

# Report to Place Overview and Scrutiny Committee

<b>Report Title</b>	Section 106 Allocations: Projects and Committed Spend Update
<b>Date of Meeting</b>	Wednesday 20 March 2025
<b>Report Author</b>	Ashley Baldwin
<b>Corporate Director</b>	Executive Director Place
<b>Lead Cabinet Member(s)</b>	Cabinet Member for Good Growth
<b>Wards Affected</b>	(All Wards);
<b>Identify exempt information and exemption category</b>	Choose an item.  N/A
<b>Appendices (if any)</b>	1. S106 projects progress updates 2. Grays community forum presentation

## 1. Executive Summary

- 1.1 The purpose of this report is to update the Place Overview and Scrutiny Committee on the progress of Section 106 (S106) agreements and the governance of funds. Key progress so far includes the review of projects funded by S106 monies and further communication with forums within the borough.

## 2. Recommendations

For the reasons set out in this report, the Committee is recommended to:

- 2.1 Note the progress made in implementing the new system of governance of Section 106 funds since the last report to the Committee in January 2025.**

## 3. Commissioner's Comments

- 3.1 No comments have been received from Commissioners for this report.

## 4. Proposals – the rationale and evidence for the recommendations

### **Background and drivers**

- 4.1 A progress report was presented to the committee on 8 January 2025 outlining how the governance of funds received through S106 agreements was to be changed, after it had been raised as a point of risk to the council by the Planning Advisory Service in 2023.

### **Policy outcomes and objectives**

- 4.2 The crucial considerations to be made to improve governance and usage of S106 funds continue to be to:
- ensure the Council complies with planning obligation legislation and Local and National Policy.
  - ensure the Council spends planning obligations in time and in accordance with the contractual terms of the Section 106 and avoids the need to repay monies due to the expiry of agreements; and
  - ensure improved transparency and better political/ public engagement.

### **Proposals and delivery**

- 4.3 The Thurrock Strategic Infrastructure Board (TSIB) continues to play a crucial element in the governance of S106 agreements. After a cross departmental review of all S106 agreements the schemes have been analysed and categorised into four status categories, to allow for the board to focus its priorities. The four categories are:
- i. Feasible, service progressing
  - ii. Feasible but cannot deliver currently
  - iii. Not feasible, cannot deliver
  - iv. Still investigating

*Figure 1. Available funds received through S106 by department and status of committed project.*

<b>Department</b>	<b>Feasible, service progressing</b>	<b>Feasible but cannot deliver currently</b>	<b>Not feasible, cannot deliver</b>	<b>Still investigating</b>
Affordable Housing	-	-	-	£11,000.00
Community Development & Equalities	-	£44,950.50	-	£256,126.35
Education	£1,143,965.29	£417,028.72	-	£2,745,184.43
Environment	£111,186.03	£161,489.36	-	£16,618.27
Health Care	£250,090.55	£214,864.54	-	-
Highways-Transportation	£2,559,552.27	£675,817.58	£1,228,037.59	£1,919,661.62
NHS – Health Care	£321,814.85	-	-	£9,000.00

Department	Feasible, service progressing	Feasible but cannot deliver currently	Not feasible, cannot deliver	Still investigating
Regeneration	£49,336.43	-	-	-
Sports	£221,938.51	£12,880.10	-	£183,025.92
Strategic Planning	£105,787.38	-	£30,000.00	-
<b>Total</b>	<b>£4,763,671.31</b>	<b>£1,527,030.80</b>	<b>£1,258,037.59</b>	<b>£5,140,616.59</b>

4.4 Service leads provide monthly updates for the s106 agreements that are still being investigated, with the intention of moving these agreements to feasible. Non feasible projects are currently being reviewed by the legal department to provide an update on how they can be progressed. Feasible schemes that cannot be currently progressed are also being monitored by the board and again the aim is to move these schemes to feasible and service progressing. Feasible schemes that are feasible and service progressing are also reported monthly. Some schemes have progressed into the spending stage, awaiting start dates or awaiting projects for the money to be drawn down to. Updates are set out in Appendix 1, including expected delivery timeframes for schemes. These dates are indications only and are subject to change, as schemes may be subject to consultation or other processes which can delay delivery. The unfeasible scheme under Strategic Planning relates to the transfer of an Ecological project or mitigation either EWT/RSPB/Plantlife but the land is not within the existing responsibility of those bodies.

4.5 As an example of the successful usage of S106 funds relating to the education service, is the use of £81,718.16 of funds. The spend has been since the previous S106 governance and spending report was delivered to the Place Overview & Scrutiny Committee:

Application	Money spent	Project
14/00600/FUL	£27,000	New 3- and 4-year-old nursery provision at Little Chestnuts Preschool.
14/01321/OUT	£19,500	Additional new nursery provision for Charrissa Jones and Giffards Primary Grounds.
20/00827/FUL	£26,218.16	Expansion of 3- and 4-year-old nursery provision at Dilkes Academy.
	£9,000	Expansion of 3- and 4-year-old nursery provision at Rainbows Day Nursery in Aveley.

