

PERFORMANCE MANAGEMENT SCRUTINY COMMITTEE

Scrutiny Review into Section 106 Expenditure

1. Executive Summary

2. The Performance Management Scrutiny Committee (the Committee) has now received its second evidence gathering session as part of its Scrutiny Review into the subject of 'Section 106 Expenditure at Braintree District Council (the Council).
3. Throughout this evidence gathering process, officers have presented various aspects of Section 106 which Members of the Committee have had the opportunity to scrutinise. In particular, the Committee is very grateful to Dominic Collins, Corporate Director for Growth and his team who have shared their knowledge and experience to help Members better understand the scope and activities carried out by the Council in respect of Section 106. The Committee are also grateful for the support given by Kerry Harding, Director of Estates - NHS for her contribution to the scrutiny review.
4. The drive from central government for the Council to meet its housing targets has resulted in significant housing growth across the District, a trend that will continue in the coming years as the approved Local Plan shapes the future of the District.
5. This growth in housing has progressively imposed a significant burden upon the infrastructure of our communities as developers have driven forward with several significant new developments. The Town and Country Planning Act, Section 106, provides the opportunity for the Local Planning Authority (LPA) to secure obligations from developers to provide some mitigation to offset against the impact upon communities. The Council and other responsible authorities have been resolute and successful in securing many legal agreements with developers that provide both financial contributions and other commitments as part of the planning approval process.
6. This scrutiny focused upon delivery of the obligations coming from the financial contributions by both the Council and the NHS - contributions to Essex County Council (ECC) and other authorities were outside of the scope of this scrutiny and therefore not covered by this report. Given the limited time available the principle scrutiny was examining the Council's processes and performance, with less of a focus upon the NHS, much of which is outside the control of the Council.
7. Evidence provided to the Committee identified that significant monies were being held by the Council that remain unspent, even where the monies had been received many years earlier. As at 31st March 2022, a total of £7.3million (including

£1.3million for NHS and other authorities) was held; the Council's contributions covered over 171 different contributions which had been held for an average of 5.2 years. The level of funds being held has progressively increased over previous years with expenditure by the Council being significantly lower than the funds being received by developers. Over the past six years, expenditure by the Council against the Section 106 monies held has only been £2.2million against £7.1million being received from developers. However the committee recognized that in some cases, contributions required the accumulation of several different contributions to enable delivery.

8. The increase in receipts has mainly been driven by the growth in housing which has risen from 291 to 1,081 per year over a six-year period. In addition to funds already received the Council has been successful in securing many other contributions which are in the pipeline in further agreements yet to be realized which will place further demand upon delivery in the coming years. In 2020/21 alone, a total of £6.9million in contributions were secured which will be received by the Council in the coming years as the relevant developments are built.
9. This has placed a significant pressure upon already stretched resources within the Council, many of which are shared across a number of other activities and responsibilities. The Committee were informed that there are no current or future plans to increase resources, although one graduate had recently been recruited.
10. The Committee questioned Officers to try to understand if there were any process improvement actions that could be taken to speed up delivery of projects. The Committee were informed that given a number of statutory steps required, there was no scope to significantly speed up the process.
11. It is clear from the evidence presented that the pace of delivery has not kept pace with the pace of monies received. Residents being subjected to a rapid housing growth in their communities have an expectation that at minimum any mitigations actions are taken in line with the growth in housing and not several years after completion which is currently the case.
12. The Committee therefore concludes that actions are urgently required by the Council to speed up the delivery rate of projects that would utilise the S106 monies held by the Council and implement the mitigations without further delay. Action is required to recover the backlog of unspent contributions and put in place the process and resources required to ensure that the Council is able to meet the growing Section 106 receipts in the coming years.
13. Regarding the NHS, the Committee were informed that the Council was holding £1.2million of contributions at 31st March 2022 on behalf of the NHS. Evidence was given by Kerry Harding that a number of projects were in progress across the District, most of which required the accumulation of several different contributions to enable delivery (see first evidence gathering for a list of allocated projects in progress).
14. The Committee challenged what appears to be a low level of contributions requested by the NHS. The Committee was informed that this was a tried and tested formula that was consistent nationally. From three examples, it was found

that NHS contributions amounted to just circa 6% of the total contributions which the Committee feels is very low and unlikely to be in line with residents expectations and wishes.

