

Finance and Contracts Committee

14 February 2019

CIL and S106 Biannual Monitoring Report

Report by Assistant Director, Strategic Planning & Infrastructure

Call-in deadline 5pm on 28 February 2019

Purpose

To provide an update summarising income and agreements from planning obligations, Section 106 (S106) and the Community Infrastructure Levies (CIL), entered into during the period commencing 1 April to 30 September 2018. Information on the allocation of S106 funds for two projects is provided for the Committee to approve.

Recommendations of the Portfolio Holder for Planning Policy & Culture and Heritage

To **Resolve** that -

1. the information and analysis provided on financial contributions agreed, received, and spent during the monitoring period of 1 April to 30 September 2018, be noted;
2. the Mayoral CIL and Kingston CIL income received for the period of 1 April to 30 September 2018, be noted; and,
3. the allocation of funds, as detailed in Table 4, be approved.

Benefits to the Community

Planning obligations mitigate the impact of development, which benefits local communities as it supports the provision of local infrastructure. Contributions arising from S106 and CIL are to be spent on a range of infrastructure projects that will benefit the community.

Key Points

- A. The total S106 contributions signed for the period totals £582,559.40.
- B. The total S106 money received for the period totals £751,633.33.
- C. The total CIL receipts collected through the Kingston Community Infrastructure Levy for the period totals £170,820.27.
- D. The total CIL receipts collected on behalf of the Mayor of London, through the Mayoral Community Infrastructure Levy, for the period totals £85,590.71.

Context

1. Section 106 agreements (referred to as S106, and named after the section of legislation) are private agreements made between local authorities and developers. They are attached to a planning permission and used to make a development acceptable which would be unacceptable in planning terms if the S106 was not in place. Planning obligations must be directly relevant to the proposed development. They are used for three purposes:
 - To require a type of development, e.g. affordable housing

- To compensate for loss or damage by a development, e.g. loss of habitat
 - To mitigate the impact of development, e.g. improved public transport to mitigate the pressure from new residents
2. Similarly to S106 contributions, the Community Infrastructure Levy (CIL) is a planning charge to help offset the impact of development on infrastructure. Contributions are used to provide or improve infrastructure. There are two CIL charges operating in Kingston: the Kingston CIL for infrastructure in the borough, and the Mayoral CIL which applies across most of Greater London and funds Crossrail. Most new development which creates net additional floor space of 100 square metres or more, or creates a new dwelling, is potentially liable for the levy. Fifteen percent (or 25% in areas with a Neighbourhood Plan) of the CIL is ring-fenced as the neighbourhood portion, to be spent in the local area in accordance with local community priorities.
 3. It is noted that both S106 and CIL are subject to strict legal constraints about what they can be spent on and where. For S106, those are contained in the specific legal agreement securing the funding and are often specific to that planning application. For CIL, the legal constraints apply to the fund as a whole. In addition, there are specific rules to make sure the Council does not collect funding twice for the same infrastructure through S106 and CIL. Under current legislation the Council cannot pool more than five contributions from S106 for infrastructure which could be funded by CIL, however it should be noted that the Chancellor of the Exchequer's 2018 Budget Statement confirmed that the government will consult on plans to introduce a simpler system of developer contributions, including removing all restrictions on Section 106 pooling towards a single piece of infrastructure. It is therefore crucial that the Council reviews the schemes and projects put forward against the legal tests, and the decisions taken for funding allocation, to ensure these limited, but important funding streams, are appropriately managed.
 4. This report sets out the detail of S106 and CIL income received, and agreements entered into for the first half of the 2018/19 financial year.
 5. This report sets out:
 - A summary of S106 agreements signed from 1 April to 30 September 2018
 - An analysis of S106 financial contributions and CIL received by neighbourhood from 1 April to 30 September 2018
 - Unallocated spend
 - Proposed allocations
 6. Governance arrangements for the spending of CIL were agreed by Growth Committee in November 2016. There are no equivalent arrangements for S106 beyond the Council's Constitution. These arrangements are under review, including the potential to give Neighbourhoods the final approval of the neighbourhood proportion of CIL. Neighbourhood Committees have been consulted on proposals to strengthen Neighbourhood arrangements, including neighbourhood CIL proposals, and recommendations were presented to the meeting of Council on 11 December for decision. However, an urgent decision is required on a number of allocations of S106 monies which have been included in this report for consideration by the Finance and Contracts Committee.

