



WEST OXFORDSHIRE
DISTRICT COUNCIL

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Name and date of Committee	Uplands Area Planning Sub committee – 28 th May 2024
Subject	Allocation of Section 106 funding in Long Hanborough, Oxon
Wards affected	Long Hanborough
Accountable member	Julian Cooper - Chair of Upland sub committee Email: julian.cooper@westoxon.gov.uk
Accountable officer	Charlie Jackson - Assistant Director Email: charlie.jackson@westoxon.gov.uk
Report author	Phil Shaw - Business Manager Development and Sustainability Email: phil.shaw@westoxon.gov.uk
Summary/Purpose	To enable members to consider competing requests for a sum of money reserved in the section 106 agreement associated with application ref 22/01330/OUT and to decide which request best mitigates the impact of the development and to allocate the said 106 monies accordingly.
Annexes	None
Recommendation(s)	That the sub committee resolves to: I. Allocate the funding to whichever of the two claimants it considers best mitigates the impact of the development.
Corporate priorities	<ul style="list-style-type: none">• Putting Residents First• A Good Quality of Life for All• A Better Environment for People and Wildlife• Working Together for West Oxfordshire
Key Decision	No
Exempt	No
Consultees/ Consultation	Full consultation was undertaken in respect of the original application. Consultation with the PC, the Ward Member and the Leisure team has been undertaken in preparing this report.

1. EXECUTIVE SUMMARY

- 1.1** When an outline planning application for the construction of up to 150 dwellings was approved on Land North of Witney Road in Long Hanborough (ref 22/01330/OUT) WODC Leisure Services requested a sum of money to seek to implement the approved Playing Pitch Strategy for the village. Separately the Parish Council did not initially engage in negotiating mitigation requests as they were seeking to persuade the District to refuse planning permission. At the point it became clear that officers were recommending the approval of the application the Parish Council pointed out that the allocation of s106 funding had no direct impact on Hanborough Parish – it was going to broader projects across the district. HPC therefore requested at the Planning committee meeting that s106 funding should be reviewed so that it benefitted the people of Hanborough more directly. Members resolved that notwithstanding that the heads of terms and quantum of funding had already been agreed, that officers should have delegated authority to seek to address their requests if possible. Separately HPC met with the applicants, Pye and agreed the outdoor pitch provision to include ‘outdoor pitch provision and community facilities in Long Hanborough’. Pye/Blenheim were supportive of this funding potentially going to the hub. HPC also agreed as part of their negotiations that a separate sum was reserved for the community hub alone, conditional on legal agreements being concluded in a ‘prompt’ way (so by Christmas 2022) which was achieved. The legal agreement was framed accordingly.
- 1.2** The PC believe that the phrase amendment means that the “mixed” sum should be allocated to the community hub and can only be spent in Long Hanborough. Leisure Services consider it should be spent as per the adopted Playing Pitch Strategy. Both cannot have all of the money and so a choice needs to be made. In that the sub committee were the decision makers who balanced the planning merits of the application (including the associated mitigation package) it has been decided that the most appropriate way to resolve this matter is for the sub committee to now arbitrate as to which of the competing funding requests they wish to support. i.e., almost as if the choice had been required to be made BEFORE determination of the application as to where the funding should be spent.
- 1.3** Officers have thus been in negotiation with representatives of HPC and the Leisure team asking them to set out their case so that Members can make a fully informed decision.

2. BACKGROUND

- 2.1** When the application was considered Leisure Services were one of the consultees. Officers also tried to engage with the PC, but for the reasons outlined above they were not willing to discuss as they wished the scheme to be refused. Leisure Services requested a contribution towards Sports Hall, Swimming Pool and Outdoor pitch provision, which was supported with strategic evidence. The request, in regards to the latter was as follows:

- 2.1.1 After reviewing this application, in line with [...] the draft Playing Pitch Strategy (due for adoption Autumn 2022), should this proposal be granted planning permission then the Council would require an off site contribution towards leisure facilities in the catchment area.*
- 2.1.2 150 new homes in the LA area is estimated to generate a population of 360 people (using the average household size for the area of 2.4).*

Outdoor pitch provision

- 2.1.3 Based on the cost of provision and future maintenance of football pitches (the cheapest form of outdoor sports facility) over a 15-year period at the Fields in Trust standard of 1.6ha per 1,000 population.*
- 2.1.4 A football pitch of 0.742ha, a provision cost of £105,000 (Sport England Facility Costs first Quarter 2022) and a commuted maintenance cost of £240,975 per pitch (Sport England Life Cycle Costings Natural Turf Pitches second Quarter 2021), would equate to £746,038 per 1,000 population or £1,790 per dwelling (at an average occupancy of 2.4 persons per dwelling).*
- 2.1.5 Based on Sport England Facility costs and lifecycle costings the cost for providing the required playing pitch provision is £268,500.*

2.2 When questioned as to the need to continue to apply the monies as originally sought the Leisure Team have responded as follows:

2.2.1 'The Leisure team had requested the s106 contribution based on the needs and evidence highlighted in the Playing Pitch Strategy, which was adopted by the Executive and also included appointment of a post to deliver the strategy. If we are not able to use the s106 money that we secure for outdoor pitches, we will never be able to deliver the action plan set out in the Playing Pitch Strategy and won't achieve the outcomes the Executive have committed to.'