15. **TERMS OF REFERENCE**

16. Key questions for Scrutiny Review:

- What is the current performance in the expenditure of developer financial contributions received by the Council?
- Scope to include contributions received for the Council responsible expenditure and also those received on behalf of the NHS.
- For the council responsible expenditure, what are the current processes, constraints and resources and are they adequate to deliver expenditure performance at an acceptable level? If performance is not at an acceptable level are actions and targets in place to address this?
- For NHS responsible expenditure, does the NHS have clear plans in place to spend the contributions received by the council on their behalf, and if so, what are the actions and timing to deliver increased healthcare capacity resulting from those contributions?
- To avoid duplication of resources and effort, the Scrutiny Committee to consider agreeing to the proposed Members Reference Group (MRG) on the same subject conducting their work and reporting their recommendations to the committee upon it's conclusion. Note : the proposed MRG was not launched so this was no longer relevant to the scrutiny.

17. **RESEARCH AND EVIDENCE GATHERING**

First Evidence Gathering Session – 25th July 2022
Section 106 - Introduction and Knowledge Gathering

18. In this first evidence gathering meeting, the Committee received a presentation from Dominic Collins, Corporate Director and Emma Goodings, Head of Planning and Economic Growth which was followed by a presentation by Kerry Harding – Director of Estates NHS Mid and South Essex.
19. Mr Collins and Ms Goodings, officers from the Council, gave their presentation in two parts – ‘Part 1 - Policy Basis’ and ‘Part 2 – Local Approach’.
20. The main points were as follows:-
21. Part 1 - Policy Basis
22. Planning obligations were legal obligations entered into via a planning agreement under Section 106 of the Town and Country Planning Act 1990 in order to mitigate the impacts of a development proposal. Planning obligations related to land and they were legally binding and enforceable. Agreements could be made jointly

between a person having an interest in land and the Local Planning Authority; or as a unilateral undertaking.

23. Section 106 planning obligations could restrict the development, or use of land in a specified way; require specified operations or activities to be carried out in, on, under or over land; require land to be used in a specified way; or require a sum(s) to be paid to an Authority on a specified date(s), or periodically.
24. A planning obligation could be unconditional, or subject to conditions; any restriction or requirement imposed could be indefinite, or for a specified period; and the payment of any sum(s) could be for a specified amount and for an indefinite, or specified period of time.
25. Limits relating to planning obligations were set out in Section 122 of the Community Infrastructure Levy (CIL) Regulations 2010. A planning obligation could constitute a reason for granting planning permission for a development only if it was necessary to make the development acceptable in planning terms; if it related to the development directly; and it related fairly and reasonably to the development in scale and kind.
26. The National Planning Policy Framework stated that Local Planning Authorities should consider whether development, which would otherwise be unacceptable, could be made acceptable by the use of conditions, or planning obligations. However, planning obligations should only be used where it was not possible to address unacceptable impacts through a planning condition. Furthermore, where up-to-date policies specified the contributions which would be expected from a development, any planning application which complied with these should be assumed to be viable.
27. The Government had published detailed guidance on planning obligations <https://www.gov.uk/guidance/planning-obligations>. This included guidance on evidence and policy; viability and negotiation/changing agreements; timeframes; restrictions to seeking obligations; vacant building credit; and monitoring and reporting, including Infrastructure Funding Statements.
28. In summary, planning obligations should only be used to make a development acceptable where it would not be otherwise; obligations were subject to negotiation based on policy and evidence; contributions secured via a Section 106 Agreement had to be spent in line with the Agreement and on schemes associated with the development to which they related; contributions relating to open spaces had to be used for publicly accessible space, not private space; and contributions could not be used to remedy existing issues, or for the general maintenance of existing facilities.
29. The Levelling Up and Regeneration Bill proposed that a new tariff should be established, which would be set locally. It was anticipated that this would operate in a similar way to the CIL, but further information was required in respect of how the tariff would be set; when contributions would be collected; and how affordable housing and other on-site requirements would be provided. Re-assurance was also required that contributions collected would be at least as much as those currently

collected via Section 106 Agreements. Further detail on this proposal is awaited from government.

