financial control of section 106 agreements, including affordable housing contributions, made as part of the planning process.

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**This report supports the Key Aim of effective management of Council resources.**

**Portfolio Holder** Cllr. Ramsay

**Head of Service** Group Manager – Financial Services – Adrian Rowbotham

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**Recommendation to Finance Advisory Group:** That the report be noted.

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### Introduction

- 1 In response to Members concerns at both Finance Advisory Group and Performance and Governance Committee officers have undertaken a review of the financial control processes relating to section 106 agreements arising through the planning process, including financial contributions made for affordable housing.

### Financial Contributions

- 2 Councils have the power to secure financial contributions from developers through section 106 agreements. These can be justified where there is a requirement for new or improved infrastructure as a result of the development and are most commonly used for larger scale developments which are more likely to create a need for additional infrastructure. Infrastructure sought through legal agreements may include, but is not limited to, contributions for highways improvements, contributions to address air quality concerns, contributions to Kent County Council (KCC) services such as schools, libraries and social services or contributions for community facilities. Contributions generally must be used for the purposes for which they are collected.
- 3 A summary of the legal framework for securing, collecting and spending section 106 monies is provided for Members information at Appendix A to this report.
- 4 The Government has recently amended legislation regarding the use of the Community Infrastructure Levy (CIL). The use of CIL as the primary method of administering financial contributions through the planning process is expected to

come in to effect in Sevenoaks District from April 2014 and the Council's approach to CIL was considered by Environment Select Committee at its meeting on 29 May 2012. Therefore CIL has not been considered as part of this review of financial control.

### **Affordable Housing Contributions**

- 5 The Council has recently started collecting financial contributions towards improving affordable housing from housing developments where it is inappropriate to provide affordable housing on site. This is in accordance with Policy SP3 of the Core Strategy adopted in February 2011.
- 6 Under the policy developments of five units or more will normally be expected to make provision on site and developments of less than five units will be expected to make a financial contribution.
- 7 The policy is supported by the Affordable Housing Supplementary Planning Document (SPD) which was adopted in October 2011. It includes guidance on how financial contributions should be calculated and sets out how contributions will be spent. This should be within one of five categories:
  - provision of new affordable housing in the District via a Registered Provider of social housing (including adding to provision on development sites, new stand alone schemes and existing property purchase);
  - initiatives to make better use of the existing stock (including tackling under occupation and fuel poverty where it enables better use to be made of the stock);
  - managing future needs for affordable housing, including homelessness prevention and benefit advisory services;
  - assisting those in housing need to access low cost home ownership; or
  - supporting the development of rural exception sites to meet rural housing needs (for fully or partially exempted Parishes only as set out in Section 17 Housing Act 1996, Housing (Right to Acquire or Enfranchise)(Designated Rural Areas in the South East) 1997 Order.
- 8 The SPD also states that monitoring will be on a site by site basis. Funds collected will be used within ten years and after this time any unspent money will be refunded with interest. The Council will record where funds have been allocated and spent. The information will be made available on request and will be published on an annual basis. It is envisaged that this will be through the Planning Annual Monitoring Report which is published in December and approved by Cabinet following scrutiny by the LDF Advisory Group. Contributions are generally required on commencement of the development but the Council may agree to an alternative trigger or to the phasing of contributions.
- 9 The onus is therefore on the Council to identify projects and ensure that developers make their financial contributions for affordable housing. Where a

developer makes their payment late the Council are able to charge interest for the length of the late payment, increasing the contribution due by 4% above the base rate of interest. The Council charges a monitoring fee of £300 for each requirement in an agreement to enable it to effectively undertake its monitoring and compliance role.

