

Leicester, Leicestershire and Rutland Police and Crime Panel Scrutiny Review

S106 Funding

A Review Report of the Leicester, Leicestershire and Rutland Police and Crime Panel

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Leicester, Leicestershire & Rutland Police & Crime Panel

Task Group Members:

Councillor Deborah Taylor (Chair of the review)
Councillor Piara Singh Clair
Councillor Kevin Loydall
Councillor Les Phillimore
Councillor Lucy Stephenson (until May 2022)
Councillor Marc Oxley (from May 2022)

Chair's Foreword

I would firstly like to thank the members of the panel who took the time and trouble to take part in this review. Membership was representative of the City, County and Rutland and the expertise and observations provided were deeply appreciated.

On behalf of the Task Group, I would like to thank the officers, from the Office of the Police and Crime Commissioner, Leicestershire Constabulary, the host authority and across other local authorities within the Leicester, Leicestershire & Rutland area, for the contributions they may have made to this piece of work. I would also like to give special thanks to Anita James, our democratic officer, who without her support and direction, this review would not have been possible. Her continued focus and drive kept the review on track and enabled the work of the task group to provide the recommendations contained in this report.

The review was prompted by a range of factors, but most keenly felt was the pressures on budgets arising from the current economic climate against the backdrop of the Leicester, Leicestershire and Rutland force being one of the lowest funded forces in the country. Uncertainty around when s106 funding could be made available, making it unsafe to include as a guaranteed source of income to the capital budget and frustration with the system that appeared to hold back s106 funding was also a feature that led to the review.

As Chair of the Leicester, Leicestershire and Rutland Police and Crime Panel I was keen to lead this piece of work that could probe into the issues around s106 funding with the Force and to look at how that could be addressed.

Over a series of meetings, the task group gained an understanding of the working behind the s106 agreements and examined the existing working practices of the Force to obtain s106 funding.

One of the upshots of the review was to capture the knowledge that members have within their own authorities and to reflect upon those observations in terms of the issues under review. Members recognised the challenges of developments being in different areas, some sparsely populated and what would benefit residents in those areas in terms of infrastructure as well as the different challenges of each authority administering s106 funding.

Rising population numbers now and in the future underscores the need for further developments which in turn will increase demand on services such as the Police. This increase in demand against the backdrop of tightening budgets strengthens the need for funding priorities to be based on demographic changes and the demand that services like the police and other emergency services are seeing.

This report is the culmination of many months work on the part of elected members and supporting officers and I hope that our work and the recommendations can help towards a fresh approach to this area of work and that in time we can see the benefit through improved availability and draw down of s106 funding being put to good use in capital budgets and infrastructure projects of the Force.

Councillor Deborah Taylor - Task Group Chair

1 Executive Summary

1.1 Introduction

- 1.1.1. At its meeting on 27th January 2021 to consider the pre-cept, panel members noted the core grant funding reductions and locally raised precept since 2010-11, the impact of that in terms of local policing budgets and the rising demands for service.
- 1.1.2. Demand for the service had changed over the last 5 years. In 2021 the police responded to 158,721 emergency 999 calls; 320,151 calls to 101 and received almost 17,000 online reports.
- 1.1.3. The capital strategy 2021/22 submitted to the 27th January 2021 panel meeting provided a high level overview of how capital expenditure, capital financing and treasury management activity would contribute to the provision of policing services, and it was noted that all expenditure must be financed either from external sources (government grants and other contributions), the Police and Crime Commissioner's own resources (revenue, reserves and capital receipts) or debt (borrowing, leasing and Private Finance Initiative).
- 1.1.4. At its meeting in March 2021 the panel received a further report that provided detail of how s106 funding was sought by the Force in terms of developer contribution agreements, how it was drawn down from local authorities and how it was used in terms of operational policing purposes.
- 1.1.5. There were concerns that s106 funds were not included in the budget capital programme and the panel were interested to know more about the s106 developer contributions received, those left unspent and the barriers to s106 funding being secured.
- 1.1.6. In July 2021 the Leicester, Leicestershire and Rutland Police and Crime Panel initiated its review of s106 funding and agreed its scoping document and terms of reference.
- 1.1.7. The task group highlighted the need for police to be able to access funds to address capital infrastructure needs and to be able to meet the future needs of the population in terms of policing.
- 1.1.8. The task group recognises the priority to ensure that available funding is used in the most effective way as well as ensuring that maximum value for money can be obtained.

