

Report No.

London Borough of Bromley

PART ONE - PUBLIC

---

**Decision Maker:** Executive, Resources and Contract PDS

**Date:** 8 October 2020

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

**Title:** SECTION 106 AGREEMENTS: UPDATE

**Contact Officer:** James Renwick, Infrastructure Delivery Team Leader  
Tel: 020 8313 4212 E-mail: [james.renwick@bromley.gov.uk](mailto:james.renwick@bromley.gov.uk)

**Chief Officer:** Sara Bowrey, Director of Housing, Planning and Regeneration

**Ward:** Borough wide

---

1. Reason for report

This report provides an update on Section 106 Agreements.

---

2. **RECOMMENDATION(S)**

2.1 The Executive, Resources and Contract PDS are asked to note the report and the contents of the attached Appendices 1-4.

**Appendices -**

Appendix 1 records details of all S106 agreements signed during 2019/20.

Appendix 2 records all active agreements signed since 01 April 2015

Appendix 3 records current balances of s106 sums held by the Council

Appendix 4 records S106 income and expenditure between 01 April 2020 and 31 August 2020

### Impact on Vulnerable Adults and Children

1. Summary of Impact: The impact on Vulnerable Adults and Children is not expected to be significant.
- 

### Corporate Policy

1. Policy Status: Existing Policy: Policy 125 of the Local Plan
  2. BBB Priority: Children and Young People Quality Environment Safer Bromley Vibrant, Thriving Town Centres
- 

### 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: £11.3m
  5. Source of funding: Unallocated S106 Deposits
- 

### Personnel

1. Number of staff (current and additional): 3ftes
  2. If from existing staff resources, number of staff hours: from existing staff resources
- 

### 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 125 of the Local Plan which relates to planning obligations.
  2. Call-in: Not Applicable: This report does not involve an executive decision
- 

### Procurement

1. Summary of Procurement Implications: None
- 

### 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
- 

### 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, Resources and Contracts PDS Committee in 3 July 2019.

#### **Background information**

3.2 Appendix 1 records details of all S106 agreements signed during 2019/20.

3.3 Appendix 2 records all active agreements signed since 01 April 2015

3.4 Appendix 3 records current balances of s106 sums held by the Council at the end of 31 March 2020

3.5 Appendix 4 records income and expenditure received between 01 April 2020 to 31 August 2020

3.6 The information in the appendices of this report have been reprofiled from previous versions of this report, but overall the content remains the same. This change has been necessitated to align the report with the emerging reporting requirements outlined in the Community Infrastructure Levy Regulations 2010 (as amended) to produce annual 'Infrastructure Funding Statements' (see section 7). 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.

3.7 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**

3.8 Appendix 1 of this report provide details of 19 agreements signed since the last update in July 2019 (14 new agreements and five variations to existing agreements).

3.9 Appendix 2 reports the 62 'live' agreements signed since 01 April 2015, this being agreements that have been implemented or could feasibly be implemented (removing superseded agreements). This reports a potential £18.2 worth of payments, of which £11.3m have been received, and potential for 418 Affordable Housing units.

3.10 Appendix 3 reports that £3,460,315.25 was received in 2019/20, with £3,127,510.05 spent and a further £2,015,556.01 was committed for future expenditure. The balance of funds held as of 31 March 2020 was £11,100,704.72 of which £9,085,148.71 was uncommitted as of that date. Of that sum, however, a further £8,381,471.21 has been earmarked to finance schemes within the Council's Capital Programme.

3.11 Appendix 4 reports that a further £209,941.98 was received between 01 April 2020 to 31 August 2020; no further expenditure has been accrued.

3.12 The level of 'Commitments' in Appendix 3 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 for £1,026,152.65 (and a further £400k notionally for future projects). Officers propose to further highlight emerging commitments as part of the annual 'Infrastructure Funding Report' requirements, which will provide an improved structure for allocation of funds and also give members a clearer narrative on what the funds held will be used for. Members should note that Lead Officers have been previously identified for each of the service areas for which S106 contributions are received.