7. It should be noted that this is the first Biannual Monitoring report being reported to this committee as previous monitoring was reported to Strategic Housing and Planning Committee. It is considered that this approach is more appropriate given the allocation of funds across a range of areas and services.

Financial Contributions Agreed

Table 1: Summary of S106 agreements signed from 1 April to 30 September 2018

| Category | Kingston Town | Maldens & Coombe | Surbiton | South of the Borough | Borough Total |
|------------------------|--------------------|--------------------|--------------------|----------------------|--------------------|
| Affordable Housing | 0 | 0 | £138,500.00 | 0 | £138,500.00 |
| Carbon Offsetting | £119,005.40 | £134,946.00 | £112,308.00 | 0 | £366,259.40 |
| Cycle Parking | £2,000.00 | 0 | 0 | 0 | £2,000.00 |
| Footway Contribution | £10,000.00 | 0 | 0 | 0 | £10,000.00 |
| Traffic Management | £15,000.00 | 0 | 0 | 0 | £15,000.00 |
| Travel Plan Monitoring | £4,500.00 | 0 | 0 | 0 | £4,500.00 |
| Monitoring | £3,300.00 | 0 | £3,000.00 | 0 | 6,300.00 |
| Parking | 0 | 0 | £40,000.00 | 0 | £40,000.00 |
| Total | £153,805.40 | £134,946.00 | £293,808.00 | 0 | £582,559.40 |

8. A total of £582,559.40 S106 contributions have been signed across the Borough from 1 April to 30 September 2018. The largest amounts signed during the monitoring period were:
- Development at Cocks Crescent (16/15346) for £134,946 (Maldens & Coombe)
 - Former NHS Trust Site, South Place/Warwick Grove (18/16123) for £110,140 (Surbiton)
 - Land at 64 Ravenscar Road, 125 Tolworth Park Road and 115-127 Red Lion Road (17/16147) for £182,918 (Surbiton)
 - 57 Eden Street (16/13280) for £52,800 (Kingston Town)

S106 Financial Contributions Received

9. Table 2 summarises S106 receipts received from 1 April to 30 September 2018 by Neighbourhood, and Category. The trigger for S106 contributions (which includes additional index linked sums) varies between developments and often relates to the commencement date or specific occupancy rates of the development; therefore the contributions listed are from S106 agreements signed in recent years.

Table 2: Summary of S106 Financial Contributions Received 1 April to 30 September 2018

| Category | Kingston Town | Maldens & Coombe | Surbiton | South of the Borough | Borough Total |
|---|--------------------|--------------------|--------------------|----------------------|--------------------|
| Affordable Housing | 0 | £115,228.00 | £21,313.59 | 0 | £136,541.59 |
| Carbon Offsetting | £14,075.70 | 0 | £500 | 0 | £14,575.70 |
| Community Safety & Visitor Management | £53,675.61 | 0 | 0 | 0 | £53,675.61 |
| Cycling Improvement | 0 | £15,000 | 0 | 0 | £15,000 |
| Environment | 0 | £3,455.80 | 0 | 0 | £3,455.80 |
| Go Cycle | £10,716.76 | 0 | 0 | 0 | £10,716.76 |
| Health & Social Care | 0 | £2,051.88 | £214.26 | 0 | £2,266.14 |
| Public Realm | £29,736.29 | 0 | 0 | 0 | £29,736.29 |
| Sustainable & Environmental Improvement | £241,325.55 | 0 | 0 | 0 | £241,325.55 |
| Sustainable Travel | £14,868.14 | £1,727.90 | 0 | 0 | £16,596.04 |
| TfL Bus Route | 0 | 0 | £210,000 | 0 | £210,000 |
| Traffic Management | £536.76 | 0 | 0 | 0 | £536.76 |
| Travel Plan Monitoring | £1,610.27 | 0 | 0 | 0 | £1,610.27 |
| Education | £450.00 | £9,100.00 | £963.96 | 0 | £10,513.96 |
| Monitoring | £2,726.43 | £1,897.96 | £458.47 | 0 | £5,082.86 |
| Total | £369,721.51 | £148,461.54 | £233,450.28 | £0.00 | £751,633.33 |

