

ARUN DISTRICT COUNCIL

REPORT TO AND DECISION OF PLANNING COMMITTEE ON 27 APRIL MONTH 2021

SUBJECT: Section 106 Spending

REPORT AUTHOR: Rosalind Bentley (Planning Obligations and Monitoring Officer)

DATE: March 2022

EXTN: 01903 737636

AREA: Place

EXECUTIVE SUMMARY:

This report presents a summary of some Section 106 funds that have been received by the Council in accordance with Planning Permissions which require the funds to be spent on specific purposes or to be returned to the Developer. The Council intends to discharge the obligation by transfer of the funds to third parties not beneficiaries under the Deeds. This report requests authorisation to enter into Deeds of Agreement with the relevant third parties and formally transfer the responsibility for discharging the obligations under the section 106 Deeds.

RECOMMENDATIONS:

- i. That the committee allows deeds of agreement to be entered into and subsequently allows the expenditure by way of transfer of funds as detailed below:

Planning Ref	Location	Amount	S106 agreed spend	3 rd Party & Intended Spend
BN/84/21/PL	Angel's Nursery	£160,528	Enhancing, drainage, levelling, re-seeding, pitch set out & access to Murrell's Field as previously agreed in the s106	Barnham & Eastergate Parish Council intend to spend as per the agreed s106
LU/330/18/PL	South of Cornfield Close	£125,849	For off-site play equipment at Littlehampton for the supply and installation of a range of play equipment improvements with appropriate surfacing to	Littlehampton Town Council have recently replaced the play equipment at Rosemead at a cost of £135k in anticipation of this sum and so are looking to offset that spend using this s106 funding

			enhance and improve existing facilities	
A/144/15/PL	Land at West End Nursery, Roundstone Lane	£72,879	To be used towards promoting and financing community policing and crime reduction and security initiatives within the vicinity of the site	Sussex Police have recently recruited more officers in the teams that cover this area. They are also planning to create a Wellbeing Room at Littlehampton Police Station. This expenditure would be in accordance with the terms of the s106

- ii. That the Committee approve the virement of funds in accordance with the Council Constitution for the financial recording of the S106 agreements.

1. BACKGROUND:

1.1 Officers have considered the proposed enhancements and consider they would be appropriate, meet the requirements of the s106 and in all instances Arun are effectively an Agent (acting as an intermediary) to transfer funds once a deed of agreement with the 3rd party is completed. The deed of Agreement will ensure full legal responsibility will be at the hands of the 3rd party and Arun DC will be able to claw back funds from them should the s106 agreement criteria of spend not be fully met.

1.2 The Constitution under Part 6 Section 3.2.2 states that any virement of s106 funds over £25K needs authority from the relevant committee. The amounts the subject of this report exceed this limit. The report therefore recommends approval of the virement.

2. PROPOSAL(S):

To agree the recommendations.

3. OPTIONS:

Not to agree and risk the held S106 funds having to be refunded to the developer

4. CONSULTATION:

Has consultation been undertaken with:	YES	NO
Relevant Town/Parish Council	x	
Relevant District Ward Councillors		x
Other groups/persons (please specify)		

5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES:

YES	NO

(Explain in more detail at 6 below)		
Financial	x	
Legal	x	
Human Rights/Equality Impact Assessment		x
Community Safety including Section 17 of Crime & Disorder Act	x	
Sustainability		x
Asset Management/Property/Land		x
Technology		x
Other (please explain)		x

6. IMPLICATIONS:

FINANCIAL

The release of s106 funds over £25k must be authorised by the relevant committee. As explained in legal implications the funds will not be released until a deed of agreement has been completed. There is also a risk of refund if not spent in time.

LEGAL

Section 106 of the Town and Country Planning Act 1990, as relevant, provides that “Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (a);(b).....;(c).....; or (d)requiring a sum or sums to be paid to the authorityon a specified date or dates or periodically. The sums are to be paid for the purposes set out in the section 106 Deed, and if not used for that purpose it is repayable to the payer.

The purpose can be achieved by the Council executing the purpose itself (e.g procuring and fitting play equipment) or by asking a third party to do it. The third party can be a contractor in which case the decision to appoint the contractor (and on what terms) has to be made in accordance with contract standing orders; or it can be by a Parish Council or other public body in which case the decision to have the purpose executed by the Parish Council or other public (and on what terms) has to be made in accordance with the constitution. In order to ensure that the third party spends the funds on the specified purposes they are required to enter into a deed of Agreement with the Council which claws back money not spent on the specified purposes. The purposes are all within the powers of the Council.

CRIME AND DISORDER

By Section 6 of the Crime and Disorder Act 1998 the Council and its partners are required to formulate and implement a strategy for the reduction of crime and disorder in the area. Further Section 17 of the Crime and Disorder Act 1998 places a duty on the Council to exercise its various functions with due regard to the likely effect of the exercise of those functions, and the need to do all that it reasonably can to prevent crime and disorder in its area. The payment to the Sussex police is therefore within the powers of the Council.

7. REASON FOR THE DECISION:

To discharge obligation under section 106.

8. BACKGROUND PAPERS:

S106 dated 12-04-17 (as amended) under [BN/43/16/PL](#) (as amended under BN/84/20/PL)

S106 dated 14-08-19 under [LU/330/18/PL](#)

S106 dated 01-06-16 under [A/144/15/PL](#)