

Community Scrutiny

25th June 2018

Overview of Section 106 and Developer Contributions

Recommendations / key decisions required:

- To consider and accept the content of the report.
- To note the processes set out within the report and the commitment to further member briefings and training on the processes involved in identifying, securing and using the financial contributions.

Reasons:

- To reflect the commitment to present a report to Community Scrutiny.
- To raise awareness and enhance transparency in terms of the s106 processes.
- To provide an overview of the developer contributions received through s106 and the purposes for which they were secured.

To be referred to the Executive Board / Council for decision: No

EXECUTIVE BOARD MEMBER PORTFOLIO HOLDER:- Cllr Mair Stephens

Directorate : Environment

Designations :

Tel Nos. 01267 228918

Name of Head of Service:

E Mail Addresses:

Llinos Quelch

Head of Planning

LQuelch@carmarthenshire.gov.uk

Report Author: Ian Llewelyn

Forward Planning Manager

IRLlewelyn@carmarthenshire.gov.uk

Community Scrutiny

25th June 2018

Overview of Section 106 and Developer Contributions

1. BRIEF SUMMARY OF PURPOSE OF REPORT.

The report builds on a commitment to present a report to Community Scrutiny to provide an overview of the developer contributions received, through planning obligations (also known as Section 106 Agreements), during the 2017/18 financial year.

The report outlines the background information relating to planning obligations, the process of applying for developer contributions and an overview of the income and expenditure during 2017/18.

It should be noted that this report relates solely to the financial contributions received through Section 106 Agreements (these are the Agreements made under Section 106 of the Town and Country Planning Act 1990) for, and in accordance with the requirements of the CIL Regulations. The report does not refer to other contributions such as the provision of affordable dwellings and onsite provision of parks and open space. The report also excludes those agreements secured under Section 278 of the Highways Act 1980.

It should also be noted that the report does not detail the procedures for the identification of potential planning obligations. For members reference this will be subject to specific training/briefings providing a focus on how and when members can best engage in the identification of planning obligations arising from a development.

2. What are Planning Obligations?

A Planning Obligation (also known as a Section 106 Agreement) is a legal agreement between the Planning Authority and the applicant/developer, and any other party that may have an interest in the land. Planning Obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. They can also be issued unilaterally to the Council by the persons with an interest in the land; these are known as Unilateral Undertakings (UU). A UU is a commitment offered by the applicant to the Local Planning

Authority with the intention of overcoming any obstacles that may arise which are preventing the granting of a planning permission.

The Council's approach to planning obligations is set out in Policy GP3 'Planning Obligations' of the Carmarthenshire Local Development Plan (LDP). Further detail on the implementation of this policy is provided in the Planning Obligations Supplementary Planning Guidance (SPG) as well as in the Affordable Housing SPG, Caeau Mynydd Mawr Special Area of Conservation SPG and the Leisure and Open Space – Requirements for New Developments SPG.

3. What are they used for?

Planning Obligations can cover almost any relevant issue, acting as a main instrument for placing restrictions on developers, often requiring them to minimise the impact on the local community and to carry out tasks which will provide community benefits, and can include the payment of sums of money.

They are commonly used to bring developments in line with the objectives of sustainable development. Examples of types of infrastructure or services that planning obligations can include are:

- Highway Improvements
- Provision of Affordable Housing
- Improved community facilities – e.g. Public open space/ play areas, educational facilities
- Specific measures to mitigate impact on a local area – e.g. parking restrictions, habitat protection or management

This list is not exhaustive. Each planning application is dealt with individually on its own merits, and restrictions and requirements not on this list may also be needed.

4. Applying for Section 106 funds

All community based organisations that operate on a not-for-profit basis in Carmarthenshire can apply for funding which has been secured through a planning obligation or s106 agreement, as well as the different service areas within the Local Authority. Application forms are available on the Council's Planning webpage.

The Section 106 Agreements typically set out the following details:

- How much of a contribution should be paid and when it should be paid;
- What the developer contribution should be spent on; and,
- Where the developer contribution should be spent

When determining applications for the use of Section 106 funds the Local Authority must ensure that the project accords with the terms of the Section 106 Agreements. It must therefore ensure that there are funds available for the relevant geographical area and for the specified project or purpose before it can agree to any request for funds. The legal agreement is checked upon

receipt of every request to utilise a contribution and where appropriate the ward member and service area are consulted. Each service area and consultee is given thirty days to respond to a request and encouraged to come back with comments. The application for S106 funds and any comments received are then referred to the Head of Planning for determination.

Should the member or service area not make any comment prior to the 30 day deadline, it is presumed that there is no objection and the project will be referred to the Head of Planning for resolution.

If an application is successful, the amount of funding awarded will depend on the amount of S106 money available for that community, and for that particular project or purpose. Projects can be supported with 100% of the project costs if sufficient monies are available and they accord with the terms of the agreement. However, applicants are encouraged to seek matching funding from other grant bodies and community sources where possible so that the S106 funds can support as many local projects as possible. They are also encouraged to consider the future financial implications of maintaining and sustaining the relevant project as this element of funding can rarely be provided from Section 106 funds.

