

PART 1 - PUBLIC

Decision Maker: Executive and Resources PDS

Date: 25th August 2010

Decision Type: Non-Urgent Executive Non-Key

Title: SECTION 106 AGREEMENTS: UPDATE

Contact Officer: Bob McQuillan, Chief Planner
Claire Martin Head of Finance
Tel: 020 8313 4554 020 8313 4286
E-mail: claire.martin@bromley.gov.uk bob.mcquillan@bromley.gov.uk

Chief Officer: Marc Hume, Director of Renewal and Recreation

Ward: Boroughwide

1. Reason for report

This report provides an update on Section 106 Agreements as requested by the Executive and Resources Policy Development and Scrutiny Committee on 9th June 2010.

It should be noted that any updates from the Monitoring Report of the Section 106 PDS Working Group, which was last reported to the Executive and Resources PDS Committee on June 8th 2010, will be incorporated into this report with effect from December 2010.

2. **RECOMMENDATION(S)**

Members are asked to note the report and the contents of the attached appendices.

Corporate Policy

1. Policy Status: Existing policy. IMP1 of the Unitary Development Plan
 2. BBB Priority: Safer Bromley. Plus Children and Young People, Vibrant and thriving Town Centres and Quality Environment
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Financial

1. Cost of proposal: N/A
 2. Ongoing costs: N/A.
 3. Budget head/performance centre: S106 deposits
 4. Total current budget for this head: £3,669,171
 5. Source of funding: S106 deposits
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Staff

1. Number of staff (current and additional): 2
 2. If from existing staff resources, number of staff hours: from existing staff resources
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Legal

1. Legal Requirement: Statutory requirement. S106 of the Town and Country Planning Act enables the Local Authority to make agreements with applicants to secure benefits relating to the granting of planning permission. This is reflected in Policy IMP1 of the Unitary Development Plan which relates to planning obligations.
 2. Call-in: Call-in is not applicable. This report does not involve an executive decision
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Section 106 agreements are made with the applicant for the benefit of the future occupants of new developments and also for the benefit of existing residents in the vicinity of a new development
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

- 3.0 At the meeting of 9th June 2010, the Executive and Resources PDS Committee requested that Members be updated on the current position of Section 106 Agreements at its next meeting on 25th August 2010.

Joint Database

- 3.1 The development of the joint database has been completed. An Access Database has been created which is populated by downloading information from both the Uniform system and the Oracle accounting system. The database has been designed to display the information in the same format as reported to Members in November 2009 and comprises 3 Appendices.
- 3.2 The 'live' spreadsheets are accessible to Planning, Finance and Legal Officers and are regularly updated.
- 3.3 A set of procedures have been agreed which sets out the responsibilities of all officers in the Legal, Planning and Finance sections and includes the regular checking of trigger dates to ensure that invoices are raised at the required time.

Background information

- 3.4 The detail of every S106 agreement is stored in at least one of the three Appendices.
- 3.5 Appendix 1 records the 'negative/restrictive obligations' and include developments that are restricted by the S106 either by use, limitations on development within the curtilage or not to implement a previous permission.
- 3.6 Appendix 2 records the 'positive non financial' contributions. These agreements form the larger proportion of planning obligations gained through Section 106. Mostly they relate to the provision of affordable housing units.
- 3.7 Appendix 3 records 'positive financial' contributions. There are 7 main service areas where monies are received through the use of S106 obligations: Local Economy, Community or Town Centre use, Highways/Traffic (including Transport for London), Education, Health, Land (which records payments for landscaping), Affordable (which records payments in lieu of affordable housing) and Other (which records payments for any other contributions which do not fall into one of the above categories). The full Appendix 3 also shows that since March 2003 a wide variety of contributions have been negotiated through S106 agreements including funds for the creation of a Heritage Centre at Biggin Hill, travel plans, traffic calming/crossings, town centre improvement funding, public footpath maintenance, CCTV schemes and woodland management schemes. Increasingly over the last year the Council has used the NHS London Healthy Urban Development Unit (HUDU model), which gauges the impact that residential developments have on the capacity of health services. This formula produces a health contribution per unit and is administered by the Primary Care Trust.
- 3.8 Appendix 3 has been compiled from and updated using information from the Oracle accounting system and the Council's Public Register and Contribution record, which is held with the Public Register along with copies of all S106 legal agreements dating back to 1998.
- 3.9 If a S106 includes obligations from more than one category the details are recorded in each of the relevant appendices.
- 3.10 The full Appendices cover the period from March 2003 to June 2010 with details of 173 sealed legal agreements. Copies of these documents are available to view in the Members Room.

3.11 The Committee may note that there can be considerable time delay between the sealing of a Section 106 grant of permission and subsequent implementation of development (up to 5 years) when the obligation becomes due. There is always a possibility that a development will not go ahead at all where a developer feels the development is no longer viable.

3.12 All S106 legal agreements are registered as a Land Charge against the property and are registered at the Land Registry with the title deeds of a property or piece of land.

