

Delegated authority officer decision notice

Request to spend S106 funding under section 106 application reference: P24/V0721/106
Oxfordshire County Council – Primary and Secondary Education Contributions

Vale of White Horse District Council
Infrastructure Implementation and Funding – Strategic Finance

Decision made by	Simon Hewings – Head of Finance
Lead officer contact details	Silke More O’Ferrall – Infrastructure Implementation Officer
Decision	<p>To create a budget for £1,984,339 from S106 contributions (Primary and Secondary Education) and release the funds to Oxfordshire County Council (OCC) towards the designing, commissioning, procuring and building out the primary school to be erected on the site (Shrivenham CE Primary School) under 74 of council’s financial procedure rules.</p> <p>and to enter into a funding agreement in the form of a Third Party Funding Agreement, with Oxfordshire County Council and thereafter to release funds, subject to receipt of the signed third party funding agreement.</p>
Property address If a council asset, include Asset ID	<p>Oxfordshire County Council is the county council – local authority for Oxfordshire and county planning authority for the area in which the Site is situated and has sundry powers and duties in respect of education.</p> <p>Shrivenham Church of England Primary School, 28 High Street, Shrivenham, Oxfordshire, SN6 8AA – relocation of school within the new area of houses being built to the North of the village (Land East of Highworth Road, Shrivenham SN6 8BL). It is approximately 0.5 miles from the current site.</p>
Key decision?	Yes
If key decision, has call-in been waived by the Scrutiny Committee chair(s)?	
Confidential decision, and if so under which exemption category?	No

<p>Delegated authority reference from the constitution</p>	<p>Constitution May 2024 Section 106 and community infrastructure levy (CIL) income and related expenditure</p> <p>Page 222-223 Constitution of South Oxfordshire District Council and Vale of White Horse District Council – 23 May 2024 Financial procedure rules</p> <p>74. For section 106 or CIL agreements that provide clear and unambiguous details on how the receipts raised must be used, where that agreement has been approved by the Planning Committee and over which further discretion cannot be applied then the head of finance can approve the creation of the relevant revenue or capital budget.</p> <p>The S106 agreement (17V14) under which £1,984,339.25 has been paid to the district council is “clear and unambiguous” about how the contributions are to be used (Primary and Secondary and Sixth Form Education Contribution - towards the designing, commissioning, procuring and building out the primary school to be erected on the site) and the planning decision was made by the Planning Committee (10 April 2017), over which further discretion cannot be applied.</p>
<p>Risks</p>	<p>None identified – The proposed project commenced in November 2022 and is due for completion in April 2024.</p>
<p>Reasons for decision</p>	<p>New 1.5FE Primary School - Relocation and Expansion of Shrivenham CE Primary School (Academy)</p> <p>The project is currently in construction, and due for completion in April 2024. Details of the project is set out in attachment 1 – Business case report (G2-FBC / Full Business Case / Commit to Spend, dated 14/06/2022).</p> <p>The Primary Education and Secondary and Sixth Form Education Contributions of £1,461,828 were secured through the Section 106 Agreement (17V14) between Vale of White Horse District Council, the owner, and the developer of the Land to the East of Highworth Road, Shrivenham under planning permission P13/V1810/O, dated 7 April 2017.</p> <p>However, as Oxfordshire County Council was not a party to this agreement, the monies were secured and collected by Vale of White Horse District Council on behalf of the county council with the intention that the sums would be transferred when required. This sum has been received by Vale of White Horse District Council and, with indexation, totalled £1,984,339.25.</p>
<p>Alternative options rejected</p>	<p>The S106 Primary Education Contribution is explicitly to be used towards the designing, commissioning, procuring and building out the</p>

