

Report No.
CSD22124

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: EXECUTIVE, RESOURCES AND CONTRACTS POLICY
DEVELOPMENT AND SCRUTINY COMMITTEE

Date: 23 November 2022

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

Title: SECTION 106 AGREEMENTS: UPDATE

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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 1-5.

Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
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Corporate Policy

1. Policy Status: Existing Policy: Policy 125 of the Local Plan
 2. Making Bromley Even Better Priority:
(5) To manage our resources well, providing value for money, and efficient and effective services for Bromley's residents.
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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: £11.2m
 5. Source of funding: Unallocated S106 Deposits
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Personnel

1. Number of staff (current and additional): 3ftes
 2. If from existing staff resources, number of staff hours: N/A
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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 125 of the Local Plan which relates to planning obligations.
 2. Call-in: Not Applicable:
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Procurement

1. Summary of Procurement Implications: None
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Property

1. Summary of Property Implications: N/A
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Carbon Reduction and Social Value

1. Summary of Carbon Reduction/Sustainability Implications:
 - 1.1 The council secures improvements to Carbon Reduction and Sustainability measures as part of the award of planning permission. In some cases, where this cannot be met in the development design, alternative provision or the payment of an in-lieu contribution is made as a 'Carbon Offset Payment'. Details of such payments due, received and expenditure are detailed in Appendix 2, 3 and 4

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 on 08 October 2020.

Background information

- 3.2 Appendix 1 records details of all S106 agreements signed during 2020/21 and 2021/22
- 3.3 Appendix 2 records all active agreements with potential financial payments signed since 01 April 2017
- 3.4 Appendix 3 records current balances of s106 sums held by the Council at the end of 31 March 2022
- 3.5 Appendix 4 records the 'Allocated' sums and the projects they have been assigned towards
- 3.6 Appendix 5 records income received between 01 April 2022 to 25 October 2022.
- 3.7 It is noted that there can be a considerable time delay between the issuing of a Section 106 / grant of planning 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. Also, some of the information contained may be updated periodically after further data reconciliation between council services.
- 3.8 All S106 legal agreements are registered as a Land Charge against the property.

Section 106 Agreements: Update

- 3.9 Appendix 1 of this report provide details of 57 agreements secured between 01 April 2020 and 31 March 2022 (covering 62 developments). Removing those that are Deeds of Variation to existing agreements (11 'DoVs'), there were 46 new agreements, of which three were council-led developments secured under planning condition (Brindley Way, Banbury House and Anerley Town Hall). 32 developments subject to an agreement will require financial payments to be made to the Council. 11 agreements require the delivery of affordable housing on-site (totalling 230 units).
- 3.10 Appendix 2 reports the 'live' agreements signed since 01 April 2017 that contain financial requirements - this being agreements that have been implemented or could feasibly be implemented. This reports a potential £17.4m worth of payments to be made to the Council. However taking account of duplicate permissions, the amount potentially due is £14m, of which £9.5m has been triggered, with £7.3m received to date (the remaining £2.2m becoming payable at future points in the development timeline – such as prior to occupation of the development)
- 3.11 Appendix 3 reports that income received during 2020/21 and 2021/22 totalled £1.8m (£0.5m in 2020/21 and £1.3m in 2021/22), with £2.4m spent. The balance of funds held as of 31 March 2022 was £10.47m, of which £8.75m has been allocated to future expenditure, leaving £1.75m uncommitted. Appendix 4 highlights the allocated sums and projects.
- 3.12 Appendix 5 reports that a further £716k was received between 01 April 2022 to 25 October 2022; no further expenditure has been accrued.
- 3.13 As reported at the 08 October 2020 committee, previous reports to this committee did not

make clear which of the sums held were planned for future expenditure and which were uncommitted. Officers have continued to identify future expenditure, mainly school improvements and commitments towards the Council's Affordable Housing build programme. Please note that due to a delay in internal reporting, some of these allocations may have now been spent. Specific queries on those projects should be made to the relevant council service

- 3.14 At the time of drafting this report, (25 October 2022) the S106 balance (to be confirmed) is £11.2m, of which £8.8m is allocated and £2.4m unallocated. Of the unallocated amounts, more than half (£1.3m) was received after 01 April 2020

4. POLICY IMPLICATIONS

- 4.1 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 Council's corporate priorities.
- 4.2 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).
- 4.3 The London Plan prioritises specific obligations, particularly affordable housing and public transport improvements.
- 4.4 A revised Supplementary Planning Document (SPD) on Planning Obligations was adopted by the Council in June 2022. 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.
- 4.5 The SPD also incorporates the implication of Community Infrastructure Levy (CIL) regulations which came into force on 6th April 2010. It was reported at the 8 October 2020 Executive, Resources and Contract PDS that the Council intends to adopt the CIL. Following a successful independent examination of the proposals in January 2021, the council adopted a local CIL Charging Schedule on 21 April 2021, which was brought into effect on all new permissions determined on and after 15 June 2021. 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 Council is required to report on CIL receipts and expenditure as part of the annual Infrastructure Funding Statement, which is published before the end of each calendar year on the Council's website¹.

¹ <https://www.bromley.gov.uk/planning-policy/use-developer-contributions-bromley>

5. FINANCIAL IMPLICATIONS

5.1 The table below provides a breakdown across the service areas of all S106 activity in 2021/22 and the balance carried forward as at 31st March 2022.

					Actual as at
31st March				Transfers to/(from)	31st Mar
2021	Service	Income	Expenditure	Capital	2022
£000		£000	£000	£000	£000
<u>Revenue</u>					<u>Revenue</u>
-					
175	Highway Improvement Works	58	-	-	233
30	Road Safety Schemes	-	-	-	30
8	Local Economy & Town Centres	-	-	-	8
17	Education	827	-	(844)	-
70	Parking	-	-	-	70
1,205	Healthcare Services	253	14	-	1,444
10	Community Facilities	-	-	-	10
299	Other	203	59	-	443
1,814	Total revenue	1,341	73	(844)	2,239
<u>Capital</u>					<u>Capital</u>
4,234	Education	-	-	844	5,078
2,452	Housing	-	-	-	2,452
20	Highways	-	-	-	20
686	Local Economy & Town Centres	-	-	-	686
0	Other	-	-	-	-
7,392	Total capital	0	0	844	8,236
9,206	Grand total	1,341	73	0	10,475

5.2 A total of £1.341m was received in 2021/22 and £73k was spent. The total balance carried forward into 2022/23 was £10.475m.

5.3 In 2022/23 to date, a further amount of £716k has been received to give a current available balance of £11.191m.

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 1-23².

- 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 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 have to be allocated by a certain time in the agreement or undertaking.

Non-Applicable Sections:	Personnel, Procurement
Background Documents: (Access via Contact Officer)	Executive, Resources & Contracts PDS Committee 08 October 2020 Supplementary Planning Document (SPD) on Planning Obligations – June 2022 Infrastructure Delivery Plan September 2020 Infrastructure Funding Statement 2019/20 Infrastructure Funding Statement 2020/21 Bromley Community Infrastructure Levy Charging Schedule April 2021

² <https://www.gov.uk/guidance/planning-obligations>