

Title: **Review of Section 106 & CiL Audit report**

Wards Affected: **All**

To: **Audit Committee** On: **27<sup>th</sup> November. 2024**

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## **1. Key points and Summary**

1.1 In June 2024 an audit report was issued into Section 106 & Community infrastructure Levy monies collected by the Council as mitigation for the harm caused by development. (Attached as Appendix 1) This looked at process, risks and performance management issues. This report is to update members on the progress towards addressing the risks outlined in that report and give a general understanding of what changes have been made.

## **2. Introduction**

2.1 A follow-up Audit report was conducted in October 2024, feedback is being given to the team and it is understood that further update will be given at the January Audit Committee. The original report had made a number of recommendations, and these have been largely addressed, mainly through the implementation of the new Exacom System, a new role and joint working with other departments.

2.2 Torbay is in a defining period for the place. Government investment and private sector interest has been secured for the growth and aspiration plans of the Council and Community. Delivery of those plans and ensuring that the major projects and investment knit together and enhance our lived, built and natural environment in line with corporate plan will require additional investment. In addition to its own direct resources the Council can use s106 and Community Infrastructure Levy (CIL) to support delivery. This update sets out the challenges facing the Council in terms of using the Section 106 monies collected and remaining unspent, looks at the control mechanisms in place at present and proposes a new system of controlling s106 negotiation, prioritisation, recording and spend to ensure that this important area is fully aligned to our corporate objectives.

2.3 Torbay Council are in a similar situation that a lot of other Local Planning Authorities find themselves in whereby monies have been collected within planning s106 agreements to mitigate the harm from various developments, but the amounts collected have remained unspent some years on from when originally collected.

2.5 The Council have invested in a nationally recognised and widely used back office system called Obligations Office – ‘Exacom’ system, which will be referred to in the actions section later in the report. We also purchased the Public facing module to

allow for community groups, councillors and the public to self-serve and access information.

- 2.6 The issue that has been in existence for too long within the Council is that the negotiated pots of money are seen by individual departments as theirs for use on projects and for several different reasons a number of those projects have either not happened, or been delivered in a different way. As a result, pots of s106 monies have been accumulating and remaining unspent. This is in part due to the restrictive nature of the clauses within the S106 agreements.
- 2.7 To address this several actions are required. The first is to restate that these funds are paid to address harm created by a development and are required to be spent. These funds are not general Torbay Council monies and are for outcomes they are not exclusively and only for that service to use. Especially the legacy monies that remain unspent some considerable time after they should have been.
- 2.8 The second action is move to a model which ensures a greater level of control over the Section 106 monies, supported by accurate and timely monitoring and reporting with clear management information channels. Depending on the quality of reports that Exacom will produce, there could be the potential to also use Power BI too. These actions are the responsibility of the Planning Service with support from the Finance Team. The tool/mechanism for the management of the monies is the Exacom system.

### **3. Section 106 Monies**

- 3.1 The new system has allowed for greater degree of control and monitoring of Section 106 Monies.
- 3.2 The current totals held for Capital projects (unspent) is £1,012,673 and for revenue £2,918,180. A proportion of these totals are committed and works scheduled to begin, but this finalised list has not been established yet. (In addition, there is a further £725,000 of revenue funding expected). Not all these monies are due to be spent yet and a more detailed breakdown of the 'unspent and nearing deadline for spend' has been produced.
- 3.3 As with CiL monies collected and spent, as detailed below, the details of Section 106 monies collected, spent and due can be found on the Council website at: <https://pfm.exacom.co.uk/torbay/index.php>

### **4. Community Infrastructure Levy monies**

- 4.1 The CiL Neighbourhood Proportion Spend Panel has met regularly throughout the year and decided upon the awarding of CiL monies to a variety of different community led projects from steps and railings down to beaches to supporting some of our sports clubs in their improvement projects. Panels have good discussions ask detailed questions of project proposers and maintain minutes and Record of Decisions of the Spend Panels. The Brixham monies are handed directly to the Town Council and they make their own decisions about spend.
- 4.2 The current unspent Community Infrastructure neighbourhood proportion monies are detailed below:

Overall Neighbourhood CIL Available: £368,066.77.

