

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:	3122
Author:	James Dymond
Department:	Commercial and Operations
Contact:	James Dymond (Job Title: Parks & Open Spaces Development Manager, Email: james.dymond@nottinghamcity.gov.uk, Phone: 01158764983)
Subject:	Section 106 and other Capital Funding for Bilborough Park, Forest Recreation Ground, Victoria Embankment and Mill and Windmill Allotments
Total Value:	£443,033.41 (Type: Capital)
Decision Being Taken:	<ol style="list-style-type: none">1. To authorise the use of the five Section 106 open space contributions itemised at numbers 1, 5, 6, 7 and 8 in the attached Appendix for the respective purposes detailed in that Appendix;2. To authorise the allocation of £25,000 Area Capital itemised at number 2 in the attached Appendix for the purpose detailed in that Appendix;3. To authorise the allocation of £10,000 Nottingham City Homes funding itemised at number 3 in the attached Appendix for the purpose detailed in that Appendix;4. To allocate the £60,000 WREN (Waste Recycling Environmental Ltd) funding itemised at number 4 in the attached Appendix for the purposes detailed in that Appendix;5. To delegate authority to the Director of Neighbourhood Services to sign orders for the above spend; and6. To amend the capital programme to reflect the expenditure detailed.
Reasons for the Decision(s)	Decision 1, in relation to Item no. 4 in the Appendix, represents an increase of £10,000 from the allocation in DD2926. Decisions 1 - 4 are required for the implementation of necessary environmental improvements and enhancements for which funds are immediately available and Decisions 5 and 6 are subsidiary to those.
Briefing notes documents:	Delegated Decision Appendix.docx
Other Options Considered:	If the Section 106 funding is not used for the purposes detailed within 5 years of receipt, it could be reclaimed by the developer. Therefore other spend options have been discounted. The use of the WREN funding is governed by the contract with WREN and so cannot be used for other projects.

Background Papers:

None

Published Works:

Delegated Decision 2926 - WREN bids November 2017.
Area 4 Committee - minutes of the meetings of 22 November 2017 and 21 February 2018.
Area 8 Committee - minutes of the meeting of 14 February 2018.

West Area Committee - minutes of the meetings of 16 November 2016, 13 September 2017 and 14 February 2018.

Affected Wards:

Arboretum, Bilborough, Bridge, Leen Valley

**Colleague / Councillor
Interests:**

None.

Consultations:

Date: 14/02/2018
Area Committees: Area 3: Aspley, Bilborough and Leen Valley, Area 4: Arboretum, Dunkirk and Lenton, Radford and Park (from May 2012), Area 8: Clifton North, South and Bridge (from May 2012)
Area 4 - endorsement of use of Section 106 on 22 November 2017 and 21 February 2018.
Area 8 - endorsement of use of Section 106 on 14 February 2018.
West Area - endorsement of use of £25,000 Area Capital on 16 November 2016.
West Area - endorsement of use of Section 106 on 13 September 2017.
West Area - endorsement of use of Section 106 on 14 February 2018.

Those not consulted are not directly affected by the decision.

**Crime and Disorder
Implications:**

The works detailed aim to improve the sites and make them more attractive to users, thereby reducing anti-social behaviour and crime.

Equality:

EIA not required. Reasons: There is no proposal for new or changing policies / services / functions or financial decisions that would have a major impact on services.

Decision Type:

Portfolio Holder

Subject to Call In:

Yes

Call In Expiry date:

05/04/2018

Advice Sought: Legal, Finance, Procurement

Legal Advice: Legal advice as attached.
Advice provided by Judith Irwin (Senior Solicitor) on 22/03/2018.
Advice documents: Legal Comments - DD of March 2018.docx

Finance Advice: Following approval of this decision the capital programme will be updated with the funding envelope as detailed in the appendix.

