

**Decision Session - Executive Member for
Culture, Leisure and Tourism**

29 January 2016

Report of the Assistant Director (Communities, Culture and the Public Realm)

New monitoring arrangements for Open Space Section 106 Funds

Summary

1. This report seeks the approval of the Executive Member to update the way the Council monitors Section 106 (s.106) agreements and how it allocates the funds received.

Recommendations

2. The Executive Member is asked to agree:
 - To publish on the Council's web site a comprehensive list detailing all open space s.106 agreements, including any payments due, received or used; and, to update the list at regular intervals as set out in Paragraph 9.
 - The additional priorities for use of open space s.106 payments set out in Paragraph 11.

Reason: To improve the efficiency and transparency of use of s.106 payments.

Background

3. The Town and Country Planning Acts create the ability for Local Authorities to seek a payment from developers in lieu of providing children's play space, amenity space and sports pitches within new housing developments. This is commonly known as a s.106 payment.
4. The Council's approach to using s. 106 funds as been set out in two previous reports to the Executive Member in 2011 and 2013. In April 2015 the government introduced new rules on the collection and use of 106 funds; this report provides a response.

5. Payments are generally made where there is an existing or identified shortfall arising from a proposed development and it is not practical or desirable to have open space within a development (for example where developments are for individual or a small number of dwellings or where there is existing open space nearby which could be improved to accommodate the additional use from new residents). Payment is based on an approved formula related to the number of new bedrooms within the development. Full details can be found on the Council's web site at:

<http://www.york.gov.uk/environment/Planning/guidance/OpenspaceAdviceNote/>

6. S.106 payments received by the Council must be used for the benefit of the residents who will live in the development that has generated the payment. Previous Executive reports used Local Development Framework (LDF) process - the playing pitch assessment and the Open Space Sport and Recreation Study to identify sites for investment with s.106 funds directed to:

- Investment that supports quality initiatives such as the Green Flag award or club mark
- Investment that will increase access by all sectors of the community
- Schemes that are significantly well developed and/or have enough funds to be achievable
- Schemes that lever in other sources of funding e.g. lottery, sports governing bodies, landfill tax

New arrangements

7. In April 2015 the government introduced a limit on the number developments within an area that can contribute to site, scheme or project. This is known as pooling and, in accordance with Regulation 123 of the Town & Country Planning (Community Infrastructure Levy) Regulations 2010 (as amended), a pooling limit applies to any s.106 obligation which was secured after 6 April 2010. From 6 April 2015 when determining a planning application after this date the LPA is not allowed to request s.106 funding for an infrastructure project if more than five s.106 obligations since 6 April 2010 have already been entered into for that project. This pooling limit applies even if the funds are not paid to the Council or the planning permission is never implemented.

8. Pooling has been very useful and has been used extensively over the last 10 - 15 years as it allowed several smaller contributions to be combined to create a single large scheme that meet the objects set out in paragraph 6 above. For example, the recent major refresh of Clarence Gardens play area was funded by money from 6 developments accumulated over 8 years.
9. In order to comply with the new regulations improved recording, monitoring and transparency of s.106 obligations entered into and their use is required. To meet this requirement the Council will publish on the Council's website a list detailing for each appropriate planning application:
 - What s.106 obligations have been entered into
 - What payments are expected
 - What has been paid
 - What the payments can be used for, and
 - What has been used, by whom and when, including 3rd parties

This information will be searchable by ward.

10. Initially it is proposed that this list will be published monthly. The frequency will be reviewed once the system has been running for a few months.
11. It is proposed that use of s.106 funds continue to be based on the approach set out in paragraph 6 above with the following additional priority areas:
 - Supporting sites and schemes which help galvanise increased community engagement, reflecting the development of more ward based green space maintenance and care
 - Furthering the priorities and guidance contained within the Taking Play Forward Policy. (This policy will be refreshed in the next few months)
 - Increasing the self-sufficiency of sports facilities, especially those that create opportunities for new participants to be active and target those who are currently least active
12. To aid this process the Council is asking for help from wards and parish and town Council's at every stage.

This starts with suggesting sites and projects for inclusion in obligations, through to monitoring progress of developers once they start on site. This latter point will help in releasing funds for use as release cannot happen until it is certain that there is no risk of repayment. It will also help to identify developments where a payment should have been made but none has been received. Where money is transferred to 3rd Parties, including parish and town Councils the specific purpose for the payment will be set out and they will be required to report back to the Council to confirm the appropriate use of the s.106 funds.

Consultation

13. The proposed new reporting procedure has been tested out with representatives from parish and town Councils who are supportive of the idea.

Options

14. The options available to the Executive Member are:
 - Option 1: Agree to the proposals publish regular updates
 - Option 2: Suggest further and/or alternative proposals

Analysis

15. Option 1 – to publish the list as set out in paragraph 9. This has the support of local Councils and meets the wider objective of greater transparency.
16. Option 2 – No other options have come forward from the liaison meeting with parish and town Councils. The Executive Member is free to suggest alternative forms of reporting.

Council Plan

17. The actions set out in the report contribute to improving transparency and public engagement as out in the Council Plan 2015-19.

Implications

18. **Financial and Legal** – Failure to accurately record and monitor s.106 obligations entered into and their use may result in the Council breaching the Community Infrastructure Levy Regulations on pooling. A challenge to the grant of planning permission may be launched on the ground that the pooled contribution to be paid by the planning applicant is invalid.

Additionally, s.106 contributions must be spent within the agreed timescales and on the purposes specified within the individual s.106 agreements.

Failure to comply with these issues could cause reputational damage to the Council and might require repayment of developer contributions.

19. There are no Property, Equalities, Human Resources, Crime and Disorder or Information Technology implications arising from this report.

Risk Management

20. In compliance with the Council's risk management strategy the main risks that have been identified with the proposals contained in this report are:
- that insufficient resource is committed to the new monitoring arrangements and
 - 3rd parties fail to engage and provide the necessary information.
- 21 In an extreme case this could result in the Council having to pay back s.106 contributions to the developer which would have financial and reputational consequences. Level of risk is assessed as Low. This means that periodic monitoring is required of the operation of the new arrangements

Contact Details

Author:

Dave Meigh
Operation Manager –
Public Realm
Communities and
Neighbourhoods
Tel No. 01904 553386

Chief Officer Responsible for the report:

Charlie Croft
Assistant Director (Communities,
Culture and Public Realm)

Report
Approved

✓ **Date** 17.01.16

Specialist Implications Officers:

Jonathan Carr Head of Development Services & Regeneration
Mary Bailey Head of Communities & Equalities
Vicky Japes Health Improvement Manager (Lifestyles & Sport)

Wards Affected:

All ✓

For further information please contact the author of the report

Background Papers:

Taking Play Forward 2013-2016 York Play Policy <http://www.york.org.uk/workforce2014/play>

Annexes - None