Brixham: £10,223.88

Torquay: £185,210.44

Paignton: £172,632.45

However, the next spend panel on 3rd December has three applications for monies totalling @£42,000, from Torquay, were they to be approved.

These can be viewed on the Exacom system below:

## Community Infrastructure Levy Dashboard ⓘ

CIL Date Filter ⓘ

01 January 2017 ⊞ 31 December 2035 ⊞

**NH Zone** Ward Parish Town ⓘ  Reset ↻

Allocation	Due <span>👆</span>	Collected <span>👆</span>	Allocated <span>👆</span>	Spent <span>👆</span>	Returned <span>👆</span>	Available
CIL Admin	<u>8,051.07</u>	<u>134,585.79</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	134,585.79
Neighbourhood CIL	<u>27,133.23</u>	<u>590,788.03</u>	<u>28,800.00</u>	<u>218,921.14</u>	<u>0.00</u>	343,066.89
CIL Berry Head Strategic Planning	<u>17,982.08</u>	<u>280,990.30</u>	<u>209,131.49</u>	<u>1,850.00</u>	<u>0.00</u>	70,008.81
CIL South Devon Link Road -Strategic Planning	<u>107,854.77</u>	<u>1,685,351.97</u>	<u>0.00</u>	<u>1,265,446.11</u>	<u>0.00</u>	419,905.86
Total:	161,021.15	2,691,716.09	237,931.49	1,486,217.25	0.00	967,567.35

⬅️ Click here to scroll up Print Page

## 5. Risks

### 5.1 There are several risks to consider;

1. Council must be cautious in terms of spending collected s106 money on other projects. An evidenced and transparent risk-based approach is currently being adopted and subject linked schemes in same areas of the Bay are being agreed. The new section 106 agreements are written in a manner to allow for the greatest amount of flexibility over final spend, so this will help in the future and we are taking internal legal advice, verified by one of our outsourced legal firms to confirm the acceptability of such wording.
2. The potential for the Council to have to pay back unspent Section 106 monies to developers as they are beyond the agreed timescale in the Agreement and the Council has been approached to return the unspent monies. We have had several speculative FOI's, but only one or two, formal claim for return of monies paid. There could also be a risk of having to cover the developers cost of pursuing the unspent monies and again legal advice and clarification over this point is being sought. This specific risk has been added to the Planning Service Risks in the Risk Register.
3. The risk of s106 monies remaining unspent which increases the risk set out above and below at 4.

4. The risk of reputational harm, whereby the public and developers will lose confidence in the Council. Where having securing monies to help mitigate the harm caused by that development, the scheme goes ahead but the mitigation never happens as the Council did not spend the money in a timely fashion and has had to give it back to the developer. This risk is increased owing to the nature of the Exacom system and the publicly accessible data.
- 5.2 Monthly reports will now be produced for the Capital & Growth Board from the Exacom System to run totals on monies collected, allocated and spent and outstanding. To keep that board informed and to consider proposals for alternative uses of time-expired unspent contributions.