Please note that with regards to the S106 contribution from Katherine house (16/01099/PFUL3), the unindexed amount has been received (£12,308) but the interest amount (£531.11) is still outstanding. Therefore, the interest amount is at risk and should it not be received the project manager's budget will be reduced accordingly.

The S106 receipts are not committed to any capital scheme at present therefore following the approval of this decision all S106 receipts detailed in the appendix will be earmarked, meaning that these receipts are fully committed.

The Director of Sports and Culture will put appropriate measures in place to ensure compliance to the funding conditions all projects.
Advice provided by Tom Straw (Senior Accountant - Capital Programmes) on 23/03/2018.

Procurement Advice: There are no procurement concerns with the recommendations set out in the report. The Procurement Team will work with the client to ensure value for money and compliance with the Councils Financial Regulations. Advice provided by Sue Oliver (Category Manager - Procurement) on 26/02/2018.

Signatures
David Trimble (Portfolio Holder for Leisure and Culture)
SIGNED and Dated: 27/03/2018
Andrew Vaughan (Corporate Director Commercial and Operations)
SIGNED and Dated: 27/03/2018

**APPENDIX TO DELEGATED DECISION RE S106 AND OTHER CAPITAL FUNDING FOR
BILBOROUGH PARK, FOREST RECREATION GROUND, VICTORIA EMBANKMENT AND MILL
AND WINDMILL ALLOTMENTS**

<u>Item No.</u>	<u>Source of funding</u>	<u>Value</u>	<u>Site and purpose</u>
1	S106 contribution from Dairy Square development (planning ref 09/00526/PFUL3)	£97,971.00	Bilborough Park – construction of a new play area at the park.
2	Area Capital	£25,000.00	Ditto
3	Nottingham City Homes	£10,000.00	Ditto
4	Waste Recycling Environmental Limited (WREN) grant	£60,000.00	Ditto and £20,000 to be used for arboricultural works
		Sub - total: £192,971.00	
5	S106 contribution from Talbot House development (planning ref 15/01889/PVAR3)	£184,842.25	Forest Recreation Ground and Waterloo Road – repair of footpaths
6	S106 contribution from Katherine House development (planning ref 16/01099/PFUL3)	£12,849.11	Forest Recreation Ground – improvement of play area
		Sub - total: £197,691.36	
7	S106 contribution from Norwich Union House development (planning ref 15/00951/PFUL3)	£37,122.13	Victoria Embankment Memorial Gardens – improvements including restoration of War Memorial
		Sub-total £37,122.13	
8	S106 contribution from Ascot Road development (planning ref 15/01928/PFUL3)	£15,248.92	Mill and Windmill Allotments, Leen Valley – improvements to security and infrastructure
		Sub-total: £15,248.92	
		<u>GRAND TOTAL: £443,033.41</u>	

Legal Comments - Delegated Decision re s106 and other capital funding for Bilborough Park, Forest Recreation Ground, Victoria Embankment and Mill and Windmill Allotments

