

ARUN DISTRICT COUNCIL

REPORT TO CABINET 9 DECEMBER 2019

SUBJECT: Section 106 Obligations Agreed, Secured and Received Summary

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

DATE: 7 November 2019

EXTN: x 37636

PORTFOLIO AREA: Planning

EXECUTIVE SUMMARY: This report presents a summary of S106 data concerning planning obligations.

RECOMMENDATIONS:

That Cabinet notes the content of this report.

BACKGROUND AND ISSUES

1. As at the end of September 2019 (and only including agreements logged up to the 31 March 2019) there are 112 live Section 106 Agreements with 481 financial and 237 non-financial obligations agreed and being monitored by Arun and WSCC.
2. On agreements signed between 1 April 2014 and 31 March 2019 approximately £18.1million has been received against them (£12.5mil received by West Sussex County Council (WSCC) and £5.6mil received by Arun DC). There is currently over £10mil of paid obligations still to be spent by Arun or transferred to third parties such as the NHS (this figure includes Pagham Harbour Mitigation contributions to be transferred to Chichester DC). (See Table 2)
3. In the last financial year 2018/19 Arun has received over £2.02 million in Section 106 contributions. This along with previously received amounts are regularly being monitored for allocation, spending or transfer to third parties such as the NHS, Police etc. (This figure includes Pagham Harbour Mitigation contributions to be transferred to Chichester DC but does not include Public Open Space maintenance sums). All contributions must be spent in strict accordance with the Agreement and require ongoing monitoring until they are fully spent.
4. It is acknowledged that monitoring processes were not satisfactory between around 2013 and 2017 and that resources were insufficient to be able to adequately monitor all planning obligations which resulted in the potential loss of some funds and non-financial obligations not being adhered to sufficiently and timely.

5. The Group Head of Planning took up his position in April 2017. Approximately 3 years ago a new officer took up post dealing solely with s106 monitoring and reporting. They inherited a system that was inadequate, incomplete and impossible to cross reference. It has taken all for this time to put new monitoring systems and processes in place with additional resource obtained for monitoring the strategic site non-financial obligations. All historic cases have been investigated and are resolved or in hand to resolve. Therefore, such delays and oversights are much less likely now.
6. A significant issue was caused by the Governments removal of the Affordable Housing Policy that removed the requirement for contributions on small sites (under 10 units). If the development had been implemented without payment it was treated as a breach and invoices were sent to try and retrieve the funds. However, if they hadn't implemented their permission with obligation, they were given the option to apply for a fresh permission (probably without obligation), apply to remove the obligation or to pay it. In hindsight we could have written off all the breached obligations, as a recent appeal was allowed on such a scenario.
7. Another issue is ensuring the contributions received are spent on the specific projects in the agreement, within the prescribed timescales. Some projects are very prescriptive (due to previous pooling restrictions whereby no more than 5 contributions were allowed to be secured for any one infrastructure project) and the projects could change over time, they will potentially need a deed of variation on top of the required deed of agreement together with a firm commitment (such as a copy of a contract) before the contributions can be forwarded on to third parties for spending.

NEW COMMUNITY INFRASTRUCTURE LEVY (CIL) REGULATIONS AND HOW THEY AFFECT S106 MONITORING

8. As part of the recently amended CIL regulations (Part 10A -121A) which came into force on 1 September 2019, Local Planning Authorities that have received developer contributions must publish, at least annually (starting December 2020), an Infrastructure Funding Statement (IFS) summarising their developer contributions. This must include, amongst other things, S106 Agreements signed in the reporting year, a list of live obligations and a list of obligation transactions (i.e. secured, received, spent). It will require significant resource to produce these reports as our current systems are not able to automatically produce this data.
9. Our obligation statuses will need re-categorising to match the IFS data format as follows:

Secured = Obligation is known to be due i.e. it's reached its trigger point and is being chased as outstanding or invoiced

Received = Paid or Part Paid

Allocated = Money received and committed to a project – there will be a related ICM/Cabinet or Delegated report

