

**Decision Maker:** Executive

**For Pre-Decision Scrutiny by Care Services PDS Committee  
on 26<sup>th</sup> June 2014**

**Date:** 16<sup>th</sup> July 2014

**Decision Type:** Non-Urgent Executive Key

**Title:** SECTION 106 FUNDING FOR HEALTH PROVISION

**Contact Officer:** Lorna Blackwood, AD Commissioning  
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**Chief Officer:** Terry Parkin, Executive Director of Education, Care & Health Services

**Ward:** List wards here

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1. Reason for report

Officers and Health colleagues at Bromley Clinical Commissioning Group have reviewed how Section 106 funding, which the planning division secures specifically for health services, should be processed, to secure the best value and quality health provision for residents.

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2. **RECOMMENDATION(S)**

2.1 **Care Services PDS are asked to note and comment on the contents of this report.**

2.2 **That the Executive agrees the process for Health partners accessing and utilising specific health related funding made available through Section 106 agreements as set out in paragraph 3.8;**

2.3 **That authority is delegated to the Executive Director, Education Care and Health Services, in consultation with the Portfolio Holder and Director of Corporate Services, to approve individual health proposals up to £250k and can allocate the funding under a formal grant arrangement; and**

2.4 **That authority to agree proposals for spending above £250k be delegated to the Care Services Portfolio Holder up to £1m.**

### Corporate Policy

1. Policy Status: Existing policy. Process rather than policy change
  2. BBB Priority: Supporting Independence.
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### Financial

1. Cost of proposal: Estimated cost £702,057
  2. Ongoing costs: N/A.
  3. Budget head/performance centre: S106 Deposits
  4. Total current budget for this head: £702,057
  5. Source of funding: Section 106 funding
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### Staff

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

### Legal

1. Legal Requirement: Statutory requirement. requirement to utilise Section 106 funding as stated in the planning agreement
  2. Call-in: Call-in is applicable
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
- 

### Ward Councillor Views

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

### 3. COMMENTARY

- 3.1 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).
- 3.2 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, Education, Health, Land, Affordable and Other (which records payments for any other contributions which do not fall into one of the above categories).
- 3.3 Increasingly over the last few years the Council has used the NHS London Healthy Urban Development Unit (HUDU model) formula, which gauges the impact that residential developments have on the capacity of health services and produces a health contribution per unit.
- 3.4 Historically the processes for allocating Section 106 health funding was clear. The Primary Care Trust (PCT) were responsible for maintaining an Estates Strategy and would manage any health allocation as a contribution to delivering against this strategy.
- 3.5 In April 2013 when the PCT was disbanded and Clinical Commissioning Groups (CCG) were established in their place, the responsibilities for estate management for health provision was effectively split. NHS London as a regional body was made accountable for primary care (GPs and Pharmacies) while the CCG retained responsibility for acute and community care (Hospital and health clinics). The post specifically set up to deal with estates management has been lost and as a result the allocation of Section 106 funding for health projects in the Borough has been problematic.
- 3.6 The Local Authority is holding funds from a number of Section 106 agreements that are now approaching the end of their term and need to be committed to health estate improvements.
- 3.7 Details of all the outstanding Section 106 Section funding totalling £702,057 from 13 Agreements for Health is set out in Appendix One.
- 3.8 Subject to agreement from the Executive it is proposed that:
- Planning continue to be responsible for flagging these agreements up as early as practically possible and putting them into an agreed format.
  - The Assistant Director Commissioning in ECHS will act as the Local Authority lead taking the information from planning and liaising with the Director of Finance at the CCG who is now the designated CCG officer responsible for Section 106 funding.
  - The CCG would be responsible for liaising with their partners at NHS London so as any proposals are agreed and authorised by both the CCG and NHS England covering all parts of the health economy in the Borough.
  - Proposals must be for infrastructure projects which require capital funding. Proposals must meet any criteria as set out within each individual Section 106 agreement.
  - The Executive Director EHS is given delegated authority, in consultation with the Portfolio Holder and Director of Corporate Services, to approve funding up to £250k per scheme against firm proposals from the CCG as to how the Section 106 funding will be committed.