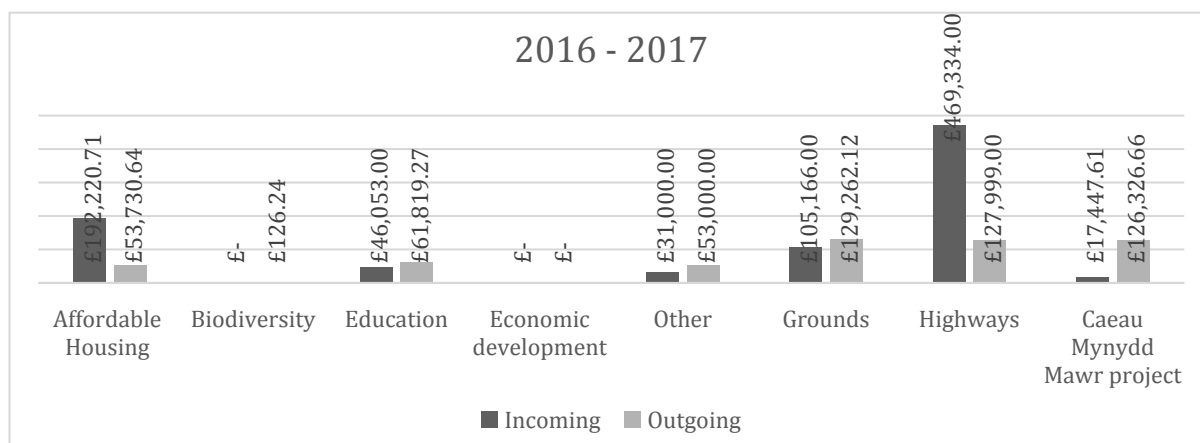
Contributions may only be transferred to the S106 applicant upon completion of the approved works and upon receipt of suitable evidence outlining costs incurred.

5. S106 Monitoring Overview

It is crucial that developers provide financial contributions under S106 agreements in a timely manner in accordance with the requirements set out within the relevant Section 106 Agreements. The Agreements will usually set out a trigger or, less commonly, a specific date for the payment of contributions. These are varied according to the requirements of the specific development but usually relate to a specific stage of a development, for example, at the development's commencement, or a later date, such as the first occupation of a residential unit.

The progress of developments are monitored and the developer contributions are sought and received accordingly.

Financial Summary



The following summary provides the income and committed balances during the last financial year, 2017/2018.

	Incoming	Outgoing	Committed by agreement	Committed by request
Affordable Housing	£227,680.67	£447,408.65	£282,661.41	£ -
Biodiversity	£138,647.20	£22,338.24	£263,682.72	£ -
Education	£67,013.00	£307,850.20	£ -	£272,994.74
Economic development	£ -	£ -	£38,000.00	£ -
Other	£50,000.00	£26,760.00	£ 143,097.00	£ -
Grounds/Open Space	£175,189.00	£256,511.94	£ 112,813.32	£236,799.80
Highways	£454,722.00	£ -	£204,396.25	£ 89,559.56
Caeau Mynydd Mawr Project	£169,771.21	£117,954.83	£ 369,289.72	£ -
Miscellaneous	£743,668	£ -	£743,668	£ -

Funds Currently Held

- Affordable Housing - £282,661
- Biodiversity - £263,682.72
- Education - £537,506.26
- Economic Development - £38,000
- Other - £143,097
- Grounds/Open Space - £1,223,813.32
- Highways - £633,402.30
- Caeau Mynydd Mawr Project - £369,289.72
- Miscellaneous -£743,668*

*This contribution was sought from the Carmarthen West development and priority for spend has been placed with Highways due to the need to develop the road in the surrounding area. Whilst the works are on-going, Highways will be identifying the required amount of contribution with the remaining balance being split between Education and Grounds.

6. Contributions Committed by agreement

Of the monies currently held at the end of the 2017/2018 financial year, a total of £2,157,608.42 has been committed in accordance with the specific requirements set out in the Section 106 agreement. The committed monies will be spent in accordance with the terms of the agreements. These contributions are held for specific projects and may only be transferred to be spent once the approved works have been completed. This requires receipt of suitable evidence outlining the costs incurred.

The following list sets out some examples of where contributions received have been committed by agreement.

- Biodiversity - £263,682.72
Brechfa Forest Grid Connection - The first round of applications for landscape enhancement works were restricted to landowners of land directly affected by the new overhead line 18 applications were approved, and recently, those who did not apply have been invited to re consider, this has generated another 6 or 7 applications. The next stage is to open the fund up to landowners living within 3km of the line.

Llanelli Water Vole S106 – for the creation, management and enhancement of water vole habitat in Llanelli - Creation of new ponds on CCC owned land just outside WWT's Penclacwydd site.

