

Report to the Resources Select Committee



**Epping Forest
District Council**

Date of meeting: 14 December 2015

Portfolio: Finance

Subject: Review of Private Funding

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Recommendations

That the Committee consider the current position on private funding and any further opportunities, whilst bearing in mind potential conflicts of interest.

Executive Summary

The report provides information on the use of Section 106 monies and provides a brief commentary on one or two other possibilities that are or will be explored.

Reasons for proposed action

Members are asked to note the report.

Other options for action

No other options applicable.

Report

1. The Council derives its revenue funding from a number of sources for example the General Fund receives money from Central Government, the Council Tax, Business Rates, various fees and charges and other grants and contributions. The Housing Revenue Account (HRA) receives money from Housing Rents, various fees and charges and other non-dwelling rents.
2. Capital expenditure is funded slightly differently, from Capital Receipts, various grants and contributions and with regard to HRA schemes, also from revenue resources which in effect means Housing Rents etc.
3. Grants and Contributions make up a fairly modest proportion of capital funding, this includes section 106 and similar income which the Council receives as part of agreements made when planning permission is granted for development schemes. These monies can be provided for a variety of different purposes and will be based upon requirements identified as part of the planning process. The types of project can range from education, highways, leisure, health and affordable housing provision. In some cases the money is provided to the County Council or the national health service and in other cases to this Council.
4. If a developer is developing land for housing purposes there is a requirement to provide 30% affordable housing. The developer will either build that housing on the site they are developing or as in a number of instances, provide money to the Council to meet the required social housing on another site. Prior to the house building programme this money

was used by the General Fund and passed to housing associations, however this money is currently being used by the HRA.

5. The Section 106 agreements themselves can vary and in particular can have a repayment clause included where the money has to be spent for the agreed purpose within a specific timescale. If this timescale is not met the money becomes repayable and the provider is entitled to apply for the money to be returned to them.

6. There are also other legal documents which provide for financial payments to be made to the Council known as a Deed of Unilateral Undertaking. The Council is not a party to the Deed but under the legislation (S106 Town and Country Planning Act 1990, as amended) is able to enforce the undertaking given if necessary. As the Council is not a party it does not make any commitment to returning the monies if not spent, so the party making the payment has no ability to enforce repayment against the Council. Having said that the Council must spend the monies for the purpose given or be open to possible challenge by way of Judicial Review.

7. As at 31st March 2015 the Council held £2,172,000 in various private contributions; £1,173,000 for affordable housing, £474,000 for other projects, £477,000 due to other organisations varying from NHS England to a number of parish councils and £48,000 from the Civic Offices O2 mast. Based on current expectations the affordable housing contributions should all be used in 2015/16, however there is likely to be funding still available for other projects.

8. The Governance Select Committee of 6 October received a report setting out the section 106 agreements entered into during the last financial year. Concern was expressed at the meeting around the ability of members to properly scrutinise the section 106 agreement process without a complete overview of the progress of all agreements in preparation. It was therefore felt that the annual report should in future be made to the District Development Management Committee.

9. It is possible that Section 106 agreements will be replaced by the Community Infrastructure Levy or CIL, This is being evaluated as part the Local Plan process by a consultant who is doing the groundwork to assess whether or not we should put a CIL in place, however we will not be able to adopt this until the Local Plan has been finalised. The work on this is being paid for from the Local Plan DDF budget.

10. There are other areas where private finance could play a part in Council service delivery and indeed with the redevelopment of the museum the possibility of the creation of a museum, heritage and culture trust is being investigated. This has the potential to open new avenues of funding to the Council. A report on this is expected during the new calendar year.

11. The new Leisure contract is due to be let during the Autumn of 2016 and is being procured using the competitive dialogue process adopted for the Waste Management contract. With the poor state of the swimming pool in Waltham Abbey and the limited life expectancy of the sports centre in Epping there is likely to be a requirement for some significant capital expenditure during the life of the next leisure management contract. As part of the dialogue the funding requirements necessary to achieve the aspirations in the Leisure Strategy will need to be explored.

12. Another area that has been used by some organisations and not necessarily particularly well are Private Finance Initiatives (PFI). These are projects undertaken by Public bodies that are funded using money from the private sector. Important projects such as the building of Hospitals, Schools and to carry out major infrastructure works have been funded in this way. This approach was particularly popular during the 1990's and early 2000's, the attraction was that there was no need to find the required money up front, however the downside of course was the level of interest payable on these debts and the length of time necessary to repay them. In recent years such arrangements have fallen out of favour though the resultant debt will be with us for some time to come.

Consultations Undertaken

Consultations with a number of other officers but in particular the Assistant Director of Governance with responsibility for Section 106 agreements.

Resource Implications

The report refers to funding for the house building programme and other projects. This funding becomes available as a result of negotiations with developers as part of the planning process. Much of the funding is already allocated but there is potential for further funding for projects depending on the outcome of these negotiations.

Legal and Governance Implications

All sums paid to the Council referred to above will be the subject of a legal agreement which stipulates when and how much is payable to the Council. The agreements themselves are monitored by officers to ensure that the obligations therein are adhered to. There is also the possibility for conflicts of interest where an organisation that has provided finance to the Council subsequently seeks planning permission for something or might become subject to planning enforcement action.

Safer, Cleaner, Greener Implications

Nothing specifically identified, though agreements entered into will consider the environmental impact of the proposed use of the money.

Background Papers

Various agreements held in legal Services and working papers held in Accountancy.

Impact Assessments

Risk Management

In negotiating the agreements it is important that the projects for which funding is sought are thought through properly as there is a risk that having secured funding it is then not spent within the required timescale and has to be returned to the developer. There is also a risk of using this money for capital projects that then leave unfunded revenue consequences.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?
None

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?

N/A