	<p>primary school to be erected on the site as defined in the S106 agreement (17V14).</p> <p>The Secondary and Sixth Form Education Contribution may be used to expand the Secondary and Sixth Form provision at Faringdon Academy and/or the designing, commissioning, procuring and building out the primary school to be erected on the site as defined in the S106 agreement (17V14).</p> <p>At the time of the planning application, the development site allowed for 2.22ha, however only 1.34ha was required to facilitate a new Primary School and as it was not reasonable to require the developers to offer the land for free in addition to the usual level of contributions it was decided that the remaining 0.88ha of land would be subject to separate negotiation with OCC or whoever delivers the school. The cost of the land was deducted from the total Primary Education request. However, OCC could not agree to this approach, they were not party to the S106 agreement phase one (1). This resulted in a significant funding gap on OCC's part putting at jeopardy the delivery of the Primary School. The developers understanding OCC predicament agreed to make the contribution (Secondary and Sixth Form Education) flexible knowing that it would be spent on the Primary School which was a priority.</p>
<p>Climate and ecological implications</p>	<p>Planning permission (Construction of a new 1.5FE primary school with 75-place nursery (Use Class F1) alongside hard and soft landscaping, external play areas, two sports pitches and netball court, external lighting and boundary treatment) was granted on 10 August 2022 under planning permission R3.0025/22. We are unable to influence climate and ecological implications not considered at planning application stage in order to release the section 106 education provision to Oxfordshire County Council towards the project.</p>
<p>Legal implications</p>	<p>The release of the Primary and Secondary Education Contributions is determined in the section 106 Agreement under The District Council's Obligations: -</p> <p>S106 agreement (17V14) provides in the ninth Schedule, paragraph 5 - "The District Council covenants with the Owner that it shall pay to the County Council: The Primary Education Contribution (or if applicable the Amended Primary School Contribution), the Secondary and Sixth Form Education Contribution, the Bus Shelter Contribution, the Public Rights of Way Contribution, the Highways Contribution, the Public Transport Contribution, the Travel Plan Monitoring Sum and the County Council's monitoring costs at the Sixth Schedule of this Deed - or any part or parts of such contributions received pursuant to this Deed as soon as reasonably practicable and in any event no later than 10 Working Days following receipt of such contribution or contributions once the Council is satisfied the County Council will utilise each payment for their specific purposes as set out in this Deed."</p>

	<p>A S106 Deed of Variation (22V28) completed on 8 September 2022 (The Principle Agreement dated 7 April 2017 and the First Deed of Variation dated 17 January 2020) makes changes to use of the Secondary and Sixth Form Education Contribution – which was amended to “a contribution towards the expansion of secondary education and sixth form provision at Faringdon Academy and/or the designing, commissioning, procuring and building out of the primary school to be erected on the Site.”</p> <p>The proposed School is to be erected on the Site as defined by the Section 106 Agreement.</p> <p>Transfer of this funding is not considered a subsidy as Oxfordshire County Council and third party recipient Shrivenham CE Primary School are not an organisation who are selling goods or services on the market as an economic enterprise.</p> <p>For financial assistance to be a subsidy it must meet four specific conditions. One of these conditions is for the financial assistance to confer an economic advantage on one or more enterprises. This has two components. The recipient of the assistance must be an enterprise, which is any entity that is engaged in an economic activity, which means offering goods and services on a market. Government Guidance on Subsidy Control states that Education services organised within the national education system, which are both funded through public funds and supervised by the UK Government, are not considered to be economic activities for the purposes of the subsidies control regime. The Government Guidance also states, as a rule, public funding for infrastructure that delivers a general public benefit, and which is not intended to be used primarily to carry out an economic activity will not fall within the scope of the subsidies control regime. Therefore, the funding is not considered to be a subsidy.</p> <p>It is recommended that Vale of White Horse District Council enters into a funding agreement with Oxfordshire County Council in the form of a Third Party Funding Agreement to govern the release of funds.</p>
<p>Financial implications</p>	<p>The proposed project conforms to the spending parameters of the S106 agreement and is a suitable use of the funds.</p> <p>Finance have confirmed that the requested funding is available.</p> <p>The project is included in Oxfordshire County Council’s Capital Programme – reference: ED945 (WBS C.AE01026.01) and will follow the necessary governance process for funding approvals and technical reviews.</p>
<p>Equalities implication</p>	<p>Planning permission was granted on 10 August 2022 under planning permission R3.0025/22. We are unable to influence equalities implications not considered at planning application stage in order to release the section 106 education provision to Oxfordshire County Council towards the project.</p>