- Agreement to proposals for spending above £250k would be delegated to the care Services Portfolio Holder up to £1m
- That the agreed funding is transferred to CCG as a grant with appropriate legally binding conditions attached, including conditions to ensure that the CCG informs the Council of general progress, expenditure and completion of schemes.
- That delivery of the agreed schemes against the spending plan will be monitored by the Assistant Director Commissioning in ECHS.
- Planning, in consultation with Health partners at the CCG and the Assistant Director Commissioning in ECHS would be responsible for considering health priorities in the preparation of the Borough's local plan.
- Ongoing spending commitments funded through grant will be reported to Members as part of the overall monitoring of Section 106 funding.

#### 4. POLICY IMPLICATIONS

- 4.1 This is a process rather than policy change as a result of the changes to health commissioning resulting from the Health and Care Act 2012.

#### 5. FINANCIAL IMPLICATIONS

- 5.1 The table below has the details of the thirteen S106 agreements where contributions have been received: -

<b>Planning Ref</b>	<b>Development</b>	<b>Contribution (£)</b>
172	The George, High Street Farnborough	12,228
178	Ravensbourne College, Chislehurst	163,000
180	James Dixon School, Anerley Park	26,496
197	Orpington Halls, Orpington	13,243
214	Anerley School for Boys, Penge	105,780
218	The Partidge, Chipperfield Road	13,244
223	Anerley School for Boys, Penge	75,768
227	Land at Rear of Nugent shopping park, Orpington	7,695
228	Land at former 1-23 Orchard Grove, Orpington	98,240
230	Enterprise House, 45 Homesdale Road	84,296
233	Garrard House, 2-6 Homesdale Road	35,000
237	Oatlands, 210 Anerley Road Penge	26,270
274	Denton Court, 60 Birch Row	40,797
<b>Total</b>		<b>702,057</b>

- 5.2 Further financial information is included in the Part 2 Appendix 2.

## 6. LEGAL IMPLICATIONS

- 6.1 Planning obligations (or Section 106 agreements) are private agreements negotiated, usually in the context of planning applications, between local planning authorities and persons with an interest in a piece of land. They are intended to make otherwise unacceptable development acceptable in planning terms. In addition the requirements of the obligation must be directly relevant development and be fairly and reasonably related to the scale of the development.
- 6.2 As is set out in the body of the report the Council has where it has been appropriate to do so sought financial contribution towards health provision in the Borough. In reaching a decision on spending section 106 money then regard must always be had to the terms of the agreement which can include e.g. geographical limitations on the area where money can be spent or direct funding to a particular facility.

<b>Non-Applicable Sections:</b>	<b>PERSONNEL IMPLICATIONS</b>
Background Documents: (Access via Contact Officer)	

**Appendix One: Details of all the outstanding Section 106 Section funding totalling £702,057 from 13 Agreements for Health**