## **Section 106 Agreements**

- 10 Section 106 (S106) of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally-binding agreement or planning obligation with a landowner in association with the granting of planning permission.
- 11 These agreements are a way of delivering or addressing matters that are necessary to make a development acceptable in planning terms. They are predominantly used to support the provision of services and infrastructure, such as highways, recreational facilities, education, health and affordable housing.
- 12 The scope of such agreements is controlled by Government. In short, matters agreed as part of a S106 agreement must be:
  - relevant to planning;
  - necessary to make the proposed development acceptable in planning terms;
  - directly related to the proposed development;
  - fairly and reasonably related in scale and kind to the proposed development; and
  - reasonable in all other respects.
- 13 As with affordable housing contributions the requirement for the contribution to be paid and the mechanisms for making the payment are set out in a legal agreement between the Council and the developer. Unlike affordable housing contributions the S106 agreements are specific in their nature, setting out the precise project that the contributions will be used for. The Council's Legal team draw up the agreement and are able to charge a fee to the developer for this service, currently £500. The fee is payable prior to the Council signing the agreement.
- 14 Payments relating to S106 agreements are payable at a defined date after the agreement is signed. The date does not necessarily relate to the start date for a project and therefore the Council holds the monies 'on account' until the appropriate time. If the Council fails to ensure that the designated project is commenced within 10 years then the Council is required to reimburse the developer.
- 15 The onus is therefore on the Council to ensure that S106 agreements are for achievable projects that can be commenced in a reasonable timescale. If the Council is ever in the position where it is required to repay S106 monies they are liable for interest on the monies.

- 16 A further complication with S106 agreements is that some of the monies may be payable to the County Council where the projects required fall within their remit, for example, highways improvements. In some cases the money for County Council projects are paid first to the District Council who are responsible for ensuring the correct sum is paid on. However, on occasion, developers may make the payment directly to the County Council and the District will be unaware as to whether all monies under the S106 agreement have been paid.
- 17 The Council is considering moving towards a system where all payments will come to the District Council first, prior to being transferred to the County Council. This process would ensure the District Council are better able to monitor the receipt of monies from developers but increases the level of financial transactions taking place and has implications for financial control.

### Level of Contributions

- 18 The following table sets out the position of financial contributions for affordable housing and section 106 agreements as at the end of March 2012. The table sets out the funds received during the 2011/12 financial year and the closing balance at the end of March 2012 for all monies collected in previous periods. It should be noted that the first financial contribution to affordable housing was received in January 2012.

	Payments for SDC	Payments for County	TOTAL
<b>Funds received during 2011/12</b>			
S106 – Affordable Housing Contributions	206,144	0	<b>206,144</b>
S106 – Other Agreements	25,184	64,467	<b>89,651</b>
<b>TOTAL</b>	<b>231,328</b>	<b>64,467</b>	<b>295,795</b>
<b>Balance held at 31 March 2012</b>			
S106 – Affordable Housing Contributions	206,144	0	<b>206,144</b>
S106 – Other Agreements	113,158	64,467	<b>177,625</b>
<b>TOTAL</b>	<b>319,302</b>	<b>64,467</b>	<b>383,769</b>

### Financial Control

- 19 The work undertaken by Officers has included a review of the processes undertaken and the record keeping in Development Control, the Finance team and the Legal team.

- 20 The following arrangements are in place and applied equally to financial contributions for affordable housing and section 106 agreements:
- a form providing clear instruction to the Legal team from Development Control to ensure the accuracy of legal agreements;
  - maintaining a log of all legal agreements entered into,
  - clear guidance in the legal agreement on how to make payment;
  - detailed financial coding to ensure each contribution made to the Council can be linked to the correct planning application and effectively tracked;
  - arrangements for the proper accounting treatment of each payment, ensuring they are held on the Council's Balance Sheet until a project is identified that requires the monies to be drawn down;
  - contributions allocated to the correct budget (expenditure) code where the contributions are to be spent by the Council's departments;
  - contributions transferred to third parties where contributions are to be spent by partners such as Kent County Council; and
  - daily bank reconciliations to ensure all monies received by the Council are transferred to the correct account.
- 21 The Finance team work closely with Development Control to ensure accurate records are held on payments expected and received and monies being spent. However as a result of the review a number of improvements have been implemented to make processes more efficient. These are:
- improved record keeping on the log of legal agreements entered in to;
  - ensuring the log of legal agreements is provided to the Finance team on a monthly basis as a further source for reconciliation against; and
  - an additional level of budget coding introduced by the Finance team to ensure contributions can be tracked more effectively through the financial management system.
- 22 As mentioned at paragraph 17 above the Council are considering a process where all planning contributions are paid to the District Council before being transferred to any party to the agreement such as the County Council. This would require additional financial controls being put in place to ensure monies are passed on in good time and are also repaid appropriately if a project is unable to be delivered. As such, Officers are investigating the most appropriate mechanism for implementing improved financial control without disproportionately adding to the complexity of the monitoring role.

