

Title of report: Section 106 Portfolio of Works - Section 106 Delivery Proposals

Meeting: Cabinet

Meeting date: Thursday 2 March 2023

Report by: Cabinet member finance, corporate services and planning;

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose

Following approval of Section 106 Portfolio of Works Cabinet [Report](#) (Thursday 25th November 2021), this report seeks to obtain further appropriate delegation to approve the spend, processes and resources required in connection with the delivery of the Section 106 schemes.

Recommendation(s)

That:

- a) Cabinet approves the implementation of the new delivery proposals, as set out in Section 106 Delivery Proposals, including the resources required, to spend all Section 106 developer income and future income received.**
- b) The council scheme of delegation is updated to authorise the spend of section 106 monies and to delegate all operational decisions relating to the above recommendation in accordance with the table below;**

Matters relating to:

- Andrew Lovegrove – Director of Resources (S151 Officer)**
- Ross Cook – Corporate Director, Economy & Environment**
- Hillary Hill – Corporate Director, Community Wellbeing**
- Darryl Freeman – Corporate Director, Children’s and Young People**

An overview for the proposed updates to the council’s scheme of delegation is contained in Appendix 1.

Alternative options

1. Not to approve the implementation of the new delivery proposals, including the resources required, to deliver all Section 106 monies and future monies received. This is not recommended. As of 31 January 2023 an additional £4.69m of Section 106 income has been received to mitigate the impact of building developments. There is now an urgency to deliver schemes for communities.

Key considerations

Background

2. Section 106 agreements are legally binding obligations between Herefordshire Council as the local planning authority and developers under Section 106 of Town and Country Planning Act 1990. The purpose of a Section 106 Agreement is to make development acceptable which would otherwise not be acceptable in planning terms.

A Section 106 agreement can:

- a. restrict the development or use of the land in any specified way
- b. require specified operations or activities to be carried out in, on, under or over the land
- c. require the land to be used in any specified way; or
- d. Require financial sum or sums to be paid to the authority on a specified date or dates or periodically.

3. Planning obligations should only be sought where they meet all of the following tests as set out in section 122 of the Community Infrastructure Regulations (2010) (as amended):
 - 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. With regards to sums to be paid to the authority the section 106 agreement specifies the amount of the financial contribution to be paid to the local planning authority and specifies the purpose of the financial contribution.
5. The Section 106 agreement may also specify the time period within which the Section 106 monies must be spent by the Local Authority. If this time period expires the Local Authority may be required to return any unspent or uncommitted parts of the Section 106 monies in whole or part to the developer.
6. Herefordshire Council's approach to Section 106 policy is set out in Policy ID1 – Herefordshire Local Plan Core Strategy and in its Planning Obligations Supplementary Planning Document (SPD) and the other relevant strategies to support the significant increase in population and employment.
7. In February 2021, SWAP Internal Audit Services issued a report on Section 106 Agreements. The purpose of the audit was to verify there was adequate Council oversight of funding received from developers and that Section 106 agreements were discharged as agreed. This key issues identified were:
 - a. Management Board require more comprehensive reporting to enable informed decisions to promote the expenditure and maximise the benefits to residents.
 - b. Governance is not consistently applied to approve contribution expenditure.
 - c. Inconsistencies were identified between the spreadsheets recording the Section 106 information.
8. On 25th November 2021, Cabinet approved the procurement and delivery proposals for expenditure of £9.3m of Section 106 income. The [report](#) provided delegation to the Section 151 officer to take all operational decisions in relation to S106 monies in consultation with the Cabinet Member for Finance, Corporate Service and Planning, the Cabinet Member for Infrastructure and Transport and the Cabinet Member for Children's and Family Services.