2.3 The Council has collected £790,774.76 for leisure purposes from various developments in Long Hanborough since 2014. All of the remaining funds (£621,692.55) have been allocated to the Hub project. This does not include the separate Long Hanborough Hub Contribution (£200,000) and Outdoor Pitch Contribution (£268,500) from the application which this report relates to, as those funds have not been collected yet. There are therefore no other funds available to the Council to deliver the Playing Pitch Strategy.

2.4 To set against this position set out by the leisure team the PC make the following points:

- *“We raised the matter of not enough s106 funding specifically for Hanborough at the Uplands Planning sub-committee meeting.*
- *WODC councillors agreed that the s106 funding should ‘benefit the local community’ and HPC should be given chance to discuss this with Pye/Blenheim as part of the legal agreement.*
- *We met with Pye and amended the pitch provision to a much more specific and Hanborough related issue. Pye/Blenheim were very clear in their support of this funding going to the hub – in an email on 16th Dec 2022 to Stephanie Eldridge, Ashley Maltman wrote:*

‘In previous exchanges we have requested clarity form WODC that the existing contributions can be directed to the Hub project. It was agreed that it would be appropriate for the ‘outdoor pitch’ provision to be explicitly amended to ‘Outdoor pitch provision and community facilities in Long Hanborough’ so that certainty can be provided that such funding can be directed to the Parish Council’s Hub project. We understand the Parish have consistently received funding via the District Council from other S106s and see no reason why this should change from the existing s106 pot.’

- *This was acknowledged by WODC Planning team*
- *This was put into the s106 agreement and signed by all parties.*
- *This £268k (index linked so closer to £300k) is the ‘missing piece’ of our funding for the Hanborough Hub/Pavilion extension – we have a public information session and then we will apply for planning permission shortly afterwards’.*

2.5 An additional impact of any decision to allocate monies to the HPC’s Community Hub project would be that it would be difficult for the Leisure Team to request monies for outdoor sports provision from future developments in Long Hanborough. As there would be no (or at least a reduced) need for additional funds if the current funds had been used to deliver the strategy as per the Leisure Team’s original request, developers can argue that any further requests would not pass the legal tests for S106 contributions. HPC are aware of this potential issue but are content that they in effect have control over all relevant leisure facilities in Long Hanborough and so it will not disadvantage any third-party leisure providers.

3. ALTERNATIVE OPTIONS

- 3.1 Members could decide not to allocate the monies but if that were the case it would need to be returned to the developer with interest and necessary mitigation for the impacts of the development would not have been achieved.
- 3.2 The monies could be split between the parties, but this is likely to leave both of them short on the funding necessary to complete either task in full.

4. CONCLUSIONS

- 4.1 This is a tricky situation that has arisen as a result of seeking to facilitate the PC request beyond the point that the rest of the S106 had been negotiated. We are however where we are and there are two parties who can legitimately lay claim to the funding - but only enough funding to provide for one of them. Section 106 money is not a tax on development but rather, in order to meet the relevant tests, must be necessary mitigation to assist in offsetting harm caused by any particular development. When requests are made before a resolution is reached where there are viability issues the subcommittee essentially has to decide which matters to include and which to exclude. That is the task that is now before members - albeit it is happening at a far later stage in the process. Your Officers are satisfied that both claims meet the relevant legal and other tests and would provide mitigation and so it essentially becomes a political/practical decision as to which one Members consider best meets the needs of the village and can best mitigate the impact of the development.

5. FINANCIAL IMPLICATIONS

- 5.1 Section 106 monies are funding provided by developers and as such there is no direct impact upon the Council finances.

6. LEGAL IMPLICATIONS

- 6.1 None arising from this report.

7. RISK ASSESSMENT

- 7.1 The risks are set out in the above report.

8. EQUALITIES IMPACT

- 8.1 Under equality legislation, the Council has a legal duty to pay 'due regard' to the need to eliminate discrimination and promote equality in relation to:
 - Race
 - Disability
 - Gender, including gender reassignment
 - Age
 - Sexual Orientation
 - Pregnancy and maternity
 - Religion or belief

8.2 The Council also has a duty to foster good relations, and to consider the impact of its decisions on human rights. The law requires that this duty to pay 'due regard' is demonstrated in the decision making process. The report does not have a particular impact on any of the above groups.

9. CLIMATE AND ECOLOGICAL EMERGENCIES IMPLICATIONS

9.1 None

10. BACKGROUND PAPERS

10.1 Application reference 22/01330/OUT and associated papers.