

Decision Maker: Executive and Resources PDS

Date: 8th July 2014

Decision Type: Non-Urgent Executive Non-Key

Title: SECTION 106 AGREEMENTS: UPDATE

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Ward: Boroughwide

1. Reason for report

This report provides both an update on Section 106 Agreements.

2. **RECOMMENDATION(S)**

2.1 **The Executive and Resources PDS are asked to note the report and the contents of the attached Appendices 1-5.**

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: Estimated cost N/A
 2. Ongoing costs: N/A.
 3. Budget head/performance centre: S106 Deposits
 4. Total current budget for this head: £5,618,221
 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 January 2014.

Background information

3.2 The detail of every S106 agreement is stored in at least one of the Appendices (1), (2) and (3).

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 education provision, 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.

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 over 300 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 issuing 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 3 new agreements since the last update in January 2014. Member should note that none of these are variations to agreements to reflect minor amendments to schemes already approved.

3.12 Appendix 1 shows a table with 2'negative' S106 legal agreements.

- 3.13 Appendix 2 shows a table with 1 new 'positive non-financial' S106 legal agreements. The total net affordable housing gain since January 2014 amounts to 12 units. The full Appendix 2 table shows that since March 2003 the Council sealed legal agreements that will potentially net 1,372 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 1 new agreement of specific 'positive financial gain to the Council (1 Chilham Way). In addition there is 1 deed of variation that secures an additional financial contribution (H Smith Engineers)
- 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 3.5 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 Appendix 5 in the Part 2 agenda, provides an update on the progress of financial contributions received to date that are outstanding with target spend dates before the end of March 2015. The relevant Lead Officers listed in para 4.7 below have provided the information in the table for Members information.
- 3.20 'Significant' new agreements are as follows: -
- 1 Chilham Way – permission was granted in March 2014 for a total of 28 houses and flats and the legal agreement secured 12 affordable housing units, £283,046.32 for education provision and £52,315 for health provision.

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 2015).
- 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 incorporates the implication of CIL regulations which first 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 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 Munnely

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 11 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	2,586,500	20,000	2,606,500
Highways/Traffic/Parking	1,336,561	15,000	1,351,561
Education	3,935,160	301,608	4,236,768
Health/Primary Care Trust	1,339,369	60,595	1,399,964
Landscape	222,500	65,000	287,500
Housing	9,945,469	80,000	10,025,469
Other	318,000	0	318,000
TOTALS	19,683,559	542,203	20,225,762

- 5.2 Of the £19.7m confirmed sums, £14.7m has been received and £6.96m has been spent, leaving an unspent balance of £7.74m, excluding interest accrued of £1.5k.

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 31.05.14	CURRENT OUTSTANDING COMMITMENTS	LATEST BALANCE AS AT 31.5.14
	£	£	£
Revenue			
Local Economy, Town Centre, Community Use	120,000	0	120,000
Highways/Traffic/Parking	792,613	269,517	523,096
Health/Primary Care Trust	727,137	25,080	702,057
Landscape	0	0	0
Other	55,000	5,000	50,000
Total Revenue Balance	1,694,750	299,597	1,395,153
Capital			
Housing	4,473,909	1,116,711	3,357,198
Education	1,571,523	705,653	865,870
Total Capital Balance	6,045,432	1,822,364	4,223,068
Total Section 106 Balance	7,740,182	2,121,961	5,618,221

5.4 The balance above includes interest that has accrued to one of the S106 agreements within the Education capital balances, totalling £1,463.

5.5 On 2 April 2014, Executive agreed to set aside £192,500 from S106 monies in an earmarked reserve for the future maintenance of Cheyne Woods and Cyphers Gate open space, in accordance with the criteria set out in the specific agreements.

5.6 As mentioned above, Appendix 5 in the Part 2 agenda provides an update on the progress of financial contributions received to date that are outstanding with target spend dates before the end of March 2015.

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 18 th November 2009

	<p>Executive and Resources PDS Committee 10th August 2010 Executive and Resources PDS Committee 15th June 2011 Executive and Resources PDS Committee 6th December 2011 Executive and Resources PDS Committee 6th September 2012 Executive and Resources PDS Committee 5th June 2013 Executive Committee 15th January 2014</p>
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