



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

CABINET

Thursday, 17 November 2022

Report of the Executive Director - Place

Approval to Allocate Existing Section 106 Agreements to Highways Schemes and to Approve the Process to Allocate Future Section 106 Agreements

(Cabinet Member for Highways, Assets and Transport)

1. Divisions Affected

1.1 County-wide.

2. Key Decision

2.1 This is a key decision because it is likely to result in the Council incurring expenditure which is, or savings which are significant having regard to the budget for the service or function concerned (this is currently defined as £500,000) and/or it is likely to be significant in terms of its effect on communities living or working in an area comprising two or more electoral areas in the County.

3. Purpose

3.1 To update Cabinet on Section 106 Agreements, to seek approval for applying current unallocated Section 106 funding to new schemes, and adding them to the highways capital programme where appropriate, or existing highway schemes, and the process for managing highways schemes funded by new Section 106 agreements, to receive an annual report detailing progress and updates aligned to the annual Infrastructure Funding Statement, and to delegate amendments to the Section 106 process and future Section 106 allocations to the Director

of Highways, in consultation with the Cabinet Member – Highways Assets and Transport.

4. Information and Analysis

- 4.1 'Section 106 agreements' are legal agreements made under the Town and Country Planning Act 1990 between a Local Authority and landowners that create covenants that are binding on the relevant land, called planning obligations. Section 106 agreements are often required for the granting of planning permissions, to provide sufficient mitigation of the impacts of the development proposals. The planning obligations required for new developments usually include commitments to make financial contributions to the County Council as Highway Authority for highways improvements.
- 4.2 Where proposed development is foreseen by the County Council as highway authority to affect the future of the highway network or traffic safety or congestion over any part of it, it provides comments to the Local Planning Authority responsible for determining the planning application. The highway authority often also recommends specific off-site projects or schemes, provided there are no exceptional highways or traffic grounds for finding the development to be fundamentally objectionable in planning terms. These recommendations are made in order to help make any granting of planning permission for the development acceptable, by mitigating the adverse impacts it associates with that development. These comments and recommendation have to be addressed by the Local Planning Authority, in its deciding on the planning application. It is generally necessary, in order to secure such a recommended scheme or programme, for any planning authority decision to approve the grant of permission to be subject to a requirement for a Section 106 agreement with a relevant obligation to be completed first. The mitigation by the obligation can be in the form of a financial contribution to fund specified improvements to be implemented by the Highway Authority. The Section 106 agreement will generally provide that if such funds received by the Planning Authority are not spent on the relevant schemes/projects within an allotted time period, they must be repaid, in many instances with interest. There is therefore a potential for loss of funding for delivery of these projects, and consequent reputational risk to the Council. Hence there is a need to ensure that robust processes are in place to achieve their timely delivery (alongside a transparent audit trail for the reason set out in paragraphs 4.3 and 4.4 to accord with the Council's Financial Regulations).

- 4.3 An added dimension has been provided by the amendments to the Community Infrastructure Levy (CIL) Regulations, which came into force in September 2019, which require that Section 106 contribution receiving authorities produce an annual Infrastructure Funding Statement (IFS) for reasons of transparency. The IFS provides a summary of all financial and non-financial developer contributions activity relating to Section 106 agreements for the previous financial year and must be published annually by 31 December. The CIL Regulations specify the financial information which must be reported within the IFS and includes Section 106 income and expenditure, allocated and unallocated funds, and funds expended and funds remaining at the end of the reported year.
- 4.4 The Council produced its first IFS for 2019-20 which identified that Highways retained £2.6 million of Section 106 funding at the end of 2019-20, with an in year spend of £383,000. The second IFS was produced for 2020-21 showing £2.75 million retained at the end of this period. The reports can be found on the Council's Infrastructure Planning page.
- 4.5 To ensure that section 106 triggers are monitored, and funds collected as required by the relevant Section 106 agreement, the Planning Services team in Place has taken on the role of monitoring and collecting Section 106 funding for highways schemes and projects. As Planning Services now has the appropriate Section 106 monitoring software, which has been populated with all Section 106 agreements held by the Council including the triggers, it is efficient and appropriate for the funds to be monitored and collected centrally in this way. However, with Section 106 monitoring forming only part of an officer's role, it is not possible to monitor project delivery across all the functions of the Council. Each Council department therefore needs to have a process in place to deliver the projects it is specifically concerned with, in line with the Section 106 obligations by which funding is due to be collected, and to ensure projects are delivered within the appropriate timeframe.
- 4.6 The advent of the Derbyshire Highways Transformation Programme has focussed activity in areas where improvements and efficiencies can be made in service delivery. A significant level of collaboration between Place Highways, Planning and Finance teams has taken place over the last year that has resulted in the recognition that the approach in dealing with the implementation of highways schemes resulting from Section 106 agreements and their associated financial management needs to be reformed. This is to ensure that:

