

BRECKLAND DISTRICT COUNCIL

Report of: Robert Walker, Executive Director of Place and Delivery

To: Overview and Scrutiny Commission, 9th September 2021

Author: Simon Wood – Director of Planning and Building Control

Subject: Section 106 Briefing Note

Purpose: To inform Members of the process by which Section 106 (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. Heads of Terms in relation to a S106 Agreement should generally agreed in advance of an application going to Planning Committee. 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 held 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 Planning).
- 1.5 The Planning Service is responsible for monitoring when S106 payments are due, checking completions and raising the appropriate invoice request to Finance. The S106

officer within the Planning Service liaises with finance regularly to check that all income due has been raised and confirms the balances are still available to spend. It should be noted that S106 monies have a time limit attached to them and if they are not spent then the monies are returned to the developer.

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 effectively 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. To apply for funds Town and Parish Councils need to complete an application form 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, or 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, variations 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.

1.11 *Future options for S106 monies*

As part of the Planning for the Future White Paper – August 2020, there is a proposal to replace the Community Infrastructure Levy and S106 payments with a nationally set, value based flat rate charge to be known as the Infrastructure Levy. There are no further details as to how that will operate but it is clear that how development is funded is a matter of national debate at present.

1.12 There is also a debate to be had as to how the Council uses the monies received through S106 payments that are made to it. It is important to note that monies within a S106 must be used for the purposes for which it is collected. Where the obligation is specific as to the purpose of the payment then that is straightforward. Where the requirement is more generic i.e. towards leisure provision within a specific area, then there is the ability for the Council to use the money more strategically.

1.13 The Council now has a requirement to publish an Annual Infrastructure Funding Statement. Breckland published its own in December 2020 and it can be accessed via the following link:

<https://www.breckland.gov.uk/media/17745/Breckland-s-Infrastructure-Funding-Statement-2020/pdf/Brecklands-Infrastructure-Funding-Statement-2020.pdf?m=637463101870270000>

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.

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; 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**

5.2.1 This report is for information only and contains no legal implication.

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 All

7.0 **ACRONYMS**

7.1 S106 – Section 106

Background papers:- N/A

Lead Contact Officer

Name and Post: Simon Wood – Director of Planning and Building Control

Telephone Number: 01362 656805

Email: simon.wood@breckland.gov.uk

Key Decision: No

Exempt Decision: No

This report refers to a Mandatory Service