

Delegated authority officer decision notice

**Request to spend S106 funding under section 106 application reference: P24/V0939/106
Oxfordshire County Council – Highways 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 £236,995 from S106 contributions (Highways) and release funds to Oxfordshire County Council (OCC) towards the A420 Junction Works at Shrivenham 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 highways, transport and regulation of traffic.</p> <p>Highways Works at A420, Shrivenham, Oxfordshire.</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 (17V14) under which £236,995.20 has been paid to the district council is “clear and unambiguous” about how the contribution is to be used (Highways Contribution - towards the cost of the Works together with any road traffic orders that may be required and maintenance of traffic lights in connection with the Works. The Works definition in the agreement – means provision of a strategic vehicular access to the A420 to the north west of the Site in Shrivenham including a new junction to the north of Shrivenham included as part of planning application reference P15/V2541/O) and the planning decision was made by the Planning Committee (10 April 2017), over which further discretion cannot be applied.</p>
Risks	<p>None identified – this is a retrospective application - A420 Junction Works project was completed on 7 February 2023.</p>
Reasons for decision	<p>The Vale of White Horse District Council has received a request from Oxfordshire County Council to draw down funds for a total of £236,995.20 towards the A420 Junction Works at Shrivenham.</p> <p>The requirement for the A420 Junction Works was identified through the transport assessment associated with the development for Land at North Shrivenham Highworth Road, Shrivenham (P15/V2541/O) – for the full provision and delivery of A420 roundabout and Highworth Road junction.</p> <p>Further funding provision to be sought from developments in the vicinity: Land to the East of Highworth Road, Shrivenham (P13/V1810/O) and Land off Townsend Road (P15/V0663/O - was granted on 6 May 2016 by way of an appeal decision (APP/V3120/W/15/3141276)) to be secured through contributions to be used by Oxfordshire County Council for this purpose.</p> <p>A Highways Contribution of £554,973.62 was secured through the development at Land off Townsend Road (P15/V0663/O) towards A420 Junction Works. This sum has been received by Oxfordshire County Council and, with indexation totalled £612,080.40.</p> <p>A further Highways Contribution of £208,000 was secured through the Section 106 agreement (S106) 17V14 between Vale of White Horse District Council, the owner, and the developer of the Land to</p>

	<p>the East of Highworth Road, Shrivenham Site developed 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 £236,995.20.</p>
<p>Alternative options rejected</p>	<p>None considered. The S106 Highways Contribution is intended explicitly to be used towards the A420 Junction Works as defined in the S106 agreement (17V14).</p>
<p>Climate and ecological implications</p>	<p>Planning permission for the development was granted on 10 April 2017 (P13/V1810/O). We are unable to influence climate and ecological implications not considered at planning application stage in order to release the section 106 highways provision to Oxfordshire County Council towards the project.</p>
<p>Legal implications</p>	<p>The release of the Highways Contribution 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 (e) – “The District Council covenants with the Owner that if shall pay to the County Council – the Highways Contribution - 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>Transfer of this funding is not considered a subsidy as transfer of funds between two public bodies (Vale of White Horse and Oxfordshire County Council) is non-economic and is not liable to Subsidy Control. In the event that the second public body is passing the funds to a third party for economic use, the second public body will be responsible for implementing Subsidy Control.</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. The Government Guidance on Subsidy Control states:</p> <ol style="list-style-type: none"> 1) 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 Act. 2) where infrastructure in the form of roads, bridges, tunnels and inland waterways is not intended to be commercially exploited and

	<p>is made available to the public to use for free, the provision of access to this infrastructure will not be considered to constitute an economic activity and public funding for this infrastructure will not fall within the scope of the Act.</p> <p>Therefore, the funding is not considered to be a subsidy.</p>
Financial implications	<p>The project conforms to the spending parameters of the S106 agreements and is a suitable use of the funds.</p> <p>Finance have confirmed that the requested funding is available.</p> <p>A copy of the Certificate of Completion, Cost Statement and Cost Evidence has been provided by Oxfordshire County Council.</p>
Equalities implications	<p>Planning permission for the development was granted on 10 April 2017 (P13/V1810/O). We are unable to influence equalities implications not considered at planning application stage in order to release the section 106 highways 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	<p>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.</p>

Consultees:	NAME	Outcome / Comment	DATE
<i>Statutory</i>	Legal – Pat Connell legal@southandvale.gov.uk	Agreed	11/06/2024
<i>Statutory</i>	Finance – Emma Creed Finance@southandvale.gov.uk	I can confirm this contribution is available.	13/05/2024
<i>Statutory</i>	Climate and biodiversity – Kim Hall climateaction@southandvale.gov.uk	No comment from the Climate & Biodiversity team as this is a retrospective funding application.	20/05/2024
<i>Statutory</i>	Equality and diversity - Abi Witting, Trina Mayling, Ruth Lewin-Leigh equalities@southandvale.gov.uk	No comments to make in regard to equalities.	13/05/2024
<i>Statutory</i>	Communications – Victoria Nickless communications@southandvale.gov.uk	Noted by communications.	10/05/2024

<i>Statutory</i>	Property – Chris Mobbs property@southandvale.gov.uk	No comments from Strategic Property	13/05/2024
<i>Statutory</i>	Cabinet member Cllr Andy Crawford	Emailed spend notification	16/05/2024
<i>Statutory</i>	Ward Councillor Cllr Katherine Foxhall Cllr Viral Patel	Emailed spend notification	16/05/2024
<i>Required</i>	Stuart Walker – Planning Officer	Thanks for the consultation. No observations to make.	13/05/2024
<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: 19/06/2024	

Form Received	Date: 21 June 2024	Time: 8.34am
Published	Date: 21 June 2024	
Call-in deadline	Date: 28 June 2024	Time: 5pm

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.