- There is transparency in the Council's approach to applying Section 106 funding to these schemes.
- As much as possible, schemes resulting from Section 106 agreements are timed to co-ordinate with internally commissioned highways schemes, so that the highways benefits are maximised and disruption on the highways network is minimised.
- There is clear accountability for delivery of highways schemes resulting from Section 106 agreements.
- There is a clear audit trail to ensure Section 106 monies are allocated and monitored.
- Section 106 funding is spent within the timeframe from the payment of the funding contribution as required by the relevant Section 106 agreement.
- For accounting purposes, the correct ledgers are added to when the contribution is paid and (i.e., re. Section 106) are drawn from or added to the appropriate budgets where the scheme takes place in advance.

4.7 As the Derbyshire Highways Transformation Programme matures, the Commissioning Service will ensure that the necessary specifications, policies, priorities and coordination are considered when schemes associated with Section 106 agreements are packaged up for the delivery service. The implementation of a Project Delivery Office (PDO), as part of the development of the Commissioning Service, will provide the necessary governance, reporting and process management that will support the management, delivery and visibility of Section 106 agreements.

5. Consultation

5.1 As this activity forms part of the Derbyshire Highways Transformation Programme and is focussed on service improvement, formal consultation is not required.

6. Alternative Options Considered

6.1 Do nothing – for the reasons mentioned in Section 4 and to ensure that the Derbyshire Highways Transformation Programme is able to deliver the intended benefits, do nothing is not an option being considered.

6.2 Do something different – the agreed preferred approach in collaboration with Place Planning Service, Finance and Procurement colleagues is as follows, albeit this will be subject to amendment as the work under the Derbyshire Highways transformation programme progresses:

- Highways Development Control respond to planning consultations
- Where a planning application is granted with a Section 106, the Director of Legal and Democratic Services to provide all Section 106 agreements to Planning Services to record the obligations and potential trigger dates on the Mastergov system.
- Planning Services to monitor development progression and invoice when necessary.
- Once funds are received, the Highways Commissioning Service will be notified with the relevant information (project, expiry date, and number of the trigger) and a copy of the Section 106 agreement. Having a central point of contact within the Highways Commissioning Service to allocate projects to accountable leads for delivery, to monitor project progression and to ensure early engagement with procurement colleagues, will create a more robust and transparent process.
- The Highways Commissioning Service will identify a project delivery lead and assess any impacts on highways delivery programmes. The PDO that is currently in development will provide the necessary governance.
- Project identified and funds allocated with an appropriate finance Work Breakdown Structure (WBS) code.
- Accountable lead to ensure that the necessary approvals are in place as per the delegations in this report and Planning Services to record funding allocation on the Mastergov system.
- Accountable lead to provide the necessary updates to Planning Services colleagues to monitor progress and to ensure delivery within the allotted timescale.
- Costs recharged to the relevant finance code and Accountable lead and Place Finance to keep track of spend.
- Project completion date to be provided to Section 106 Monitoring Officer which will also be recorded along with spend on the Mastergov system.
- Planning services to provide an annual report to Cabinet on Section 106 progress aligned to the preparation of an annual IFS as mentioned in paragraph 4.3.

