

Decision maker:	Cabinet member children and families
Decision date:	Monday, 17 December 2018
Title of report:	Policy for the use of, and determination of projects for, Children's Wellbeing Section 106 funding
Report by:	Interim Education & Capital Manager

Classification

Open

Decision type

Non-key

Wards affected

(All Wards);

Purpose and summary

To approve the policy for the use of, and determination of projects for, children & families Section 106 (S106) contributions received from housing development schemes that have been implemented in the administrative area of Herefordshire Council

Other than the Planning Obligations Supplementary Planning Document (SPD) there is no policy in place that determines how contributions gained by way of S106 agreements for children & families should be allocated to projects and spent. This policy sets out the principles that will be applied to identify the affected establishments, the level of funding requested, the project to which funding received will be allocated, the governance required and how the project will be managed.

Recommendation(s)

That:

- (a) the policy, at appendix 1, for the use of, and determination of projects for, children and families S106 funding be approved;**

- (b) **the director for children and families be authorised to take all operational decisions necessary to implement the policy and allocate funding in accordance with the policy criteria.**

Alternative options

1. There is no current policy to cover S106 expenditure for children and families. Without a policy there is no open or transparent process for identifying projects against which the S106 monies will be allocated.

Key considerations

2. Planning obligations, or S106 agreements pursuant to Section 106 of the Town and Country Planning Act 1990, are legally binding agreements entered into between a local planning authority and any person with a legal interest in the land to ensure that the obligations are enforceable and deliverable..
3. The council's approach to seeking contributions is set out in a clear process which ensures that the negotiation of contributions is transparent and efficient for the applicant, the council and any other interested parties. This is detailed in the SPD produced to provide advice to developers and applicants on the use of planning obligations in the planning application process in Herefordshire.
4. Planning obligations are the means by which a local planning authority can secure contributions, improvements or mitigation works to offset any adverse impact of new development. Therefore, it is the overriding objective of the SPD that, in the interests of sustainable development, it is reasonable to expect contributions towards the financing of new or improved infrastructure directly related to new development proposals as long as they accord with policies within the Core Strategy.
5. Government guidance on planning obligations s provided in the National Planning Policy Framework (NPPF) and planning practice guidance on planning obligations.
6. Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet three tests. These tests are statutory tests and set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and as policy tests in the NPPF.. They must be:
 - a. Necessary to make the development acceptable in planning terms i.e. required to bring a development in line with the objectives of sustainable development as set out in the Local Plan – Core Strategy adopted by this Council in October 2015. These are the matters which, following consultation with potential developers, the public and other bodies, are agreed to be essential in order to allow the development to go ahead and in accordance with the policies laid down in the Core Strategy;
 - b. Directly related to the development (there should be a functional or geographical link between the development and the obligation being provided as part of the applicant's contribution);
 - c. Fairly and reasonably related in scale and kind to the development (planning obligations should not be used solely to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider

planning objectives that are not necessary to allow consent to be given for a particular development)

7. These tests are to prevent applicants/developers being over-burdened by requests from local planning authorities, which are not policy justified, as well as preventing a perception that developers may be “buying” planning permissions.
8. Where appropriate and particularly on small residential schemes, contributions from several applicants/developers may be pooled, subject to the maximum amount allowed to be pooled, to enable the necessary benefits to be secured. The pooled benefits will still relate to the development from which they were raised.
9. The advice in the NPPF is clear that developer contributions should only be sought where the need for additional facilities arises as a consequence of the new development. Moreover, they should be fairly and reasonably related in scale to the proposed development. Applicants/developers will be expected to make an appropriate contribution towards enhancing existing facilities or new provision where current levels of service are insufficient to accommodate the development. For education, this will usually be related to existing capacity in schools.
10. Education contributions will be sought from residential developments providing ten or more additional units where the implementation of the development will result in the generation of additional numbers of children in excess of that which local educational facilities in permanent buildings can accommodate in terms of capacity or when measured against qualitative standards set out in the Education Building Bulletins.
11. Contributions will be calculated based on the number of children likely to be generated by the development and the costs of providing additional facilities / services needed.
12. Contributions will be sought for:
 - a. Pre-school / nursery places;
 - b. 5-10 years (primary schools);
 - c. 11-15 years (compulsory secondary school age);
 - d. 16+ (post statutory school-age, in schools); and
 - e. Children with special educational needs beyond the capacity of existing schools in the area.
13. The process that will be applied in the use and determination of projects for children and families S106 funding will be:
 - a. Contributions will only be sought for primary and secondary schools where it can be demonstrated that there is insufficient capacity to accommodate any children created by the housing development;
 - b. Contributions will be sought for the primary and secondary schools that are determined as the catchment schools for the development;
 - c. The level of contribution requested will be as per the SPD which indicates the amount of funding that will be requested, where applicable, for early years, primary, secondary, post 16 and SEN;