Transferred = Money received and Transferred to an 3rd party organisation

Spent = All the money received has been spent

Returned = Money received has been refunded

The categories of infrastructure held on our S106 Monitoring system (LAM) and our Finance Budget Monitoring Report (Appendix 1) are not currently consistent with each other and the categories as set out in the new regulations so further considerable resource is needed to sort this out.⁴

10. As part of the new CIL Regulations we are now able to charge a S106 monitoring fee which will help us recover the costs of monitoring and reporting the Section 106 obligations. We have started to include this within new agreements (from 1 September 2019) and is anticipated that this will now generate some income for the Council (where there has previously been none) to direct to monitoring the agreements.
11. With CIL collection highly likely to start in Spring 2020, we are already starting to set up our monitoring processes by getting new documents and reports set up ready to administer this new process. We are going to use the existing monitoring system which is already used to monitor S106 so where possible similar monitoring processes will be used for consistency and ease of use. We will continue, as we do for S106 spending monitoring, to have regular liaison with the infrastructure providers, to track the status of projects and to ensure money is not transferred until committed projects are in place. We will be required to receive all CIL money including for such items that would normally go direct to WSCC so this will increase the workload in finance. The full details of how we will administer CIL and its spending has not been finalised yet.
12. Following the adoption of CIL, there will be significantly less s106 agreements and these will be limited to strategic sites and affordable housing. ADC may consider having only one signatory to a s106 agreement and that ADC would manage all financial obligations within s106 agreements planning (even for matters which currently are dealt with by WSCC). There are positives and negatives for such an approach. It would probably speed up the completion of agreements and provide a greater degree of certainty for ADC that contributions were being spent on matters for which they had agreed upon. However, historical problems of WSCC spending contributions in a way that we do not agree with were at a time when such agreements allowed for flexibility to do so. Agreements made now are much more specific in terms of where contributions can be spent. Doing this would also create a great deal of extra work (with no additional income or resources) in terms of paperwork for spending agreements for contributions and would result in the ADC being responsible for the spending of contributions for which WSCC has a statutory responsibility for – highways and education for example.

SUMMARY S106 DATA – CURRENT STATUS

Over £6 million is currently agreed or secured for Arun in completed Planning Obligations dated between 1st April 2014 and 31st March 2019.

£10.8 million is currently received by Arun and awaiting spending or transferring to a third party to be spent.

13. Table 1 pulls all the Arun obligation amounts currently 'live' in the S106 monitoring system which are agreed or secured (only including new Agreements logged up until 31 March 2019) and all monies actually received. It should be noted that some of the amounts agreed may never be received due to sites not being implemented, revised agreements or land/buildings not being transferred to Arun for maintenance. Also, some of the amounts agreed (principally for West Sussex obligations) may be based on a formula which can only be calculated once further details are known from future reserved matters permissions. It is not possible to estimate a likely total amount for these applications without doing so on a site by site basis as these amounts are not logged on the system until they are the actual amounts required. The amounts secured are in addition to the amounts agreed and received but have a greater degree of certainty as they have become due and are currently being chased for payment but again there is still a small degree of uncertainty as per the case of affordable housing contribution on small sites as mentioned in paragraph 6.

Table 1 - Current Summary of Arun S106 Obligations

Category	Amount Agreed £'000 ³	Amount Secured £'000 ³	Amounts received and available or committed to spend* £'000 ⁴
Affordable Housing	105	6 ¹	3,189
Pagham Harbour	465	7	106 ²
Community Facilities	1,321	0	1,865
Open Space and Leisure	1,535	24	650
Health	1,778	51	1,659
Police	219	0	7
Highways to Arun	180	0	1,169
Education to Arun	0	0	1,853
Others	356	0	2,209
Totals	5,959	88	10,881

¹ The amount of Affordable housing secured is not likely to be received as these invoices are currently going through the ICM write off process due to the issue with the affordable housing policy on small sites

² Some of the Pagham Harbour amounts in available to spend are still at risk of refund (if developments not implemented) due to them being advance payments

³ The agreed and secured amounts on agreements signed between 1 April 2014 and 31 March 2019

⁴ The amounts available have been extracted from finance records and show the summary of money received and waiting to be spent per category. Please note that although the total matches the Budget Monitoring Report total at Appendix 1 the category amounts do not coincide exactly with the finance budget codes. Resource will be required to re-categorise across all records to adhere to the new government return categories as explained in paragraphs 8 and 9.

