

The Vale of Glamorgan Council

Cabinet Meeting: 16th July 2018

Report of the Cabinet Member for Regeneration and Planning

Annual Report: Section 106 Agreements 2017/18

Purpose of the Report

1. The purpose of this report is to inform Cabinet about the progress on Section 106 (Planning Obligation) matters that have arisen in the last financial year (April 2017 - March 2018).
2. Following Cabinet approval (Minute C. 199) of the Council's 21st Century Schools Band B Programme, this report seeks Cabinet approval for a deviation from the adopted Section 106 Protocol for Implementation, specifically in relation to Education contributions which are necessary to support the Band B strategic investment programme.

Recommendations

1. That Cabinet note the progress made on Section 106 matters between April 2017 and March 2018.
2. That this report be referred to Scrutiny Committee (Environment and Regeneration), Community Liaison Committee, all Councillors and the Clerks of all Town and Community Councils for information.
3. That Cabinet approve a deviation to the Council's adopted Section 106 Protocol for Implementation (Appendix C), specifically in relation to Section 106 contributions received to provide or enhance education facilities which correspond with proposals contained within the Council's 21st Century Schools Band B Programme.
4. That, where the contribution is required to support the Council's 21st Century Schools Band B Programme, delegated authority is granted for the Head of Regeneration and Planning and Operational Manager for Planning and Building Control, in consultation with the Cabinet Member for Regeneration and Planning and Director of Skills and Learning, to allocate Section 106 education contributions to support the Council's 21st Century Schools Band B Programme.

Reasons for the Recommendations

1. To inform Cabinet of the progress made on Section 106 matters between April 2017 and March 2018.

2. To inform all Members and Town and Community Councillors of the progress made on Section 106 matters between April 2017 and March 2018.
3. To ensure that Section 106 contributions for education, which have been secured in lieu of anticipated additional capacity required as a result of planned developments (in accordance with the Vale of Glamorgan adopted Local Development Plan 2011-2026), are reflected strategically into the 21st Century Schools Band B programme.
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Background

3. Cabinet will be aware that the Council has the power to enter into legal agreements with developers under Section 106 of the Town and Country Planning Act 1990, to require developers to provide works, services or financial contributions to mitigate the impacts that arise as a consequence of the new development.
4. The Council's policies on affordable housing and planning obligations are set out in the Vale of Glamorgan Local Development Plan (LDP) (2011-2026) and the adopted Affordable Housing and Planning Obligations Supplementary Planning Guidance documents (SPGs).
5. LDP Policy MG4 sets out the over-arching policy for requesting community infrastructure and planning obligations, where appropriate and having regard to development viability. The Planning Obligations SPG provides further clarification of where, what, when and how planning obligations will be sought, in order to assist the Council in creating sustainable communities that provide social, economic, and environmental benefits.
6. Appendix C within the Planning Obligations SPG contains the adopted Section 106 Protocol for Implementation.
7. This report summarises the Council's progress on negotiating, monitoring and implementing planning obligations through Section 106 agreements, for the last financial year.

Relevant Issues and Options

Planning applications subject to Section 106 Agreements in 2017/18

8. In the 12 months between 1st April 2017 and 31st March 2018, a total of 28 planning permissions have been granted, which have been subject to a legal agreement.
9. The value of the financial contributions in these legal agreements totals £8,109,968 (all figures rounded to pounds for clarity) and relate predominantly to allocated major residential developments, such as:
 - land south of Cog Road, Sully - 350 dwellings;
 - Caerleon Road, Dinas Powys - 70 dwellings;
 - land at Cardiff Road/Cross Common Road, Dinas Powys - 50 dwellings;
 - land at Sycamore Cross, Bonvilston - 120 dwellings; and
 - land adjacent to Llantwit Major Bypass, Boverton - 65 dwellings.

10. A full list is attached in Appendix A.
11. The financial contributions secured through these legal agreements will be used to provide or enhance facilities off site, such as sustainable transport services and infrastructure, highway improvements, public open space, community facilities, public art and educational facilities.
12. The planning obligation requirements secured this year have also included 'in-kind' obligations such as provision of on-site affordable housing, on-site public open space and public art.