Unallocated Expenditure

Table 3: Total unallocated S106 contributions at 30 September 2018

| Category | Kingston Town | Maldens & Coombe | Surbiton | South of the Borough | Borough Total |
|---------------------------------------|---------------|------------------|------------|----------------------|---------------|
| Affordable Housing | 0 | £115,228.00 | £21,313.59 | 0 | £136,541.59 |
| Carbon Off-set | £92,710.59 | 0 | £500.00 | 0 | £93,210.59 |
| CCTV | £5,056.49 | 0 | 0 | 0 | £5,056.49 |
| Community Safety & Visitor Management | £53,675.61 | 0 | 0 | 0 | £53,675.61 |

| | | | | | |
|---|----------------------|--------------------|--------------------|-------------------|----------------------|
| CPZ | £7,079.08 | £5,080.17 | 0 | 0 | £12,159.25 |
| Cycling | 0 | £15,000.00 | £480.00 | 0 | £15,480.00 |
| Employment Technology Hub | £62,300.00 | 0 | 0 | 0 | £62,300.00 |
| Environment | 0 | £3,455.80 | 0 | 0 | £3,455.80 |
| Go Cycle | £10,716.76 | 0 | 0 | 0 | £10,716.76 |
| Health & Social Care | £319,122.54 | £97,509.15 | £18,964.34 | £1,991.92 | £437,587.95 |
| Highways | £382,443.39 | 0 | 0 | 0 | £382,443.39 |
| Leisure | £129,532.29 | 0 | £8,129.66 | 0 | £137,661.95 |
| Public Open Space | £126,440.50 | £36,177.29 | £21,294.97 | £2,961.52 | £186,874.28 |
| Public Realm | £201,347.58 | £4,886.79 | £5274.30 | £75,086.71 | £286,595.38 |
| Sustainable & Environmental Improvement | £241,325.55 | 0 | 0 | 0 | £241,325.55 |
| Sustainable Travel | £467,727.87 | £150,115.64 | £4,857.56 | £4,004.15 | £626,705.22 |
| TFL Bus route | 0 | 0 | £210,000 | 0 | £210,000 |
| Traffic Management | £536.76 | 0 | 0 | 0 | £536.76 |
| Travel Plan Monitoring | £1,610.27 | 0 | 0 | 0 | £1,610.27 |
| Education | | | | | £21,832.10 |
| Monitoring | | | | | £7,343.88 |
| Total | £2,101,625.28 | £427,452.84 | £290,814.42 | £84,044.30 | £2,933,112.82 |

10. In total there was £2,933,112.82 unallocated expenditure up to 30 September 2018.

Allocation of Funds

11. The Finance and Contracts Committee is asked to allocate S106 funds to the projects detailed in Table 4. Further information on the projects follow. Discussions have taken place at officer meetings to ensure that the projects are an appropriate spend of S106 funds. Allocation by this committee would make the S106 funds available as set out below.

