

**Tonbridge and Malling Borough Council**  
**Infrastructure Funding Statement**  
**November 2023**



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## **1. Introduction and Context:**

- 1.1 This document represents the borough's third infrastructure funding statement in accordance with the Community Infrastructure Levy Regulations (CIL) 2010 (as amended), the Infrastructure Funding Statement requirement was introduced on the 01 September 2019, the reporting period for this statement is 01 April 2022 to 31 March 2023. Section 2 of this statement sets out infrastructure delivery and contributions collected from S106 agreements. Section 3 sets out the planned expenditure and future priorities.
- 1.2 Tonbridge and Malling is not a Community Infrastructure Level (CIL) charging authority. It was decided at the meeting of the Community Infrastructure Levy Panel on 19 December 2011 to not move forward with production of such a schedule, although this position is continually kept under review. In determining planning applications for new development, the Council therefore relies on S106 provisions of The Town and Country Planning Act 1990 to ensure that appropriate and successful mitigation of development takes place in all instances.
- 1.3 Section 106 agreements are a mechanism designed to ensure a development proposal is acceptable in planning terms where it would not otherwise be acceptable. S106 income is used to help fund the provision of supporting infrastructure in association with development and maximise the benefits and opportunities from growth, such as employment opportunities and affordable homes. The statutory tests for such agreements are that the obligations must be:
- necessary to make the development acceptable in planning terms;
  - directly related to the development; and
  - fairly and reasonably related in scale and kind to the development.
- 1.4 The use of Planning obligations in relation to developments may:
- restrict development or use of the land in any specified way;
  - require specified operations or activities to be carried out in, on, under or over the land;
  - require the land to be used in any specified way; or
  - require a sum or sums to be paid to the authority on a specified date or dates or periodically.

1.5 Common examples of what mitigation may be sought within planning obligations to make a development acceptable within this Borough can be as follows:

- Affordable housing;
- Provision of public open space and public realm enhancements;
- Highways, transport and travel schemes including cycle and public transport improvements, highway infrastructure works, pedestrian links and facilities;
- Educational facilities
- Healthcare facilities

1.6 However, the above list is not exhaustive and the precise details of what will be sought by way of a planning obligation will always be dependent on the scale, nature of the application, the above tests, and will be governed by relevant development plan policies in force in the area and any other material considerations (including the National Planning Policy Framework and associated Planning Practice Guidance).

1.7 The Development Plan currently in force continues to be the Tonbridge and Malling Local Development Framework Core Strategy (TMBCS) adopted in September 2007, the saved policies of the Tonbridge and Malling Borough Local Plan 1998 (TMBLP), Development Land Allocations DPD (DLA DPD) adopted in April 2008 and the Managing Development and the Environment DPD (MDE DPD), and Tonbridge Central AAP adopted April 2010.

1.8 Tonbridge and Malling Borough Council have been working alongside parish councils to produce a Parish Infrastructure Statement which enables the parish councils to put forward infrastructure/community projects that have supporting evidence and a direct positive impact for the community in close proximity to development. All proposed projects are required to meet the statutory tests in Regulation 122 (as amended by the 2011 and 2019 Regulations), being necessary to make the development acceptable, directly related in kind and fairly and reasonably related in scale and kind to the development.

## **2. Infrastructure delivery and financial contributions collected from S106 (2022/23)**

2.1 Annex 1 to this Statement sets out all financial contributions held by the Council as of 01 April 2022. The Annex includes the following information:

- Development site;

- Planning reference;
- Purpose of the contribution;
- Opening balance as at 1<sup>st</sup> April 2019 (this includes sums going back to 1996, although three are commuted sums);
- Contributions received during 2022/23;
- Accrued interest if contribution not spent during the year;
- Amount of contribution that has been used;
- Closing balance as at 31<sup>st</sup> March 2023;
- What project the contribution has been spent on / to be spent on / or if transferred to a third party (where this has been determined at the time of publication);
- A final column gives the original amount received.

2.2 Annex 3 to this statement is a link to KCCs Infrastructure Funding statement which outlines as above the current monies held, allocated, and spent by the County Council.

### **3. Summary of obligations agreed within S106 (2022/23)**

3.1 A total of 250 affordable housing units have been secured within the S106 for on-site provision via signed S106 agreements for the reporting period.

