

## **Report to Leader of the Council**

**Subject:** Transfer of Section 106 Open Space Contribution from Development at Land at Wighay Road to Linby Colliery Welfare FC

**Date:** 13<sup>th</sup> February 2025

**Author:** CIL and Section 106 Monitoring Officer

**Wards Affected** Newstead Abbey Ward

### **Purpose**

The purpose of this report is:

1. To seek approval to transfer the remaining Section 106 Open Space Capital Contribution (£33,400), received under Section 106 Agreement dated 7th April 2015, to Linby Colliery Welfare FC for expenditure on capital projects which meet the requirements of said Section 106 Agreement;
2. To establish by virement the capital programme budgets for the delivery of open space development projects by Linby Colliery Welfare FC, funded by Section 106 Open Space Contributions.

### **Key Decision**

This is not a key decision as it does not impact on two or more wards in the borough and does not result in the Council incurring expenditure which is significant having regard to the budget for the service or function concerned.

### **Recommendation(s)**

**To approve:**

**1) the transfer of the Open Spaces Capital Contribution (up to £33,400), from the Section 106 Agreement dated 7<sup>th</sup> April 2015, in relation to the Planning Permission 2014/0950 Land at Wighay Road, to Linby Colliery Welfare FC to be spent in accordance with Schedule One of the above Section 106 Agreement on the improvement of recreational facilities within a 2km radius of the development .**

**2) the establishment, by virement the capital programme budgets for the delivery of open space development projects by Linby Colliery Welfare FC, funded by Section 106 Open Space Contributions 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 Capital Contribution of £94,822 detailed in the above Recommendations, was collected by Gedling Borough Council on the 14<sup>th</sup> June 2016 and held in accordance with the relevant Section 106 Agreement. Schedule 1 of the aforementioned Agreement stipulates that the Open Spaces Capital Contribution must be used "towards the improvement or provision of open spaces/recreational facilities within a radius of 2km from the centre of the development".
- 1.6 On the 20<sup>th</sup> July 2023 approval was given by the Leader of the Council to transfer the Open Spaces Capital Contribution to Linby Parish Council for

expenditure in accordance with Schedule One of the above Section 106 Agreement and to establish, by virement, of the capital programme budgets for delivery of open space development projects to be funded by Section 106 Contributions. The project to which this contribution was awarded was for the redevelopment of the Linby Heritage Centre, an area of public open space to the north of Main Street, Linby. The redevelopment works consisted of the provision of picnic benches, new vegetation / planting, re-surfacing of cobbled access road and installation of water supply to Heritage Centre. An initial total of £59,652 was transferred to Linby Parish Council in August 2023 with a final payment of £1,769 transferred in May 2024.

- 1.7 As a result of the above payments to Linby Parish Council, Gedling Borough Council hold a total of £33,400 remaining from the Off-Site Open Spaces Capital Contribution. In accordance Para 2.2 of Schedule 1, if this sum is not spent or allocated to a project within the 10<sup>th</sup> anniversary of payment to the Council, then Gedling Borough Council, upon request of the person who made payment of the Open Spaces Off-Site Contribution, could be required to repay the Contribution.
- 1.8 In light of the above, and in the absence of any suitable projects identified by Gedling Borough Councils PASC team, predominantly due to a lack of Council owned land within 2km of the development site, a request was made by Linby Colliery Welfare FC to utilise the remaining £33,400 towards the installation of floodlighting to the main football pitch at the Linby Colliery Welfare Football Ground. The project submitted by Linby Colliery Welfare FC forms part of a wider program of works for the redevelopment of the sports ground which has an extant planning permission (application reference: 2013/0038) for “Ground Improvements and new Clubhouse – including floodlighting resitting of stand and dug-out”. The project has been assessed in consultation with Gedling Borough Councils PASC Team and the project is deemed acceptable and meets the requirements of the relevant Section 106 Agreement.
- 1.9 In order to ensure that compliance with section 36(1) of the Subsidy Control Act 2022, Linby Colliery Welfare FC provided a signed declaration confirming that receipt of the remaining Off-Site Capital Contribution (£33,400) would not cause Linby Colliery Welfare FC to exceed its MFA threshold specified in section 36(1) of the Subsidy Control Act 2022. A copy of this Confirmation has been uploaded as an appendices for information.

## **2 Proposal**

- 2.1 It is therefore proposed that the remaining Section 106 Open Space Capital Contribution (£33,400) be transferred to Linby Colliery Welfare FC, to be spent on the above capital project which is deemed to be in accordance with the obligations of the Section 106 Agreement dated the 7<sup>th</sup> April 2015.

- 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 Linby Colliery Welfare FC as detailed in paragraph 2.1 to be funded by Section 106 Developer Contributions.

### **3 Alternative Options**

- 3.1 Gedling Borough Council could not transfer the Section 106 Contribution to Linby Colliery Welfare FC, 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 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 Linby Colliery Welfare FC, 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 Linby Colliery Welfare FC are not parties to the original Section 106 Agreement and as such any funds transferred should be accompanied with appropriate funding agreement between the Organisation / Stakeholder and the Council to ensure that the funds are spent in accordance with the terms Section 106 Agreement. In the event that the funds are not spent in accordance with the terms of the Section 106 Agreement then Gedling Borough Council will be entitled to recover any such money.

### **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 Form 1 - Linby Colliery Welfare FC
- 8.2 MFA Notification and Confirmation - Linby Colliery Welfare FC

## **9 Background Papers**

- 9.1 Section 106 Agreement dated 7<sup>th</sup> April 2015.

## **10 Reasons for Recommendations**

- 10.1 To ensure the expenditure of Open Space Contributions in accordance with the terms and obligations of the Section 106 Agreement dated the 7th April 2015.

### **Statutory Officer approval**

**Approved by:**

**Date:**

**On behalf of the Chief Financial Officer**

**Approved by:**

**Date:**

**On behalf of the Monitoring Officer**