1.2 RECOMMENDED ACTION

- 1.2.1 **That the Leicester, Leicestershire and Rutland Police and Crime Panel endorses the recommendations of the Task Group for the consideration of the Police and Crime Commissioner/Force.**

2 Report

2.1 Rationale for the review

- 2.1.1 The review of s106 funding was placed on the panel work programme following consideration of pre-cept/budget reports and a follow up report on s106 funding.
- 2.1.2 As funding pressures continue to grow on all aspects of the police's work there will continue to be an impact on the funding available and annual pressure to increase the pre-cept. Therefore, it is important to maximise developer funding contributions that can be used by the Force to fund infrastructure costs linked to new housing and commercial developments.
- 2.1.3 Uncertainties around trigger points, whether s106 funding would be released to authorities and in turn the Force and timescales spread over many years were also features that led to the review

2.2 Methodology

The review has been conducted by a small cross party task group working with officers from the OPCC, Force and local authorities.

2.3 Task Group Meetings

The task group held meetings outlined below:

Meeting date	Meeting focus
14 th October 2021	Revisit s106 report presented to the Panels meeting in March 2021 to better understand background and issues.
2 nd December 2022	Meeting cancelled. Hiatus in review due to staffing changes in Finance Officers at OPCC and Force
13 th April 2022	Explore what Police do to obtain s106 monies. Review current s106 agreements in place. Receive advice in relation to re-purposing bids.
13 th July 2022	Review current s106 agreements in place. Receive details of Police Capital Strategy and Investment Strategy, Explore how existing and outstanding bids could be re-evaluated or repurposed.

24 th August 2022	Feasibility of repurposing agreements. Drawing conclusions and recommendations
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2.4 Background and Context

- 2.4.1 Planning obligations (s106 agreements) are entered into under Section 106 of the Town and Country Planning Act 1990 (as amended) and are legal agreements negotiated between local authorities and property developers to mitigate the impacts of a development proposal and are legally enforceable documents. S106 contributions should not be used solely to resolve existing deficiencies in infrastructure.
- 2.4.2 Planning obligations are used for three specific purposes:
 - To prescribe the nature of development
 - To compensate for loss or damage created by a development
 - To mitigate a developments impact i.e., on service provisions.
- 2.4.3 The terms of the s106 agreement prescribe the use of any monies paid. There must be a functional or geographical link between the development and any item being provided through it.
- 2.4.4 Agreements are drafted with various “trigger” points relating to the development and when these are reached the developer is liable to pay an agreed contribution to the local authority. Agreements can have several trigger points such as commencement; completion or occupation of development which have to be reached before contributions are due and which can make it difficult in monitoring funds due, since the onus is on developers to inform local authorities when these triggers are reached. It should also be noted that planning permissions may take several years to reach completion or may cease so not all agreements are realised in full.
- 2.4.5 The process for determining the type and amount of s106 contributions is on a case by case basis with a number of factors taken into account such as the size and type of development, location and resultant impact and the mitigation needed to address that impact.
- 2.4.6 S106 agreements are often referred to as “developer contributions” along with the Community Infrastructure Levy (CIL which was introduced in April 2010).
- 2.4.7 Leicester City Council are a CIL authority; Rutland County Council is a CIL and s106 authority, and all other local authorities within Leicestershire are s106 authorities.
- 2.4.8 For the purpose of this review it is noted that there is a clear distinction between CIL and s106 and this review will not be touching on CIL.