30. Part 2 – Local Approach

31. The process for securing contributions via Section 106 Agreements was based on negotiations between a developer and the Council's Planning Case Officer. Contributions sought on behalf of others, such as Essex County Council and the NHS, were based on responses submitted following consultation on planning applications. Contributions for affordable housing and open space were secured in accordance with policies set out in the Braintree District Local Plan 2013 – 2033. On-site and sometimes off-site facilities were provided by developers. Trigger points were agreed for the payment of funds/completion of facilities throughout the course of a development. Section 106 Agreements were signed by all relevant parties, with planning permission being issued at the same time.
32. Contributions sought via Section 106 Agreements were based on policies set out in the Braintree District Local Plan 2013 – 2033. These included general policies and specific policies relating to affordable housing; open space; and transport and infrastructure. The specific policies were supported by evidence based documents. Policies in the Local Plan were subject to a viability appraisal to ensure that they were reasonable for most developments.
33. Each year the Council publishes an 'Open Spaces Action Plan' which supports policies in the Braintree District Local Plan relating to open space and allotments. The Action Plan includes a list of potential future projects for publicly accessible open space, play space, formal recreation and allotments across the District. The Action Plan is the starting point for considering which projects could be included in Section 106 Agreements and for spending funds secured. It also provided evidence for developers as to how contributions could be spent on local projects. The Council updates and approves the Action Plan on an annual basis following consultation with Parish Councils, Town Councils, sports clubs governing bodies
34. Contributions secured on some sites might not, on their own, be sufficient to deliver a specific project and the Council therefore sought contributions from other developments, or other funding sources, in order to achieve the total funding required. Also, as larger projects might deliver better value for residents, contributions may be held by the Council until additional funding could be secured. More flexibility was now available, as previous restrictions on pooling no more than five contributions had been removed.
35. A group of Council Officers monitored the funds held and those which were expected to be received via Section 106 Agreements. Specific projects were identified and were prioritised based on deadlines for expenditure. The Council's normal procurement and approval processes for expenditure had to be followed. Support was also given to Parish Councils and Town Councils, if required, in delivering schemes on land owned by them. Officer resources had to be balanced between delivering schemes funded via Section 106 Agreements and other corporate schemes and priorities.

36. Information relating to Section 106 Agreements was available in various formats. For major applications submitted to the Planning Committee for determination, details of proposed Section 106 Agreement Heads of Term, if applicable, were included within the Agenda report. Section 106 Agreements were also published on the planning portal section of the Council's website alongside the corresponding planning application. As required by the Government, Infrastructure Funding Statements are produced each year in December and information was supplied in the requisite format. Information relating to contributions secured for particular Parishes could be provided on request.
37. It was reported that the Council had never handed back to a developer any funds which had been secured via a Section 106 Agreement. Contributions received via Section 106 Agreements were not classified as a 'tax' and they could not be spent randomly. However, contributions did not have to be spent in the Parish or area where the related development was taking place. Instead, contributions could be spent where the impact of the development might reasonably be felt. Contributions received via Section 106 Agreements could be pooled and used alongside funds from other sources in order to deliver schemes, where the wording of the relevant S106 agreement allowed. However, expenditure of Section 106 contributions was often not linear. If they wished, Parish Councils and Town Councils could take the lead on spending contributions.
38. Members were then invited to ask questions of the Officers. In response to the questions that were raised, the following information was provided:-
- It was reported that Section 106 contributions could not be spent on remedying existing facilities eg. repairs to a playground, as expenditure had to relate to matters set out in Section 122 of the Community Infrastructure Levy (CIL) Regulations 2010. This sought to ensure that expenditure was focused on the provision of new facilities for new residents. It was not possible for the Council to change a signed Section 106 Agreements unless through agreement with all those party to the agreement. However this takes time and the Council would likely be required to pay the legal fees of all parties.
 - It was reported that negotiations took place between developers and the Council regarding the Heads of Term to be included in a Section 106 Agreement and that developers often 'pushed back' on initial suggestions. It was anticipated, that if the Levelling Up and Regeneration Bill introduced a new tariff arrangement which operated in a similar way to the CIL, contributions could be spent as required eg. contributions secured from a development in Sible Hedingham could be utilised for the benefit of residents living in Hatfield Peverel; or alternatively, contributions could be pooled and allocated to a larger project such as a new leisure pool.
 - It was stated that time limits on the expenditure of contributions were set out in each Section 106 Agreement and that if contributions were not spent within this time they must be handed back to the developer. There were no apparent restrictions to contributions arising from developments in the Braintree District being spent in another District if they meet the tests set out in section 122 of the CIL Regulations 2010.