Morfa Berwig S106 - Management of brown field habitat - Volunteers are working with Bynea School on the reserve. Having installed a number of nest boxes, these will be monitored for birds that use the site. Some of the maturing coppice was cut back over the winter of 2017 to let in more light to the water courses, and there will be further management i.e. cutting back and scarifying of the brown field habitats in 2018/19. There are at least two

regular monthly volunteer work parties at this site, involving volunteers from Mencap. These are organised by the Council's Conservation Officer based in Leisure.

- Caeau Mynydd Mawr Project- £369,289.72
Habitat mitigation in Cross Hands area to offset impact of development on marshy grassland and Marsh fritillary habitat, and on the permeability of the landscape, as required under EU Regulations, in accordance with the Local Authority's Supplementary Planning Guidance.
- Economic Development - £38,000
Towards assisting in the management and marketing of bringing forward initiatives or projects that seek to support, and/or improve the vitality and viability of Ammanford Town Centre, or provide a higher profile through promotion and tourism.
- Other - £103,097
Mynydd Y Betws Community Archaeological Project – A community archaeological project, including: volunteer excavations; school visits to the excavations; open days for members of the public to visit the excavations; and web-based interpretation of the archaeology on Mynydd y Betws and the excavations. Three sites were comprehensively excavated over 12 days in July 2017 (10-21 July): two possible Bronze Age round barrows and part of the stone alignment, and two less intensively investigated.

Culvert improvements in the surface water drainage network in Bynea and carbon reduction schemes in Whitland electoral ward.

7. Contributions committed by request

At the end of the 2017/ 2018 financial year, £599,354.10 has been committed by request either from Community/ Town Councils, Local members, Schools or Authority service areas.

Reference should be had to the Appended report which provides further detail on the sums committed and the specific projects.

8. Conclusions

S106 contributions can do much to mitigate potential impact of new developments and represent an important mechanism through which the Local Planning Authority can secure the necessary improvements arising from the development. The planning service will continue to work with all parties including local members to secure such contributions in accordance with planning legislation and policies set out within the LDP and SPG.

The role of local members is an integral link in the s106 process. In this respect their contribution to the use of funds is recognised with member consulted where appropriate on their use. In the 2017/2018 financial year, 43 applications were received requesting the use of Section 106 Contributions. Local members were consulted on 42 occasions before the request

for funds can progress any further. As part of the 42 consultations, 65 members have been consulted with 36 responses received.

5 applications amounting to £235,149.42 are currently on hold due to objections in relation to the use of the contribution.

It should be noted that further members briefings and training in relation to S106 and the processes involved in identifying, securing and using the financial contributions will be offered to the individual party groupings over the coming weeks. This reflects an ongoing approach from officers to ensure there is a shared understanding of the s106 process.

DETAILED REPORT ATTACHED ?	YES
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IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed: L Quelch

Head of Planning

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
YES	YES	YES	NONE	NONE	NONE	NONE

1. Policy, Crime & Disorder and Equalities

The purpose of s106 contributions are to pay for the infrastructure needed to make an otherwise unacceptable development acceptable. To this end, they supports the aims and objectives of the Local Development Plan's Objectives and its Policies and provisions.

They allow for proposals to make provision of, and to facilities which support the Well-being Goals set out within the Well-being of Future Generations Act 2015 and the Councils own Well-being objectives.

2. Legal

The Local Planning Authority secures planning contributions (or Planning Obligations) as governed by Section 106 of the Town and Country Planning Act 1990. The Planning Act 2008 makes provision for local authorities to prepare a Community Infrastructure Levy. On the 6th April 2010 the Community Infrastructure Levy Regulations 2010 came into force in England and Wales which further informed the legislative process associated with the collection and use of Planning Obligations. Reference is also had to the provisions of the Environment (Wales) Act 2015 and the requirements emanating from it in respect of the need to enhance the Environment.

3. Finance

The collection, monitoring and use of monies through s106 is undertaken through established financial procedures.

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: L Quelch

Head of Planning

(Please specify the outcomes of consultations undertaken where they arise against the following headings)

1. Scrutiny Committee

N/A

2. Local Member(s)

Further and continual training and briefings will be provided.

3. Community / Town Council

The section 106 process incorporates a number of consultation methods through which partners can understand and apply to access funds.

4. Relevant Partners

The section 106 process incorporates a number of consultation methods through which partners can understand and apply to access funds.

5. Staff Side Representatives and other Organisations

Subject to ongoing and continual consultation and discussion through internal processes.

Section 100D Local Government Act, 1972 – Access to Information

List of Background Papers used in the preparation of this report:

THESE ARE DETAILED BELOW

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Adopted Carmarthenshire Local Development Plan		http://www.carmarthenshire.gov.wales/home/residents/planning/policies-development-plans/local-development-plan/
S106 Webpage		https://www.carmarthenshire.gov.wales/home/council-services/planning/apply-for-section-106-funds/#.WyF11OaouUk
Supplementary Planning Guidance		https://www.carmarthenshire.gov.wales/home/council-services/planning/planning-policy/supplementary-planning-guidance-spg/#.WyFJA-aouUk