## **6. Actions**

- 6.1 Ensuring that the information in Exacom is accurate is critical, at a stage before that, the Planning Officers need to ensure that the fact that there is a legal agreement attached to the planning permission, is noted in Uniform, the planning back-office system.
- 6.2 The key action of completing the detailed population of the Exacom System with accurate data from all the Deeds and checking of totals has now been achieved. A monthly working group has been set up with Planning and finance staff, checking on progress and accuracy of data and ensuring an ongoing dialogue. In addition a regular meeting between Divisional Directors in Planning & Finance also occurs.
- 6.3 A second part of this action around Exacom is to set up training sessions for the use of the various departments to understand the System and what needs to be inputted. The CiL & s106 Officer & Infrastructure Programme Officer to act as gatekeepers for the information on spend going forward. Whilst the Infrastructure Programme Officer was appointed to assist specifically with s106 spend within the Planning, Housing & Climate Emergency service, this role seems likely to expand to include supporting the Pride in Place Directorate and potentially beyond.
- 6.4 The officer group will in time also establish what are the priorities for future negotiated Section 106 monies and advise and assist in the development of another iteration of the Contributions Supplementary Planning Document.
- 6.5 The immediate challenge of dealing with the unspent, overdue monies, a key task of the group will be to develop a combined list of all Capital & Revenue projects and insist that the currently responsible Service Manager responsible for that element of the budget reports on each of the pots. The group will RAG rate those and determine whether they are:  
GREEN – project ready, commissioned, committed, dates.  
AMBER – some considerable certainty that the project is well advanced in its development and will be spent within the timescale detailed in the agreement and not become part of the unspent/overdue pot.  
RED - unlikely to happen and monies can be re-directed to other projects, making a transparent and evidenced risk-based judgement as to the flexibility of its use for other purposes reflecting on wording in initial agreement.
- 6.6 Upon consideration of the RAG rated prioritised list of projects, the officer group shall make timely decisions on the re-direction of those unspent and non-committed monies. A number of catch-ups have been held with managers who historically have been responsible for these amounts and explanation sought from them about what is committed and timescales for spend. In some cases the intention of the

original spend is no longer relevant, or appropriate and so a case will be prepared to combine monies to be used in a different way in the same subject area. Those papers will be considered by Capital & Growth Board, several such cases are being prepared by the Green Infrastructure team for example.

- 6.7 The further work that was necessary to reconcile the information held on FIMS with that now populating the Exacom system, has been completed.

Specific further actions:

The Divisional Director will establish and publish, with advice from Capital & Growth Board the priorities for future negotiated Section 106 Agreements and help develop with Officers in the Planning team, the revised Supplementary Planning Document (SPD).

All spend will be through Exacom, no other authorisation will be permitted unless through that system and reconciled with FIMS.

Record of Decision notices will be used for decisions to divert monies to other projects, a system currently used by the CiL Neighbourhood Proportion Spend Panel.

Planning Service to co-ordinate enquiry responses into Section 106 Spend /payments, through FOI's, EIR's and Member Requests. As well as developing an easy-to-use guide for self-serving the information, via the online Exacom Public Facing Module.

Establish new s106 officer group, initial tasks as laid out above, and considers re-directed spend of Section 106 monies and sets out clear directions based on the Community & Corporate Plan. The Divisional Director will report up to the Capital & Growth Board and give updates on spend and running totals of total section 106 amounts and progress.

A prioritisation of those s106 monies, either overdue, or nearing deadline for potential repayment, for re-use elsewhere, with recommendations made to the Director of Pride in Place.

Schedule a further review of the Contributions SPD alongside the evidence gathering work for the review of the Local Plan, to ensure that priorities in that document align with the new Community & Corporate Plan.

## **7. Conclusions**

- 7.1 With the introduction and now the final installation of the Exacom back office system it means that an extremely close eye can be kept on all Section 106 Spend. Key Officers are being supported and trained in the different areas of the council where monies have been collected for projects in their areas and an officer group is overseeing the spend and the proposals for alternative project spend and being reported to Capital & Growth Board.

- 7.2 The Annual Infrastructure Funding Statement, which details Section 106 & CiL spend, is being completed this month and will be shared with Members of this Committee upon its completion.

## **Appendices**

Appendix 1 Section 106/CiL Audit Report June 2024

[S106 and CIL 2023-24 - FINAL REPORT](#)

### **Documents available in members' rooms**

N/A

### **Background Papers:**

The following documents/files were used to compile this report:

Government Advice: [Planning obligations: good practice advice - GOV.UK \(www.gov.uk\)](#)

Torbay Council Planning Contributions Supplementary Planning Document - [planning-contributions-spd\\_2022.pdf \(torbay.gov.uk\)](#)