- Currently, the Government had stipulated the minimum number of new properties which would trigger the payment of Section 106 Agreement contributions. However, it was not known how many properties would be required as a trigger under the new tariff arrangement proposed by the Levelling Up and Regeneration Bill. This was subject to an announcement by the Government. It was possible that a national tariff would be set, but this could be affected by varying property values across both the country and the District.
- The Heads of Term of an existing Section 106 Agreement could be changed if, for example, priorities changed over a period of time. Developers would normally request any change, but all parties to the Agreement would have to be satisfied with it. The Terms of Agreements were kept as flexible as possible.
- Section 106 Agreements could contain trigger points at which contributions became payable eg. on completion of the 99th dwelling on a development of 100 dwellings. However, some developers sought to delay the payment of contributions by deliberately not building the requisite number of dwellings. This was a disadvantage to the system. Also, the non-linear nature of Section 106 Agreements meant that the Council did not necessarily know when contributions would be received. However, in order to avoid this situation the Council sought to secure early trigger points. Furthermore, contributions were index-linked so that if a development recommenced at a later date and the trigger point was subsequently reached, contributions would become payable at that time. It was not known if the Levelling Up and Regeneration Bill would introduce new controls, but it was possible that a Council-Tax levy might be imposed on dwellings which had planning permission, but which had not been built.
- It was acknowledged that planning could be contentious and controversial and also that local people may not support the benefits negotiated on their behalf via Section 106 Agreements. However, Parish Councils and Town Councils were encouraged to keep details of their open space requirements, as set out in the Open Spaces Action Plan, up-to-date, as this helped the Council when negotiating. Furthermore, Parish Councils and Town Councils were encouraged to engage in the planning process even if they did not like a particular development and to make it clear what benefits they might wish to secure from a development. Once negotiations for a Section 106 Agreement had reached the Heads of Term stage it is usually too late to change them. It was acknowledged also that Parish Councils and Town Councils might not have the appropriate skills to deal with Section 106 Agreements, or the financial resources to match-fund contributions for specific projects if required. It was agreed that the process should be made as simple as possible and it was noted that the Council sought to assist Parish Councils/Town Councils where it could. If CIL or governments future proposals are introduced Parish Councils/Town Councils might achieve financial benefits if they had an adopted Neighbourhood Plan.
- It was acknowledged that residents were often frustrated that benefits accruing from new development did not come forward 'on the ground' in a timely way. Furthermore, Infrastructure Funding Statements for 2019/20 and 2020/21 showed that contributions amounting to over £6m, which had been secured via Section 106 Agreements, including over £3.3m for open space provision, remained unspent. Some of these contributions had been secured some time

ago. It was also acknowledged that if the Council had more resources, benefits could be delivered quicker. However, it was reported that difficulties were currently being experienced in recruiting specialist staff. Alternatively, the work could be carried out by a sub-contractor. However, this could be expensive and it reduced the funds available. Communication was considered important particularly in order to address the public's perception of what could be achieved via Section 106 Agreement contributions. It was also important to measure the success of such contributions.

39. Ms Harding (NHS Mid and South Essex Integrated Care System (ICS)) gave her presentation. *It was noted that the ICS was a new partnership between organisations which met the health and care needs of Mid and South Essex.*

40. The main points were as follows:-

- Process:

An Integrated Care Board (ICB) Planning Policy Officer was the single point of contact for health.

Liaison took place with Local Planning Authorities on a regular basis to ensure that the process adopted remained current; and to keep up-to-date with changes to Local Development Plans, trajectory changes and the outcome of planning applications/mitigation requests.

All consultation documents were responded to on behalf of all ICS health partners.

Major applications were presented to and discussed at meetings of the ICS Strategic Estates Group.

Separate Working Groups were established, as necessary, to respond to strategic/major infrastructure applications.

- Planning Formula:

The current planning formula for primary care was: 1,750 patients = 120sqm of space (NIA) @ £3,015 m².

1,750 patients was considered to be the current optimal size for a single GP list. 120sqm of space was aligned to Department for Health guidance.

£3,015 per m² was based on the Building Cost Information Service (BCIS) cost multiplier for new build and extensions to health centres and hospitals.

The number of patients generated by a development was calculated using Borough/District Council average household size taken from the 2011 Census.

Services most likely to be impacted - a 2km radius was considered to be a reasonable distance to access services without the need for a car, therefore enabling reduced car journeys and creating healthy/sustainable communities.

- Evidence to Support Requests:

Requests for Section 106 Agreement contributions should meet the requirements of the Community Infrastructure Levy (CIL) Regulations 2010 and evidence must be provided to show that a request is necessary to make the development acceptable in planning terms; that it is directly related to the development; and that it is fairly and reasonably related in scale and kind to the development.

- Utilisation of Section 106 Contributions:

Funding obtained via Section 106 contributions in order to increase capacity within health and care may be used for the reconfiguration of existing premises; to build a new facility; for IT infrastructure; for the refurbishment of the existing estate; for the extension of existing premises; or for fixed equipment.

- NHS Criteria for Spend:

Section 106 Agreement/CIL contributions were considered to be NHS capital and were public money which was subject to the NHS prioritisation and approval process. Requests to a Council for the draw-down of funds required the submission of supporting evidence and an approved PID/business case.

