

Delegated authority officer decision notice

**Request to spend S106 funding under section 106 application reference: P24/V0789/106
Oxfordshire County Council – Primary Education Contribution**

**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 £340,362.23 from S106 contributions (Primary Education) and release the funds to Oxfordshire County Council (OCC) towards the expansion of Drayton Community 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>Drayton Community Primary School, Hilliat Fields, Drayton, Abingdon OX14 4JF</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
Delegated authority reference from the constitution	Constitution May 2024 Section 106 and community infrastructure levy (CIL) income and related expenditure

	<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 (16V84) under which £340,362.23 has been paid to the district council is “clear and unambiguous” about how the contribution is to be used (Primary Education Contribution - towards the expansion of Drayton Community Primary School) and the planning decision was made by the Planning Committee (2 November 2016), over which further discretion cannot be applied.</p>
Risks	None identified – The proposed project was completed in 2017.
Reasons for decision	<p>Drayton Community Primary School – Expansion to 1FE</p> <p>This is a retrospective application. The project was completed in 2017. Details of the project is set out in attachment 1 – Business case report (Full Business Case / Commit to Construct, dated 12/01/2017).</p> <p>The Primary Education Contribution of £277,407 was secured through the Section 106 Agreement (16V84) between Vale of White Horse District Council, the owner and developer of the Land to the south of High Street, Drayton site developed under planning permission P15/V2447/O, dated 31 August 2016.</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 sum would be transferred when required. This sum has been received by Vale of White Horse District Council and, with indexation, totals £340,362.23.</p>
Alternative options rejected	The S106 Primary Education Contribution is intended explicitly to be used towards the expansion of Drayton Community Primary School as defined in the S106 agreement (16V84).
Climate and ecological implications	Planning permission was granted on 22 September 2016 under planning R3.0084/16 (A new extension to existing building to provide a single classroom with internal alterations to create cloak and withdrawal area). 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>Legal implications</p>	<p>The release of the Primary Education Contribution is determined in the section 106 Agreement under The District Council's Obligations: -</p> <p>S106 agreement (16V84) provides in the sixth Schedule, paragraph 1.3 – "When the District Council receives the County Contributions (as defined in the Fourth Schedule) the District Council shall pay the County Contributions to the County Council such payment to be made only when the District Council is reasonably satisfied that no County Contribution will be applied for any purpose other than that for which it is stated to be used in this Agreement."</p> <p>Transfer of this funding is not considered a subsidy as Oxfordshire County Council and third party recipient Drayton Community 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 Third Party Funding Agreement with Oxfordshire County Council to govern the release of funds.</p>
<p>Financial implications</p>	<p>The 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 within Oxfordshire County Council's Capital Programme: ED886 (WBS C.AE01027.01)</p> <p>The project was managed by the governing body of Drayton Community Primary School.</p>
<p>Equalities implications</p>	<p>Planning permission was granted on 22 September 2016 under planning R3.0084/16. 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 – Nigel Bell legal@southandvale.gov.uk	Confirmed the proposed project is within the terms of the Section 106 Agreement.	07/05/2024
<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	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.