

Decision Maker: **Development Control Committee**

Date: **20 September 2012**

Decision Type: Non-Urgent Non-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: bob.mcquillan@bromley.gov.uk; claire.martin@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.

RECOMMENDATION(S)

Members are asked to note the report and the contents of the attached Appendices 1-4.

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: Recurring cost.
 3. Budget head/performance centre: S106 Deposits
 4. Total current budget for this head: £5,628,456
 5. Source of funding: S106 Deposits
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Staff

1. Number of staff (current and additional): 2ftes
 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:

3. COMMENTARY

3.1 This is an update following the last report that was submitted to Executive and Resources PDS Committee in June 2011.

Background Information

3.2 The detail of every S106 agreement is stored in at least one of the three Appendices.

3.3 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.

3.4 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.

3.5 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.

3.6 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.

3.7 If a S106 includes obligations from more than one category the details are recorded in each of the relevant appendices.

3.8 The full Appendices cover the period from March 2003 to date with details of 290 sealed legal agreements. Copies of these documents are available to view in the Members Room.

3.9 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.

3.10 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

3.11 Appendices 1 to 3 of this report provide details of 17 new agreements since the last update in December 2011. Member should note that 5 of these are variations to agreements to reflect minor amendments to schemes already approved.

3.12 Appendix 1 shows a table with 5 'negative' S106 legal agreements.

- 3.13 Appendix 2 shows a table with 8 new 'positive non-financial' S106 legal agreements. The total net affordable housing gain since December 2011 amounts to 71 units. The full Appendix 2 table shows that since March 2003 the Council sealed legal agreements that will potentially net 1,332 new affordable housing units.
- 3.14 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.
- 3.15 Appendix 3 shows 5 new agreements of specific 'positive financial gain to the Council';
- 3.16 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.
- 3.17 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.
- 3.18 A complete set of Appendices 1, 2 and 3 has been left in the Members Room.
- 3.19 'Significant' new agreements are as follows:-

Denton Court, Birch Row, Bromley – planning permission was granted for 27 houses. The s106 agreement secured 10 affordable housing units, £40,797 health contribution and £205,230 education contribution.

57 Albemarle Road, Beckenham – planning permission was granted for the demolition of 57 and 57a Albemarle and erection of a block of 21 flats. The S106 agreement secured 7 affordable housing units.

Multistorey Car Park, Simpsons Road, Bromley (Site K) – permission was granted for a mixed use scheme comprising 200 flats, 130 bedroom hotel, restaurant/cafe uses, basement parking and bus parking area. The S106 agreement secured 46 affordable housing units and up to £700,000 affordable housing payment in lieu (subject to Development Agreement), £2,500 car club contribution, £504,045 education contribution, £197,000 health contribution, £20,000 town centre contribution and £15,000 wheelchair adaptation contribution.

H Smith Engineers Ltd, Fordcroft Road, Orpington – permission was granted for 28 dwellings on this site. The S106 agreement secured 9 affordable housing units.

Kent County Cricket Ground, Worsley Bridge Road, Beckenham – planning permission was granted for an indoor cricket centre/multi-function sports/leisure facility, health and fitness centre and conference centre, spectator stand, all weather pitches and 48 houses. A payment in lieu to provide or enhance sports facilities was secured by the S106 agreement.

4. POLICY IMPLICATIONS

- 4.1 Development Plan policies play a crucial role in securing appropriate planning obligations. Policy IMP1 of the Unitary Development Plan (saved policies 2004) 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 (until April 2014).
- 4.4 The London Plan (Policy 8.2: Planning Obligations)) requires boroughs to give priority to affordable housing, public transport improvements, tackling climate change, learning and skills, health facilities, childcare provision and the provision of small shops and have clear local policies to these ends.
- 4.5 A Supplementary Planning Document (SPPD) on Planning Obligations was approved by DC Committee on December 2010.

This document also incorporate the implication of CIL regulations which came into force on 6th April 2010. CIL regulation 122 places into law three statutory tests which are based upon the original five policy tests in Circular 05/05, explained under 'Legal Implications' below. Regulation 123 ensures that the local use of CIL and planning obligations does not overlap.

- 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.

- 4.6 Mayoral Community Infrastructure Levy (CIL) was introduced on 1st April 2012 (London Plan Policy 8.3). Bromley acts as the collecting authority on behalf of the Mayor. Mayoral CIL is collected on new development (as defined under 4 regulations) at a rate of £35 per square metre in Bromley.
- 4.7 Members should note that Lead Officers have been identified for each of the topic areas for which S106 contributions are received as follows:
 Highways, Road safety and Parking – Angus Culverwell
 Local Economy – Kevin Munnerly
 Landscaping – Pat Phillips
 Housing – Kerry O'Driscoll
 Education – Rob Bollen
 Primary Care Trust – Lorna Blackwell
 Community Facilities – Colin Brand
 CCTV – Jim McGowan

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 7.5 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	2,516,500	70,000	2,586,500
Highways/Traffic/Parking	1,263,061	108,500	1,371,561
Education	2,422,059	507,607	2,929,666
Health/Primary Care Trust	771,501	416,768	1,188,269
Landscape	222,500	65,000	287,500
Housing *	6,325,109	5,084,150	11,409,259
Other	18,000	300,000	318,000
TOTALS	13,538,730	6,552,025	20,090,755

5.2 Of the £13.5m confirmed sums, £9.77m has been received and £4.65m has been spent, leaving an unspent balance of £5.12m. It should also be noted that £2.2m has been received (Holy Trinity development) from the provisional sum and this also remains unspent as at 23rd August 2012.

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 23.8.12 £	CURRENT OUTSTANDING COMMITMENTS £	LATEST BALANCE AS AT 23.8.12 £
Revenue			
Local Economy, Town Centre, Community Use	135,310	55,310	80,000
Highways/Traffic/Parking	609,894	199,563	410,331
Health/Primary Care Trust	488,492	104,724	383,768
Landscape	35,000	0	35,000
Other	15,000	0	15,000
Total Revenue Balance	1,283,696	359,597	924,099
Capital			
Housing	4,507,200	1,146,428	3,360,772
Education	565,653	0	565,653
Local Economy	26,500	26,500	0
Community Facilities	743,504	25,504	718,000
Interest accrued to capital S106 agreements*	59,932	0	59,932
Total Capital Balance	5,902,789	1,198,432	4,704,357
Total Section 106 Balance	7,186,485	1,558,029	5,628,456

5.4 The interest balance relates to two S106 agreements, £56,307 from the development on Land at Biggin Hill for the Biggin Hill Heritage Centre and £3,625 from the Oakwood Court development for housing.

5.5 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.

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 Circular5/05 '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. CIL regulation 122 came into force under the Community Infrastructure Levy (CIL) Regulations in April 2010 and 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.

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 Executive and Resources PDS Committee 10 th August 2010 Executive and Resources PDS Committee 9 th June 2010