Section 106 Agreement contributions were subject to abatement in accordance with the Premises Cost Directions 2013. Contributions should not be allocated directly to a GP/Practice.

- Resources:

The presentation included details of Section 106 contributions which had been secured and how these had been, or would be, allocated.

A total of £3,038,092 had been secured in S106 agreements and £1,212,801 was currently available to spend. The planned use of the funds is as follows:

£	Project
£156,497	Silver End Extension
£75,898	Church Lane Phase 2 works
£249,625	Increased capacity Halstead Elizabeth Courtauld Surgery
£36,437	New Hedingham Health Centre
£96,395	Increased capacity Kelvedon Health Centre
£102,976	Fit out of Manor Street
£240,757	New Witham Health Facility
£254,414	Not currently allocated – Sydney House, Great Notley pump house

Details of the periods which these contributions have been held by the Council are set out on in the table on page 13.

- Next Steps:

The ICS would continue to develop business cases in order to initiate development and expenditure.

The ICS would work with Primary Care Networks to develop clinical and estates strategies in order to develop plans for the expenditure of existing and future Section 106 resources.

41. Members were then invited to ask questions of Ms Harding. In response to the questions that were raised, the following information was provided:-

- It was reported that contributions received by the NHS via Section 106 Agreements were subject to the same financial processes as any other NHS funding, in order to ensure that the best value was achieved. Abatement periods were set and funds could be recovered if necessary. If sufficient funds were received via Section 106 contributions, these could be spent exclusively on infrastructure projects without the need for match-funding. The NHS had been subject to a restructure and the former Clinical Commissioning Groups no longer existed.
- Reference was made to the time line between new housing developments being built and occupied, and mitigating infrastructure secured via Section 106 Agreements eg. improvements to GP practices, being provided. It was queried if something was blocking this process.
- It was reported that the NHS Mid and South Essex Integrated Care System (ICS) reviewed proposed development sites allocated in the Braintree District Local Plan and considered their cumulative impact. Work identified in response to this new development was implemented in phases where possible. In each case, it was important to consider the needs of patients and to ensure that the proposed process and model were right. However, work was dependent on the ownership of existing facilities and whether the owners were willing to do what the NHS sought to achieve. In some cases, the owners might also be required to commit funding to the proposed works. It was noted that some Doctors' Surgeries were owned by individual GPs, or groups of GPs. Capacity within the ICS Team had increased and it was hoped that this would improve the Team's impact. The Council and the NHS worked together in order to bring forward specific projects. As an example, a new Doctors' Surgery was being provided at Sible Hedingham where a private provider had also assisted. The Council might also be able to assist if it owned a building in which a Doctors' Surgery could be located.
- It was considered important to keep the public informed about proposed projects; their progress; and why some took time to implement. It was also important that the public should be made aware that GPs worked individually and that the NHS could not require them to relocate to a specific Doctors' Surgery in order to meet patient demand. Therefore the issues weren't just about building the premises, it was also about making sure there was the availability of the right GPs, nurses etc to occupy and deliver the right services. It was acknowledged that communication had not been good in the past, but

some Alliance Teams had now been established by the NHS which were able to spend more time in the community. It was considered important that the public should be informed about contributions received via Section 106 Agreements and how these were being used within the community.

Second Evidence Gathering Session – 21st September 2022

Section 106 - Open Spaces and NHS Expenditure

42. The Committee received a presentation by the following team:
- Dominic Collins – Corporate Director (Growth)
Emma Goodings - Head of Planning and Economic Growth
Sarah Burder – Chartered Legal Executive – S106 Monitoring Officer
Nicola Murphy – Senior Landscape Architect – S106 Delivery Officer
Neil Jones – Principal Planning Officer – Lead S106 Planning Officer
43. The team explained their individual roles in the S106 process and those of other officers who support the overall activity. It was clarified that none of the officers have full time activity on S106 and share their time across other activities in line with prevailing priorities. As such, it is very difficult to quantify the current level of resources specifically engaged in delivery of S106 projects. However, a high level estimate is that across a range of officers the hours spent per week are broadly equivalent to two full time equivalent (FTE) officers engaged in work on schemes/designs, procurement activity, commissioning of construction/delivery of projects, monitoring and working with Parish and Town Councils.
44. Additional staff from the Operations team, Strategic Investment team, Leisure team, Housing Team and Planning teams can also be involved in the delivery of individual projects on a case by case basis depending upon the need. This activity is highly variable and as such very difficult to quantify in terms of resources.
45. The S106 process was thoroughly explained from Pre-application through to delivery. The Council, as the LPA, are responsible for collating the overall S106 legal agreements although in some cases the agreements can include obligations for ECC, the NHS and others.
46. Contributions for the NHS are collected by the Council and distributed to the NHS at their request, as projects were ready to be delivered. The S106 Monitoring Officer ensures the use of the funds complies with the legal agreement. Contributions to ECC can include education, highways and other activities for which they have responsibility. Where required ECC are part of the legal S106 agreement, and the funds go direct to them when available.
47. The process of monitoring and collection of funds is well structured and well managed ensuring the monies due from developers are collected in line with the schedule of payments in the agreements and taking into account any index linking.
48. Delivery of projects can range from simple projects to larger quite complex projects. When implementation is carried out reference is made to the agreements and the Open Spaces Action Plan. The delivery of projects is managed through consultation

