

Report to	Malmesbury Area Board
Date of Meeting	7 September 2011
Title of Report	Section 106 Agreements 2004 to date for Malmesbury Community Area

Purpose of Report

To provide the Area Board with an update on the last 7 years of Section 106 agreements in the Malmesbury Community Area.

The report details the following:

1. What is a Section 106 agreement and how are they agreed
2. Summary of money received, money spent and money outstanding
3. How to access funding if there is funding available

1. Background

- 1.1. A request was made by Malmesbury Area Board for an update on the money secured through Section 106 agreements in the Malmesbury Community Area over the last 7 years.
- 1.2. An exercise is currently being carried out to capture all Section 106 agreements in Wiltshire. A Scrutiny Task Group was set up to help monitor the progress made on this work so that the same information can be given to every Area Board. This report provides all the details captured in the Malmesbury Community Area Board.

2. Main Considerations

2.1. What is a Section 106 Agreement?

- 2.1.1. The definition of a Section 106 Agreement is :

“Section 106 (S106 of the Town and Country Planning Act 1990) allows a local planning authority (LPA) to enter into a legally-binding agreement or planning obligation with a landowner in association with the granting of planning permission. The obligation is termed a Section 106 Agreement.

- 2.1.2. These agreements are a way of delivering or addressing matters that are necessary to make a development acceptable in planning terms. They are increasingly used to support the provision of services and infrastructure, such as highways, recreational facilities, education, health and affordable housing”.
- 2.1.3. The Council needs to have robust mechanisms in place to secure funding from developers towards the cost of infrastructure. These mechanisms must be supported by a comprehensive infrastructure planning evidence base, which shows what infrastructure is needed, how much it costs, how it will be funded, and when and how it will be delivered. Presently, the Council uses Section 106 agreements to negotiate developer contributions towards infrastructure from each separate development.
- 2.1.4. The North Wiltshire Local Plan 2011 has a Core Policy on Community Infrastructure. This sets out how the provision for the **directly related** community infrastructure costs of development proposals, appropriate to the scale of that development, will be sought.
- 2.1.5. The Council will examine each development proposal for its need to contribute to the following community infrastructure requirements and negotiate to secure planning obligations or by means of other appropriate methods to secure the requirements identified. The community infrastructure requirements are:

- Affordable housing
- Education, skill training provision and libraries
- Travel and transport infrastructure
- Community buildings and facilities
- Health care provision and social services
- New or improved open spaces
- Leisure, sport and recreation provision
- Waste management and recycling
- Environmental protection and enhancement
- Information Communication Technology infrastructure
- Art in the community

2.1.6. It is unlawful for the Council to spend Section 106 money on anything which is not in accordance with how it is set out in the specific agreement.

2.1.7. Within each agreement there are trigger points for when the money has to be paid to the beneficiary Services. These triggers are often different for each development and are negotiated with the applicants before the agreements are signed. Examples of trigger points could include “payment on completion of the 10th house”, “payment prior to first occupation”, “payment on commencement of development”.

2.1.8. These trigger points are recorded by the s106 Monitoring Officer and actively monitored by the beneficiary Services

2.2. Future policy

The latest Government legislation makes it clear that it intends to revise the current system with the introduction of Community Infrastructure Levy (CIL). This will be a new charge based on the principle of providing infrastructure to support development. In other words, it is a system of pooled contributions that can be spent on infrastructure across a wider area, whereas Section 106 contributions will in future be limited to site specific infrastructure and affordable housing. In time, the current use of Section 106 agreements to collect pooled contributions will be limited because CIL is the Government’s preferred mechanism in this regard. Last communication stated CIL will be mandatory as from April 2014. Malmesbury Area Board has been allocated a 2011/2012 budget of £40,593 for community grants, community partnership core funding and councillor led initiatives.

3. **Section 106 Agreements in the Malmesbury Community Area**

3.1 Appendix 1 sets out all of the Section 106 Agreements in the Malmesbury Community Area secured in the last 7 years.

- 3.2 Table one shows all of the agreements which have secured financial obligations.
- 3.3 Table two shows all of the agreements which have financial obligations which have been secured by condition. This has been separated because for a period of 12 – 18 months between 2007/2008, the former North Wiltshire District Council secured public open space contributions by condition. This was based on advice given at the time from the Council’s Legal Services. However, a Planning Inspectors decision and clarification from the Planning Inspectorate confirmed that this was not appropriate secure contributions in this way. North Wiltshire District Council changed the way it secured obligations from that point but this does mean that any previously agreed by condition may be difficult to enforce if the money is not readily forthcoming.

4 Financial update

- 4.1 In total £985,705 has been secured via a Section 106 legal agreement since 2004. Of this amount, £635,970 has already been received by the Council, leaving £349,735 outstanding.
- 4.2 Of the £349,735, £245,531 is not yet due to be paid due to the development not having been commenced or the appropriate trigger point being met.
- 4.3 Therefore the Council is actively investigating/chasing £104,204 of outstanding Section 106 obligations.
- 4.4 Table two details those obligations secured by condition. The total sum of financial contributions due to the Council is £40,420. Where the trigger points have been met, the contributions are also being actively chased.

5 Access to funding

- 5.1 The Land Adoptions team, who are responsible for the allocation of Section 106 money obtained specifically for public open space, are in the process of contacting all Town and Parish Councils to notify them of any unspent money. Any enquiries relating to this should be sent to landadoptions@wiltshire.gov.uk or contact Stuart Harper from the Land Adoptions team on 01380 734682.

Background documents used in the preparation of this report	North Wiltshire Local Plan 2011
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6 Environmental & Community Implications

6.1 There are no Environmental and Community Implications

7 Financial Implications

7.1 Section 106 money must be spent in line with Section 106 Agreement and cannot be used for other projects not related to the development.

8 Legal Implications

8.1 There are no specific Legal implications related to this report.

9 HR Implications

9.1 There are no specific HR implications related to this report.

10 Equality and Inclusion Implications

10.1 There are no specific Equality and Inclusion implications.

11 Officer Recommendations

11.1 There are no officer recommendations.

Appendices	Appendix 1 – Summary of Section 106 Agreements in the Malmesbury Community Area.
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No unpublished documents have been relied upon in the preparation of this report.

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