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

**Date:** 27 November 2023

**Decision Type:** Non-Urgent Non-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:** (All Wards)

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1. Reason for report

This report provides an update on Section 106 Agreements.

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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: £9.43m
  5. Source of funding: Unallocated S106 Deposits
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## Personnel

1. Number of staff (current and additional): N/A
  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.

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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, Resources and Contracts PDS Committee on 23 November 2022.

#### **Background information**

- 3.2 Appendix 1 records details of all S106 agreements signed during 2022/23
- 3.3 Appendix 2 records all active agreements with potential financial payments signed since 01 April 2018
- 3.4 Appendix 3 records current balances of s106 sums held by the Council at the end of 31 March 2023
- 3.5 Appendix 4 records the expenditure made during 2022/23 and remaining 'allocated' sums with the projects they have been assigned towards
- 3.6 Appendix 5 records income received between 01 April 2023 to 18 October 2023.
- 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 20 agreements secured between 01 April 2022 and 31 March 2023. Removing those that are Deeds of Variation to existing agreements (4 'DoVs'), there were 16 new agreements, of which one was a 'shadow agreement' for a council-led development (Crystal Palace Park). 11 of the new agreements will require financial payments to be made to the Council, while five require the delivery of affordable housing on-site (totalling 348 units).
- 3.10 Appendix 2 reports the 'live' agreements signed since 01 April 2018 that contain financial requirements - this being agreements that have been implemented or could feasibly be implemented. This reports a potential £17.6m worth of payments to be made to the Council. However taking account of duplicate permissions, the amount potentially due is £17.4m, of which £9.7m has been triggered, with £7.6m received to date (the remaining £2.1m 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 2023 totalled £581k (with £13.7k in interest payments on sums already held), with £851k spent (Appendix 4). However due to reporting failures, £1m of additional Capital expenditure has been identified that should have been reported in the 23 November 2022 report – meaning expenditure in 2021/22 should have reported £1.07m rather £0.07m; however this expenditure was towards schemes (and from agreements) already identified as current allocations in the November 2022 report.
- 3.12 The balance of funds held as of 31 March 2023 (as rebalanced) was £9.43m, of which £6.85m has been allocated to future expenditure, leaving £2.58m uncommitted. Appendix 4 highlights the allocated sums and projects. Of the unallocated amounts, £1.1m was only received in the last two years; of the remaining £1.48m received prior, £380k is health

contributions that the council is engaging with the Integrated Care Board (formerly known as the Clinical Commissioning Group) to allocate, £610k relates to the Glaxo payment that is being utilised for future Bromley Town Centre public realm, £175k relates to Carbon Offset contributions, with £350k held for site specific highways and public transport improvements.

- 3.13 Appendix 4 reports the remaining allocations yet to be drawn down as of 31 March 2023, totalling £6.85m. However £256k of health payments have since be drawn down for the improvements to Station Road Surgery (West Wickham) in June 2023.
- 3.14 The figures reported above balance with those highlighted in section 5 ('Financial Implications') however there is some minor inconsistency in the overall balance due to unconfirmed post April 2023 income that needs to be fully reconciled.

#### **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 06 April 2010. 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 website<sup>1</sup>.

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<sup>1</sup> <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 2022/23 and the balance carried forward as at 31st March 2023.

31st March 2022	Service	Income	Expenditure	Transfers to/from Capital	Actual 31st March 2023
£000		£000		£000	£000
<u>Revenue</u>					<u>Revenue</u>
384	Highways Improvement Works	24		-	408
8	Local Economy & Town Centres	-		-	8
81	Parking	1		-	82
1	Landscaping	-		-	1
-	Community Schemes	-		-	-
-	Housing	89		-	89
1,475	Healthcare / CCG	122	322	-	1,275
43	Education	126		-	169
491	Other	468		-	959
<b>2,483</b>	<b>Total Revenue</b>	<b>830</b>	<b>322</b>	-	<b>2,991</b>
<u>Capital</u>					<u>Capital</u>
5,078	Education		344		4,734
1,432	Housing		186		1,246
20	Highways				20
612	Local Economy & Town Centres				612
60	Other				60
<b>7,202</b>	<b>Total capital</b>	<b>-</b>	<b>530</b>	-	<b>6,672</b>
<b>9,685</b>	<b>Grand Total</b>	<b>830</b>	<b>852</b>	-	<b>9,663</b>
	Invoiced, but not yet received*	- 233			- 233
	<b>Adjusted Closing Balance</b>	<b>597</b>	<b>852</b>	-	<b>9,430</b>

\* Please note the 2022/23 closing balance includes £233k of accrued income, this is income which is due (and invoiced for) but not yet physically received.

- 5.2 A total of £830k was received in 2022/23 and £852k was spent. The total balance carried forward into 2023/24 is £9.67m.
- 5.3 In 2023/24 to date, a further amount of £70k has been received and £257k has been spent to give a current available balance of £9.48m.

## 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<sup>2</sup>.

- 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.

<b>Non-Applicable Sections:</b>	Personnel, Procurement
Background Documents: (Access via Contact Officer)	Executive, Resources & Contracts PDS Committee 23 November 2022 Supplementary Planning Document (SPD) on Planning Obligations – June 2022 Infrastructure Delivery Plan September 2020 Infrastructure Funding Statement 2019/20 Infrastructure Funding Statement 2020/21 Infrastructure Funding Statement 2021/22 Bromley Community Infrastructure Levy Charging Schedule April 2021

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