with stakeholders, feasibility and design work, procurement process and implementation.

49. For those areas of the District which are parished, in many cases the opportunity is available for Parish and Town Councils to manage the implementation of projects. A process and criteria is available to Councils if they choose to accept this responsibility. Some Parish and Town Councils have taken up this opportunity and in parished areas only spent circa 10% of the BDC expenditure. However, officers experience is that use of this procedure is highly variable and dependant upon the resources and skills available in each Parish and Town Council. However officers are open and supportive in encouraging Councils to use this process.
50. The Committee raised the question about the possibility of variations to agreements as a way of being more flexible with the use of the funds available. Officers advised that this could be complex and costly as developers would be reluctant to change without financial compensation for their legal costs.
51. The Committee were presented with the below chart which tracks the S106 contributions spent by the Council and the NHS compared to the contributions received.

Financial Year	S106 Contributions Received	S106 Contributions spent	District Housing Delivery
2016/17	£ 393,797	£ 364,888	291
2017/18	£ 567,239	£ 114,957	492
2018/19	£ 1,516,432	£259,161	534
2019/20	£ 1,931,100	£ 221,645	883
2020/21	£ 1,012,795	£ 924,953	847
2021/22	£ 1,658,983	£ 322,939	1,081
Total	£ 7,080,346	£ 2,208,543	
Difference between contributions and spend over past 6 yrs	£ 4,871,803		

52. As can be seen from the chart, the spending of funds received has been significantly below the level of funds received of £4.87million over the past six years with spend lower than receipts in each year. It can be reasonably expected that the District Housing Delivery has been the main driver of the increasing level of funds being received. The Committee acknowledges the impact of the Covid-19 Pandemic may have had during 2020/21 and 2021/22, however, expenditure in each of the previous 4 years was significantly below receipts.
53. This differential, plus unspent funds in earlier years, has resulted to an increasing level of funds being held by the Council awaiting spend and delivery.
54. The below chart shows the level of funds being held by the Council. It can be seen that overall these have increased in each of the past three years. The chart breaks down the total unspent funds held into categories to enable a better understanding.

Cat			31/03/20	31/03/21	31/03/22
A	Open spaces, art, cycling, PROW, etc	Funds held	£ 3.4m	£ 3.5m	£ 4.1m
		No of contributions with zero spend	170	170	171*
		No of contributions with >0 and <50% spend	9	8	9
		No of contributions with >50% spend	28	28	32
		Av period funds held	4.2 yrs	4.8 yrs	5.2 yrs
B	Community facilities	Funds held	£ 1.4m	£ 1.8m	£ 1.9m
		No of contributions with zero spend	7	8	8
		Av period funds held	1.4 yrs	2.1 yrs	3.1 yrs
Total Council responsibility			£4.8m	£ 5.3m	£ 6.0m
C	NHS	Funds held	£ 0.6m	£ 0.6m	£ 1.2m
		No of contributions with zero spend	15	15	27
		Av period funds held	1.2 yrs	2.2 yrs	2.0 yrs
D	Other non-Council	Funds held	£0.1m	£ 0.1m	£ 0.1m
Total held by Council			£ 5.5m	£ 6.0m	£ 7.3m

*Many of the contributions are small less than £3,000.

55. **Category A - Public Open Spaces, art, cycling and PROW etc**

56. This group contains the greatest number of contributions received and being held. There is a big variation in the size and scale of the individual contributions.

57. It can be seen that at 31st March 2022 there were 171 unspent contributions with no spend to date and a further 41 where some expenditure has occurred. These contributions have been held for an average of 5.2 years with 16 being held for 10 years or more. The total value of these contributions is £4.1m.

58. The Committee were informed of the complication of Section 106 delivery as it can be nonlinear in terms of receiving the contributions and spending them in the communities in accordance with expectations. In some cases, contributions collected singly are not sufficient to deliver facilities and may require to be

combined with other Section106 contributions to meet the cost of delivering community facilities.