## **Future Service Improvements**

- 23 Development Services have considered the processes surrounding the allocation and spending of S106 funds. For affordable housing contributions the categories of expenditure have been agreed through the SPD. It is suggested that, within these categories, specific priorities for the year and individual projects are agreed by the relevant portfolio holders for Planning and Housing following discussion between Development Services and Housing and relevant housing partners.
- 24 Development Services are also in the final stages of implementing an electronic monitoring tool for the recording and tracking of all financial contributions received through the planning process. The 'Obligation Tracker' will improve the accessibility of management information available on all financial contributions. The information held on the Obligation Tracker will be reconcilable to the Agresso financial management system more readily than current processes, further improving the levels of financial control.
- 25 Set out at Appendix B to this report is a summary of how the 'Obligation Tracker' works, based on an example planning application and legal agreement.
- 26 All planning contributions will be recorded on the tracker. Using the full benefits of the system automatic reminders will be generated to ensure due contributions are collected and spent in the required timescales. Financial contributions will be tracked from the initial planning application to the project where the monies were spent.
- 27 The importance of ensuring that the correct financial controls are applied has been built in to the system procedures. Monthly reports from the Obligation Tracker will identify all new agreements and the value of the contributions. Reports will also identify all payments that Development Services know to have been received in the period and all expenditure that they had authorised. Reconciliation of this information to the data held by the Finance team on a monthly basis will ensure accurate record keeping across both Development Services and Finance, ensuring the Council can continue to be provided with assurance that financial contributions are subject to robust financial control.

## **Key Implications**

### Financial

- 28 The Council accounts for a significant sum of monies through planning contributions. It is essential that proper financial control is exercised to ensure the community fully benefits from the contributions available and that the Council's financial records and its Statement of Accounts are in adherence with regulations. Failure to do so may result in a qualification of the Council's accounts.

### Community Impact and Outcomes

- 29 Planning contributions are allocated to projects that are of benefit to the local community and Sevenoaks District as a whole. Ensuring that all monies are

collected and spent on projects prior to expiry is essential for providing positive community impacts and outcomes.

Legal, Human Rights etc.

- 30 Legal agreements are put in place to ensure a clear framework and requirement for the payment and expenditure of planning contributions. Developers have a duty to make the payments required of them and the Council has a responsibility to ensure accurate expenditure by the terms of the legal agreement to prevent any appeals from developers and the potential repayment of monies.

**Conclusions**

- 31 Despite the complexities involved in monitoring the receipt and expenditure of financial contributions through section 106 agreements the Council has developed robust arrangements to ensure their proper financial control.
- 32 Working in partnership with Development Services the Finance team is confident that accurate records on financial contributions are held and that they are subject to proper accounting procedures. In reaching this conclusion it is evident that the delivery of the Obligation Tracker will improve transparency, administration and monitoring of financial contributions and will therefore be an improvement to existing processes.

**Risk Assessment Statement**

- 33 The Council has implemented proper financial control of affordable housing and section 106 agreement contributions, preventing a material error occurring in the statement of accounts and a qualified opinion being issued by the Council's external auditors.

**Appendices**

Appendix A – Legal basis for securing, collecting and spending S106 funds

Appendix B – Obligation Tracker

**Background Papers:**

None

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