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| <b>REPORT TO:</b>              | <b>OVERVIEW AND SCRUTINY COMMITTEE</b>   | <b>AGENDA ITEM: 8</b>          |
| <b>DATE OF MEETING:</b>        | <b>27 MARCH 2024</b>   | <b>CATEGORY:</b>               |
| <b>REPORT FROM:</b>            | <b>STRATEGIC DIRECTOR (SERVICE DELIVERY)</b>   | <b>OPEN</b>                    |
| <b>MEMBERS' CONTACT POINT:</b> | <b>STEFFAN SAUNDERS - HEAD OF PLANNING AND STRATEGIC HOUSING</b><br><a href="mailto:steffan.saunders@southderbyshire.gov.uk">steffan.saunders@southderbyshire.gov.uk</a> | <b>DOC:</b>                    |
| <b>SUBJECT:</b>                | <b>SECTION 106 AGREEMENT - EDUCATION CONTRIBUTIONS</b>   |                                |
| <b>WARD(S) AFFECTED:</b>       | <b>ALL</b>   | <b>TERMS OF REFERENCE: EDS</b> |

## **1.0 Recommendations**

- 1.1 To note the Section 106 Education contributions held by South Derbyshire District Council and Derbyshire County Council as outlined at Appendix 1 and 2.
- 1.2 To receive a presentation on the development of Education provision utilizing Section 106 Contributions from Jenny Webster, Head of Development at Derbyshire County Council.

## **2.0 Purpose of the Report**

- 2.1 As part of its annual work plan the Overview and Scrutiny Committee has requested a report that outlines the Education contributions the Council has secured through Section 106 (S106) agreements from new developments. This is for both financial contributions for off-site infrastructure provision and on-site provision.
- 2.2 At the Overview and Scrutiny Committee meeting held on 11 October 2023, Members received full details of how projects receive Section 106 funding, a breakdown of the amounts spent in each Ward area and funding amounts that remain unspent and the timescales for funds being spent. Following this members requested further detail regarding the process of Section 106 Contributions and Education provision.
- 2.3 It was also requested that a representative of the Derbyshire County Council acting as the Local Education Authority attend a meeting and outline any plans for Education provision in the district using the monies available. A separate presentation is to be given on this by a representative from the Derbyshire County Council.

## **3.0 Detail**

- 3.1 Section 106 Agreements under the Town and Country Planning Act 1990 are used as part of the planning application process to address specific issues that arise and

are required to make a development acceptable in planning terms. The agreements take the form of a legal agreement, that is site specific.

### 3.2 Section 106 agreements can also:

- a. restrict the development or use of land in any specified way;
- b. require specified operations or activities to be carried out in, on, under or over the land;
- c. require a sum or sums to be paid to the authority on a specified date or dates periodically.

A planning obligation is recorded as a land charge and the obligation runs with the land ownership until the obligation is fully complied with.

Policy INF1 of the South Derbyshire Local Plan Part 1, adopted in June 2016, sets out how infrastructure should be delivered to support and mitigate the effects of new developments sustainably. The value of the contribution that is sought is supported through the Planning Obligations SPD and agreed at the point of the signing of the decision notice and accompanying S106 agreement. In accordance with the Statement of Community Involvement (SCI) Derbyshire County Council are consulted upon for major planning applications as a statutory consultee, this is when they have the opportunity to say if there is a particular project they wish to be considered for inclusion within the S106 agreement; should the application get approved either via delegated powers or at Planning Committee.

3.3 There is a statutory duty placed upon the County Council to ensure that there is education provision provided for every young person, ideally at normal area school. This duty applies to Academies, Free Schools, and County Council run Schools. Derbyshire County Council acting as the Local Education Authority, respond to planning applications in accordance with the Developer Contributions Protocol which in its current edition was published 1<sup>st</sup> April 2022. Education contributions are sought in line with this document following the receipt of a consultation from South Derbyshire District Council.

3.4 The National Planning Policy Framework (NPPF) paragraph 99 states “It is important that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement”. Therefore, it is essential that cooperative working takes place between the South Derbyshire District Council and Derbyshire County Council during the planning consultation process. Below outlines the different levels a contribution is requested by the County Council:

- a. Primary or Secondary schooling contributions are requested on developments of ten dwellings or more. The calculation for this is based on the normal area school capacity, projected pupil numbers over the next five years and the impact of all extant major planning permissions (10 houses or more) to assess the effect the committed development will have on school capacity. If it is calculated that there will be no sufficient capacity at the normal area school, then a financial contribution would be sought to mitigate the impacts.
- b. Special Educational Needs and Disability (SEND) provision is requested on developments of 100 homes or more. Due to the nature of the provision, it is not subject to an analysis of capacity within a set geographical area as it is a specialised educational setting therefore it can

involve pupils travelling a significant distance to the most appropriate place to suit their needs within the County for the provision. Consequently, to ensure that what is requested is fair and reasonable in scale the requests are made using guidance from the Department of Education.