59. **Category B – Community Facilities**

60. This group has been categorized separately as there are generally smaller number of contributions with high value where funds are being accumulated for expenditure on larger projects in the future.

61. At 31st March 2022 there were 8 contributions being held with a total value of £1.9m.

62. **Category C – NHS Healthcare**

63. These contributions are being held by the Council on behalf of the NHS. It can be seen that there are now 27 contributions being held with a total value of £1.2million. These have now been held for an average of 2 years. It can be seen in the first evidence gathering session, some of the projects where these funds are due to be spent.

64. Given the above analysis of the categories, the main focus for improvement in delivery therefore needs to be in Category A for Open Spaces, art, cycling and PROW, etc where there is a considerable backlog of unspent contributions.

65. The subject of Key Performance Indicators (KPI) was discussed as this is one of the Terms of Reference for this scrutiny. The Council doesn't currently have any specific KPIs related to the expenditure of S106. Officers searched other authorities and none were apparent, however, it did reveal that the Council secured more S106 funding by entering S106 agreements (£6.9million in 2020/21) than any of the other authorities reviewed.

66. For the past three years legislation has required councils to report annually performance through an Infrastructure Funding Statement (IFS). The Council's statements for 2019/20 and 2020/21 are currently available on the Council's website. The IFS for 2021/22 is due for publication by the end of 2022. These statements go some way to providing an indication of performance, however, they do not go far enough to provide a clear focus on where improvement is required. To drive forward a reduction in the lead time to deliver projects in line with residents expectations, a small set of focused KPIs will be required and improvement objectives set.

67. **CONCLUDING COMMENTS**

68. The Committee's work schedule and upcoming Local Elections in May 2023 has prevented further evidence gathering on this scrutiny; however, the two evidence gathering sessions and follow up information has enabled the Committee to draw some conclusions and make recommendations.

69. It is clear from the evidence provided that the expenditure has not kept pace with the growth in contributions being received and the level of funds held by the Council is increasing and not falling.

70. As the rate of housing growth in the district increases further in line with the Local Plan this will put more pressure on resources as more Section 106 contributions are secured. Urgent action is required to put in place the resources and improvements required to recover the backlog on delivery of contributions being held and meet the challenge of increased contributions in the coming years.

71. **RECOMMENDATIONS OF THE SCRUTINY REVIEW**

72. The Performance Management Scrutiny Committee would like to make the following recommendations to Cabinet:

Recommendation 1

The Council urgently reviews the organisation and level of resources assigned to delivering Section 106 expenditure and if necessary increases those resources to ensure they are adequate to deliver a rapid reduction in the backlog of unspent funds currently being held and ensure early delivery of projects coming from future receipts.

The level of expenditure in recent years has been significantly below the rate of receipt of funds from developers. The level of funds being held by the Council is growing each year and reached £7.3million at 31st March 2022. There were a minimum of 171 contributions unspent under the Council's responsibility and that have been held for an average of 5.2 years, with some being held as long as 10 years or more.

The rate of receipt of funds from developers is increasing each year with many legal agreements for further funds in the pipeline. This largely comes from the increasing rate of house building and the excellent work done by Officers in securing S106 agreements with developers.

Current resources appear to be inadequate to meet this challenge despite some excellent examples of work carried out by Officers in recent years.

This recommendation is linked to recommendation 5 which addresses methods for the monitoring of delivery for the reduction of funds held by the Council.

Recommendation 2

The main focus of reducing the backlog of unspent funds being held should be in the area of Public Open Spaces, art, cycling and PROW, etc.

The evidence shows that this is the area where the highest number of unspent contribution lies in terms of both total value (£ 4.1million), number of unspent contributions (>171) and the time they have been held (average of 5.2 years).

Recommendation 3

A closer examination of current processes should be made with the view of exploring any improvement that could be made to speed up the delivery of projects.

The Committee had very limited time available to examine the current process which appear to be long and not helping the rapid delivery of projects. The examination should include the statutory framework and processes and the Council's own processes within the statutory framework.

Recommendation 4

The Council establishes three new KPI's to focus upon it's performance in delivery of the expenditure of Section106 funds under their responsibility for Public Open Spaces, art, cycling and PROW, etc contributions. These are:

- 1 Total value of funds held;
- 2 Average period the funds have been held, and;
- 3 Number of unspent contributions where less than 50% of the funds have been spent.

To aid transparency the KPIs should be included in the Council's Performance Management Report which are published quarterly and annually.