Table 4: Proposed Allocation of Funds

| Project Allocation | Type | Application of Funds | Amount | Obligation | Spend Requirement |
|---------------------------|----------------------------------|--|--------------------|--|---|
| SHEDx | Public Open Space / Public Realm | Delivery of recommendations of the Tolworth Green Infrastructure Audit. | £26,569.27 | Numerous (total of 9 allocations) | Open space, play facilities, biodiversity, public realm. |
| Community Parks Programme | Public Parks/ Green Spaces | Delivery of a number of physical improvements to RBK parks & green spaces within the context of the Community Parks Programme. | £208,823.24 | Numerous (total of 17 allocations from Leisure, Public Open Space and Public Realm categories) | Public open space, play facilities, biodiversity, public realm, leisure and community facilities. |
| Total | | | £235,392.51 | | |

Project Allocation: SHEDx

The allocation of these funds will fulfill the Council's commitment to provide £25,000 match fund from S106 to the SHEDx project, a Greater London Authority (GLA) Good Growth Fund funded project, which has been incorporated into the associated Grant Agreement with the GLA. While only £25,000 was committed, £26,569.27 is requested to facilitate the spend of nine small scale allocations in the Tolworth area which individually might be difficult to usefully spend, and whose spend requirements (public open space / public realm) complement the SHEDx project.

SHEDx is a community-led regeneration project, based in Tolworth, and follows the recommendations of the Draft Tolworth Area Plan. As part of the project, a Green Infrastructure Audit (GIA) is being undertaken by Kingston Environment Centre in collaboration with students from Kingston University. The GIA will identify areas of public open space and public realm which can be improved through the mobilisation of local community and voluntary networks, local communities, and volunteers. This allocation will contribute towards the capital costs associated with this in accordance with their respective legal agreements.

Improvements to the local area are anticipated to include some of following:

- enhanced green space to better support biodiversity and community enjoyment (including better signposting to, and connections between, local green spaces);
- improved quality of public realm (small scale interventions);
- improved satisfaction in the quality of the local environment and local distinctiveness; and
- improved children's play facilities.

The SHEDx project and associated funding mechanisms, including the allocation of £25,000 S106 contributions, was agreed at the Corporate Resources Panel on 10th July 2018. The following planning application contributions have been allocated:

| S106 planning contributions allocated to SHEDx | | | |
|---|---------------------|------------------|----------------------------|
| Site address | Planning Ref | £ | Category |
| 120 Ewell Rd | 13/16611 | 1,300.00 | Public Open Space |
| Unit 6 Chancery Lane 4-20 Tolworth Close | 13/16031 | 1,380.60 | Public Open Space |
| Former 60-62 Red Lion Rd | 12/10109 | 5,616.76 | Public Open Space |
| Rear of 21 Victoria Rd | 12/16612 | 5,231.00 | Public Open Space |
| 20 Kingsdowne Rd | 13/16572 | 3,245.02 | Public Open Space |
| 123 Warren Drive South | 12/16073 | 1,921.59 | Public Open Space |
| 37 Victoria Rd | 11/16609 | 2,600.00 | Public Open Space |
| 31 Tolworth Broadway | 12/16685 | 1,404.19 | Site Specific Public Realm |
| Bramshott Lodge 18a South Bank | 13/16724 | 3,870.11 | Public Realm |
| Total | | 26,569.27 | |

Project Allocation: Community Parks Programme

The Community Parks Programme will run for three years and will deliver a wide range of capital improvements to these natural assets across Kingston Borough (See **Annex 1** for more details). The overall capital funding programme was agreed at the RBK Council Meeting of February 2018. The Council's capital funding contribution will be matched by external grant funding from a number of funding bodies and Section 106 contributions where appropriate. This will increase the capacity and number of projects which can be realised and add significant value to the programme, thereby enhancing community benefit and reach.

The following key objectives and opportunities have been identified:

- Improvement of the Borough's parks and green spaces to provide widespread multi-generational community benefits.
- Match funding of RBK capital and grant funding from external providers, e.g. London Marathon Trust, Big Lottery.
- Physical improvements to facilities and features within 15 parks and green space sites including play areas, exercise equipment, buildings, footpaths and accessibility.
- Increased community engagement and direct involvement with the design, management and maintenance of parks and greenspace.