7. Implications

- 7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

8. Background Papers

- 8.1 None identified.

9. Appendices

9.1 Appendix 1 – Implications.

9.2 Appendix 2 - Table of existing Section 106 agreements and their proposed allocation. A Red, Amber, Green (RAG) rating has been applied to each entry to identify the position each Section 106 agreement is in in relation to their expiry date. In addition, where appropriate, Section 106 agreements have been grouped together geographically.

10. Recommendations

That Cabinet:

- a) Notes the content of the report.
- b) Approves the creation and the allocation of funds to existing or new Section 106 projects identified in Appendix 2 and adding them to the highways capital programme where appropriate.
- c) Approves the draft process for managing Section 106 agreements as outlined in this report.
- d) Agrees to receive an annual report detailing progress and updates aligned to the annual Infrastructure Funding Statement.
- e) Delegates amendments to the Section 106 process described in this report and future Section 106 allocations to the Director of Highways in consultation with the Cabinet Member - Highways, Assets and Transport.

11. Reason for Recommendations

11.1 To deliver a more efficient, effective and transparent Section 106 process, in collaboration with Place Planning Services and finance colleagues, as part of the Derbyshire Highways Transformation Programme.

12. Is it necessary to waive the call in period?

12.1 No.

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Implications

Financial

- 1.1 The Section 106 funding is allocated to mitigate the impacts of a development resulting from the planning process. The sums involved are agreed as part of the Section 106 process and are intended to reflect the costs associated with the delivery of the specified highways mitigations. Ensuring that there is a clear and transparent process in allocating funds to projects is important to ensure that there is a financial audit trail, that regular financial monitoring is carried out and that Section 106 funds are spent within the allotted time frames.
- 1.2 There is already a Planning Services resource allocated to monitoring Section 106 agreements. As the Derbyshire Highways Transformation Programme is still at an early stage, the financial implications of the necessary Highways Commissioning resource have yet to be determined. This will be a component of the Phase 2 development activities that are currently underway as part of the Derbyshire Highways Programme Delivery. However, the need to agree a consistent, transparent and auditable process for Section 106 agreements cannot wait for the necessary elements of the Derbyshire Highways transformation and, hence, resources to be in place. The opportunity to deliver efficiencies in aligning Section 106 projects to highways prioritised work programmes and ensuring delivery accountability, alongside clear financial processes is an essential component in delivering the Derbyshire Highways benefits case.

Legal

- 2.1 The Derbyshire Highways Service has an obligation to deliver the relevant elements of Section 106 agreements within the defined timeframes stated. In addition, the effective planning and programming of highways activities, both internally promoted and those arising from Section 106 agreements ensures that the Council discharges its duties under the Traffic Management Act 2004.

Human Resources

- 3.1 As part of the Derbyshire Highways Transformation Programme, a Commissioning and Delivery Service will be created to deliver services using the mixed economy model, as approved by the Derbyshire Highways Programme Board in August 2021. This model of delivery will ensure that the service can scale its resourcing to meet the demands

placed upon it. The service transformation is still at an early stage and the requisite resourcing has yet to be designed. However, the model does provide for a dedicated function within the commissioning service that will be accountable for determining delivery priorities and providing the reporting of progress of programmes of work which will include the works associated with Section 106 agreements.

Information Technology

- 4.1 The requisite Planning Services back-office systems are in place to manage and monitor Section 106 agreements. Derbyshire Highways has existing asset management systems to deliver programmes of work, however, the implementation of more effective asset management systems to reflect the needs of a transformed Highways Service is underway as a component of the Transformation Programme.

Equalities Impact

- 5.1 N/A.

Corporate objectives and priorities for change

- 6.1 The delivery of the Derbyshire Highways Transformation Programme is a key component of the Place Service Plan and supports the delivery of Council Plan priorities.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

- 7.1 The delivery of an effective Section 106 process ensures the consistent application of the Highways Service asset management principles, specifications and standards to all programmes of work, whilst providing a clear, transparent audit trail in discharging its legal responsibilities.