

## **SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Overview and Scrutiny Committee **DATE:** 11<sup>th</sup> July 2019

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**WARD(S):** All

### **PART I**

#### **FOR COMMENT AND CONSIDERATION**

##### **SECTION 106 MONEY UNSPENT**

1. **Purpose of Report**

To respond to a Members' request for information on unspent Section 106 money, how Section 106 income is allocated and time limits for spending.

2. **Recommendation(s)/Proposed Action**

The Committee is requested to note the report.

3. **The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan**

3a. **Slough Joint Wellbeing Strategy Priorities**

No direct implications but the content of the report is associated with gaining money for infrastructure or housing or Council services/duties relevant to:

3. Improving mental health and wellbeing
4. Housing

3b. **Five Year Plan Outcomes**

No direct implications but the content of the report is associated with gaining money for infrastructure or housing or Council services/duties relevant to:

- *Our people will be healthier and manage their own care needs*
- *Slough will be an attractive place where people choose to live, work and stay*
- *Our residents will live in good quality homes*
- *Slough will attract, retain and grow businesses and investment to provide opportunities for our residents*

4. **Other Implications**

(a) **Financial**

There are no financial implications of the proposed action.

(b) Risk Management

None

(c) Human Rights Act and Other Legal Implications

No Human Rights Act Implications.

(d) Equalities Impact Assessment None

**5. Supporting Information**

5.1 The following was requested at the 31st January 2019 meeting :

The Committee asked to receive a report outlining the process regarding the allocation of funds from S106 receipts, information regarding why the Council currently holds approximately £14.4m unspent Section 106 ("S106") receipts, clarification relating to the time period the Council has to allocate/use the monies prior to having to pay it back to developers and details of the number of incidents when this had occurred.

The size of the current balance

- 5.2 As at June 2019 the current balance of S106 planning obligation financial contributions held and unspent is £10.2 million. However £8.7 million is a more realistic figure to use as this excludes money held for long term maintenance of open space transferred to the Council by some developers. Taking ownership of land and its associated liabilities is a different category of planning obligation than receiving money for infrastructure and affordable housing.
- 5.3 93% of the £ 8.7 million is already committed to specific works, projects or tasks. Furthermore most of the £8.7 million sum relates to proposed capital works the rest is collected for non capital items (see below). Non-capital items include for example Travel Plan monitoring, money for bus passes which could be spent over a period of years or money for the legal processes such as introducing parking restrictions. Consequently £7 million is the current balance held for capital works most of which is for proposed highway and transport works.
- 5.4 Of the total balance held (£10.2 million) the split by service area is as shown below. Education had a higher proportion of unspent monies until last year.

£ million (rounded)	Capital	Non capital (excluding identified maintenance)	Maintenance
Recreation/ open space	1.3	-	1.5
Education	0.7	-	-
Affordable Housing	0.4	-	-
Air Quality	0.2	minor	-
Highways/ Transport	4.4	1.7	0.05
<b>Total</b>	<b>7</b>	<b>1.7</b>	<b>1.55</b>

5.5 Please note the above table covers unspent money only. The proportion, by service area, of all money received is very different. In general, education and highway/transport receive about the same amount each and combined, their income makes up about 75 % of total receipts over recent years. It should also be noted that the value of non-financial planning obligations, which includes affordable housing provided by developers on or off site, is not reflected in the financial contribution figures above.

5.6 New regulations coming into force in September 2019 require Council's to publish, in 2020, an infrastructure funding statement listing Section 106 money received and spent. A national standardised format for categorising and listing contributions etc. is expected to be available for use by Councils.

#### Reasons for existing balances

5.7 There are several reasons for the size of the current balance which are set out below.

- If S106 money is a contribution towards only part of a project time is needed to gather additional funds before committing to spend. (A pooling restriction has contributed to this issue – see below.)
- In the time between requesting funding and it being received department priorities can change or the size and scope of a project may need to alter. Several years can pass between the date S106 contributions are first requested and receipt of the income.
- Where the S106 spend deadline is several years away other funding, with a shorter spend deadline, might be used in place of S106 income. (This only works where S106 spend is not precisely defined in the legal agreement).
- Receipt of income is not predictable long term as it depends upon when or if a developer chooses to start work. S106 money is normally received at commencement of development, part way through construction or at occupation of development or a combination of these thresholds. Departments are consequently unwilling to commit to a precise timescale for spending income before it is actually received. Planning, Finance and budget holders will be working together to improve Council systems to make it easier to update budget

holders of likely timescales for and degree of certainty regarding receipt of income.

- The impact of new development on infrastructure is not always immediate – for example new housing does not result in peak education demand until several years after completion.

- 5.8 Pooling restriction – a few years ago the Government introduced a limit of 5 S106 contributions being pooled for any one infrastructure project. This means a large project that needs more than 5 contributions has to wait until other funding sources are found. This restriction will be relaxed in September 2019. It does not apply to affordable housing.
- 5.9 Some contributions have no spending deadlines or long spend deadlines; this gives more flexibility to mix and match different funding sources for any particular project.
- 5.10 In conclusion budget holders require some flexibility for spending money held for investment. The current balance is perhaps not particularly high bearing in mind the 5 to 10 year spend period available and the fact that new receipts are continually being received.

#### Process for allocation

- 5.11 In most cases the S106 planning obligation (the legal agreement or unilateral undertaking) specifies how the financial contribution must be spent and on which project. Sometimes this is very specific e.g. expansion of an identified school while at other times it is more general such as 'affordable housing' in the Borough giving some flexibility on precisely how it is spent.
- 5.12 Each contribution has a specified budget holder, usually a service lead or service manager, who is informed, when a S106 is signed, that income can be expected and any restrictions on how it is to be spent, in particular, time limits for spend. When the funding is received the Finance team will inform the budget holder. Based upon expected income budget holders will commit or allocate money to specific projects or tasks where the S106 does not precisely define these.
- 5.13 Precisely how and when money is spent is the responsibility of the budget holder. When agreeing a new project they will review available funds including any S106 income that is available to assemble the required budget. The Finance Team hold a spreadsheet of monies expected received and spent etc. together with a summary of spending restrictions. They remind budget holders of time limits.
- 5.14 Depending on the type of project programming of spend will vary – sometimes it will involve commissioning design work and arranging a contract or instruction to a service department e.g. for a junction improvement, new cycleway, school building extension. Affordable housing money may be used to top up a fund for a forthcoming Council housing project or, in the past, assisting a partner registered provider to construct new homes. Some spending is evenly spread over a number of years and effectively committed without action by the budget holder such as maintenance work. Spending on travel plan monitoring is dependent on the associated building occupier submitting information to the Council.

## Time period for spending

- 5.15 The time limit for spending S106 money is usually fixed at 5 years, 8 years or 10 years from receipt. 5 years is the accepted guideline for most circumstances but Officers seek and often get a longer period which provides flexibility for the budget holder.
- 5.16 Money for maintenance is rarely time limited. Some income has no limit on spend recorded within the S106; these tend to be very old agreements or unilateral undertakings.
- 5.17 It can be confirmed that Slough has never returned S106 income to a developer/land owner because it was unspent by the time limit. Occasionally developers or agents (on a no win, no fee basis) or researchers ask if money is being spent correctly or within the required time limit.

## 6. **Background Papers**

- '1' - Internal accountancy spread sheets of Sec. 106 money received and spent for each financial year.
- '2' - Government Planning Practice Guidance
- 3 - Community Infrastructure Levy Regulations 2010
- 4 - Amendment to 2010 Regs coming into force 1<sup>st</sup> September 2019 (re pooling and infrastructure funding statements).