4.6 Following the initial presentations that were delivered to community forums by The Executive Director of Place, Chief Planning Officer, Head of Performance and Intelligence and the Cabinet Member for Good Growth, forums have received a further two updated presentations. Presentations were sent to each forum and included updates on allocated S106s including department proposals and service updates. A third update is expected imminently and the

further updates will be provided on a quarterly basis. The presentation delivered to the Grays community forum is appended as an example.

- 4.7 To further enhance transparency and communication a workshop with all forums has been organised for 18 March 2025. Forums have been invited to attend the council in person to have an open conversation with services. The workshop will provide an in-depth overview of the allocations, as well as updates on the work being carried out in service areas.
- 4.8 The new position of Principal Planning Officer for Planning Obligations and Major Infrastructure has now been successfully recruited to. The officer will oversee the management, monitoring, and collection of Section 106 funding and commences in-post on 1<sup>st</sup> April 2025. The role also covers Nationally Significant Infrastructure Projects and will report directly into the Chief Planning Officer.
- 4.9 Following research into how other local authorities handle interest accrued on funds received through S106, it is recommended that Thurrock implement its own policy to establish a standard usage of interest accrued. At present, interest earned on S106 monies is not treated as part of the S106 fund, except where specified by the terms of the contract. The Principal Planning Officer for Planning Obligations and Major Infrastructure will be responsible drafting the policy in consultation with the Chief Planning Officer and finance colleagues.
- 4.10 A dedicated single point of contact (SPoC) has been allocated to the Forum chairs for them to reach out to if they have any questions regarding S106 or wish to provide feedback to the Council.
- 4.11 We continue to work with promoters and developers to promote an Infrastructure First as part of their planning application. This approach is in collaboration with the Portfolio Holder for Good Growth and seeks to encourage joint working with applicants. The intention is to work closely with the Forums in order to ensure their infrastructure needs are included within future S106 agreements, which will need to be in line with the legal tests associated with Section 106 agreements.

## **5. Alternative Options Considered**

- 5.1 This is a progress report only, which provides updates to the proposed work set out in previous reports delivered to the Place Overview and Scrutiny Committee on 10 September 2024 and 8 January 2025. No alternative options have been considered in writing the report.

## **6. Consultation**

- 6.1 There are no requirements for consultation.

## 7. Financial Implications

- 7.1 Of the available £12.689m Section 106 monies, £4.764m has been committed and progressing, £2.785m within feasible schemes and £5.141m still being investigated. Since the previous Place Overview and Scrutiny Committee report £0.082m has been spent.
- 7.2 Improved governance regarding planning obligations is intended to ensure better oversight of the monitoring and implementation of Section 106 funding. Review of the projects to which funds have been allocated aims to minimise the risk of those funds being unspent and having to be returned.
- 7.3 The appointment of the Principal Planning Officer for Planning Obligations and Major Infrastructure, as a dedicated resource for the proper management of planning obligations, will improve oversight of S106 funds.

**Implications verified by:** **Nish Narendran**  
**Head of Financial Business Partnering**  
**(Place & Corporate**

## 8. Risk Implications

- 8.1 The proposal to improve governance aims to improve oversight and monitoring of Section 106 funds, which should reduce the risk in this area.
- 8.2 This is a progress report, and as such no new risks have been highlighted. However, please see the below table for previous risks identified and their associated mitigating actions:

<b>RISK DESCRIPTION &amp; CONSEQUENCE</b>	<b>MITIGATIONS</b>	<b>RESIDUAL RISK STATUS (after mitigations)</b>
Lack of governance and oversight could mean that S106 finances are unspent in time exposing a financial and reputational risk.  This a <b>RED</b> risk prior to mitigations	Any S106 expenditure risks are identified and actively monitored, tracked and mitigated at the Thurrock Strategic Infrastructure Board (TSIB)	<b>GREEN</b>
Governance change/potential risks  This an <b>AMBER</b> risk prior to mitigations	The appointment of the Principal Planning Officer - Planning Obligations and Major Infrastructure, as a dedicated resource for the proper management of planning obligations, will improve oversight of S106 funds.	<b>GREEN</b>