Section 106 Agreements: Update

3.13 Appendices 1 to 3 of this report provide details of 17 new agreements since the last update in November 2009.

3.14 Appendix 1 shows a table with 9 'negative' S106 legal agreements.

3.15 Appendix 2 shows a table with 5 new 'positive non-financial' S106 legal agreements. The total net affordable housing gain since November 2009 amounts to 93 units. The full Appendix 2 table shows that since March 2003 the Council sealed legal agreements that will potentially net 1,272 new affordable housing units.

3.16 As can be seen from the tables LBB will not necessarily receive all of these units unless they are built and handed over but the agreements are in place. In terms of revenue as a non-stockholding authority the Council does not gain direct asset value through Section 106 of the 1990 Town and Country Planning Act. All housing assets acquired are held by our partners RSLs.

3.17 Appendix 3 shows 3 new agreements of specific 'positive financial gain to the Council; 1 of these agreements is also included in Appendix 1.

3.18 Members should note that the detailed description of the agreement terms in Appendix 3 gives an indication of any time limitations on spend together with whether interest is accrued to the contributions.

3.19 Appendix 4 gives the details of the current balances the Council holds for S106 agreements, split by service area category mentioned in 3.9 above and by revenue/capital classification and the time limit for spending monies. Where there are no time limits, a 5 year limitation from the date of the legal agreement has been assumed in accordance with legal advice.

3.20 A complete set of Appendices 1, 2 and 3 has been left in the Members Room.

3.21 'Significant' new agreements are as follows: -

- Dylon International Ltd, Worsley Bridge Road, SE26 – permission was granted, on appeal, for a mixed commercial and residential development which will provide 51 affordable housing units
- One-O-One Club, 101A Parish Lane, Penge – permission was granted, on appeal, for a residential scheme which will provide 20 affordable housing units.

4. POLICY IMPLICATIONS

4.1 Development Plan policies play a crucial role in securing appropriate planning obligations. Policy IMP1 of the Unitary Development Plan 2006 sets out the Council's approach to Section 106 agreements. There are implications also for the objectives of 'Building A Better Bromley' including, Safer Communities, A Quality Environment and Ensuring that all children and young people have opportunities to achieve their potential.

- 4.2 The sustainability of vibrant town centres is also one of the Council's key priorities and Section 106 funding, where appropriate, can make a significant contribution in achieving one of the Council's main aims.
- 4.3 The Department for Communities and Local Government (DCLG) document 'Planning Obligations: Practice Guidance' sets out ways in which local planning authorities can secure planning obligation. It covers such matters as in-kind and financial contributions, one-off and phased payments, maintenance and pooled payments. It stresses the need for Local Development Documents (whether DPDs or SPDs) to articulate the Council's policies on planning obligations in line with regional spatial strategy (The London Plan), and local need.
- 4.4 The London Plan (Policy 6A.4) requires boroughs to give priority to affordable housing, public transport improvements, learning and skills, health facilities and childcare provision and have clear local policies to these ends.
- 4.5 The Planning Act 2008 has now received Royal Assent and there is a proposal to introduce a Community Infrastructure Levy (CIL). The final regulations covering the Levy came into force on 6th April 2010. A report was submitted to Development Control Committee on 20th October 2009 setting out the Council's response to consultation on the details of the regulations. For the present, S106 agreements will continue to be the way in which local planning authorities receive community advantages from development proposals.
- 4.6 In addition a Revised Draft Supplementary Planning Document (SPPD) on Planning Obligations was submitted to Development Control Committee on 12th January 2010 and it was agreed that the document should be published for consultation. The consultation period ended on the 31st March and responses are being compiled in a report which will accompany the final version of the SPD.
- 4.7 This final version will also incorporate the implication of CIL regulations which came into force on 6th April. CIL regulation 122 places into law three statutory tests which are based upon the original five policy tests in Circular 05/05. The three tests are ;
- a) necessary to make development acceptable in planning terms;
 - b) directly related to the development; and
 - c) fairly and reasonably related in scale and kind to the development.
- 4.8 These are the only basis on which section 106 contributions can now be sought. Regulation 123 ensures that the local use of CIL and planning obligations does not overlap. However, DCLG has now been advised that with the change of Government the position on CIL is unclear. Confirmation on the future of CIL is expected in the autumn. Inevitably, this will delay the final SPD further.

5. FINANCIAL IMPLICATIONS

- 5.1 The table below summarises the overall Appendix 3, giving a breakdown across the service areas of all S106 obligations agreed within the last 6.5 years and details of whether the sums are confirmed (eg development has started) or provisional (S106 obligation agreed but development not started): -

AREA	S106 SUMS CONFIRMED	PROVISIONAL S106 SUMS £	TOTAL £
Local Economy, Town Centre, Community Use	2,188,500	51,000	2,239,500
Highways/Traffic/Parking	966,061	362,000	1,328,061
Education	1,541,829	678,561	2,220,390
Health/Primary Care Trust	532,704	417,768	950,472
Landscape	35,000	30,000	65,000
Housing	3,120,437	4,818,000	7,938,437
Other	13,000	0	13,000
TOTALS	8,397,531	6,357,329	14,754,860

5.2 Of the £8.4m confirmed sums, £7.3m has been received and £2.8m has been spent, leaving an unspent balance of £4.5m. It should also be noted that £1.2m has been received (Garrard House development) from the provisional sum and this also remains unspent as at 30th June 2010.