- d. Where an outline application is received, responses will be provided on a per dwelling basis as the mix of housing and set amount of housing to be provided at this stage is unlikely to be known. All other applications will have the actual contribution request and split calculated;
 - e. If requested, a project to which the funding will be allocated will be provided at the time of submitting the planning comments with the contributions expected;
 - f. Dependent upon the type and cost of a project, up to five housing development contributions can be considered against one project to enable contributions to be combined;
 - g. Funding received will be checked against the original request for contributions. Where the amount differs, the final amount received will be apportioned in line with the original contribution request to determine the amount of funding available for each element of the S106 funding unless the breakdown is provided in the signed S106 agreement;
 - h. Where a project has been identified, contact will be made with the school confirming that the funding is now available and that the project may proceed;
 - i. Where no specific project is included in the S106 agreement but a generic use of funds is requested, consideration will be given to the most efficient use of the funding at the school in line with the following:
 - i. Where the Council is planning work at the school in line with the school capital investment strategy, the funding will be contributed towards this project;
 - ii. Where the Council have no immediate or short-term plans for work at the school, the school will be contacted to identify potential schemes towards which this funding can be attributed;
 - iii. In most cases it is unlikely that the S106 contribution will be able to fully fund the project and therefore the school will need to put funding into the project themselves;
 - iv. All projects identified will need to conform with the three tests identified above. They will need to be capital in nature and able to demonstrate that they address the impact of additional children from the development. Examples of projects are: increased ICT infrastructure, extensions, provision of canopies, external play areas and internal remodelling;
 - j. A record of officer decision will be produced for expenditure of all allocations of funding below £500k. If expenditure of an allocation above £500k is sought an executive decision will be taken by the relevant cabinet member with portfolio responsibility for education prior to any project progressing;
 - k. Unless the project is council led, schools will be expected to manage the work themselves. Reimbursement will only be made upon provision of a certified invoice.
14. The policy will be sent to all stakeholders for information; this includes schools and council staff who may be affected by the policy.

15. The policy will be reviewed annually and updated at least every five years.

Community impact

16. The principle community impact relates to being more open and transparent in local decision making and being more accountable to the electorate. This policy statement provides a clear framework for all developers, schools and governing bodies to understand how S106 monies will be determined and allocated to projects upon receipt.
17. The S106 funding secured from housing developments would support the council's corporate plan priority of securing better services, quality of life and value for money.
18. The S106 receipts will be used to invest in schools around the county to improve their facilities, bring the buildings in line with the specifications included in the ESFAs building bulletins and could include works to mitigate potential health and safety risks. This could support the council's corporate plan priority and children and young people's plan objective of keeping children and young people safe and giving them a great start in life and hence could promote the life chances of looked after children and care leavers.

Equality duty

19. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
20. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. This policy if accepted will support the council in for filling this specific duty by demonstrating that it will be using the S106 funding in line with the specific duties.

Resource implications

21. There are no direct financial implications on the council's budget arising from the recommendations. However there could be additional costs incurred where the S106 funding received is put forward as a contribution towards a scheme that is being proposed by the Council.

Legal implications

22. This is a non-executive function and as such under the Constitution is delegated to the Chief Executive (Part 2 Article 10) to officers (Part 3 Section 7) to act on behalf of Herefordshire Council in all land use planning matters under the Town and Country Planning Acts, secondary legislation and any related statutory instruments as the local

planning authority under the Directorate Scheme of Delegation Economy and Place. This includes seeking S106 contributions. The contributions payable under S106 to the Council can be utilised only for the purposes they are sought and the Directorate children and families in this instance in its statutory roles in childcare and educational matters under the Directorate Scheme of Delegation children and families has the authority to use such contributions to aid the services they are statutorily required to provide. The cabinet member children and families as the decision maker in this instance also has the authority to take such decisions.

23. Section 106 of the Town and Country Planning Act 1990 allows any person interested in land in the area of a local planning authority to enter into a planning obligation by way of agreement to restrict the development or use of the land; to require specified operations or activities to be carried out in, on, under or over the land; for the land to be used in any specified way; or requiring a sum or sums to be paid to make the development acceptable in planning terms, before planning permission can be granted. The obligation is enforceable by the local planning authority against the person entering into the obligation and against any person as successor in title. In this instance the obligations require a sum or sums to be paid for the provision of education and childrens facilities to make the development acceptable in planning terms to offset the impact of the development on the local infrastructure.

Risk management

24. There may be a reputational risk to the council if the S106 monies are not spent effectively. There are also normally time constraints written into the individual agreements that if the monetary contribution/s is not spent by the Council within a certain period of time after it has been provided for that particular purpose, then the person making the payment is entitled to have it repaid and in some cases with interest. Each is based on the wording of the individual agreement.
25. If this policy is not approved spend of S106 within Herefordshire will continue to be made without having an open and transparent method of allocating the funding.
26. Each S106 receipt would have to be accompanied by its own individual report which would have to be reviewed by officers prior to publication.

27. Consultees

28. None.

Appendices

Appendix 1 – Policy for the use of, and determination of projects for, Children and Families Section 106 funding

Background papers

None identified