<p>There is a risk that Senior Management and Political oversight could be obscured through lack of reporting / progress visibility.</p> <p>This a <b>GREEN</b> risk prior to mitigations</p>	<p>Regular progress update reports are presented at Director, CEO and Cabinet levels.</p>	<p><b>GREEN</b></p>
<p>The Section 106 must comply with requirements of the Planning Inspector. Monies received through Section 106 must be used as specified in the agreement</p> <p>This an <b>AMBER</b> risk prior to mitigations</p>	<p>The appointment of the Principal Planning Officer - Planning Obligations and Major Infrastructure, as a dedicated resource and the TSIB board ensure compliance and mitigate against this risk.</p>	<p><b>GREEN</b></p>
<p>Section 106's need to be monitored to ensure proper compliance, agreements require a clawback provision where unspent monies are returned.</p> <p>This an <b>AMBER</b> risk prior to mitigations</p>	<p>This is managed by the newly appointed Principal Planning Officer - Planning Obligations and Major Infrastructure, and the TSIB board to ensure compliance and mitigate against this risk.</p>	<p><b>GREEN</b></p>
<p>Where not explicitly permitted by the terms of a Section 106 agreement, usage of the interest accrued on the S106 funds held by the Council for any spending other than that specified in the contract risks breaching the terms of the contract. The development of a well thought out policy regarding the usage of interest on Section 106 funds held by the Council could ensure compliance with the relevant contracts; it is crucial that the policy itself be compliant.</p> <p>This an <b>AMBER</b> risk prior to mitigations</p>	<p>This is managed by the newly appointed Principal Planning Officer - Planning Obligations and Major Infrastructure, and the TSIB board in conjunction with the finance team to ensure compliance and mitigate against this risk.</p>	<p><b>GREEN</b></p>
<p>There is a risk that the Legal department may not have the resources available to ensure any</p>	<p>Timely presentation of reviews to legal must be considered. Resourcing</p>	<p><b>AMBER</b></p>

<p>legal review of S106 funding requests can be carried out on time.</p> <p>This a <b>RED</b> risk prior to mitigations</p>	<p>within the Legal team to be monitored according to demand and increased using 3<sup>rd</sup> party support if required.</p>	<p><b>AMBER</b></p>
<p>There is a risk that unspent monies are required to be returned if not utilised in time or if the destination project becomes unviable for any reason.</p> <p>This an <b>AMBER</b> risk prior to mitigations</p>	<p>Close monitoring and management of the funding utilisation timeline and scope to be set by the Principal Planning Officer - Planning Obligations and Major Infrastructure</p>	<p><b>GREEN</b></p>

**Implications verified by: Kelly McMillan  
Risk Manager**

## **9. Legal and Governance Implications**

- 9.1 The report is an update and there are no direct legal implications arising from this report.
- 9.2 Using Section 106 of the Town and Country Planning Act 1990 (as amended), an agreement or unilateral undertaking may:
- i. restrict the development or use of the land in any specified way.
  - ii. require specified operations or activities to be carried out in, on, under or over the land.
  - iii. require the land to be used in any specified way; or
  - iv. require a sum or sums to be paid to the authority. These can be pooled.

Such commitments are known as planning obligations. At the end of the planning process, these will have been secured in a contract which must take the form of a deed.

- 9.3 To be lawful, planning obligations are subject to the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010 and must be:
- i. necessary to make the Development acceptable in planning terms.
  - ii. directly related to the Development; and
  - iii. fairly and reasonably related in scale and kind to the Development.
- 9.4 Authority for the Council to seal the deed and enter into the contract is obtained from the planning decision at the end of the planning process. The heads of terms of the planning obligations will have been specified in a resolution to grant planning permission which will have been passed either under delegated powers or by the Planning Committee or specified by a Planning Inspector following a planning appeal or Development Consent Order or Local Development Order. The Section 106 must comply with the resolution or requirements of the Planning Inspector. Monies received through Section 106 can only be used as specified in the agreement or unilateral undertaking.
- 9.5 Once completed, Section 106s need to be monitored to ensure proper compliance at the requisite time. Most parties to Section 106 agreements require a clawback provision where unspent monies are returned to them. Usually, the spend period is 10 years from the date of payment, after which the relevant party may request a refund of unspent monies.
- 9.6 Where not explicitly permitted by the terms of a Section 106 agreement, usage of the interest accrued on the S106 funds held by the Council for any spending other than that specified in the contract risks breaching the terms of the contract. The development of a well thought out policy regarding the usage of interest on Section 106 funds held by the Council could ensure compliance with the relevant contracts; it is crucial that the policy itself be compliant.
- 9.7 The Council should act in a transparent and auditable manner.

**Implications verified by:**

**Caroline Robins  
Locum Principal Solicitor**



**10. Equality and Diversity Implications (including the public sector equality duty)**

- 10.1 There are no direct diversity implications contained within this report. The proposal to improve governance aims to improve oversight and monitoring of Section 106. This in turn should result in mitigating any negative impact on the community due to development.

**Implications verified by:**

**Roxanne Scanlon**

**Community Engagement and Project  
Monitoring Officer**

**11. Other Relevant Implications**

- 11.1 There are no ICT or Digital implications

**12. Background Documents**

None.