

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
OFFICE OF THE CHIEF EXECUTIVE	EXECUTIVE COMMITTEE	19 SEPTEMBER 2023	7
FULLY FUNDED REVENUE BUDGET INCREASE - EDUCATION CONTRIBUTION RELATING TO SECTION 106 AGREEMENT FOR DEVELOPMENT LAND MOSS FARM, CROPPER ROAD, WESTBY			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

RELEVANT LEAD MEMBER

This item is within the remit of Lead Member for Corporate and Economic Development (Councillor Karen Buckley).

PURPOSE OF THE REPORT

On 6 February 2023 the Council approved the transfer of all Section 106 funds held by Fylde Council for the provision or improvement of education facilities to Lancashire County Council (LCC), subject to an agreement to indemnify Fylde Council in the event that the funds are not used for the purposes intended or within the agreed timeframes. In the event, it was not possible to reach agreement with LCC to mitigate against any requests from developers for repayment.

However, LCC's education team have now identified a suitable scheme that is appropriate to utilise the contribution. If the contribution remains unspent it will become repayable to the developer in June 2024.

This report therefore requests the transfer of Section 106 funds originally paid to Fylde Borough Council as a contribution towards the provision of additional primary school places in relation to application 12/0717 (Land at Moss Farm, Cropper Road) approved 16th May 2013. LCC have requested the money be paid to fund the provision of additional primary school places at Heyhouses Endowed Church of England Primary School. Although this is some distance from the development LCC have once again confirmed Staining is outside their school planning area and has not increased their admission number or net capacity, so it is not serving this development.

RECOVERABILITY

This decision is recoverable under section 7 of part 3 of the constitution.

RECOMMENDATIONS

1. That the Executive Committee approve a fully funded revenue budget increase of £218,206.74 in 2023/24 to be met by Sn106 monies held by the council towards the improvement of local primary school places (application 12/0717).
2. To authorise the sum of £218,206.74 be paid to Lancashire County for the provision of additional school places at Heyhouses Endowed Church of England Primary school in accordance with the terms of the agreement, subject to the approval of the fully funded budget increase.

REPORT

Background

1. On 6 February 2023 the Council approved the transfer of all Section 106 funds held by Fylde Council for the provision or improvement of education facilities to Lancashire County Council (LCC), subject to an agreement to indemnify Fylde Council in the event that the funds are not used for the purposes intended or within the agreed timeframes. In the event, it was not possible to reach agreement with LCC to mitigate against any requests from developers for repayment.
2. However, LCC's education team have now identified a suitable scheme that is appropriate to utilise the contribution and so this report is presented for consideration as an alternative proposal to that agreed by Council in February.
3. Planning permission was granted for a development of up to 146 dwellings at land rear of Moss Farm, Cropper Road, Westby in October 2013. The planning permission was subject to a Section 106 agreement that secured a range of contributions including a contribution towards the provision of additional primary school places to serve the needs of the residents of the development. This report follows the allocation of the first instalment to the same project as this relates to the second payment of £218,206.74.
4. The agreement defines the education contribution as a contribution "*... towards the funding of additional primary school place provision to serve the needs of the residents of the development...*". The agreement also makes provision for a review of the contribution amount due, which was done before the payment.
5. The developer has paid Fylde Council the agreed second contributions of £218,206.74 in line with the second trigger and subsequent recalculation as set out in the agreement. Following the original assessment of the impacts of the development, Lancashire County Council initially advised that there had been changes in demand for primary school places resulting in a general surplus of primary school places in the area. They have subsequently advised that there have been further changes in school rolls and this contribution is requested towards the provision of further additional primary school places as there is now an increase in demand for places at Heyhouses Endowed Church of England Primary School. Lancashire County Council have confirmed that Staining is outside their school planning area and that this school has not increased their admission number or net capacity. Accordingly, children living at the development at Moss Farm are more likely to attend Heyhouses Endowed Church of England Primary School than Staining CE Primary School and so the proposed use of the Sn 106 funds would be appropriate.
6. LCC have advised that Heyhouses Endowed Church of England Primary School located on Clarendon Road North is the closest school to this development at Cropper Road and so is a local primary school and LCC have advised that the children living at the development are likely to attend this school. This transfer of funds to the local education authority follows an increase the number of places at this school would be in line with the provisions of the legal agreement.
7. This money cannot be used other than to ensure education provision in accordance with the terms of the Sn106 Agreement. Consequently, Fylde Council will continue to ensure that the terms of any Sn106 reflect the requirements for appropriate education provision in the borough. Should this contribution not be spent by the 25th June 2024 the Council will be required to repay the money to the developer.
8. This report follows a decision of the council to transfer all Sn 106 monies currently held for education contributions to LCC, subject to LCC providing appropriate indemnities against Fylde being required to repay to

the developer monies that had already been paid to LCC. LCC was unwilling to provide an indemnity, so the transfer of the monies to LCC was not actioned. Instead, due the expiry date on this permission LCC have identified the scheme as detailed in this report.