Planning Ref	Development	S106 Agreement Clause	Amount & what the money should be spent on
172	The George, High Street Farnborough	To pay the Health Contribution to the Council upon Implementation of the Planning Permission. The sum of £12,228 to provide additional primary care infrastructure within the London Borough of Bromley	£12,228 to provide additional primary care infrastructure within the London Borough of Bromley
178	Ravensbourne College, Walden Road, Chislehurst, BR7 5SN	<p>8.1 The owner covenants that subject to receiving from the Council the Primary Healthcare Contribution Notice it will pay the Primary healthcare Contribution in accordance with clause 8.2.</p> <p>8.2 The Owner covenants: to pay the Primary Healthcare Contribution of £163,000 in three instalments - £55,000, £55,000 and £53,000. The Council undertakes to a) spend the Primary Healthcare Contribution only on the provision of primary healthcare facilities within the London Borough of Bromley and within a 3km radius of the Land and to consult the Bromley Primary Healthcare Trust on the expenditure of the Primary Healthcare Contribution; and b) return to the payer any unexpended part of the Primary Healthcare Contribution on the fifth anniversary of payment.</p>	£163,000 to spend only on the provision of primary healthcare facilities within the London Borough of Bromley and within a 3km radius of the Land and to consult the Bromley Primary Healthcare Trust on the expenditure of the Primary Healthcare Contribution;
180	James Dixon School site, Anerley Park	<p>The developer covenants with the Council that it will pay the Council the Health Contribution on or before the Payment Date.</p> <p>The Council covenants with the developer that it will not utilise the Health Contribution other than towards the provision of health services within the London Borough of Bromley.</p> <p>The Council covenants with the Developer that if the said Contribution or any part thereof shall not have been expended within the five (5) years after the date upon which it shall have been paid then the Council shall give upon written request by the Developer a written statement within 3 months of its proposals to expend any unallocated sums or alternatively shall issue a certificate signed by the Council's Director of Resources certifying that the contribution has been spent.</p> <p>The Council agrees with the Developer that the Council will repay any sums not spent or contractually committed within 5 years to the Developer within one month of the end of the 3 month period referred to above.</p>	£26,496 towards the provision of health services within the London Borough of Bromley.
197	Orpington Halls, High Street Orpington	The Owner agrees with the Council that it will pay the Healthcare Contribution to the Council within 3 months from the Commencement Date to be used towards the provision of healthcare services to the local community in the vicinity of	£13,243 towards the provision of healthcare services to the local community in the vicinity of Orpington and for no other purpose.

Planning Ref	Development	S106 Agreement Clause	Amount & what the money should be spent on
		<p>Orpington and for no other purpose. The Council shall after 5 years from the Commencement Date give upon written request by the Owner a written statement within 3 months of receipt of the written request of its proposals to expend any unallocated sums or alternatively shall issue a certificate signed by the Council's Director of Resources certifying that the Health Care Contribution has been spent. The Council agrees with the Owner that the Council will repay any sums from the Health Care Contribution not spent or contractually committed within 5 years from the Commencement Date to the Owner within one month of the end of the 3 month period referred to above.</p>	
214	Anerley School for Boys, Versailles Road, Penge	<p>The Developer agrees with the Council that it will pay the Healthcare Contribution to the Council within 3 months from the Commencement Date to be used towards the provision of health and medical services to the local community and for no other purpose. The Council agrees with the Developer to use the Healthcare Contribution only for the reason set out in the paragraph above and for no other purpose. The Council shall after 4 years from the Commencement Date give upon written request by the Developer a written statement within 3 months of receipt of the written request of its proposals to expend any unallocated sums or alternatively shall issue a certificate signed by the Council's Director of Resources certifying that the Healthcare Contribution has been spent. The Council agrees with the Developer that the Council will repay any sums from the Healthcare Contribution not spent or contractually committed within 4 years from the Commencement Date to the Developer within one month of the end of the 3 month period referred to above.</p>	£105,780 towards the provision of health and medical services to the local community and for no other purpose.
218	The Partridge, Chipperfield Road	<p>The Owner covenants with the Council to pay the Healthcare Contribution to the Council on or before the Payment Date to be used towards the provision of health and medical services to the local community in the London Borough of Bromley and for no other purpose. The Council agrees with the Owner to use the contribution only for the reason set out in the paragraph above and for no other purpose. The Council shall at the end of the Specified Period (being 5 years from the payment date) give upon written request by the Owner a written statement within 3 months of receipt of the written request of its proposals to expend any unallocated sums or alternatively shall issue a certificate signed by the Council's Director of Resources certifying that the Health Care Contribution has been spent. The Council agrees with the Owner that the Council will repay any sums not spent or contractually committed within the Specified</p>	£13,244 towards the provision of health and medical services to the local community in the London Borough of Bromley and for no other purpose.

