

Decision Maker: Executive and Resources PDS

Date: 16 March 2016

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 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 Not Applicable
 2. Ongoing costs: Not Applicable
 3. Budget head/performance centre: S106 Deposits
 4. Total current budget for this head: £5,273,416
 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: 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? Not Applicable
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 2015.

Background information

- 3.2 The detail of every S106 agreement is stored in at least one of 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 an obligation 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, Healthcare, 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 education provision, travel plans, traffic calming/crossings, town centre improvement funding, public footpath maintenance, CCTV schemes and woodland management schemes. The Council uses 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 4 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 Appendix 5 in the Part 2 agenda, provides an update on the progress of financial contributions received to date that are outstanding together with target spend dates. The relevant Lead Officers listed in para 4.12 below have provided the information for the table.
- 3.8 If a S106 includes obligations from more than one category the details are recorded in each of the relevant appendices.
- 3.9 The full Appendices cover the period from March 2003 to date with details of over 356 sealed legal agreements. Copies of these documents are available to view in the Members Room.
- 3.10 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.
- 3.11 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

- 3.12 Appendices 1 to 3 of this report provide details of 8 new agreements since the last update in June 2015.
- 3.13 Appendix 1 shows a table with 4 'negative' S106 legal agreements.
- 3.14 Appendix 2 shows a table with 1 new 'positive non-financial' S106 legal agreements. The total net affordable housing gain since June 2015 amounts to 11 units. The full Appendix 2 table shows that since March 2003 the Council sealed legal agreements that will potentially net 1,518 new affordable housing units.
- 3.15 As can be seen from the tables LBB will not necessarily receive all of these housing 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.
- 3.16 Appendix 3 shows 4 new agreements of specific 'positive financial gain to the Council.
- 3.17 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.
- 3.18 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. The precise implications of the 'time limit' are set out in the individual planning agreements. The level of 'Commitments' in Appendix 4 has increased substantially in the last 24 months. This is mainly due to commitments to additional school and health projects, for example a grant agreement with the local NHS Clinical Commissioning Group. Lead officers who can provide further details in each of the service areas are shown in paragraph 4.12 below.
- 3.19 A complete set of Appendices 1, 2 and 3 has been left in the Members Room.
- 3.20 'Significant' new agreements are listed in the table below, with full details included in the appendices:-

Ref 353	57 Albemarle Road, Beckenham,	Affordable housing contribution £351,230.05 Education Contribution £80,099.95 Health Contribution £18,670
Ref 355	165 Masons Hill Bromley BR2 9HW	11 Affordable Housing units Education contribution £154,431.62 Health Contribution £57,996
Ref 357	Old Town Hall, 30 Tweedy Road, Bromley, Kent and Land Known as the Former South Street Car Park Site, Bromley, Kent	Car Club Space – £4,000 Health Contribution – £56,062 for new facilities and/or improvement of existing facilities at Dysart Surgery. Education Contribution – <ul style="list-style-type: none"> • Total £116, 368.12 for the following new facilities and/or the improvement of existing facilities: • (i) £51, 151.63 at St George’s School, Tylney Road; • (ii) £38,329.82 at Ravensbourne School, Hayes Lane; • (iii) £26,886.67 at Beacon House, Holmesdale Road Highway Works Contribution – £3,000 to relocate disabled parking bays in Court Street and coach pick-up/drop-off parking bay in South Street. Paid prior commencement of hotel; Stopping Up Order Contribution – £3,000 Contract for hotel shall be let and work commenced prior to commencement of residential development Landscaping scheme on TfL land adjacent to residential and hotel parts of the development to be approved prior to commencement and implemented prior to first occupation

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 Government sets out criteria for when planning obligations are sought in the National Planning Policy Framework (NPPF) paras 204 and 205, and full operational use guidance details are now found in the National Planning Practice Guidance (NPPG) document paras 1-23. These documents replace Planning Obligations Circular 05/2005.
- 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 (SPD) on Planning Obligations was adopted by the Council in December 2010. The SPD provides non-statutory guidance on the Council’s general approach to planning obligations, and where possible the requirements, and mechanisms for infrastructure contributions.
- 4.6 The SPD also incorporates the implication of CIL regulations which came into force on 6th April 2010. CIL regulation 122 places into law three statutory tests, explained under ‘Legal Implications’ below.