14. Table 2 summarises all obligations paid on Agreements signed between 1 April 2014 and 31 March 2019.

Table 2 - Summary of Obligations Paid on Agreements signed in the last 5 years (1 April 2014-31 March 2019)

Category	Amount Paid £'000
Affordable Housing	1,132
Pagham Harbour	203
Community Facilities	1,322
Open Space and Leisure	261
Health	620
Police	67
Others	102
Highways to Arun	0
Primary Education to Arun	1,855
Sub Total for Arun	5,562
Education to WSCC	8,117
Highways to WSCC	3,880
Libraries to WSCC	351
Fire Service to WSCC	33
Others to WSCC	168
Sub Total to WSCC	12,549
Total	18,111

15. Further detail from the Budget Monitoring Report (Appendix 1) is listed in Table 3 below to highlight sums that are still available for spending against a particular infrastructure project as at 30th September 2019. It also shows some of the Arun and WSCC agreed or secured amounts linked to a project but these amounts are not definitely going to be received. **Please be aware that these tables do not show all possible projects.**

Healthcare

<u>Project</u>	<u>Amount Received</u>	<u>Amount Agreed or Secured</u>	<u>Development Site</u>
Provision of Healthcare in	£522,854	£94,792	Received from LU/355/10 Courtwick (Kingley Gate) and

Littlehampton (HCL, HCF, NHS- LU)			LU/47/11 Land North of Toddington and Agreed for LU/116/13 Hollyacre Phase 2, LU/229/10 Windroos Site & LU/55/15/OUT Land South of The Littlehampton Academy	
Healthcare - Angmering Medical Centre (New build or expansion) (HCA) and Healthcare projects in Angmering (HC8, HCG, HCJ)	£328,423	£620,579	Received from A/82/12 Land to east of Roundstone Lane and A/167/14/PL Land at Pound Nursery Roundstone Lane and Agreed from A/51/14/OUT Manor Nursery, A/27/16/PL Broadlees Dappers Lane, A/99/17/OUT Land South of Water Lane and A/114/18/PL Broadlees	
Healthcare - Extension to Croft Surgery (HC2) and other related projects in Barnham (HC1, HC9, HCC, NHS - BN)	£236,159	£659,721	Received from AL/61/13 Land at Nyton Road and Northfields Lane, BN/7/12 Land north of Yapton Road, BN/16/12 Pollards Nursery and Agreed from Y/19/16/OUT Burndell Road, WA/22/15/OUT Fontwell, Y/91/17/OUT Land at Bilsham Road and WA/23/17/OUT Barnfield House	
Medical Equipment and Services at Surgery serving Yapton (HJC) and other projects related to Healthcare in Yapton (HC4, HCH, HCM, HCV, HCW, NHS – Y)	£508,225	£52,408	Secured from Y/5/17/OUT Cinders Nursery and Agreed from M/45/16/PL Land West of Yapton Road, CM/1/17/OUT Land West of Church Lane & South of Horsemere Green Lane, Y/1/17/OUT Bonhams Field, Y/44/17/OUT Land at Stakers Farm North End Road	

Community Facilities

<u>Project</u>	<u>Amount Received</u>	<u>Amount Agreed or Secured</u>	<u>Development Site</u>
For Improving the Keystone Community Centre (CKC, COM-LU)	£306,367	£41,499	Received form LU/355/10 Courtwick (KingleyGate) and LU/116/13 Phase 1 Hollyacre and Agreed from LU/116/13 Phase 2 Hollyacre
Provision of Public Art in Angmering	£26,515		A/167/14 Land at Pound Nursery, A/82/12 Land East of Roundstone Lane and A/144/15 Land at West End Nursery, Roundstone Lane (Cresswell Park)