They are a key part of the process for identifying needs and allocating funding, as well as progressing those schemes for which contributions have been received. . They are:

- Highways, Road safety and Parking – Angus Culverwell
- Local Economy – Lydia Lee/Alicia Munday
- Landscaping – Peter McCready
- Housing – Sara Bowrey
- Education – Rob Bollen
- Healthcare/CCG – Paul Feven
- Community Facilities – Colin Brand
- CCTV – Rob Vale

The responsible officer details will be updated as part of the work highlighted in section 7 of this report, including details of lead officers for specific projects

3.13 A complete set of Appendices has been left in the Members Room.

3.14 ‘Significant’ new agreements are listed in the table below, with full details included in the appendices:-

	19/01543	Land At Junction With South Eden Park Road And Bucknall Way Beckenham	Carbon Offsetting Contribution of £213,466 Education Contribution of £644,71.46 Health Contribution of £211,479
	18/01537	34 West Common Road Hayes Bromley	Affordable Housing Contribution of £697,200 Carbon Offset Contribution of £51,840 Healthcare Contribution of £32,946
	18/00443 additional agreement to 12/00976	GlaxoSmithKline Langley Court South Eden Park Road Beckenham	Affordable Housing units - 119 Additional Affordable Housing (subject to formula) Bus stop Contribution of £30,000 Care home Contribution of £98,083 Deferred Affordable Housing Contribution (subject to formula) Education Contribution increased from £1,379,029 to £1,654,063.14, Employment Contribution of £4,000,000 (to be reduced to £3.5m if care home delivered) Highways payment increased to £34,000 Management arrangements for MoL, Monitoring fee of £2k00

#### **4. IMPACT ON VULNERABLE ADULTS AND CHILDREN**

- 4.1 S106 contributions are intended to address the impact of new development. They involve contributions to the general provision of Education and Health infrastructure and as such the impact on Vulnerable Adults and Children is not expected to be significant.

#### **5. POLICY IMPLICATIONS**

- 5.1 Development Plan policies play a crucial role in securing appropriate planning obligations. Policy 125 of the Local Plan (2019) sets out the Council's approach to Section 106 agreements, and supports the objectives of 'Building A Better Bromley' including, Safe Bromley, Quality Environment, Regeneration, and Ensuring that all children and young people have opportunities to achieve their potential.
- 5.2 The sustainability of Vibrant Thriving Town Centres, and Regeneration of our Borough, are two of the Council's key priorities and Section 106 funding, where appropriate, can make a significant contribution in achieving two of the Council's main aims.
- 5.3 The Government sets out criteria for when planning obligations are sought in the National Planning Policy Framework (NPPF July 2018) paras 54-57, and full operational use guidance details are now found in the National Planning Practice Guidance (NPPG).
- 5.4 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.
- 5.5 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.
- 5.6 The SPD also incorporates the implication of CIL regulations which came into force on 6<sup>th</sup> April 2010. CIL Regulation 122 places into law three statutory tests, explained in the Legal Implications section below.

#### **6. Introduction of the Community Infrastructure Levy – update**

- 6.1 It was reported at the 3 July 2019 Executive, Resources and Contract PDS that the Council intends to adopt the Community Infrastructure Levy (CIL). CIL will provide a more standardised method of collecting contributions from development to invest in infrastructure without the specific restrictions that are often attached to S106 agreements. The matter of CIL adoption and how the Council spend (and reports spend) of S106 was also discussed at the Section 106/CIL Task and Finish Group on 27<sup>th</sup> February 2020.
- 6.2 Officers anticipate that the charging of a Bromley CIL could be introduced by summer 2021. If this target is met, local CIL income would be expected to generate revenue in the final quarter of the 2021/22 financial year (as CIL is payable on the commencement of sites approved after CIL has come into effect). In consequence it is expected that contributions received via S106 agreements will remain a key source of funding for infrastructure for some time. A trajectory of future CIL and S106 income is being developed by the Planning Service and will be reported to this Committee in future.
- 6.3 On 6 August 2020 the Government launched a white paper proposing significant changes to the planning system, one strand being the replacement of CIL, and largely the replacement of S106, with a new 'Infrastructure Levy'. While details of the proposal are yet to be released,

early indications are that such changes will not be in effect for some time. However, a clear commitment from ministers has been made that the operation of any new levy will rest with the local authority, and as such it would appear that the administration and reporting requirements as for CIL will largely remain the same for any new levy.