Implementation of Planning Obligations in 2017/18 – Financial Obligations

13. As of 31st March 2018, the Council had £13,836,471 within the Section 106 account. The majority of the contributions have been committed to schemes within the Vale of Glamorgan, as agreed with Elected Members and Service Areas, or are pending further consultation. In addition £678,524 was held for on-going maintenance costs, equalling a total of £14,514,995.
14. The Council received financial contributions of £5,210,619 between April 2017 and March 2018. In particular, large contributions were received from the following developments:
 - Former ITV Studios, Culverhouse Cross;
 - Land adjacent St. Josephs School, Sully Road, Penarth;
 - Land off St. Brides Road, Wick;
 - Barry Waterfront;
 - Woodlands Road, Barry; and
 - Land to the rear of St. David's Primary School, Colwinston
15. A summary of income and spend on each planning obligation between April 2017 and March 2018 is attached at Appendix B.
16. £1,831,407 was spent on schemes during 2017/18, with Section 106 contributions fully (or partially) supporting enhancements to public transport, walking and cycling networks, new school places and open space enhancements. A summary list is provided below:

Sustainable Transport:

- Pedestrian and cycling improvements at High Street / Broad Street Barry
- Harbour Road cycleway scheme - phase five
- Footpath improvements in the villages of Wenvoe and Dinas Powys
- Completion of Port Road cycle scheme
- Cycle stands and associated works at Llandough Primary School
- Green links Community Transport

Public Open Space:

- Replacing the existing play area with new equipment and associated works at Wordsworth Park, Penarth
- Replacing the existing play area at Trebeferad, Llantwit Major

- Replacing the existing play area with new equipment and associated works at Badgers Brook, Ystradowen
- Works to upgrade the multi-use games area at Jenner Park Primary School
- Improvements at the Bear Field, Cowbridge
- Improvements to Lower Gladstone Gardens, Barry
- Preliminary works and feasibility undertaken to implement new play facilities and upgrade numerous parks across the Vale of Glamorgan in 2018/19 and 2019/20 (this list is not exhaustive), including: Paget Road, Penarth; Ceri Road, Rhoose; a new community garden project at Oakfield Primary School and Ysgol Gwaun Y Nant; Lougher Place, St. Athan; Batts Field, Barry; Fferm Goch, Llangan; Dochdwy Road, Llandough.

Educational Facilities:

- Completion of Llantwit Learning Community
- Completion of the new nursery at St. Brides Major Primary School;
- Initial feasibility for St. Joseph's Nursery and Education Intervention Base Unit
- Initial feasibility for a new nursery at Wick Primary and remodelling the building

Community Facilities:

- Purchasing equipment for Dinas Powys Library and Activity Centre, including a catering appliance and IT equipment.
- Preliminary work undertaken for a new extension to Wenvoe Community Centre to accommodate the library and to create a multi-functional hub

Implementation of Planning Obligations in 2017/18 – ‘In Kind’ Obligations

17. In addition to financial contributions, the Council has also worked with developers to deliver ‘in kind’ obligations on development sites, such as affordable housing.
18. A total of 172 new build affordable housing units were delivered in 2017/18 via Section 106 Agreements, on major developments such as St. Johns Well, St. Athan; Barry Waterfront; land adjacent to St. Joseph's School, Sully Road, Penarth; land off St. Brides Road, Wick; ITV Studios, Culverhouse Cross; Craig Yr Eos, Ogmore by Sea.

Strong Communities Grant Fund - Update

19. In 2017/18, Members granted approval for Section 106 contributions to support two Strong Communities Grant Fund applications in the first two rounds, for the following:
 - Rhoose Community Cinema - application to purchase cinema equipment - £10,974.
 - The Gathering Place, St. Athan - application to purchase new equipment to provide a lunch club for people in St. Athan - £891.
20. In addition, Section 106 contributions have also been added to the core fund following consultation with Cabinet Members and Local Ward Members, for Community Groups, the Voluntary Sector, and Town and Community Councils to apply for in future rounds:
 - 1) £10,000 Section 106 Community Facilities monies received from a development in Rhoose, and specifically for groups in Rhoose who operate a community facility/activity's.