1. Under the Council's Constitution, the Area Committee for the area within which s106 contributions are to be used is a consultee on the spending proposals. The "Consultations" section of this report sets out the details of the reports which have been taken to Area 4, Area 8 and West Area Committees and it would appear that this Constitutional requirement has been complied with.
2. Each of the s106 agreements identified below contain a standard provision that once five years have elapsed from receipt of a contribution, on demand by the developer the Council is liable to repay any monies which have not been spent in accordance with the agreement.
3. Decision 1 and Item 1 in the Appendix propose the use of a section 106 contribution from the Dairy Square development for construction of a new play area at Bilborough Park. The relevant s106 agreement dated 27 April 2006 (varied on 23 April 2007 and again on 20 July 2009) obliged the developer to pay to the Council an open space contribution of £97,971 prior to occupation of more than half of the development. The Council covenanted to use the open space contribution towards the provision or enhancement of public open space in the City of Nottingham. (It is understood that the contribution was paid on 1 February 2018 so although the agreement is a relatively old one, this funding will remain available for use by the Council until 2023 before any liability to repay unused monies arises). It is considered that the decision is compliant with the terms of the relevant s106 agreement.
4. Decision 1 and Item 5 in the Appendix propose the use of a section 106 contribution from Talbot House development for the repair of footpaths to Forest Recreation Ground and Waterloo Road. The relevant s106 agreement dated 1 April 2015 (varied on 9 December 2015) obliged the developer to pay to the Council an open space contribution of £174,750.10 (index linked) prior to first occupation of the development. The Council covenanted to use the open space contribution towards the following projects: (a) refurbishment of Colville Street play area; (b) footpath resurfacing works at the Forest Recreation Ground; and (c) footpath resurfacing works at Waterloo Promenade and Waterloo Road. It is considered that the decision is compliant with the terms of the relevant s106 agreement.
5. Decision 1 and Item 6 in the Appendix propose the use of a section 106 contribution from Katherine House development for the improvement of the Forest Recreation Ground play area. The relevant s106 agreement dated 18 August 2016 obliged the developer to pay to the Council an open space contribution of £12,318 (index linked) prior to first occupation of the development. The Council covenanted to use the open space contribution towards improvements to the play area at the Forest Recreation

Ground. It is considered that the decision is compliant with the terms of the relevant s106 agreement.

6. Decision 1 and Item 7 in the Appendix propose the use of a section 106 contribution from Norwich Union House for improvements to Victoria Embankment Memorial Gardens including the restoration of the War Memorial. The relevant s106 agreement dated 16 September 2015 obliged the developer to pay to the Council an open space contribution of £35,030.55 (index linked) prior to first occupation of the development. The Council covenanted to use the open space contribution towards the provision and/or the enhancement of the Victoria Embankment Memorial Gardens. It is considered that the decision is compliant with the terms of the relevant s106 agreement.
7. Decision 1 and Item 8 in the Appendix propose the use of a section 106 contribution from Ascot Road for improvements to security and infrastructure at Mill and Windmill Allotments, Leen Valley. The relevant s106 agreement dated 29 March 2016 obliged the developer to pay to the Council an open space contribution of £14,654 (index linked) prior to occupation of more than half of the dwellings within the development. The Council covenanted to use the open space contribution towards improvements to security and infrastructure at The Mill and the Windmill Allotments. It is considered that the decision is compliant with the terms of the relevant s106 agreement.
8. Decision 2 and Item 2 in the Appendix propose that the sum of £25,000 from Area Capital be used towards the construction of a new play area at Bilborough Park, this spend having been approved by West Area Committee on 16 November 2016. No legal issues would appear to arise in relation to this element of the decision.
9. Decision 3 and Item 3 in the Appendix propose that the sum of £10,000 from Nottingham City Homes (NCH) be used towards the construction of a new play area at Bilborough Park. It is understood that no written agreement exists (or is proposed) between the Council and NCH to specify the objects to which this funding must be used.
10. Decision 4 and Item 4 in the Appendix propose that the WREN (Waste Recycling Environmental Limited) grant of £60,000 be used towards the construction of a new play area at Bilborough Park and for arboricultural works. Grants may be made by WREN from its Community Fund for amenity projects within 10 miles of a FCC Environment landfill site in WREN's operating area. In the case of the Bilborough Park project, that site is Eastcroft. The primary intent of the project must be the protection of the environment, the provision, maintenance or improvement of a public park, or another public amenity.
11. In the case of all grant applications approved by WREN, the Council will be required to enter into an agreement restricting the purpose to which the monies are put, delivery

of progress reports, maintenance of records of income derived and provision of documentation and expenditure details to WREN as the projects are implemented. The agreement will also typically contain obligations relating to the projects being accessible to the public for a minimum period, and in the event that the project is not ultimately implemented, the return of the funding to WREN.

12. The above decisions are within the terms of reference of the Portfolio Holder for Leisure and Culture under the Council's Constitution.