Section 106 Portfolio of Works – S106 Delivery Proposals

9. Following cabinet approval on 25th November 2021, implementation of the new delivery proposals, processes and expenditure of up to £9.3m of Section 106 monies commenced under a Portfolio Manager with the Project Management Office (PMO) in liaison with service areas.
10. Due to the administrative complexity of the built-up backlog, resource challenges, the Covid-19 pandemic, value for money issues (VFM) and operating within the BBLP contract, delays to delivery of projects have occurred.
11. New resource with the Project Management Office (PMO) has been appointed to support this programme which comprises of two Programme Managers, Senior Project Manager and Programme Co-ordinator.
12. AECOM have been appointed enable the development, procurement and delivery of the £3.85m Transport and Highways S106 projects.
13. The in-house resource successfully completed the delivery of a pelican crossing in Bartestree & Lugwardine (A438). The project completed on 04th November 2022 utilising £212k of Highways & Transport S106 contributions. In-house projects for Ledbury West – Improvements to infrastructure, are also underway.
14. Since April 2022, the programme has delivered £370k of Education S106 contributions with a further committed allocation of £872k, totalling £1.24m.
15. Within the delivery proposals of the Cabinet report (25th November 2021), the proposals sought to engage design services through the North West Construction Hub (NWCH) Framework. Through collaboration with the Education Service, the requirement for design services for Education, Off-Site Play & Open Space and Sports was low.
16. The Programme therefore seeks to utilise alternative procurement methods that meet Herefordshire Council's need, value for money (VMF) and Contract Procurement Rules (CPR).
17. With wider transformation strategies underway, the S106 delivery Programme has established a more collaborative working platform and delivery model which prioritises delivery based on time periods.
18. The new delivery model identifies clear roles and responsibilities between the Planning Obligations Team, Service Areas and S106 Delivery creating greater cohesion and collaboration. The delivery model adopts the [Project Management Model](#) which is used by the wider Project Management office for delivery.
19. The adoption of the Project Management Model will establish a more efficient delivery process, with efficiencies in governance and decision making and delivery of local infrastructure / community facilities in the County of Herefordshire. The implementation of new processes will allow for a continual reduction in S106 income.
20. The role of the S106 delivery programme is to expedite delivery whilst safeguarding the use of S106 monies. In some cases, S106 monies act as a contribution to a larger project which can delivered by a third party. In order to safeguard Herefordshire

Council this report seeks the implementation of a grant agreement to provide contractual liability against improper use of funding, compliance with statutory obligations and best practise methodologies.

21. Since the Cabinet report in November 2021 and as of January 2023 an additional £4.69m of Section 106 income has been received to mitigate the impact of building developments. This income comprises of;

<i>Planning Contribution Type</i>	<i>S106 Finance Analysis Code</i>	<i>Planning Contribution Amount</i>
Education	GT05	£2,498,288.49
Healthcare	GT12	£111,817.38
Monitoring	GT08	£4,492.74
Off-site play/open space	GT03	£172,912.81
Primary Care	GT11	£110,584.71
Recycling	GT01/GT02	£49,139.23
Sports	GT04	£527,044.20
Transport/Highways	GT06	£1,219,650.21
Total		£4,693,929.77

22. With these additional contributions there is currently £12.8m to spend in the Section 106 Portfolio and this continues to increase monthly:

Financial Obligation / Gain Type	No of S106 Agreements	Remaining Balance (£)
Highways & Transport	81	5,472,848.85
Education	40	4,680,363.25
Offsite Play & Open Space	37	817,048.53
Sports	20	707,542.86
Recycling	30	59,811.47

Waste	8	84,084.91
Libraries	5	26,682.35
Monitoring	0	4,492.74
CCTV	0	-
Public Realm	1	89,679.00
Primary Care - CCG	7	249,019.90
Wye Valley Trust	5	111,817.38
Flood	2	497,722.30
Public Art	0	-
Biodiversity	0	-
Graveyard	1	15,000.00
TOTAL		12,816,113.54

23. In order to create one set of governance and an adoptable delivery strategy as a whole, this report seeks to expand the delegation and delivery model across all contributions, including future Section 106 income received.
24. In addition, it proposes to amend the delegation to spend from the S151 officer to all responsible service directors. This will ensure that those service directors, who attend the Planning Delivery Board, will have an understanding and oversight of income available and being spent and where it may align with other capital projects being delivered in their service area.
25. The alignment of the governance will allow service areas and delivery mechanisms within the Project Management Office (PMO) to work more collaboratively and efficiently in bringing forward the delivery of Section 106 contributions. Stakeholders will benefit from a wholly adopted approach which will provide more robust management and oversight of project delivery.
26. To give assurance going forward, the programme will report back to Cabinet on a quarterly basis.

Community impact

27. Section 106 monies assist in mitigating the impact of new developments on existing facilities and infrastructure. The approval of the additional delegated authority will ensure the monies are spent efficiently and effectively and will also have a positive impact on contributing towards local and regional strategy priorities, targets and legislation.

28. The County Plan (2020-24) priorities are:

a - Protect and enhance our environment and keep Herefordshire a great place to live

b - Minimise waste and increase reuse, repair and recycling

c - Build understanding and support for sustainable living

d - Invest in low carbon projects

f - Support the an economy which builds on the county's strengths and resources;

h - Develop environmentally sound infrastructure that attracts investment

i - Support an economy which builds on the county's strengths and resources and spend public money in the local economy wherever possible.