Upon examining the data of funds being held, the value, period funds had been held and the number of unspent contributions for Public Open Spaces, art, cycling and PROW, etc, were highlighted as being a key area for performance improvement. These KPIs would exclude contributions for community buildings where a small number of contributions with generally large values are being accumulated for future projects.

Contributions for NHS would also be outside of these KPIs as they are the responsibility of the NHS to deliver.

Recommendation 5

The Council sets challenging targets to reduce the number of unspent contributions, reduce the average period of time funds are held before spending and reduce the overall value of funds being held. The Committee recommends the following targets:

KPI – Open spaces, art, cycling and PROW, etc	For Ref 31/3/22	31/03/24	31/03/25	31/03/26
Average period funds held	5.2 years	Max 3 years	Max 2 years	Max 1 year
No of unspent contributions	180	Max 100	Max 75	Max 50
Total value of funds held	£4.1m	Depends upon the level of future receipts		

Currently, there are no KPIs relating to the delivery of S106 funds and therefore no direct focus upon improvement in delivery lead times. Establishing challenging targets will drive performance improvement and focus everyone on delivery in line with residents expectations for infrastructure improvement.

This recommendation is linked to recommendation 1 which seek the urgent review of the organisation and level of resources assigned to delivering Section 106 expenditure.

Recommendation 6

To focus on delivery performance improvement, the Cabinet Member for Planning and Infrastructure should report performance against KPI's and actions being taken to improve them to Council in the Cabinet report on a quarterly basis.

The subject of Section 106 expenditure is rarely reported and should be elevated to give confidence to Members that improvements are being made.

Recommendation 7

A file listing details of the unspent contributions should be posted on the Council's website at year-end in addition to the current data files supporting the Infrastructure Funding Statement (IFS).

Currently the IFS is published on the Council's website together with excel files detailing developer agreements, developer agreement contributions and developer agreement transactions. There are currently no details published of the overall value of funds being held.

Recommendation 8

Where possible greater use should be made of the opportunity for Parish and Town Councils to deliver projects. In consultation with Parish and Town Councils, the current process should be examined to give them greater flexibility and remove constraints which may be barriers to them engaging in the process.

It appears that although there are some good examples of Parish and Town Councils working with the Council to deliver projects, this is fairly limited and there may be potential to increase this with some flexibility from the Council. It is recognised that Parish and Town Council resources and skills vary but the Committee believe there could be further potential, particularly with smaller projects, to help reduce the burden on Council Officers. The Council should speak with Parish and Town Councils to get a better understanding of what constraints they have.

Recommendation 9

The Council, with other Councils, should engage with the NHS at a senior level with the objective of finding an improved weighting and better balance of NHS contributions compared to the overall level of contributions secured in larger developments.

It has been observed that the level of contributions requested by the NHS is very small compared to the overall level of contributions secured in agreements for larger developments. In a limited review of two larger developments in Halstead the

NHS contributions secured were circa 6% of the total contributions. If this is repeated in other developments it represents an overall concern that there is not a good weighting between contributions. It is quite likely that residents would consider the provision of NHS facilities to be high on their priority list in mitigation of developments. It is understood that this is a matter for the NHS who specify the contributions required, however, it is felt that the Council should take a lead in discussions with the NHS to try to find a better balance more in line with residents expectations. The Council should work with other Councils to engage with the NHS to achieve securing and expenditure of Section 106 funds to deliver services for communities.

Recommendation 10

To provide less ambiguity and more clarity the Council should consider changing the name of the Open Spaces Action Plan (OSAP) to something more appropriate.

The current Open Spaces Action Plan (OSAP) is not an action plan, it's a list of aspirations of projects for improving Open spaces at some time in the future. This is a valuable tool in providing a database of potential inclusion in future S106 agreements. Understandably there are not specific actions or dates included in the OSAP, therefore it is not an action plan.

73. **MINUTES AND AGENDAS OF MEETINGS**

[18th May 2022](#)

[27th July 2022](#)

[21st September 2022](#)

74. **ACKNOWLEDGEMENTS**

Members of the Performance Management Scrutiny Committee wish to express their gratitude to the following Council officers for their contribution to the Scrutiny Review:-

- Dominic Collins, Corporate Director;
- Emma Goodings, Head of Planning and Economic Growth;
- Sarah Burder, Chartered Legal Executive, S106 Monitoring Officer;
- Nicola Murphy, Senior Landscape Architect;
- Neil Jones, Principle Planning Officer;
- Jessica Mann, Governance and Members Officer and
- Kerry Harding, Director of Estates at NHS Mid and South Essex.