3.2 In terms of financial contributions secured, where agreements entered into give a firm, final amount, the following have been secured for the reporting period:

- £273,524.88 towards off-site affordable housing provision
- £371,635 towards provision and/or enhancement of medical practices to account for additional demand generated by new development. These will be transferred to the ICB upon receipt in accordance with the terms of the individual agreements.
- £1,781,873 towards off-site public open space provision
- £190,000 towards rail station improvements
- £1,516,400 towards primary education
- £2,998,591 towards secondary education

- 3.3 Where obligations have been agreed within the S106 to be directed to projects delivered by the County Council (in respect of schools, off-site highway works, community facilities, bus services, social services etc.), KCC was removed as a formal party to S106 agreements from April 2023 as set out within the new S106 Protocol (annex 2), however it is noted that this change does not apply to all agreements, there are circumstances in which KCC will be required to be a signatory to an agreement, for example on developments where there are reciprocal covenants. The Borough Council does in certain instances collect and transfer funds to the County, this is outlined on the spreadsheet at Annex 1 clearly marking which ones relate to Kent County Council. The County Council will be required to publish its own Statement in these respects.
- 3.4 The Council has published its updated Section 106 Protocol which is intended to provide a clear and transparent process for all parties involved with the provision of such infrastructure to follow, thus ensuring those opportunities are maximised wherever possible. The council changed the protocol and removed Kent County Council as a signatory to S106 agreements, therefore all contributions from 01 April 2023 will be collected by TMBC and transferred to KCC once the appropriate documentation has been received. The change in proposal is to ensure contribution requirements are being met for the spend of any S106 funds as well as keeping an accurate record of when/where monies were utilised.

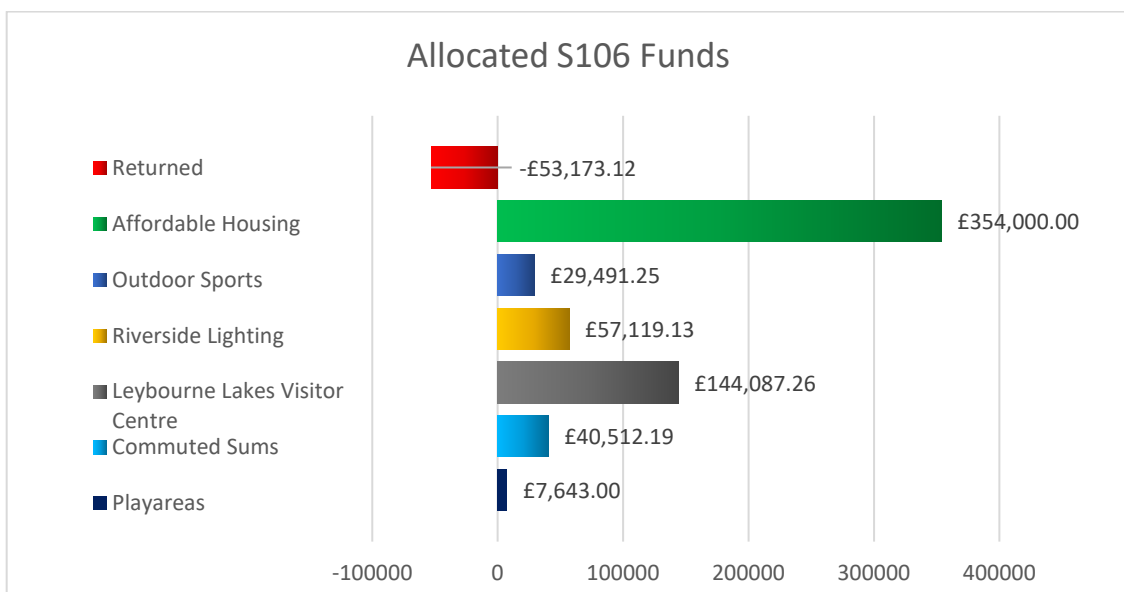
#### **4. Planned expenditure (2023/2024) and future priorities**

- 4.1 This section sets out how S106 income will be spent and prioritised over the next reporting period (as per the requirements set out in relevant planning practice guidance and the 3 tests set out in CIL regulation 122). The level and timing of income will depend on the nature and scale of the development, the number of implemented planning permissions, build-out rates, and the phasing of development etc. Due to the uncertainty over forecasting, particularly over the last two years, the level of income will be based on the total receipts collected from the previous financial year and any unspent receipts from previous financial years.
- 4.2 In terms of future spending priorities, the Council will continue to ensure wherever possible and appropriate to do so affordable housing will be provided on site in accordance with prevailing adopted policy. Where this is not possible, and where exceptional circumstances have been identified and agreed between the parties, commuted sums will be collected, and the Council will seek to direct them in a manner that will best address our identified need. In this respect, the Council has also published an Affordable Housing Delivery Protocol which sets out how affordable housing will be secured across the Borough at this time, particularly given the current position regarding the Local

Plan progression. Prospective developers will be directed to this in all circumstances.

4.3 Chart 1 below shows how S106 monies currently held by Tonbridge and Malling Borough Council have been allocated and utilised over the current reporting period (2022/2023).

4.4 There are instances such as below where the contribution deadline passed and the contribution funding was not utilised within the required timeframe, the returned contribution below related to Youth and Community funding from the Former Ryarsh Brickworks development. Unfortunately, after liaising with KCC it appeared that the works were not undertaken within the deadline and therefore the monies had to be returned to the Redrow Homes.