The allocation of £208,823.24 S106 contributions, was agreed at the Corporate Resources Panel on 15 October 2018 from the planning applications listed below:

| S106 planning contributions allocated to the Community Parks Programme | | | | |
|---|---------------------|----------------------|-----------|-------------------|
| Site address | Planning Ref | Neighbourhood | £ | Category |
| HM Resettlement prison, Latchmere House, Ham, Richmond | 14/12144 | Kingston Town | 12,985.59 | Leisure |
| 64-67 & 76 Cambridge Road Kingston | 14/13010 | Kingston Town | 68,347.29 | Public Open Space |
| 117 London Road | 13/12622 | Kingston Town | 15,981.69 | Public Open Space |
| 36-38 Beaufort Lodge | 13/12967 | Kingston Town | 11,570.78 | Public Open Space |
| 90-92 (Everyday store) Willoughby Road | 12/12732 | Kingston Town | 1,872.81 | Public Open Space |
| L/A 3 Coombe Lane West | 13/14121 | Kingston Town | 6,616.73 | Public Open Space |
| 28 Gibbon Road | 14/12870 | Kingston Town | 1,627.43 | Public Open Space |
| Kingston Vale Service station 1A Robin Hood Lane | 14/14223 | Maldens & Coombe | 32,841.61 | Public Open Space |
| 1 Ullswater Close SW15 3RF | 12/14764 | Maldens & Coombe | 3,335.68 | Public Open Space |

| | | | | |
|--|----------|----------------------|-------------------|-------------------|
| 28 Woodgate Avenue, Chessington | 14/10040 | South of The Borough | 1,849.86 | Public Open Space |
| Scout Hall, 62 Hartfield Rd, Chessington | 13/10358 | South of The Borough | 1,111.66 | Public Open Space |
| 28-30 Castle St | 12/12589 | Kingston Town | 4,118.96 | Public Open Space |
| 117 London Road | 13/12622 | Kingston Town | 8,100.00 | Public Open Space |
| 295 Richmond Road | 13/12422 | Kingston | 3,333.02 | Public Open Space |
| Rooms 1&3 Clattern House | 14/13062 | Kingston | 1,329.01 | Public Open Space |
| Bramshott Lodge, 18A South Bank | 13/16724 | Surbiton | 4,064.83 | Leisure |
| 22-30 Gala Bingo Hall, Richmond Rd | 13/13017 | Kingston | 29,736.29 | Public Realm |
| Total | | | 208,823.24 | |

The Mayoral Community Infrastructure Levy

12. The Mayoral Community Infrastructure Levy came into force in April 2012 and is charged by the Mayor of London to contribute to the funding of Crossrail. The Royal Borough of Kingston upon Thames, acting as collecting authority on behalf of the Mayor, collected £85,590.71 between 1 April to 30 September 2018.

13. The Council can retain a proportion (4%) of the Mayoral CIL collected to cover administration charges. This equates to £3,423.63 for this period. Administration income can be spent on items such as the ongoing functions like establishing and running billing and payment systems, enforcing the levy, the legal costs associated with payments in-kind, and monitoring and reporting on levy activity. Any surplus income must be returned to TfL. The Council has incurred costs associated with administering the Mayor's CIL above that retained as administration income.

Kingston Community Infrastructure Levy

14. The Royal Borough of Kingston upon Thames CIL was introduced on the 1st of November 2015. Table 5 below details the total Kingston CIL income received during the period 1 April to 30 September 2018. Table 6 provides the CIL cash receipts running total as of 30 September 2018.

Table 5: Kingston Community Infrastructure Levy Income 1 April to 30 September 2018

| Planning Reference | Kingston Town | Maldens & Coombe | Surbiton | South of the Borough | Borough Total |
|--------------------|-------------------|------------------|-------------------|----------------------|--------------------|
| 14/16954 | 0 | 0 | £39875 | 0 | |
| 15/12373 | £4,230.77 | 0 | 0 | 0 | |
| 15/14737 | 0 | £27,700 | 0 | 0 | |
| 16/12749 | £5,775 | 0 | 0 | 0 | |
| 17/14124 | 0 | £76,230 | 0 | 0 | |
| 17/16052 | 0 | 0 | £7,150 | 0 | |
| 17/16971 | 0 | 0 | £9,859.50 | 0 | |
| Total | £10,005.77 | £103,930 | £56,884.50 | 0 | £170,820.27 |