2.5 Increasing demands on Policing

- 2.5.1 A national picture of growing pressure on housing and other services has led to increasing demand for new developments. The Office for National Statistics estimates there will be a population increase of 11m over the next two decades.
- 2.5.2 Information from the Census 2021 indicates the current population of Leicester and Leicestershire at 712,300 and Rutland at 41,000 and the number of households with at least one usual resident at 127,400 in Leicester; 296,400 in Leicestershire and 16,700 in Rutland showing the area as one of the fastest growing in the country in terms of population.
- 2.5.3 Rising population numbers now and in the future underscore the need for further housing and commercial developments.
- 2.5.4 Increases in population need to be supported by appropriate and proportionate increases in emergency service provision and account needs to be taken of the need to deliver the infrastructure requirements to meet that increased demand.
- 2.5.5 All service providers face difficult economic pressures, and the Leicestershire Force has the additional difficulty of being unable to generate its own income.
- 2.5.6 Leicestershire Force is one of the lowest central funded forces. In terms of total funding (core grant and precept) Leicester, Leicestershire and Rutland receives approximately £196 per head of population (as at Feb 2022) which is lower than the national average. Leicestershire Police funding per head of population is the 12th lowest in the country.
- 2.5.7 Leicestershire Force is one of just a few forces (6 out of 43 nationally) that pursues contributions and has been doing so for over 16 years.
- 2.5.8 The Leicestershire Force capital programme sets out requirements for future investment in land, buildings, vehicle fleet and information technology. The capital programme is mainly funded through borrowing and a small Home Office capital grant.
- 2.5.9 The ongoing uncertainty around the release of s106 funds prevents the inclusion of these funds in the capital programme as a guaranteed source of funding moving forward.

2.6 Findings

- 2.6.1 The task group reconsidered the s106 report presented to the Leicester, Leicestershire and Rutland Police and Crime Panel meeting in March 2021 and referenced this for background information.

- 2.6.2 There were differences of approach and process across various local authorities, firstly in relation to bid requirements and more challengingly in respect of the evidence asked to be provided in relation to the impact on policing of new developments even when those had been completed and were occupied. It was noted however that not all of the local authorities in the area were holding any monies on behalf of Leicestershire Force as triggers had been met and contributions received and passed on to the Force.
- 2.6.3 Although there were variances across the local authorities it was apparent that the 2 key issues were around firstly, money that had not been drawn down and given to the police and secondly, money that had not been spent by the police and the task group explored some of the reasons behind that.
- 2.6.4 As regards the first issue trigger points in some of the agreements caused difficulty in drawing down funds either because of uncertainty around when those would be reached i.e., a certain number of houses being built before funds could be released or because of the need to evidence links on service to those properties.
- 2.6.5 There were also instances where developers had stopped building just short of the trigger number and so monies could not then be drawn down, but those houses would become occupied and at some point, may require police services.
- 2.6.6 The demand on policing was not dictated by waiting for a development to be completed and the Force were sometimes in the position of having to fund upfront investment in infrastructure often through borrowing before completion of a development, then the Force had found that some local authorities took a view that the funding is not needed as the Force has already found funds. There was however a seminal case that had brought about major change in this instance and would support the Force in future on that aspect of evidencing claims.
- 2.6.7 A key test for the Force was to prove that any bid to draw down monies was linked to a particular development, this presented difficulties evidentially as all police calls/incidents/reports and specialist assets were based at Force HQ Enderby and the challenge was relating those calls for service to a particular development and to be able to provide demonstrative evidence.
- 2.6.8 In relation to unspent money held by the Leicestershire Force it was noted that if contributions are not used as agreed the money can be claimed back.
- 2.6.9 Most of the outstanding s106 agreements dated back to the early 2000's and the proposals within those were not always relevant to the present time. 80% of the agreements related to buildings that may not be needed in their entirety.
- 2.6.10 A breakdown of the Leicestershire Force's s106 agreements, showed there were 71 current agreements in place to a value of £10.7m. Of that the

Leicestershire Force had spent £3.3m leaving approximately £7m of developer contributions to draw down or spend. Around £5.1m was estates related and was at risk of being lost if those agreements could not be repurposed.