5.3 The summarised financial position of the unspent balances across the service areas (detailed in Appendix 4) is as follows: -

AREA	BALANCE AS AT 30.6.10 £	CURRENT OUTSTANDING COMMITMENTS £	LATEST BALANCE AS AT 30.6.10 £
Revenue			
Local Economy, Town Centre, Community Use	85,310	11,000	74,310
Highways/Traffic/Parking	588,297	171,905	416,392
Health/Primary Care Trust	223,202	0	223,202
Landscape	35,000	0	35,000
Other	15,000	0	15,000
Total Revenue Balance	946,809	182,905	763,904
Capital			
Housing	2,391,263		2,391,263
Education	915,699	450,000	465,699
Local Economy	410,452	383,952	26,500
Community Facilities	860,000	15,000	845,000
Interest accrued to capital S106 agreeem	119,665	106,000	13,665
Total Capital Balance	4,697,079	954,952	3,742,127
Total Section 106 Balance	5,643,888	1,137,857	4,506,031

5.4 It should be noted that an additional amount of £19,000 is held as a bond in accordance with the S106 agreement for the Orpington College development.

5.5 £2,000 is also being held as part of a maintenance fund for the developer to use for the future maintenance of the road from the Denbridge Road development.

6. LEGAL IMPLICATIONS

6.1 The power of a Local Planning Authority to enter into a Planning Obligation with anyone having an interest in land in their area is contained in section 106 of the Town and Country Planning Act 1990 (as amended by Section 12 of the Planning and Compensation Act 1991). Planning Obligations made under section 106 comprise both obligations and unilateral undertakings.

Government advice on the use of section 106 is contained within Circular 5/05 'Planning Obligations' (Office of the Deputy Prime Minister, July 2005).

- 6.2 A Planning Obligation may only be created by a person with an interest in the relevant land, and may be created either by means of an agreement with the Local Planning Authority or by means of a unilateral undertaking. An Obligation may restrict development or the use of land, need specific works to take place or need a financial contribution towards a work or service of public benefit.
- 6.3 The main features of a Planning Obligation are:
- It applies to the land, so enforcement of it would be against the person who agreed it (normally the applicant) or their successor in title.
 - It can also be enforced by a legal injunction. Where a person has defaulted on a requirement to carry out works on the land, the Local Planning Authority may also enter onto the land to enforce the terms of the Obligation and to claim back its reasonable costs arising from this action.
 - It can contain a restriction on use of the land or a requirement for works to be undertaken thereon, that can be for an indefinite period, a stated period, or a period defined by reference to some future event, e.g. the completion of specified works.
 - Contribution(s) may be expressed as being due:
 - (a) Singly, on a specified date, or one that can be derived from defined future event(s),
 - (b) In instalments, the amounts of which can be stated or derived from a formula, that are payable on specified dates or on dates based on future events, e.g. stages of the development, and
 - (c) Singly or in instalments, the amounts of which can be stated or derived from a formula, that are payable on specified date(s), or at defined times after, the completion of the development, e.g. to contribute to maintenance needs.
- 6.4 A section 106 Agreement can be varied with the agreement of the Local Planning Authority; there is also a formal application and appeals process in certain circumstances. Section 106 contributions may be time limited in the agreement or undertaking. Even where this is not the case then section 12(3) Planning and Compensation Act 1991 Section allows a person to apply for a planning obligation to be discharged after 5 years and if money has not been spent or there is not a clear intention to spend within a reasonable time a local authority may be made to refund in such cases.
- 6.5 The planning system works on the principle that planning permissions cannot be bought from or sold by a Local Planning Authority. Negotiations to gain benefits from development proposals must take place in a way which is seen to be fair and reasonable. By working in this way, Planning Obligations can improve the quality of development proposals which might otherwise have to be refused.
- 6.6 Planning Obligations must be related to the scale and nature of the development being proposed. Circular 5/05 requires Planning Obligations to meet the following tests. They have to be:
- Necessary to make a proposal acceptable in planning terms;
 - Relevant to planning;
 - Directly related to the proposed development;
 - Fairly and reasonably related in size and type to the proposed development; and
 - Reasonable in all other respects.
- 6.7 The Council acting as Local Planning Authority cannot allow unacceptable developments because of unnecessary or unrelated benefits that the applicant may be offering. Equally

applicants cannot be expected to pay for facilities which are only needed to deal with existing shortfalls in the area.

Non-Applicable Sections:	Personnel
Background Documents: (Access via Contact Officer)	ODPM Circular 05/2005 Planning Obligations 2008/09 budget monitoring files within ES Impact of Large Developments – Progress Monitoring Report March 2006 Shared file listing all S106 agreements Executive & Resources PDS Committee 26 th March 07 Executive and Resources PDS Committee 16 th July 07 Executive and Resources PDS Committee 2 nd Sept 2008 Executive and Resources PDS Committee 25 th March 2009