

Overview and Scrutiny Committee

23 April 2026

Part 1 - Public

Recommendation to Cabinet



www.tmbc.gov.uk

Cabinet Member Cllr Adem Mehmet, Cabinet Member for Infrastructure & Tonbridge Regeneration

Responsible Officer Eleanor Hoyle, Director of Planning, Housing & Regulatory Services

Report Author Eleanor Hoyle, Director of Planning, Housing & Regulatory Services

s106 Processes and Considerations

1 Summary and Purpose of Report

1.1 To provide the Committee with an overview of the current approach to the management and monitoring of s106 funding and to propose some process improvements for endorsement.

2 Corporate Strategy Priority Area

2.1 Improving housing options for local people whilst protecting our outdoor areas of importance.

2.2 Section 106 payments cover a wide range of infrastructure delivery, including health, highways, open space and affordable housing.

3 Recommendations

3.1 Members are asked to;

- 1) NOTE the information provided in this report, including the next steps proposed for developing the Council's approach to s106 obligations at section 11.
- 2) ENDORSE the proposed terms of reference for the Member and Officer monitoring groups and RECOMMEND to Cabinet that these are adopted

4 Introduction and Background

- 4.1 Planning obligations under s106 of the Town & Country Planning Act 1990 are legally binding obligations entered into by agreement or otherwise by any person interested in land in an area of a local planning authority. The purpose of entering into a s106 obligation is to mitigate the impacts of a development proposal on the local community and infrastructure. The s106 is enforceable by the local planning authority if not complied with.
- 4.2 The Council has an adopted [Planning Obligations Protocol](#), which lays out the approach the Council takes to roles and responsibilities relating to the securing of development contributions.
- 4.3 The Council has an annual requirement to publish an Infrastructure Funding Statement. This has been presented to the Housing & Planning Scrutiny Select Committee for endorsement at their December meeting in recent years, ahead of the 31 December deadline for publication. The 2024/25 document can be found [here](#).
- 4.4 The Council has also introduced Parish Infrastructure Statements. There is no legal requirement for these and whether one is in place or not, if a scheme is being proposed in an area, the Council would seek to engage with the Parish. However, projects require evidenced need to be included in a s106 and therefore the use of these statements ensures this is a planned and considered process, rather than being reactive to individual applications. Of our 28 Parish and Town Councils, 23 have Parish Infrastructure Statements. The process for reviewing these documents is now underway and Parishes have been given a deadline of 15 June to submit updated Statements. Although this is the ideal timetable, Parishes are regularly advised that they can update and review their Statements at any time, particularly if a new priority emerges.
- 4.5 As Members will be aware, Tonbridge is currently the only un-parished area in the borough. Work has commenced on proposing a Tonbridge Infrastructure Statement to the Council (as the currently most local level of government in Tonbridge) and the Tonbridge Community Forum has been engaged on this work. Officers are aiming to present the first statement to the Housing & Planning Scrutiny Select Committee in July 2026.

5 Process

- 5.1 The table below lays out the most common types of s106 obligation and who requests these (the statutory body). Links are also provided to the relevant guidance from those organisations.

Obligation category	Statutory body	Guidance
Education	Kent County Council (KCC)	Developer Contributions Guide - Kent County Council
Highways	KCC	Developer Contributions Guide - Kent County Council
Adult Social Care/Education	KCC	Developer Contributions Guide - Kent County Council
Health	Kent & Medway Integrated Care Partnership (ICP)	developer-contributions-guide-2025.pdf
Open Space, Playing Pitches and Indoor Leisure	TMBC	Guidance
Housing	TMBC	Affordable Housing Protocol
Skills	KCC/TMBC	Developer Contributions Guide - Kent County Council

- 5.2 No organisation has a “first call” on funding, albeit should an applicant not be able to meet required obligations they would be required to submit a viability assessment and to engage with relevant statutory bodies themselves about any revised contributions.
- 5.3 The County Council is the statutory authority for a significant proportion of the infrastructure that can be secured via s106, and the Integrated Care Partnership is responsible for health infrastructure.
- 5.4 Although other types of infrastructure, such as drinking and wastewater supply, can be secured through s106, this is usually where specific on-site infrastructure is required or where a requirement cannot be conditioned. These types of infrastructure also have other funding processes through their legal requirements, charging for their supplies and government funding cycles.
- 6 S106 (bilateral agreements or unilateral undertakings)**
- 6.1 The Council now has a pro forma s106 legal agreement which can be found on our [website](#). This means that applicants can review this ahead of submissions and ensure that they have accounted for key provisions in their viability considerations.

