



**EXECUTIVE DECISION RECORD
Cabinet Member**

REF No: 072.23

A1 Service Area	Regeneration and Development
A2 Title	Return of S106 funding for off-site Affordable Housing relating to planning permission P/2013/01287
A3 Decision Taken By	Cabinet Member
A4 Chief Officer	Please print name: Thomas Deery Please sign name: (Approval by signature 04/10/2023)
A5 Cabinet Member	Please print name: Cllr Rob Hawkins Please sign name: (Approval by signature 04/10/2023)
A6 Date of Decision	4 th October 2023

Confidentiality

A7 Is this Decision confidential by containing exempt information as described in Schedule 12A of the Local Government Act 1972?	No
A7.1 If yes, please state relevant paragraph from Schedule 12A LGA 1972.	N/a

Conflict of Interest

Are there any conflicts of interest to declare? No

(If “Yes” please contact the Chief Executive before making the Decision. A note of dispensation should be attached).



Scrutiny/Audit

A8 Which Committee should this decision be submitted to? *(Please tick as appropriate)*

Scrutiny (Value for Money Council) Committee

Scrutiny (Regeneration Development and Market Hall) Committee X

Scrutiny (Health and Wellbeing) Committee

Scrutiny (Climate Change and Environment) Committee

Audit Committee

B1 What is the Decision?	To approve the return of £398,447 of S106 commuted sums for affordable housing to the contributing developer, Lioncourt Homes, following the expiry of the spend deadline.
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B2 What are the reasons for the Decision?

B2 Alternative options considered and rejected?

The commuted sum identified above was provided to the Council on 27th March 2018, following the approval of a planning permission for the development of Rycroft Farm, secure through a S106 agreement.

Within that agreement, there was a requirement for the sums to be expended within a 5 year period, expiring on 27th March 2023 (the spend deadline).

A project to utilise this funding was identified in 2022, however as the project was located a significant distance from Rycroft Farm, the use of this funding was not approved at the time.

Ahead of the spend deadline, the Council worked with Lioncourt Homes to agree an extension of time in order to facilitate the use of the funds on a more 'local' project. Discussions continued in the months that followed the spend deadline, however the Board at Lioncourt Homes have now formally asked for the return of the funds, which is permitted within the S106 agreement.

Alongside this, the S106 agreement entitles the developer to index linked interest payments, which were calculated as being £21,691.94 as of 11th August 2023 (and increasing each day thereafter). The developer has agreed to the interest payment being waived as a gesture of goodwill.

Further, the developer has committed the funds to a separate affordable housing scheme which, although outside of the Borough, will provide 12 equipped homes for a local Trust to provide for adults with learning difficulties.

The alternative option to this decision would be to refuse the return of the funds, in breach of the S106 agreement, -However non return of the funds would result in legal action being taken against the Council, which would be successful. The terms of the S106 agreement to which the Council entered into, requires the Council to return to the developer the monies if not expended within 5 years. This is an unequivocal obligation on the Council and the Council has no legal basis to retain the monies beyond the 5 year spend deadline.

B3 What are the contributions to Corporate Priorities?	The approval of this decision does not directly positively contribute towards the Council's Corporate Priorities, however the agreement of the developer to forfeit the Council's interest liability does.
B4 What are the Human Rights considerations?	There are no Human Rights issues arising from this decision.

Financial Implications

B5 What are the financial implications?	<p>The main financial issues arising from this decision are as follows:</p> <p>This decision is fundamentally a financial one, approving the return of £398,447 of ring-fenced S106 funding for affordable housing to the developer.</p> <p>As mentioned above, the Council's interest liability of circa £22k has been waived.</p>
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Revenue	2023/24	2024/25	2025/26

Capital	2023/24	2024/25	2025/26
S106 Commuted Sums for Affordable Housing (refund)	£398,447		

The finance section has been approved by the following member of the Financial Management Unit:	<p>Please print name: Anya Murray</p> <p>Please sign name: (Approval by email 28/09/2023)</p>
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Policy Framework

B6 Is the Decision wholly in accordance with the Council's policy framework?	Yes
B6.1 If No, does it fall within the urgency provisions (Part 3 of the Constitution)?	NA
B6.2 Has it got the appropriate approvals under those provisions?	NA
B7 Is the Decision wholly in accordance with the Council's budget?	Yes
B7.1 If No, does it fall within the urgency provisions (Part 3 of the Constitution)?	NA
B7.2 Has it got the appropriate approvals under those provisions?	NA

Equalities Implications

B8 What are the Equalities implications: N/a
B8.1 Positive (Opportunities/Benefits):
B8.2 Negative (Threats):
B8.3 The subject of this decision is not a policy, strategy, function or service that is new or being revised. An equality impact assessment is not required.
B8.4 [The equality impact assessment identified the following actions to be carried out:]

Risk Assessment

B9 What are the Risk Assessment implications:
B9.1 Positive (Opportunities/Benefits): The returning of these funds at this juncture prevents any future legal challenge and requirement for the Council to pay its interest liability and further costs.
B9.2 Negative (Threats)
B9.3 These risks do not need to be entered in the Risk Register. Any financial implications to mitigate against these risks are considered above.

Legal Considerations

B10 What are the Legal Considerations:
B10.1 The main legal issues arising from this decision are as follows: These funds are returned under the requirements of a S106 agreement for the planning permission in question, which is agreed under the Town and Country Planning Act 1990.
This section has been approved by the following member of the Legal Team
Please print name: Sherrie Grant Please sign name: (Approval by email 27/09/23)

Sustainability Implications

B11 What are the Sustainability implications: N/a
B11.1 The proposal [would/would not] result in an overall positive effect in terms of sustainability (including climate change and change adaptation measures). The positive/negative impacts are set out below (please refer to guidance notes).
B11.2 Positive (Opportunities/Benefits):
B11.3 Negative (Threats):

Health & Safety Implications

B12 What are the Health & Safety implications: N/a
B12.1 A Risk Assessment has not been carried out and entered into Safety Media for all significant hazards and risks because there are no significant hazards or risks arising from this decision.
B12.2 [The significant hazards and risks have been identified in the Safety Media Risk Assessment numbered []. Any financial implications to mitigate against these hazards and risks are considered above.]
B12.3 [Control measures and an action plan have been identified for any significant hazards and risks identified in the risk assessment. The positive/negative impacts are set out below]
B12.3.1 Positive (Benefits)
B12.3.2 Negative (Threats)

Key Decision

B13 Is this a Key Decision? Yes

Note: A Key Executive Decision is one where:

- 1. REVENUE – Any contract or proposal with an annual payment or saving of more than £100,000**
- 2. CAPITAL – Any capital project with a value in excess of £150,000**
- 3. A decision which significantly affects communities living or working in an area comprising two or more wards.**

B13.1 If this is a Key Decision, is this an urgent decision such that a delay caused by use of the Call-in Procedure would <u>seriously</u> prejudice the public interest?	No
B13.2 If yes, has the Mayor or in his/her absence the Deputy Mayor or in his/her absence the Chair of the relevant Scrutiny Committee agreed that the decision will be exempt from Call-in?	N/a

NOTE: If this decision is subject to the Call-in Procedure it will come into force, and may then be implemented, on the expiry of 3 working days after publication – unless 10 Members of the Council call in the decision.

Please send the original signed document to andrea.davies@eaststaffsbc.gov.uk