Other implications	None identified.
Background papers considered	
Declarations/ conflict of interest?	None
Proposed action plan assuming grant of authority	On approval, arrange completion of the Third Party Funding Agreement with Oxfordshire County Council. Funding to be released and monitored in-line with the agreed terms to ensure the necessary evidence of spend is received and recorded.

Consultees:	NAME	Outcome / Comment	DATE
<i>Statutory</i>	Legal – Louise Greene legal@southandvale.gov.uk	Legal clearance provided	23/05/2024
<i>Statutory</i>	Finance – Emma Creed Finance@southandvale.gov.uk	I can confirm the contribution is available.	03/05/2024
<i>Statutory</i>	Climate and biodiversity – Kim Hall climateaction@southandvale.gov.uk	No comment from Climate & Biodiversity team.	10/05/2024
<i>Statutory</i>	Equality and diversity - Abi Witting, Trina Mayling, Ruth Lewin-Leigh equalities@southandvale.gov.uk	Thank you for sharing the S106 document with us. Since this is a retrospective matter, there are limited comments we can provide at this time.	14/05/2024
<i>Statutory</i>	Communications – Victoria Nickless communications@southandvale.gov.uk	Information noted	03/05/2024
<i>Statutory</i>	Property – Karen Lister property@southandvale.gov.uk	There are no comments to be made from Strategic Property.	07/05/2024
<i>Statutory</i>	Cabinet member Cllr Andy Crawford	Emailed spend notification	08/05/2024
<i>Statutory</i>	Ward Councillor Cllr Katherine Foxhall Cllr Viral Patel	Emailed spend notification	08/05/2024
<i>Required</i>	Stuart Walker – Planning	Thanks for the consultation. No comments to make.	07/05/2024
<i>Required</i>	Adrian Duffield – Head of Planning	Approved at S106/CIL Applications Meeting	23/05/2024
Decision maker's signature To confirm the decision as set out in this notice.	Simon Hewings – Head of Finance	Signature: Simon Hewings Date: 07/06/2024	

IMPORTANT NOTES TO OFFICERS:

1. You need to ask your head of service (or above) to determine whether this is a key decision. The constitution specifies a key decision as a decision of Cabinet, an individual Cabinet member or an officer acting under delegated powers, which is likely to:
 - (a) incur expenditure, make savings or to receive income (except government grant) of more than £75,000; or
 - (b) award a revenue or capital grant of over £25,000; or
 - (c) agree an action that, in the view of the chief executive or the relevant head of service, would be significant in terms of its effects on communities living or working in an area comprising more than one ward in the area of the council.
2. If this is a key decision (as defined in paragraph 1 above), immediately after it is signed off, send it to democratic.services@southandvale.gov.uk to allow the councillors' scrutiny call-in procedure to commence. You cannot implement a key decision until the scrutiny call-in procedure has been completed. You will receive a copy of the email to councillors. Check with Democratic Services after the close of the call-in period to see if the decision has been called-in.
3. If this is a key decision but the Scrutiny Committee Chair(s) has waived call-in, immediately after it is signed off send it to democratic.services@southandvale.gov.uk to allow councillors to be informed that a key decision has been made and scrutiny call-in waived. You may then implement the decision without further delay.
4. If this is a non-key decision, save this decision notice to your network drive for audit purposes (Democratic Services do not need a copy). You may implement the decision immediately.