- 6.2 Generally, our s106's are processed by an external legal advisor. This contract is managed by Legal Services. A revised monitoring approach has recently been agreed to ensure that progress on completion of these agreements can be reviewed on a regular basis. This report will now be sent monthly to DPHRS, Head of Legal and Head of Planning so that queries can be raised and managed as needed. The fees for this work are paid by the applicant. Delays can sometimes arise where there is dispute about a proposed condition on an obligation – this is often relating to the timing or indexing of contributions.
- 6.3 There is no set period in legislation for this work to be completed, however the planning decision will not be issued until the relevant agreement is signed and therefore it is in the interest of all parties for this to happen as efficiently as possible. The pro forma agreement has helped with these timescales, as the Council's legal advisor does not need to review different agreements proposed by applicants.
- 6.4 There has been previous consideration of a business case for bringing this work in house, with additional resource being funded in the Legal team from the fees paid by applicants. There is no standard practice on this across Local Planning Authorities, but rather a mix of in house and external models. Given the proximity of LGR and the likely challenges in being able to fill such a post based on recent recruitment experience in the sector, this option will be discussed with neighbouring boroughs once the LGR geographies are known.

7 Governance changes

- 7.1 Whilst a monitoring framework for s106 has been in place for some time, it is acknowledged that this requires improvement to ensure that Members are properly sighted on s106 matters.
- 7.2 The Senior Development Obligations Officer has recently run sessions for both Members and Parishes to offer information and advice on the s106 process. Whilst this is not part of any formal monitoring of s106, it has provided a valuable opportunity for engagement and will be repeated later in 2026.
- 7.3 Attached to this report at Annex 1 is a proposed set of Terms of Reference for the s106 Strategic Monitoring Group. This is an updated approach, in order to ensure that all political groups are represented and that there is a requirement for the minutes of these meetings to be shared with the Housing & Planning Scrutiny Select Committee for noting.
- 7.4 A set of Terms of Reference is also attached at Annex 2 for the Officer Monitoring Group, also recommended for approval by Members.

8 Financial and Value for Money Considerations

- 8.1 The most up to date information on received s106 contributions is reviewed by both the Strategic and Officer monitoring groups on a regular basis. Although the

Council is required to account for s106 funding, the contributions are managed separately to the Council's other funds.

- 8.2 Graphs detailing the spend on projects relating to contributions held by TMBC and how these have been distributed and allocated is attached at Annex 3. This data runs until January 2026.

9 Risk Assessment

- 9.1 A key risk in the s106 process is developers challenging contributions because they do not consider that they meet the legal tests (see below). Having clear guidance documents is an important mitigation for this risk.
- 9.2 If contributions cannot be spent because of time limits or relevant projects not being identified, this would mean that monies could have to be returned to applicants. Having Parish Infrastructure Statements, the Council's Capital Plan and regular monitoring of contributions, as well as having a pro forma s106 agreement, which helps to ensure that contributions are accurately worded, all mitigate this risk.

10 Legal Implications

- 10.1 The Council as Local Planning Authority has a duty to ensure that planning obligations meet the tests laid out in legislation. In summary, these are that the obligation is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale. It is unlawful for any planning obligation to be taken into account as a reason to grant planning permission unless it meets the above tests.

11 Next steps

- 11.1 With regards to open space contributions, there are a number of subcategories that are listed in the TMBC guidance, which are taken from national policy. Officers are currently reviewing the definitions of these categories and considering whether they can be applied to a wider range of sites in the borough to ensure that sites can be identified as locally to a development site as possible.
- 11.2 As per section 6 of this report, officers will review the management of s106 agreements once the Council's LGR geography is known.
- 11.3 Should the revised Terms of Reference for the Strategic Monitoring Group be approved and adopted by the Council, Group Leaders will be asked to propose a representative for the group, and a new set of meeting dates will be organised.
- 11.4 The consideration of a Tonbridge Infrastructure Statement will be added to the work programme for the Housing & Planning Scrutiny Select Committee for July 2026.

12 Cross Cutting Issues

12.1 Climate Change and Biodiversity

12.1.1 Significant impact on reducing emissions in support of carbon neutral by 2030 or enhancing the natural environment.

12.1.2 Climate change advice has not been sought in the preparation of the options and recommendations in this report.

12.2 Equalities and Diversity

12.2.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Background Papers	None
Annexes	1 – Strategic Monitoring Group Terms of Reference 2 – Officer Monitoring Group Terms of Reference 3 – Data set on TMBC contributions