2 Pitches/Pavillion/ Changing room/ Car Park in Angmering (PA8)	£618,375	290,296	Received from A/167/14 Land at Pound Nursery, A/82/12 Land East of Roundstone Lane and A/144/15 Land at West End Nursery, Roundstone Lane (Cresswell Park) Agreed from A/51/14/OUT Manor Nursery and further amount secured from A/144/15
Sport Halls in the District (General) (SPG)	£316,216	67,635	Received from A/144/15 Land at West End Nursery, Roundstone Lane (Cresswell Park), LU/229/10 Former Windroos Nursery & and AL/61/13 Nyton Nursery and Agreed from LU/55/15/OUT Land south of Littlehampton Academy and LU/229/10 Windroos

Education

<u>Project</u>	<u>Amount Received</u>	<u>Amount Agreed or Secured</u>	<u>Development Site</u>
New Primary School in Angmering (EDK, EDA)	£1,854,595 at ADC and £3,649,195 at WSCC	£2,286,031 to WSCC	Received and Secured form A/167/14/PL Land at Pound Nursery Roundstone Lane and A/82/12 Land to east of Roundstone Lane A/144/15/ Cresswell Park Development and Agreed from A/99/17 Land South of Water Lane
Towards additional facilities at The Angmering School (EDE, EDN)	£833,192 at WSCC	tbc	A/144/15 Cresswell Park Development and Agreed amounts tbc from A/142/16/OUT, A/169/17/OUT, A/44/17/OUT, A/132/17/OUT

Highways

<u>Project</u>	<u>Amount Received</u>	<u>Amount Agreed or Secured</u>	<u>Development Site</u>
Lyminster Bypass (HWB)	£1,168,680 at ADC £475,000 at WSCC	£1,629,998	Received from LU/355/10 Courtwick Lane (Kingley Gate) LU/229/10 Former Windroos Site and LU/271/11/ Former Body Shop (now Morrisons) and Agreed/Secured from LU/47/11 North Littlehampton and LU/229/10/ Windroos

<u>Project</u>	<u>Amount Received</u>	<u>Amount Agreed or Secured</u>	<u>Development Site</u>
Bus Service for North Toddington Development	£218,096 at ADC		LU/47/11 Land North of Toddington Lane.

16. At 30 September 2019, there were a total of 30 outstanding individual obligations within 12 s106 agreements that we are seeking compliance with. Only 10 of these financial obligations relate to ADC matters (it is the responsibility of WSCC to invoice for their contributions if they are being paid to them). It is worth noting that this figure is exceptionally low in comparison to the total of 718 obligations referred to in paragraph 1 of this report. In all 10 cases, invoices have been sent (some obligations are part paid). All outstanding cases are logged as such on the monitoring reminder system so they are not forgotten about and relevant chase up and enforcement action will be taken where necessary if payment is not forthcoming.
17. Of these outstanding obligations most are for small amounts for Pagham Access contributions and the only more significant amounts are £14,000 play area equipment on AL/8/16/OUT and £50,000 for NHS contribution on Y/5/17/OUT. The contribution from Y/5/17/OUT is due prior to first occupation – whilst the development has commenced, this trigger has not yet been reached. Similarly, the contribution on AL/8/16/OUT is due on first occupation. The applicant informed us that the development was commenced in September 2019 and requested that we send an invoice. As invoices have been issued, our database classifies these as 'outstanding', even though the trigger has yet to be reached.

1. PROPOSAL(S):

That the report is noted

2. OPTIONS:

n/a

4. CONSULTATION:

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

5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)

	YES	NO
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: None. The report is a position statement.		

7. REASON FOR THE DECISION: n/a
8. EFFECTIVE DATE OF THE DECISION: 18 December 2019

9. BACKGROUND PAPERS: https://www.arun.gov.uk/planning-obligations/ https://www.arun.gov.uk/cil/
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