## **7. Future Reporting of S106/CIL receipts and Investment Priorities**

- 7.1 The Bromley Local Plan, adopted 16 January 2019, contains an 'Infrastructure Delivery Plan' (IDP) which sets out infrastructure (including schools, open space, community, health and leisure services) to assist in delivering thriving and sustainable places in Bromley over the Local Plan period. The IDP was updated in August 2020 by relevant services in the Council and other stakeholders to support the CIL examination. As part of the adoption of CIL, the Council will be required to build on the IDP and formally produce an 'Annual Infrastructure Funding Statement' - a breakdown of current and future income against future infrastructure requirements.
- 7.2 Furthermore, in September 2019 the Government relaxed some of the prescriptive restrictions placed on local authorities regarding the scope of future S106 agreements - in that previously, after April 2014, the Council could not require a developer to enter into an agreement where five or more existing agreements had already been secured to fund the same 'project' or 'type of infrastructure'. Ultimately, this restricted the Council to secure a very narrow definition on what S106 funds could be spent on, usually nominating a specific scheme that was a priority at the time the agreement was signed.
- 7.3 The Council is no longer tied to the prescriptive restriction of five agreements, however it is required to clearly demonstrate (through the Annual Infrastructure Funding Statement and Supplementary Planning Guidance produced by the Council on the use of planning obligations) that S106 contributions are not being sought to fund items of infrastructure the Council intends to use CIL for. In short, that provided the three legal tests are satisfied (i.e. necessary to make the development acceptable in planning terms, directly related to the development; and fairly and reasonably related in scale and kind) and the contribution will not make development economically unviable, a S106 contribution can be sought with a wider definition on permissible expenditure and be 'pooled' with other contributions. This will allow a contribution to be targeted to the most appropriate infrastructure proposal at the time of committing funds, rather than what was the priority when the agreement was signed - which in many cases can be several years apart. However, upon adoption of CIL the current 'tariff' based S106 operated in the borough (e.g. a contribution per unit or m2 of development towards general capital infrastructure to support wider growth in the borough) will be assumed to have been replaced by CIL.
- 7.4 As such, there is a clear need to co-ordinate existing S106 expenditure - irrespective of the move to CIL - and identify not just the current balance of funds or immediate commitments, but also the funds that are required to be held for future priorities. While this report highlights a current balance of £11.1m, and an uncommitted balance of £9m, some of these uncommitted funds will be legally restricted for specific schemes, while others may be required to be held to support future strategic projects – as a result the actual 'available' balance to apply to further infrastructure will be much lower.
- 7.5 The planning service has appointed additional resource to co-ordinate planning obligations and infrastructure delivery – one task will be to present S106 balances in a more encompassing way that will explain how funds will be spent. It is proposed that the Planning Service will work with other Service Heads to assess the existing balances and the terms of the legal agreements, then 'allocate' the amounts against agreed priorities in line with adopted strategies. The appendices of this report will in future be amended to reflect these allocations.

- 7.6 In terms of CIL, the Council has not set a process for the allocation of CIL receipts. As CIL is not restricted to a type of infrastructure, there are many approaches that could be taken; most authorities in London favouring an approach that aligns CIL to existing capital and revenue setting processes, but with varying degrees of specific considerations of planned growth. Furthermore, the Council is required to set a proportion of CIL aside for ‘neighbourhood’ expenditure (typically 15%); there are no stipulations as to how this should be adopted, but there is a clear expectation that a high degree of determining its expenditure should be made at a neighbourhood level – however, definition of what is the ‘neighbourhood’ is not prescriptive, and is to be determined by the Council; this may differ for example depending on the type of infrastructure and its catchment area. Further options for this will be developed after CIL has been adopted.
- 7.7 While the Council is required to produce an Annual Infrastructure Funding Statement, until CIL is adopted this report largely covers the reporting requirements, however it is proposed that a version of a full IFS be attempted for this year’s annual Authority Monitoring Report – highlighting how the Council determines investment priorities, what those priorities are, and how much has been assigned to those priorities.
- 7.8 This work should assist with providing assurance to this Committee that although the Council may have a balance of S106 funds, most have clear plans in place for its expenditure. Furthermore, this work should highlight smaller amounts that the Council hold which are generally available for individual allocation at a local level or through third parties (such as local charities) on a case by case basis – such as neighbourhood public realm improvements.