- c. It is typically anticipated that a new build primary school will be required from developments of around 1,000 dwellings or more and schemes of around 6,000 dwellings will require a new secondary school. This threshold is a guide, however if existing schools cannot be expanded then a new school may be required for a smaller scale development.

- 3.5 The authority receives two different types of contributions, direct provision (where the developer typically delivers themselves on-site) and monetary provision (where the developer provides a financial contribution towards off-site provision or long-term on-site management or maintenance). The requirement for monetary provision is detailed within the S106 agreement including how the contribution is expected to be spent and the timeframe for spending prior to the amount being repaid to the developer. In more recent years, where possible Derbyshire County Council, who are collecting authority for infrastructure such as education and highways have been a signatory to the agreements so that they can actively collect their own contributions direct from the developer.
- 3.6 Set out in the Community Infrastructure Levy Regulations 2010 (as amended) it is a mandatory requirement for the Council as a 'contribution receiving authority' to publish an Infrastructure Funding Statement annually. The Infrastructure Funding Statement reports on receipts and expenditure of financial contributions in relation to Community Infrastructure Levy (CIL) and S106. As South Derbyshire District Council does not have a CIL, the obligations reported are all under S106 requirements. This report will be presented to the Environmental and Developmental Services Committee in November 2024, which will cover the 2023-2024 financial year. Previous Infrastructure Funding Statements can be found on the Council's [website](#). Derbyshire County Council as a contribution receiving authority have a statutory duty to publish their Infrastructure Funding Statement annually. This can be found on the website [here](#) and includes information on the collection of Education, Highways and Bus Service provision within South Derbyshire.
- 3.7 The total financial value of contributions collected via Section 106 agreements between 1 January 2019 and 31 December 2023 is £28,697,357.07. Of this funding £28,451,917.99 is towards improvements towards existing schools within South Derbyshire. Further contributions are expected to be sought from all major residential planning applications if the criteria as set out above is met. The spend deadline is dependent upon the individual Section 106 terms. The contributions are split between those that are held by South Derbyshire District Council and those that are held by Derbyshire County Council. Appendix 1 highlights those that are held by South Derbyshire District Council, totalling £1,806,307.08 Appendix 2 highlights those contributions that are held by Derbyshire County Council and the spending that has taken place and is proposed for these contributions, which totals £26,877,049.99.
- 3.8 In relation to on-site provision, the following have been provided within the Local Plan period and are due to be provided under the current adopted Local Plan allocations:
  - a. [Highfields Spencer Academy](#) – Opened September 2020
  - b. [Chellaston Fields Spencer](#) – Opened September 2019
  - c. [Hilton Spencer Academy – Opened September 2019](#)
  - d. [Clover Leys Academy](#) – Due to open in September 2024 at Boulton Moor
  - e. Drakelow Park Primary School – [Planning application pending](#) for a two-

- form entry primary school
- f. New House Farm – Primary School expected to be provided as required within the Section 106 for [9/2017/0349](#)
  - g. Infinity Garden Village – A new Secondary School is to be provided as part of the wider Infinity Garden Village and the adopted Local Plan policy INF12.

#### **4. Financial Implications**

- 4.1. S106 agreements have a timescale specified for the spending of the contribution; any contributions that remain unspent at the end of the specified date will need to be repaid to the developer.

#### **5.0 Corporate Implications**

##### **Employment Implications**

- 5.1 None.

##### **Legal Implications**

- 5.2 None directly associated with this report.

##### **Corporate Plan Implications**

- 5.3 The S106 agreements reported within Appendix 1 and 2 are consistent with several Corporate Plan themes. These include:
  - Promote Health and Wellbeing across the District (Our People).
  - To influence the improvement of infrastructure to meet the demands of growth (Our Future).

##### **Risk Impact**

- 5.4 None. There is a risk that if the money is not spent on time then it has to be paid back to the developer. It is critical that projects are adequately managed to prevent this.

#### **6.0 Community Impact**

##### **Consultation**

- 6.1 None.

##### **Equality and Diversity Impact**

- 6.2 None.

##### **Social Value Impact**

- 6.3 The S106 contributions reported will lead to an increase in the provision of specific infrastructure of benefit for the community as specified in appendix 1 of the report.

## **Environmental Sustainability**

6.4 None.

### **7.0 Background Papers**

Appendix 1: Section 106 Education Contributions held by South Derbyshire District Council

Appendix 2: Section 106 Education Contributions held and spending by Derbyshire Council

[Derbyshire County Council Developer Contributions Protocol](#)