Table 6: Kingston Community Infrastructure Levy cash receipts running total as of 30 September 2018

| Income Type | Kingston Town | Maldens & Coombe | Surbiton | South of the Borough | Borough Total |
|-----------------------|---------------|------------------|-------------|----------------------|----------------------|
| Neighbourhood Portion | £77,398.36 | £43,229.91 | £60,086.18 | £14,084.05 | £194,798.49 |
| Strategic | £412,791.25 | £230,559.54 | £320,459.62 | £75,114.95 | £1,038,925.36 |
| Admin | | | | | £64,932.83 |
| Total | | | | | £1,298,656.68 |

15. CIL is broken down into three distinct sections for allocation; the neighbourhood portion, the strategic portion and the administrative portion. The neighbourhood portion (15% of CIL receipts) is to be allocated for spend on infrastructure priorities at a neighbourhood level within the neighbourhood in which the CIL receipt was raised by development. The strategic portion (80% for CIL receipts) is to be allocated for spend on strategic infrastructure priorities across the borough. The administrative portion (5% of CIL receipts) is used to fund the set-up and administration costs of operating a Community Infrastructure Levy.

Resource Implications

16. CIL and S106 planning obligations are collected by the Council and ring-fenced within specific budgets to be spent on appropriate infrastructure projects. Individual allocations are set out in Table 4.

Legal Implications

17. Planning obligations are secured in legal agreements executed under Section 106 of the Town and Country Planning Act 1990 (as amended), which are registered as Local Land Charges. The Community Infrastructure Levy was introduced under The Planning Act 2008 and is a discretionary charge that councils can levy on development in their area.

18. The S106 funds referred to in this report have been received by the Royal Borough of Kingston upon Thames and are available to be spent in the manner agreed by Committee, in accordance with the planning agreements.

Risk Assessment

19. This report addresses any risk associated with not monitoring planning obligations, which would have legal implications and risk of losing the funding. A transparent and comprehensive framework for monitoring such obligations is vital to minimise the risk.

20. Without adequate coordination commuted sums could be spent on inappropriate schemes and not on priorities identified within the Council's various plans and strategies.

21. Without an adequate and coordinated system for monitoring S106 obligations and any subsequent commuted sums it is possible that should deadlines expire,

commuted sums would have to be returned (plus interest) to the developers and required community facilities / affordable housing would not be provided.

22. Legal restrictions are in place in planning agreements which set out how financial contributions can be spent. There is a risk that insufficient appropriate funds are available to allocate to projects. In allocating funds the Council must have appropriate mechanisms in place to ensure transparency. The allocations made at this Committee are supported by records in relation to appropriate spend.

Equalities Impact Assessment

23. Monies collected within this process, and distributed, will ensure that it is compliant with the equality legislation and the public sector equality duty to ensure we work towards eliminating discrimination, advancing equality of opportunity and fostering good relations. An initial Equalities Impact Assessment has been undertaken and if necessary, a full impact assessment will be undertaken.
24. The funding allocations for the projects set out in Table 4 of this report will have a positive impact for individuals. Projects will improve public open spaces, increasing accessibility and opportunity for all members of the community.

Health Implications

25. Planning obligations are sought towards infrastructure, including health and social care. CIL and S106 contributions can be used to provide new and improved health facilities, including mental health facilities, across the borough.

Road Network Implications

26. Planning obligations are sought towards transport infrastructure, including improvements to the Borough's road network. All modes of transport that utilise the road network can benefit from CIL and S106 contributions.

Environmental and Air Quality Implications

27. S106 planning obligations and CIL secure financial contributions, some of which are used to fund a range of environmental improvements. Planning obligations enable the Council to secure environmental benefits from development that can contribute to local environmental improvements and reduce any adverse environmental effects, subject to meeting the statutory tests.

Background papers

None

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