## 8. FINANCIAL IMPLICATIONS

- 8.1 As mentioned above, Appendix 3 provides an update on the progress of financial contributions received to date together with target spend dates. The table below summarises the contents, giving a breakdown across the service areas of all S106 activity in 2019/20 and the balance carried forward as at 31<sup>st</sup> March 2020.

Service Area	31 Mar 2019 £	Income £	Interest Earned £	Expenditure £	31 Mar 2020 £
Highway Improvement Works	(249,135.00)	(29,000.00)	(2,342.08)	105,322.89	(175,154.19)
Local Economy & Town Centres	(2,023,079.32)	(1,500,000.00)	(25,165.21)	2,607,981.42	(940,263.11)
Parking Schemes	(72,003.96)	0.00	(153.51)	2,500.00	(69,657.47)
Landscaping	(576.67)	0.00	0.00	0.00	(576.67)
Community Facilities	(43,259.98)	0.00	(198.45)	0.00	(43,458.43)
Housing	(3,550,259.27)	(100.00)	(12,941.71)	115,652.50	(3,447,648.48)
Healthcare/CCG	(1,713,184.65)	(393,541.89)	(3,704.11)	0.00	(2,110,430.65)
Education	(2,750,801.39)	(1,276,447.33)	(10,902.46)	0.00	(4,038,151.18)
Other Schemes	(310,119.30)	(261,226.03)	(72.45)	296,053.24	(275,364.54)
<b>Total</b>	<b>(10,712,419.54)</b>	<b>(3,460,315.25)</b>	<b>(55,479.98)</b>	<b>3,127,510.05</b>	<b>(11,100,704.72)</b>

- 8.2 A total of £3.460m was received in 2019/20 and £3.128m was spent. With interest accrued in the year of £55.5k, the total balance carried forward into 2020/21 was £11.101m.
- 8.3 in 2020/21 so far, a further amount of £210k has been received to give a current available balance of £11.311m. Of this, a total of £2.016m has been identified as committed on healthcare projects by the CCG, with a further £8.381m previously earmarked to mainly fund housing and education schemes within the Capital Programme.

## **9 LEGAL IMPLICATIONS**

- 9.1 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.
- 9.2 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.
- 9.3 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.
- 9.4 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.

- 9.5 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.
- 9.6 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.
- 9.7 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.

<b>Non-Applicable Sections:</b>	Personnel, Procurement
Background Documents: (Access via Contact Officer)	<p>Budget monitoring files within ES</p> <p>Impact of Large Developments – Progress Monitoring Report March 2006</p> <p>Shared file listing all S106 agreements</p> <p>Executive &amp; Resources PDS Committee 10 July 2014</p> <p>Executive &amp; Resources PDS Committee 19 Nov 2014</p> <p>Executive &amp; Resources PDS Committee 3 June 2015</p> <p>Executive &amp; Resources PDS Committee 16 March 2016</p> <p>Executive &amp; Resources PDS Committee 7 July 2016</p> <p>Executive &amp; Resources PDS Committee 4 Jan 2017</p> <p>Executive &amp; Resources PDS Committee 17 July 2017</p> <p>Executive &amp; Resources PDS Committee 1 Feb 2018</p> <p>Executive &amp; Resources PDS Committee 5 July 2018</p> <p>Executive, Resources &amp; Contracts PDS Committee 7 February 2019</p> <p>Executive, Resources &amp; Contracts PDS Committee 3 July 2019</p> <p>Supplementary Planning Document (SPD) on Planning Obligations: Addendum to Changes to Pooling S106 Contributions and S106 Threshold Changes. DC Committee 24 March 2015 and Executive 10 June 2015</p> <p>Infrastructure Delivery Plan September 2020</p>