2) £15,000 Section 106 Public Open Space monies received from a development in Dinas Powys, specifically for groups in Dinas Powys.

21. There are legal caveats, terms and conditions associated with each of these contributions, which will be set out on the Strong Communities Grant fund website page.

Section 106 Protocol Deviation - Education Contributions for Band B

22. The Section 106 Protocol for Implementation (hereafter referred to as 'the Protocol') is a consultation procedure which is carried out by the Senior Planner (Development Contributions), with Cabinet Members, Service Areas and Local Ward Members upon receipt of a Section 106 financial contribution. The Protocol is set out in Appendix C.
23. The purpose of the Protocol is to ensure that financial contributions received by the Council are allocated in a democratic manner, having regard to the legal framework, the impact and needs arising from a new development and best value for money.
24. Section 106 contributions specifically for educational facilities are secured via Section 106 Agreements when additional capacity is required to accommodate new pupils who will be generated from a new development. The Council's adopted Planning Obligations Supplementary Planning Guidance (2017) sets out the thresholds for seeking such a contribution, and the formula for calculating the contribution.
25. Section 106 contributions, once secured, can only be spent on educational facilities serving the new development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). Where school enhancements and additional capacity is required in order to accommodate projected growth, the schools are usually clearly defined within the Section 106 Agreement. Therefore, in these cases consultation serves no purpose, as the contributions are already committed to specific schools.
26. Cabinet will be aware that Band B of the 21st Century Schools Programme is the second wave of a long term strategic investment programme, and will commence in April 2019. The Council's Band B Strategic Outline Programme (SOP) proposes an investment of £142.417m across 10 schemes.
27. The SOP assumes £83.82m would be funded by Welsh Government and the remainder would be funded via a composition of Section 106 contributions, Capital receipts, General Capital Funding, Prudential Borrowing and Reserves.
28. A list of Band B Schemes and initial funding compositions can be found at Page 3 of the following Cabinet Report (22nd January 2018):
[http://www.valeofglamorgan.gov.uk/Documents/ Committee%20Reports/Cabinet/2017/18-01-22/reports/21st-Century-Schools-Programme-Band-B-Cabinet-Report.pdf](http://www.valeofglamorgan.gov.uk/Documents/Committee%20Reports/Cabinet/2017/18-01-22/reports/21st-Century-Schools-Programme-Band-B-Cabinet-Report.pdf)
29. One of the main objectives of the Council's Band B SOP is to create additional capacity to accommodate the forecasted growth which will arise as a result of new developments planned in the adopted Local Development Plan (2011-2026).
30. Consequently, 9 out of the 10 Band B schemes have forecasted utilising match-funding from Section 106 contributions, totalling £18.21m. The figures forecasted as match-funding have taken into consideration a number of factors, including:
- Section 106 education contributions received;
 - Approved planning permissions;
 - The residential growth anticipated within the adopted Local Development Plan up until 2026 and anticipated pupil projections; and

- The Council's Planning Obligations Supplementary Planning Guidance which sets out costs required to create additional pupil places.