Allocated S106 monies	
Allocated project	Amount allocated
Returned funds	£53,173.12
Affordable Housing	£354,000
Outdoor Sports	£29,491.25
Leybourne Lakes Visitor Centre	£144,087.26
Commuted Sums	£40,512.19
Play Areas	£7,643

Open space enhancements

4.5 Requirements for public open space provision, enhancement and maintenance are still set out within the MDE DPD. In this Borough, the types of open space that can be addressed through S106 agreements include Parks and Gardens,

natural and semi-natural green spaces, green corridors, outdoor sports facilities, amenity green space, play areas, allotments, cemeteries and other burial grounds.

- 4.6 The Open Space Strategy sets out our standards regarding the provision of open space and identifies the locations where obligations are required through S106 and other sources to address deficiencies in the borough's open space network.
- 4.7 Tonbridge and Malling Borough Council are working closely with local Parish councils to provide open space enhancements to the parish owned sites, including those such as sports and play facilities. Contributions are currently being allocated for various outdoor sports and play area enhancements which will be reported on in the next period (23/24).
- 4.8 Contributions collected in connection with Leybourne Lakes Country Park have been directed towards making improvements to the park including the recently opened new purpose-built building which houses a café/water sports area. A total of £384,693.71 was allocated in 21/22 and was spent on the project within the monitoring period, this does not include the additional funds allocated to this project outside of the monitoring period as shown in the above table.



4.9 Contributions have been collected and allocated to various open space sites based within the Tonbridge area, monies have been utilised on upgrading the existing play areas and installing outdoor gym equipment to the Tonbridge Farm Sportsground as shown in the below photographs.



4.10 The Council has been in communication with Parish Councils across the borough to create an in-depth list of projects that would benefit the local parish residents, the list and quotations are utilised by the borough council planning officers when undertaking negotiations with local developers. There have been multiple projects which have received allocations which will be reported on in the 23/24 Infrastructure Funding Statement.

4.11 Liaising with the local parishes in relation to current S106 funding held has greatly improved the facilities they are able to offer local residents, schemes such as the new outdoor tennis table and benches have been provided in Aylesford Parish, as well as improves to Outdoor Sports facilities such as new signage for the outdoor gym as well as the maintenance and repairs to the MUGA and Skatepark within East Malling & Larkfield Parish.

Affordable housing:



4.12 The affordable housing secured over the reporting period has been via on-site provision and a financial contribution to provide affordable housing as an off-site provision, as required by policy. The Council has progressed and completed works to Affordable Housing units in Tonbridge which has been funded via S106 contributions as allocated above.

Monitoring arrangements:

4.13 From 01 April 2021, the Council commenced charging a monitoring fee of £300 per obligation, we have received a total of £13,700 in the monitoring period (2022/2023). The monitoring fee charge was reviewed and a decision was made to increase the fee to £330 per obligation, this will be reviewed annually as part of the discretionary fee process.

4.14 The monitoring fees relating to S106 agreements are due to be paid at the time of signing the S106 agreements, the monitoring of agreements is undertaken by the Senior Development Obligations Officer. Part of this role is to ensure contribution amounts are correct, paid at the appropriate moment and in a timely manner whilst ensuring the funds are spent on appropriate projects that meet the tests as outlined within the regulation 122 (as amended by the 2011 and 2019 Regulations).

4.15 The agreed change in the protocol meant two monitoring groups were to be created to oversee S106 matters, currently a monitoring group comprised of internal team members and external bodies from KCC has been created to provide a current view of ongoing S106 negotiations, allocations and spends. The group discussions enable various bodies to have an input and create a conversation in relation to the ongoing S106 matters. The strategic monitoring group is set to be created which will include a politically balanced group of members and internal colleagues to discuss S106 negotiations, allocations and any other matters.

## **5. Conclusions**

5.1 Tonbridge and Malling Borough Council continues working with the local community and other stakeholders to ensure that planning contributions are used in a fair and transparent way to maximise the benefits and opportunities arising from development, such as new affordable homes, community infrastructure, jobs and environmental improvements.

5.2 Whilst Tonbridge and Malling Borough Council are not a CIL charging authority, we are aware of the consultation published by central government in relation to the new Infrastructure Levy. As part of the consultation process a number of presentations were attended to enable an informed response to be issued in June 2023 (Annex 4), as part of the consultation a decision was made to put TMBC forward to become a 'testing authority' for the proposed Infrastructure Levy.

5.3 A part for the next reporting period will be to monitor current S106 agreements and new agreements, the creation of a strategic monitoring group to enable inform members of the current S106 allocations, spends and negotiations creating a transparent service. Tonbridge and Malling Borough Council remains committed to the monitoring of agreements ensuring the monies are used in the proper manner.

## **6. Background papers**

Annex 1 – Infrastructure funding statement 2022/23 spreadsheet.

Annex 2 – Updated S106 protocol.

Annex 3 – Link to KCCs Infrastructure Funding Statement

Annex 4 – Infrastructure Levy consultation response.