Environmental Impact

29. Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.

30. The planning obligations sought through Section 106 are an important mechanism to mitigate the impact of new developments, this includes environmental impact and sustainability.

31. Contributions for example, can assist in allowing for the needs of walking and cycling, as well as enhancements to public transport all of which can contribute to a reduction in carbon emissions and improvement in air quality.

32. The development of this project has sought to minimise any adverse environmental impact and will actively seek opportunities to improve and enhance environmental performance.

Equality duty

33. 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.

34. 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. Our providers will be made aware of their contractual requirements in regards to equality legislation.

Resource implications

35. There is resource with the Project Management Office (PMO) to support this programme which comprises of two Programme Managers, Senior Project Manager and Programme Co-ordinator.

36. Further resources may be identified as required through the programme lifecycle to support delivery.

37. There may be additional resource implications required for Herefordshire Council to discharge its statutory functions as the Highway Authority. These will be quantified and reported upon receipt /identification of the detailed works programmes.

38. There are no direct financial implications on the council's budget arising from the recommendations. However, schemes may be identified where there is not sufficient Section 106 funds available.

39. Future section 106 agreements will include a 5% administration fee (on top of the 2% monitoring fee).

Legal implications

40. Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as s106 agreements, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focused on site specific mitigation of the impact of development. Section 106 agreements may secure financial contributions to provide infrastructure or affordable housing. However these are not the only uses for a Section 106 and an

obligation may for example, restrict the development or use of the land in any specified way or require specified operations or activities to be carried out in, on, under or over the land require the land to be used in any specified way.

41. Where the Section 106 Agreement seeks to secure a financial contribution the amount of the financial contribution secured will be specified together with the purpose for which the monies are to be used in the agreement.
42. The Section 106 agreement may also specify the time period within which the Section 106 monies must be either be spent or committed by the Local Authority. If this time period expires the Local Authority may be required to return any unspent or uncommitted parts of the Section 106 monies in whole or part to the developer.
43. The role of the S106 delivery programme is to expedite delivery whilst safeguarding the use of S106 monies. In some cases, S106 monies act as a contribution to a larger project which can delivered by a third party. In order to safeguard Herefordshire Council this report seeks the implementation of a grant agreement to provide contractual liability against improper use of funding and compliance with statutory obligations and best practice methodologies.

Risk management

44. There is a reputational risk to the council if the Section 106 monies are not spent efficiently and effectively. This will also have a direct impact on communities and their environment as Section 106 monies mitigate the impact of new developments.
45. There is a financial risk as time constraints are written into the Section 106 agreements that if the monetary contributions are not spent within a certain period of time after it has been provided for that particular purpose, then the person/company making the payment is entitled to have it repaid and in some cases with interest.
- 46.

Risk / Opportunity

Mitigation

Schemes may be identified where there are not sufficient S106 funds.

Seek to identify additional funds from alternative sources, i.e. grants, capital and revenue budgets.

The extended delegation to manage Section 106 delivery proposals and processes to include all Section 106 monies and future monies received not approved.

Complete further work to ensure acceptable delivery proposals and processes are arrived at. Complete further process workshops and briefing with key stakeholders.

Section 106 agreements not delivered Within specified time period

Project delivery to be prioritised and effectively planned.

Consultees

47. Political group consultation has been undertaken to support this decision paper on 30th and 31st of January 2023.

Appendices

Appendix 1 - Proposed Section 106 Portfolio of Works Delegated Officers v2.



Proposed Section
106 Portfolio of Work

Background papers

None identified

Report Reviewers Used for appraising this report:

Please note this section must be completed before the report can be published		
Governance	Sharon Bennett-Matthews – Head of Legal	Date 26/01/2023
Finance	Karen Morris – Strategic Capital Finance Manager	Date 31/01/2023
Legal	Sharon Bennett-Matthews – Head of Legal	Date 26/01/2023
Communications	Luenne Featherstone – Communications Manager	Date 20/01/2023
Equality Duty	Harriet Yellin – Equality Compliance Manager	Date 20/01/2023
Procurement	Lee Robertson – Commercial Manager	Date 18/01/2023
Risk	Kevin Lloyd – Performance Team Lead	Date 30/01/2023

Approved by Andrew Lovegrove – Director of Resources and Assurance Date [Click or tap to enter a date.](#)