Report to Leader of the Council

Subject: **Transfer of S106 Developer Contributions for Open Space Development Projects**

Date: **14th June 2023**

Author: **Head of Development and Place**

Wards Affected **Newstead Abbey Ward**

Purpose

The purpose of this report is:

1. To seek approval to transfer the open space development contributions received under S106 developer agreements to Linby Parish Council to expend on capital projects which meet the requirements of the developer agreements;

2. To establish by virement the capital programme budgets for the delivery of open space development projects by the Parish Council, to be funded by S106 developer contributions.

Key Decision

This is not a key decision as it does not impact all wards in the borough and the financial implications are below £500,000.

Recommendation(s)

To approve:

1) the transfer of the Open Spaces Contribution (up to £59,652.67), from the Section 106 Agreement dated 7th April 2015 in relation to the Planning Permission 2014/0950 Land at Wighay Road, to Linby Parish Council to be spent in accordance with Schedule One of the above Section 106 Agreement.

2) the establishment, by virement, of the capital programme budgets for delivery of open space development projects to be funded by S106 developer contributions as detailed in recommendation 1.

1 Background

1.1 Planning obligations are taken forward through legal agreements, principally known as Section 106 Agreements made under Section 106 of the Town and Country Planning Act 1990 (as amended). They are usually negotiated and entered into between the local planning authority, the developer /applicant and all parties with a legal interest in the development site.

1.2 Where necessary, Section 106 Agreements can require the developer to make an off-site financial contribution in lieu of suitable on-site provision for infrastructure such as Open Space. Any financial contribution is then expended in accordance with the terms of the relevant Section 106 Agreement.

1.3 Gedling Borough Council, in its capacity as the Local Planning Authority, have secured various Section 106 Contributions, a full report of which can be viewed publicly on the Council's Infrastructure Funding Statement on the Gedling Borough Council website. Many of these Open Spaces Off-Site Contributions are restricted in terms of how they may be spent, whether that be a certain distance from the centre of the development from which they were collected or on the improvement of a specific area of Open Space.

1.4 Instances may arise where it is appropriate for the Local Planning Authority to transfer Section 106 Contributions to other Organisations, such as the CCG or Local Parish Councils, to expend in accordance with the terms and obligations of the Section 106 Agreements if Gedling Borough Council are not able to do so. This may be due to a lack of land under Gedling Borough Councils ownership, or to ensure that the monies are expended in a timely manner. Where Section 106 Contributions are not expended within a certain timeframe, typically 10 years from collection, the developer can request that the relevant monies, including any indexation, are re-paid by the Local Planning Authority.

1.5 The Off-Site Open Space Contribution which is listed in the above Recommendations has been collected and held in accordance with the relevant Section 106 Agreement. The local Parish Council that functions within the parish where the development has taken place have submitted a project to Gedling Borough Council which meets the requirements of the Section 106 Agreement. As Gedling Borough Council do not have any projects identified for these Contributions at this time, it is recommended that the monies are transferred to the relevant Local Parish Council to be expended in accordance with the relevant Section 106 Agreement.

1.6 Linby Parish Council have requested Section 106 Contributions for the redevelopment of the Linby Heritage Centre, an area of public open space to the north of Main Street, Linby. The redevelopment to consist of the provision of picnic benches, new vegetation / planting, re-surfacing of cobbled access road and installation of water supply to Heritage Centre. The total sum

requested is £59,652.67. GBC have collected £94,822.42 through the Section 106 Agreement for the Land at Wighay Road dated 7th April 2015 which stipulates that the Off-Site Contribution is to be used "towards the improvement or provision of open spaces/recreational facilities within a radius of 2km from the centre of the development".

1.7 The project submitted by Linby Parish Council has been assessed in consultation with Gedling Borough Councils PASC Team and the project is deemed to meet the requirements of the relevant Section 106 Agreements.

2 Proposal

2.1 It is proposed that the following Section 106 (S106) Open Space developer contribution be transferred to Linby Parish Council to be spent on capital projects which satisfy the requirements of the S106 agreement, as follows:

- £59,652.67 from the Section 106 Agreement dated 7th April 2015, 2015/0424 Land at Wighay Road, to Linby Parish Council.

2.2 It is proposed that the Leader approves the establishment, by virement, of the capital programme budgets for delivery of open space development projects by the Parish Council as detailed in paragraph 2.1 to be funded by S106 developer contributions.

3 Alternative Options

3.1 Gedling Borough Council could not transfer the Section 106 Contribution to Linby Parish Council however, if the Council does not spend the financial contributions in accordance with the obligations and timescales within the relevant agreements this could result in the contributions, including any indexation, having to be paid back to the developer.

4 Financial Implications

4.1 The council has received the following S106 developer contribution: £94,822.42 2015/0424 Land at Wighay Road. The contributions received must be spent on the development of off-site open space capital projects in accordance with the S106 developer agreements.

4.2 The proposed transfer of the contributions to the Parish Councils, as detailed in paragraph 2, for the delivery of capital projects which satisfy the requirements of the S106 agreement requires the establishment of the capital programme budgets.

4.3 Failure to ensure that Section 106 Contributions are spent in accordance with the relevant Section 106 Agreements in a timely manner could result in the contributions, including any indexation, having to be paid back to the developer.

5 Legal Implications

5.1 Monies can be passed to the relevant parishes provided the funds are spent in compliance with the relevant schedules of the Section 106 Agreements, Land at Wighay Road dated 7th April 2015. It should be noted that the parishes are not parties to the s.106 agreements themselves and as such any funds transferred should be accompanied with appropriate funding agreement between the parish and the Council to ensure that the funds are spent in accordance with the 106 agreement.

6 Equalities Implications

6.1 There are no equalities implications arising from this report. Equalities impacts should be assessed as part of any proposed project at each site.

7 Carbon Reduction/Environmental Sustainability Implications

7.1 The delivery of new Open Space through Section 106 Contributions can help contribute to carbon reduction in the borough. Non-formal physical activity opportunities, such walking and cycling, provide a more sustainable alternative to high carbon emission transport options whilst the provision of additional green infrastructure can further reduce the Councils carbon footprint.

8 Appendices

8.1 DEVELOPER CONTRIBUTIONS Commitment Request Form 1 - Linby Parish

9 Background Papers

9.1 Section 106 Agreement dated 7th April 2015.

10 Reasons for Recommendations

10.1 To ensure the transferring of funds for delivery of open space provision in line with planning obligations detailed in the above 106 agreements.

Statutory Officer approval

Approved by:
Date:
On behalf of the Chief Financial Officer

Approved by:
Date:
On behalf of the Monitoring Officer