- 2.6.11 Funding can only be claimed back by a developer when it is spent contrary to a legal agreement or when the timeframe for spending contributions has been exceeded.
- 2.6.12 None of the timeframes for spending contributions had been exceeded but time was a pressing factor and deadlines were approaching for some of the older agreements that meant securing monies was a priority.
- 2.6.13 There was the potential to repurpose or reallocate money if it was not spent by a certain time or if the need identified had changed, although evidence would be needed to prove that the alternative use is in line with the terms of the legal agreement so, the challenge was how the police could re-prioritise and repurpose those outstanding agreements and avoid that risk.
- 2.6.14 Advice was received from a Principal Planning Officer in relation to repurposing bids:
“The key information required to re-purpose any pre-agreed (signed) contributions to new infrastructure items (e.g. to spend on modern technology or in an alternative location etc) is to formally agree this spend diversion with the respective developers (who are to pay the contribution to the Police) and the Local Authority (who are the signatory on the Legal Agreement on behalf of the Police) and to ensure that the new infrastructure to be delivered as a result of that diverted spend is also compliant with the three statutory tests, as per CIL Regulation 122 (2).”
- 2.6.15 Planning officers at Oadby & Wigston Borough Council had recently negotiated on Leicestershire Police’s behalf to agree a spend diversion of a triggered contribution that the Leicestershire Police received from a developer. The original agreed infrastructure (radio mast) was now obsolete to policing operational need and instead the money with agreement of the developer has been re-directed to contribute towards a social media data security software package. This example showed it was possible locally to repurpose existing agreements and the financial benefit of receiving those funds was significant enough to pursue repurposing other agreements.
- 2.6.16 The Leicestershire Force supports any opportunities that can be generated through s106 monies to provide shared spaces in public buildings or fund specific items such as PCSOs to provide a police presence from the moment building commences.
- 2.6.17 In terms of police estate, whilst police would welcome opportunity to occupy shared spaces in public buildings there remained other resource requirements to meet the increased demand on policing services such as technology to be able to tackle cybercrime and to address the changing direction of future crime

- 2.6.18 In relation to the historic s106 agreements and approx. £5.1m linked to estates, the Force hoped to be able to repurpose half the funds to be invested in the local areas for CCTV, vehicles, offices etc and the other half towards key infrastructure changes that sat at Force HQ, and whilst that is not within the areas being built Force HQ did service the new areas and includes the specialist assets that require investment and growth to echo demand on policing.
- 2.6.19 There was a need to engage with the right people at the right time and to take up opportunity for more working across partnership space including working with planners about repurposing agreements and to link in to the strong networks in planning to look collectively and discuss repurposing of agreements as well as engaging with partners such as Community Safety Partnerships who could discuss priorities in local areas and upcoming infrastructure projects that might support new agreements or generate evidence to obtain funds.
- 2.6.20 An opportunity was taken up for the task group and Force to be represented at the Planning Officers Forum to open up discussion about renegotiating existing s106 agreements. All those present understood that things had moved on and there was no resistance from planning officers to exploring how the agreements could be renegotiated and reference was made to the Oadby & Wigston example.
- 2.6.21 It would be necessary for the Force to liaise with each local authority individually about renegotiating the s106 agreements and there was likely to be a cost implication with fees up to £1000, that cost burden would fall to the Force as they were the instigators and could not be subsumed in the agreements.
- 2.6.22 The Task Group felt that the Force should absorb those costs as ultimately, they would gain the benefit; if nothing was done to repurpose the bids access to significant sums of money would be lost and therefore the benefits of taking action to repurpose the agreements and absorb the costs outweighed a course of taking no action.
- 2.6.23 As far as staffing resources, this area of work was delegated from the Office of the Police and Crime Commissioner to the Leicestershire Force. There was just one officer that dealt with all of the s106 agreements and new funding bids; however, that officer also had a wider role which meant there was no full time resource for this area of work.
- 2.6.24 In order to take this work to the next level there was a need for additional resource.
- 2.6.25 Regarding future plans, the Force were looking at developing a new formula for their bids which will see bids being more targeted and easier to evidence