31. This funding composition proposed for Band B may be subject to change, as there are risks associated with the forecasted Section 106 contributions. For example, the Local Development Plan period runs until 2026, whereas the Band B programme runs until 2023/24, and therefore the timings of some of the anticipated developments which have not yet come forward for planning permission and anticipated contributions which have been forecasted in Band B, will need to be kept under review. Further, careful planning and project management will be required, in order to ensure that contributions are spent within the five year period stipulated in Section 106 Agreements.
32. In order to satisfy the Welsh Government's terms under Band B of the 21st Century Schools Programme, the Council is required to prepare and submit business cases to Welsh Government for the individual schemes. Each business case will provide Welsh Government with evidence to support the validity of each project and also provide assurance both for Welsh Government and the Council of the delivery of these capital investment projects.
33. Given the significant Section 106 funding needed to support the programme, the timing issues and associated risks involved, it is requested that Cabinet approve a deviation to the Protocol, specifically in relation to Section 106 contributions received to provide or enhance education facilities which are required to support the Council's Band B SOP.
34. Notwithstanding the Protocol, Section 106 contributions for education are legally defined within the individual Section 106 Agreements, and therefore there is limited scope to consider alternative proposals, unlike a community facilities contribution for example where there may be several options for spend.
35. Consequently, it is requested that delegated authority is granted for the Head of Regeneration and Planning/Operational Manager for Planning and Building Control, in consultation with the Cabinet Member for Regeneration and Planning, to allocate these contributions for the purposes of Band B, following advice from the Directorate of Skills and Learning.
36. Relevant Local Members will still be notified upon the receipt of contributions supporting Band B, however, there will not be scope for any consultation regarding their future allocation.
37. The Protocol will remain in force for all other financial contributions.

Resource Implications (Financial and Employment)

38. Financial contributions secured via Section 106 Agreements have a positive impact on many of the Council's functions including education, community facilities, open spaces, highways and public transport.
39. Financial contributions secured via Section 106 Agreements, specifically to provide and improve educational facilities, will enable the Council to secure significant match-funding through Welsh Government's 21st Century Schools Band B Programme.

Sustainability and Climate Change Implications

40. The planning obligations sought through Section 106 Legal Agreements are an important mechanism to mitigate the impacts of new developments. In terms of

sustainability, contributions can assist in allowing for the needs of walking and cycling as well as enhancements to public transport all of which can contribute to a reduction in the carbon footprint.

Legal Implications (to Include Human Rights Implications)

41. Planning obligations are covered by Section 106 of the Town and Country Planning Act 1990 (as amended), The Planning Act 2008 (as amended), The Community Infrastructure Levy Regulations 2010 (as amended) and the Localism Act 2011.

Crime and Disorder Implications

42. None arising out of this report, although planning obligations can be related to crime and disorder matters given that such matters are material considerations in the planning process.

Equal Opportunities Implications (to include Welsh Language issues)

43. None arising out of this report. Although planning obligations such as affordable housing; financial contributions for education; improvements to sustainable transport; and the implementation of new play areas, assist to ensure that equal opportunities are available for residents in the Vale of Glamorgan.

Corporate/Service Objectives

44. The contributions paid by Developers under the planning obligations system have a positive impact on many of the Council's functions including education, community facilities, highways and public transport, and seek to mitigate the impact upon services created by new development. More specifically, Section 106 financial and in-kind obligations assist in meeting the Council's Corporate Plan Objectives.

Objective 2: Providing decent homes and safe communities – increasing the number of sustainable, affordable homes delivered within the Vale of Glamorgan.

Objective 3: Promoting regeneration, economic growth and employment –delivering sustainable transport improvement schemes; developing opportunities for employment and training through new developments.

Objective 4: Promoting sustainable development and protecting our environment - using Section 106 Sustainable Transport contributions to reduce the need to travel by car.

Objective 5: Raising overall standards of achievement – using Section 106 Education contributions to assist the education department to meet the Council's aims set out under this objective.

Objective 7: Encouraging and promoting active and healthy lifestyles – using Section 106 Sustainable Transport contributions to deliver infrastructure which will encourage and promote active and healthy lifestyles; using Section 106 Public Open Space contributions to support play development.

Policy Framework and Budget

45. This report is a matter for Executive decision by Cabinet.

Consultation (including Ward Member Consultation)

46. No Ward Member consultation has been undertaken as the report has implications for the Vale of Glamorgan as a whole, rather than specific wards. Consultation has been undertaken with the representatives of the relevant service areas.

Relevant Scrutiny Committee

47. Environment and Regeneration.

Background Papers

Town and Country Planning Act 1990

The Community Infrastructure Levy Regulations 2010

The Vale of Glamorgan adopted Local Development Plan (2011-2026)

Supplementary Planning Guidance 'Affordable Housing' (2018)

Supplementary Planning Guidance 'Planning Obligations' (2017)

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