Planning Ref	Development	S106 Agreement Clause	Amount & what the money should be spent on
		Period (being 5 years from the payment date) to the Owner within one month of the end of the 3 month period referred to above.	
223	Anerley School for Boys, Versailles Road, Penge	If the Developer receives a written request from the Council within 2 years following the Commencement Date in which the Council – request payment of the Healthcare Contribution. Covenants to use the Healthcare Contribution only for the provision of health and medical services to the local community and for no other purposes. Undertakes that if or to the extent that the Healthcare Contribution shall not have been applied by the Council in accordance with the above paragraph within 4 years after payment shall have been made to the Council then the Council shall on such date repay to the Developer such sum as shall not have been so applied together with any interest at the base rate from time to time of Lloyds Bank TSB plc from the date of payment to the Council pursuant to this clause to the date of repayment.	£75,768 for the provision of health and medical services to the local community and for no other purposes.
227	Land rear of Nugent shopping park, Cray View Close, Orpington	Contributions towards healthcare provision required in relation to residential development	£7,695 towards healthcare provision required in relation to residential development
228	Land at former 1-23 Orchard Grove Orpington	The contribution towards the provision of health care facilities in the London Borough of Bromley.	£98,240 towards the provision of health care facilities in the London Borough of Bromley.
230	Enterprise House, 45 Homesdale Road	<p>To pay the Contribution to the Council on or before the Payment Date to be used towards the provision of health and medical services to the local community and for no other purpose.</p> <p>The Council shall after 5 years from the Specified Period give upon written request by the Owner a written statement within 3 months of receipt of the written request of its proposals to expend any unallocated sums or alternatively shall issue a certificate signed by the Council's Director of Resources certifying that the Health Care Contribution has been spent. The Council agrees with the Owner that the Council will repay any sums not spent or contractually committed within the Specified Period (being 5 years from the payment date) to the Owner within one month of the end of the 3 month period referred to above.</p>	£84,296 towards the provision of health and medical services to the local community and for no other purpose.
233	Garrard House, 2-6 Homesdale Road	<p>The contribution of £35,000 to be used towards the provision of health facilities within the London Borough of Bromley.</p> <p>The Council covenants with the Developer as follows: - To apply the Contribution and any interest accrued thereon towards the purposes specified in the agreement and for no other purpose and To refund the Owner any portion of the Contribution which has not been expended</p>	£35,000 towards the provision of health facilities within the London Borough of Bromley.



Planning Ref	Development	S106 Agreement Clause	Amount & what the money should be spent on
		within five years from the date of payment together with any interest accrued thereon at the rate from time to time prescribed under Section 32 of the Land Compensation Act 1961 from the date of payment by the Owner to the date of repayment by the Council.	
237	Oatlands 210 Anerley Road Penge	<p>Prior to the commencement of the Development on the site the owner shall pay to the Council the sum of £26,270 as a commuted sum towards the provision of additional health care necessitated by the Development.</p> <p>The Council shall at the end of the specified period (being 5 years from and including the payment date) give upon written request by the Owner a written statement within 28 days of its proposals to expend unallocated sums or alternatively shall issue a certificate signed by the Council's Director of Resources certifying that the contribution has been spent.</p> <p>The Council agrees with the Owner that the Council will repay any sums not spent or contractually committed within the Specified Period (being 5 years from and including the payment date) to the Landowner within one month of the end of the 28 day period referred to in the paragraph above.</p>	£26,270 towards the provision of additional healthcare necessitated by the development.
274	Denton Court 60 Birch Row	To pay the Healthcare contribution to the Council within 14 days of the completion of the first sale of any market dwelling. Healthcare contribution means the sum of £40,797, to be spent on healthcare in the London Borough of Bromley.	£40,797 towards healthcare in the London Borough of Bromley.

## **Appendix two: Part 2 Financial Implications**

The contents of this appendix will be considered under exempt proceedings for both the Care Services PDS agenda and the Executive agenda.