9. Further monies currently held with Fylde for education contributions are as per the table below.

Application Number	Application Site	Amount	Date to be spent	Restrictions/ Area to be spent
19/0140	Moss Farm, Cropper Road	£32,101.06	05/07/2029	Intended to be used to provide additional primary school places at Weeton St Michaels CE primary school (Or subsequent name or designation by which it is known).
14/0161	Land Ballam Road (Ballam Oaks)	£60,148.00	08/01/2031	To provide additional pupil places at Lytham CE Primary School
	TOTAL	£92,249.06		

As it was not possible to obtain an indemnity agreement from LCC, separate reports seeking approval to utilise these funds will now be brought to committee for consideration as suitable projects are identified.

CORPORATE PRIORITIES	
Economy – To create a vibrant and healthy economy	
Environment – To deliver services customers expect	✓
Efficiency – By spending money in the most efficient way	✓
Tourism – To create a great place to live and visit	

IMPLICATIONS	
Finance	The report recommends the Executive Committee approve a fully funded revenue budget increase of £218,206.74 to be met in full by Section 106 monies held by the Council for this purpose and subject to this approval authorise the sum of £218,206.74 be paid to Lancashire County Council for the provision of additional school places at Heyhouses Endowed County Primary School in accordance with the terms of the agreement.
Legal	Council had previously accepted the recommendation of the Planning Committee that all section 106 education contributions held by the borough council should be transferred to the county council. This was to be subject to the county council agreeing to indemnify the borough council against the possibility that the borough council could be required by the developer to repay the contribution after the monies had been transferred to the county council. This could have happened if the county council had failed to spend the money by the deadline in the section 106 agreement, or had spent it for purposes outside the section 106 agreement. The county council were unwilling to provide an indemnity, so the transfer of the education contributions did not go forward. The use of the funds for the purposes set out in the report are considered to be in line with the purposes set out in the Section 106 agreement.

Community Safety	None
Human Rights and Equalities	None
Sustainability and Environmental Impact	The monies would be used to increase the number of places available at a local school, thereby reducing the need to travel further afield.
Health & Safety and Risk Management	None

SUMMARY OF PREVIOUS DECISIONS

On 18 January 2023 **Planning Committee** RESOLVED:

1. That, in future, all Section 106 contributions related to the delivery of community infrastructure that is solely the responsibility of Lancashire County Council will be secured through a covenant in the Section 106 agreement between the developer and the county planning authority; and
2. That, subject to Lancashire County Council entering into a satisfactory agreement to indemnify Fylde Council against any claim relating to the spending of Section 106 funds for purposes other than those for which they have been secured or the spending of those funds beyond a repayment date set out in a Section 106 agreement, that Council be recommended to approve a revenue budget increase of £310,455.80, fully funded from Section 106 monies held by the Council, and to authorise the contributions towards the provision of additional primary and secondary school places currently held by Fylde Council in the sum of £310,455.80 be transferred to Lancashire County Council. – Section 106 Agreement – Transfer of funds

On 30 January 2023 **Finance and Democracy Committee** RESOLVED:

1. That the Committee approve a fully funded revenue budget increase of £160,000 in 2022/23 to be met by Section 106 monies held by the Council towards the improvement of local primary school places (application reference 12/0717) and that the sum of £160,000 be paid to Lancashire County Council for the provision of additional school places at Heyhouses Endowed Church of England Primary School in accordance with the terms of the agreement.

On 6 February 2023, **Council** RESOLVED:

1. That, subject to Lancashire County Council entering into a satisfactory agreement to indemnify Fylde Council against any claim relating to the spending of Section 106 funds for purposes other than those for which they have been secured or the spending of those funds beyond a repayment date set out in a Section 106 agreement, that Council approve a revenue budget increase of £310,455.80, fully funded from Section 106 monies held by the council, and to authorise the contributions towards the provision of additional primary and secondary school places currently held by Fylde Council in the sum of £310,455.80 be transferred to Lancashire County Council.

BACKGROUND PAPERS

Name of document	Date	Where available for inspection
Report – Section 106 Agreement Transfer of Funds	18 January 2023	Planning committee reports.
Planning permissions 12/0717	11 October 2013	Please use the search facility at: https://new.fylde.gov.uk – view planning applications.

LEAD AUTHOR	CONTACT DETAILS	DATE
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