

BRECKLAND DISTRICT COUNCIL

Report of: Executive Director of Place

To: Overview and Scrutiny 31st January 2019

Author: Riana Rudland – Breckland Place Manager

Subject: Section 106 briefing note

Purpose: To inform Members of the process by which S106 funds are received, processed and released.

Recommendation(s):

- 1) That Members note the contents of the report

1.0 BACKGROUND

- 1.1 A Section 106 (S106) Agreement is a legal agreement under section 106 of the 1990 Town & Country Planning Act. S106 agreements are legal agreements between a planning authority and a developer, or undertakings offered unilaterally by a developer, that ensure that certain extra works related to a development are undertaken. The purpose of a S106 agreement is to mitigate the impact of a development on the local community and may require extra works to be undertaken or a financial contribution to be made.
- 1.2 As such, S106 Agreements often require a financial contribution to be made prior to a development starting or at a relevant trigger point during the development. S106 is charged based on the specific needs of the local community. For example, the Council might ask for a contribution to the local school if existing school places are limited, or a contribution towards a new community facility such as a village hall. In some instances contributions are broader such as a contribution for affordable housing which may or may not be tied to delivery in the immediate vicinity of the development. Where a contribution is required for services which fall under the remit of another authority (i.e County Council schools contribution) they will make their request for a contribution during the planning consultation process.
- 1.3 Following a decision to grant planning permission at Planning Committee, the S106 agreement is drafted by legal services (or an external legal firm) and is signed by the developer and the Council. Planning permission is granted subject to satisfactory completion of a S106 agreement. The S106 agreement contains relevant conditions that have been applied by the Committee through their decision to grant permission.
- 1.4 At Breckland, S106 funding receipts are monitored within the Finance department. They hold records detailing the amount received, any conditions attached, a 'spend by' date if applicable as well as a copy of the agreement. Copies of this document are shared regularly with relevant parties (Housing and Capita).
- 1.5 Capita are responsible for monitoring when S106 payments are due, checking completions and raising the appropriate invoice request to Finance. The Capita S106

officer liaises with finance regularly to check that all income due has been raised and confirms the balances are still available to spend.

1.6 Process to receive funds from a developer

S106 officer sends a copy of the S106 agreement to finance and requests an invoice is raised. Finance code the funds appropriately and add indexation if appropriate. The funds are then affectively ring-fenced for the purposes set out in the S106 agreement.

1.7 Process to spend S106 funds

As the funds are held within budget, and are for a specific purpose, no actual authority is required to spend providing they are spent in accordance with the legal agreement. However, for transparency, Officers produce a blue form report and get a decision recorded and published. These decisions are signed off by the Executive Director of Place and the Executive Member for Growth. This decision is accompanied by a finance proforma B which confirms the funds are available and the terms of which they are being released. Once the decision is published, the Finance Team liaise with the S106 officer to get the payment made to the relevant body.

1.8 Process to apply for S106 funds

Towns and Parish Councils can apply to the Council for funds that are available to spend in their area. Appendix A sets out the funds currently available in each of the wards and any restriction that are in place for those funds as set out in the legal agreement. To apply for funds Town and Parish Councils need to complete an application form (attached for info in Appendix B) completing details of their proposal, what they are seeking funds for, the benefits associated with their proposal, costings and how they meet any conditions outlined in the S106 agreement. They also need to provide suitable evidence of how their proposal will be delivered and how funds will be managed. Once an acceptable proposal has been received with accompanying evidence, the application is processed by the S106 officer and the blue form and proforma B are produced for sign off. Once the decision has been made and call in has passed, funds can then be released. The Town or Parish Council is then responsible for ensuring that they submit evidence that the funds released have been spent in line with the approved proposal. Failure to do so could result in the Council claiming back funds. If a Town or Parish Council undertakes a project before they have an agreement to fund in place with the Council, they do so at their own risk. There is potential therefore that a retrospective application could be rejected if it doesn't fully comply with the terms of the agreement or if funds had already been released to another party for a compliant proposal.

1.9 Transfer of Land

Where a S106 agreement requires the developer to provide open space or amenity land as part of the development, the Council will determine whether they wish for that land to be managed by a management company, be transferred to the District Council or to be transferred to another party. Often open space will be provided alongside a commuted sum which is intended to be used for the maintenance and upkeep of the land. Where land is to be passed on to a Town or Parish Council (with their agreement), the commuted sum is also passed with the legal process of the land transfer.

1.10 Variation of S106 and enforcement

On occasions, developers may apply to the Council to vary a S106 agreement. This may be due to the viability of the development or because circumstances have changed. Where the request relates to a reduction in affordable housing contributions based on the viability of a scheme the Council seeks an independent viability assessment of the scheme to determine if the S106 should be varied. In other instances, variation have occurred where Town or Parish Councils have made requests for alternative contributions which the developer is content to provide. An example this this might be a piece of land

which is to be provided as a wild flower meadow as part of the development, where the Parish feels that a grassed area would be of more benefit to the local community. The S106 could be varied in this case with the agreement of the developer and the Council. If a developer is in breach of their obligations under a S106 agreement the Council may have the ability to undertake enforcement action.

2.0 **OPTIONS**

2.1 Note the contents of the report

2.2 Do nothing

3.0 **REASONS FOR RECOMMENDATION(S)**

3.1 This report is for information only.

4.0 **EXPECTED BENEFITS**

4.1 To raise awareness of the process by which S106 funds are agreed, held, processed and released.

4.2 To inform members of the funds currently held by the Council and the conditions attached to them.

5.0 **IMPLICATIONS**

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Data Protection; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

5.1 **Constitution & Legal**

5.1.1 A S106 is a legal agreement between a Developer and the Council. This report is for information only.

5.2 **Financial**

This report is for information only and contains no legal implication. However financial information regarding S106 funds are contained in Appendix A.

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 All

7.0 **ACRONYMS**

7.1 S106 - Section 106

Background papers:- N/A

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Key Decision: No

Exempt Decision: No

This report refers to a Mandatory Service

Appendices attached to this report:

Appendix A S106 funds spreadsheet
Appendix B Application form for S106