- 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.
- 4.7 From 6th April 2015, Regulation 123 came into effect regarding scaling back of the ‘pooling’ mechanism for planning obligations; this will ensure that the use of s106 and CIL (regarding projects that will, when CIL is introduced in Bromley, appear on a published CIL 123 project list) do not overlap.
- 4.8 As an interim arrangement, until a local CIL is in place, when the Council will need to seek specific financial contributions from developers (e.g. ‘£x’ for the provision of a new classroom at ‘y’ primary school or in the ‘z’ ward), rather than the historic/generic approach of seeking generic contributions (e.g. ‘£x for Education provision’) and to comply with the regulations that only a maximum of five contributions are spent for such a specific item of infrastructure. The introduction of this part of Reg 123 does not affect s278 Highways obligations nor apply to affordable housing contributions. These interim arrangements are expected to last until a local CIL is in place, due in early 2017.
- 4.9 In those cases where Affordable Housing Policy has not been met due to financial viability and subsequently there have been difficulties in the implementation of a specific project, the Council will consider whether the sum should be used instead for Affordable Housing.
- 4.10 The addendum to the SPD, to explain changes to unit threshold, and the pooling of s106’s was approved by Executive in June 2015.
- 4.11 Mayoral Community Infrastructure Levy (CIL) was introduced on 1st April 2012 (London Plan Policy 8.3). Bromley acts as a 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 (subject to periodic inflation increases).
- 4.12 Members should note that Lead Officers have been identified for each of the service areas for which S106 contributions are received as follows:

Highways, Road safety and Parking – Angus Culverwell
 Local Economy – Kevin Munnelly
 Landscaping – Dan Jones
 Housing – Sara Bowrey
 Education – Rob Bollen
 Healthcare/CCG – Richard Hills
 Community Facilities – Colin Brand
 CCTV – Jim McGowan

5. FINANCIAL IMPLICATIONS

- 5.1 The table below summarises the complete Appendix 3 (in the Member’s room), giving a breakdown across the service areas of all S106 obligations agreed within the last 13.5 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 £	S106 Sums Provisional £	Total £
Local Economy, Town Centre, Community Use	2,957,050	4,346,736	7,303,786
Highways/Traffic/Parking	1,408,793	22,500	1,431,293
Education	5,000,817	2,376,523	7,377,340
Healthcare/CCG	1,634,875	290,658	1,925,533
Landscape	222,500	65,000	287,500
Housing	10,039,469	3,036,230	13,075,699
Other	318,000	0	318,000
	21,581,504	10,137,647	31,719,151

5.2 Of the £21.581m confirmed sums, £18.164m has been received and £7.876m has been spent, leaving an unspent balance of £10.288m, excluding interest accrued of £7.8k.

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 31.1.16 £	Current Outstanding Commitments £	Latest Balance as at 31.1.16 £
Revenue			
Local Economy, Town Centre, Community Use	118,000	73,000	45,000
Highways/Traffic/Parking	493,088	50,000	443,088
Health/Primary Care Trust	1,105,063	683,057	422,006
Landscape	0	0	0
Other	20,000	0	20,000
Total Revenue Balance	1,736,151	806,057	930,094
Capital			
Housing	5,778,676	3,771,043	2,007,633
Education	2,585,689	250,000	2,335,689
Highways/Traffic/Parking	194,736	194,736	0
Total Capital Balance	8,559,101	4,215,779	4,343,322
Total Section 106 Balance	10,295,252	5,021,836	5,273,416

5.4 The balance above includes interest that has accrued to three of the S106 agreements within the revenue balances, totalling £1,481 and two agreements within the capital balances, totalling £6,311.

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. There is also a sum of £183,534 held in an earmarked reserve for the management and maintenance of Langley Waterside Nature Reserve from the Glaxo site development. The table below provides Members with an update on the use of these monies: -

Earmarked Reserves	Current Balance £	Actual Spend £	Outstanding Commitments £	Latest Balance £
Management of Cyphers Gate Open Space	151,908	0	11,408	140,500
Management of Cheyne Woods	35,000	9,054	5,196	20,750
Management of Langley Waterside Nature Reserve	178,956	0	18,975	159,981
	365,864	9,054	35,579	321,231

5.6 As mentioned above, Appendix 5 provides an update on the progress of financial contributions received to date together with target spend dates.

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 NPPG paras 1-23.
- 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)	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 8th Jan 2014 Executive & Resources PDS Committee 10 th July 2014 Executive & Resources PDS Committee 19 th Nov 2014 Executive & Resources PDS Committee 3 rd June 2015 Supplementary Planning Document (SPD) on Planning Obligations: Addendum to Changes to Pooling S106 Contributions and S106 Threshold Changes. DC Committee 24 th March 2015 and Executive 10th June 2015