3.. Conclusions

- 3.1 S106 is a technical area of planning and involves requirement to follow complex procurement legislation.
- 3.1.2 It is recognised that in the current climate it is not reasonable to expect developers to fully meet the cost of policing new developments, the cost of policing small scale developments is usually absorbed within existing resources but larger scale developments which inevitably call upon police services and generate greater amounts of crime will require contributions from developers to meet the cost of the additional resource requirements.
- 3.1.3 Any form of housing or commercial development has to be properly integrated, most efficient communities will be safer and more sustainable as a result and whatever the infrastructure project it is vital to make sure that best value is delivered.
- 3.1.4 It is important that existing agreements are made fit for purpose to ensure the Leicestershire Force receive contributions to its capital funding to enable the police to maintain their operational standards of response as well as prevention and enforcement activity to reduce community risk and to be able to implement changes to meet the evolving needs of policing such as upgrading fleet, equipment and police estate.
- 3.1.5 Partnership is vital to ensure the police have information to make certain they do not miss out on opportunities for s106 funding from larger developments by more engagement with officers across district councils and through liaison with planning officers to agree repurposing of agreements with developers.
- 3.1.6 Through the course of the review the task group saw evidence of a shift change and more proactive approach by the Leicestershire Force towards repurposing existing agreements. Whilst there is a genuine commitment to a long term approach, sufficient officer resources will be needed to progress matters and maximise opportunity to use developer contributions to fund infrastructure costs linked to new housing and commercial developments.
- 3.1.7 If existing bids are to be re-prioritised and repurposed it will require significant input and assigned staff resources in addition to the existing staff resource to do that effectively.
- 3.1.8 An efficient monitoring process is needed for oversight and management of all s106 agreements and to monitor use of monies received so that these are fully utilised for the benefit of the community.

3.1.9 The benefits of re-purposing existing bids will lead to more certainty in future budgets for capital programming and a better understanding of plans for the future.

4. RECOMMENDATIONS

1. The Force to take steps to repurpose s106 agreements that are no longer viable through liaison with local authority planning officers and developers to ensure that funding is secured.
2. The Force to produce a defined list of items to be linked to its Investment Strategy and which can be used for repurposing agreements.
3. The Force to progress work in partnership with planners and/or Community Safety Partnerships to align timescales and awareness of new larger developments and to co-ordinate needs with other infrastructure projects.
4. The Police and Crime Commissioner to provide for resource to enable establishment of sufficient officer support to the s106 area of work and to facilitate the spend of s106 monies and pursuit of new bids.
5. The Police and Crime Commissioner/Force to develop and introduce a monitoring system to enable oversight and management of all s106 agreements and to monitor use of monies received.
6. The Police and Crime Commissioner/Force to liaise with planning officers in determining any new method for future bids.

5.. Financial, Legal and Other Implications

Financial Implications

It is important that s106 funding is used in accordance with the relevant agreement and it is allocated and spent in a timely manner to avoid the risk of pay back.

The review recommendations in this report will help ensure that Police bids for s106 funding are managed correctly and used to maximise the benefits to the community.

Legal Implications

S106 sums can only be used for the purposes set out in the relevant agreement (subject to negotiations to repurpose). An agreement can only secure contributions that comply with s122 of the Community Infrastructure Levy Regulations 2010.

Equality Implications

Equalities issues may impact people from a range of protected characteristics in relation to service demands. As proposals are developed, there needs to be consideration given to those impacts and to give due regard to how it will affect people who share a protected characteristic.

Protected Characteristics under the Equality Act 2010 are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

6. Summary of Appendices

Appendix A – Scoping document

Appendix B – Terms of reference

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