

## MUNICIPAL YEAR 2015/2016 REPORT NO. 77

### COMMITTEE:

PLANNING COMMITTEE

30.08.2016

### REPORT OF:

Director - Regeneration and Environment

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See Annexes 1 & 2

AGENDA – PART 1	ITEM 7
SUBJECT - S106 AGREEMENTS – MONITORING INFORMATION  WARDS: ALL	

## 1. SUMMARY

1.1 This report provides an update on the monitoring of Section 106 Agreements (S106) and progress on Section 106 matters during the period 1 April 2015 to 31 March 2016. It provides an overview of:

- The position regarding current S106 Agreements, categorised by constituency, including the type and amount of financial obligations, progress on spend and implementation of schemes;
- New S106 agreements agreed and signed since April 2015

1.2 This report is provided for information only. Members are invited to contact the officers named above for more information on individual schemes.

## 2. RECOMMENDATION

2.1 That Planning Committee note the contents of this Report and its Annexes.

## 3. S106 MONITORING OVERVIEW

3.1 At 31 March 2016 there were 275 individual S106 agreements in the programme, containing approximately 1,150 heads of terms.

3.2 Funds have been received for 143 of these agreements and projects are currently being delivered. The position regarding the implementation of these S106 agreements at the end of the monitoring period is set out in Annex 1. A copy of the spreadsheet has also been placed in the Members Library. An overview of the financial information contained in Annex 1 is set out in Table 1 below.

Table 1: Summary of S106 Funds Received and Expenditure Programmed

Status	Total Amount (£)
<b>Opening Balance at the start of 2015/16</b>	<b>£5,875,429.35</b>
<b>Total amount of S106 payments received in 2015/16</b>	+ £5,545,852.68
<u>In year movements:</u>	
<ul style="list-style-type: none"> <li>• Sub-total of outward in year movements - £30,329.62</li> <li>• Money moved to contingency £0</li> <li>• Total amount drawn down in 2015/16 - <b>£3,293,180.03</b></li> </ul>	
Of which:	
<ul style="list-style-type: none"> <li>• Q1 Drawdown Total £22,680.86</li> <li>• Q2 Drawdown Total £55,879.21</li> <li>• Q3 Drawdown Total N/A</li> <li>• Q4 Drawdown Total £3,214,619.96</li> </ul>	
The total figure of £3,293,180.03 comprises of:	
Total 2015/16 revenue drawdown = <b>£109,861.51</b>	
Total 2015/16 capital drawdown = <b>£3,183,318.52</b>	
<b>Interest received in 2015/2016</b>	+ £30,018.21
<b>Closing balance at 31 March 2016</b>	<b>£8,089,318.91</b>
<b>Total available balance of which:</b>	
<ul style="list-style-type: none"> <li>• <b>Earmarked/Committed to projects</b> 1,616,513.81</li> <li>• <b>Allocated to department but not committed to a specific project</b> 6,472,805.10</li> </ul>	
Including:	
S106 Contingency Fund 99,069.20	
Pooled Carbon Fund Contributions 120,776.77	
<b>Closing balance at 31 March 2016</b>	<b>£8,089,318.91</b>

3.3 As shown in Table 1 above, during financial year 2015/16 the Council received £5,545,852.68 in S106 financial contributions from schemes where planning permissions were implemented. This increased the available total balance to £8,089,318.91 taking account of monies drawn down and other movements across

the year. Of the money received during 2015/16, £2.3m was for Affordable Housing with a further £1.7m for Education.

3.4 Among the most notable of the large payments received were:

- £395,900 (covering all obligations under Phase 1 of works at the Ladderswood Estate)
- £316,538.00 (all contributions at 194-242 and 244-262 Bowes Road)
- £270,040.99 (all contributions from 94 Camlet Way)
- £1,028,250, received as an 'Overage' payment from the former Council car park at Cecil Road and this money will also be put towards Affordable Housing use.
- £664,000, received for Education purposes from the 7 Melling Drive (former Council depot) scheme.

3.5 Many S106 agreements contain clauses requiring spending of the contributions within a 5 or 10 year window, at which point any unexpended funds - plus the accumulated interest - should be returned to the developer. Due to the length of the timeframe for spending the monies, it is not uncommon for initial project identification to take up to a year (or slightly longer), particular where large or more complex works will be undertaken.

3.6 2015/16 also recorded the largest ever S106 drawdown (£3,293,180.03). However, the financial movements in year 2015/16 per se were substantially greater than has been observed in previous years. This is not evidence of any particular trend, and is attributable to the fact that there are numerous large housing developments and estate renewal works currently under construction in the borough, including several projects by Notting Hill Housing along Bowes Road, the conclusion of works at Melling Drive, construction beginning at Ladderswood and the 'Seven Sites' project being developed simultaneously at various locations in the borough by Kier. Many of these schemes reached the relevant triggers for payments to be submitted within the financial year.

3.7 Given the size and nature of these projects, the S106 agreements are more complex and include a wider range of heads of terms than would be found in agreements covering activity on a smaller site. The payments associated with large developments are, of course, considerably greater than would be anticipated for many smaller schemes.

#### **4 S106 FUNDS AGREED BUT NOT YET RECEIVED**

4.1 Paragraph 3.1 notes that at the time of writing there are 275 active S106 agreements in the programme. At the present time, there are 132 agreements where contributions have been agreed but funds have not yet been received. In these cases, although agreements have been made between the Council and relevant applicant(s) or developer(s), the payments have not been received as the relevant 'trigger points' (i.e. stages of development) have not yet been reached. Typical 'trigger points' for receipt of payments are the commencement of development works on site, or the first occupation of the development. Further details of these S106 agreements are included in Annex 2.

4.2 Attention must be drawn to the fact that not all financial contributions secured via signed S106 agreements will ultimately be received by the Council. For example, the landowner/developer may choose not to progress development, or in the event that a

planning permission expires, a new planning application(s) and S106 agreement may supersede an earlier agreement. Applicants may also seek to vary their original deed via a formal Deed of Variation.

- 4.3 Table 2 below summarises the financial contributions that have been negotiated and included in these S106 agreements. It shows that in excess of £10m could potentially be received by the Council, once the relevant planning permissions are implemented. Please note that this figure is in addition to the total current balance contained in Table 1.

Table 2: Summary of S106 Funds not yet received – awaiting implementation of planning consent (April 2016)

	<b>Expected to be received once payment is triggered (£)</b>
Education	2,808,459.62
Affordable Housing	4,822,798.81
Highways/ Traffic and Transportation	985,568.40
Health Care	1,092,976.00
Parks	198,464.39
Sustainability (carbon fund and air quality monitoring)	74,075.00
Employment and Training	131,000.00
Community Facilities	113,000.00
Public Art	30,000.00
<b>Grand Total</b>	<b>10,256,342.22</b>

## **5. KEY NATIONAL CHANGES**

- 5.1. In November 2014, the Government introduced an update to national policy via a written ministerial statement (WMS). This set out that contributions for Affordable Housing and other tariff-based contributions, such as Education, could not be sought from schemes of 10 units or less and with a combined gross floorspace of 1,000 square metres. It also introduced a 'vacant building credit' (VBC), intended to come into play where a vacant building is brought back into any lawful use, or is demolished and replaced by a new building on the same site. The VBC operates by providing a financial credit equivalent to the existing gross floor space of relevant vacant buildings when the local planning authority calculates any affordable housing contribution.
- 5.2. These policies were challenged in the High Court by Reading and West Berkshire Borough Councils. Hearings took place in the spring of 2015 and, in July of that year, the High Court found in favour of the Councils; however the Government was granted permission to appeal the decision at the Court of Appeal.

- 5.3. Hearings at the Court of Appeal took place during March 2016 and the judgement was handed down in May. The Government were successful in their appeal, and the WMS was reintroduced as national policy, while National Planning Practice Guidance (NPPG) was also revised to take account of the decision. As a consequence of the Court of Appeal decision and, due to the policy weighting exercise which must now take place, the Council can no longer attribute full weighting to its Core Strategy Policy 3, the Section 106 SPD and Policy DMD2 which have required contributions on any development with a net gain of units. This change in policy is likely to impact upon the overall level of monies which the Council receives through the Section 106 process over the coming years, particularly for Affordable Housing and Education.
- 5.4. The VBC was also restored. Where vacant buildings are now brought back into use or are demolished as part of development works, the floorspace involved should now be deducted from the developer contribution required for affordable housing. This will further reduce the level of affordable housing contributions due from schemes including vacant buildings.
- 5.5. The Government intends to introduce a new affordable housing product, known as 'Starter Homes'. A consultation document was published in Spring, which proposed that 20% of all Affordable Housing on sites delivering 10 units (or more) should include Starter Homes. Local Authorities will be under a statutory duty to promote and deliver Starter Homes, which will cost eligible purchasers 80% of the full market value. The 'Starter Homes Regulations' are expected to be published later in the year and it will be difficult to assess the impact of the product on other forms of Affordable Housing until the final Regulations are available.
- 5.6. It is impossible to forecast an amount of S106 revenue loss associated with the vote to leave the European Union on 23 June 2016. A side effect of 'Brexit' could be an increase in the number of schemes previously granted consent not coming to fruition and therefore not triggering the payment of Section 106 contributions due to uncertain economic conditions.

## **6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

### **Financial Implications**

- 6.1 The financial position as described in the report has been discussed with Finance staff and reflects the position as reported in the S106 monitor as of 31 March 2016. Annex 1 contains proposals for the allocation of approved S106 monies to specific work programmes. Approvals of individual schemes within the proposed programme are subject to separate reports and full financial appraisal. Expenditure incurred on these schemes is reported as part of the regular monitoring process and drawn down from available S106 funds at year-end. Amounts committed to projects including the nature of potential expenditure have been updated following advice from officers leading on individual schemes.

### **Legal Implications**

- 6.2 By virtue of Section 106 of the Town and Country Planning Act (as amended) the Council may secure planning obligations to make development acceptable which would otherwise not be acceptable in planning terms. Obligations must be secured in line with the Council's Section 106 SPD. Where financial contributions are required,

the terms of the obligation dictate the manner in which any financial obligation held by the Council may be spent, and must be spent by the applicable deadline. Following expiry of a spend deadline, any funds which remain unspent should be returned to a developer.

**7. Background Papers**

None.

**Annex 1**

S106 Monitoring Spreadsheet – Year End (April 2016). Electronic copies will be available

**Annex 2: Agreements signed where payments have not yet been received**

Electronic copies will be available.



