

**COMMITTEE:**

PLANNING COMMITTEE

20.12.2016

**REPORT OF:**

Director - Regeneration and Environment

Contact Officers:

Robert Davy X2263

[robert.davy@enfield.gov.uk](mailto:robert.davy@enfield.gov.uk)

See Annexes 1 & 2

Isha Ahmed X3888

[isha.ahmed@enfield.gov.uk](mailto:isha.ahmed@enfield.gov.uk)

AGENDA – PART 1	ITEM 11
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 2016 to 30 September 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 2016.

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.

2.2 That Planning Committee refers the Report and Annexes to the Local Plan Cabinet Sub Committee for information.

**3. S106 MONITORING OVERVIEW**

3.1 At 30 September 2016 there were 276 individual S106 agreements in the programme, containing approximately 970 heads of terms.

3.2 Funds have been received for 144 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 (at 30 September 2016)**

Status	Total Amount (£)
<b>Opening Balance at the start of FY 2016/17</b>	<b>7,868,325.74</b>
<b>Total Amount of S106 payments received in 2016/17 (at 30 Sept 2016)</b>	<b>1,529,019.35</b>
<b>In-Year Movements (1 April to 30 September 2016)</b>	
<ul style="list-style-type: none"> <li>• Sub-total of in-year movements</li> <li>• Money moved to contingency</li> <li>• Total amount drawn down in 2015/16 <ul style="list-style-type: none"> <li>- Of which amount drawn down in Q1</li> <li>- Total amount drawn down in Q2</li> </ul> </li> </ul>	150,000.00 0.00 34,160.23 34,160.23 0.00
<b>Interest received</b>	N/A
<b>Closing balance as at 30 September 2016</b>	<b>9,101,282.46</b>
<b>Total available balance of which:</b>	
<ul style="list-style-type: none"> <li>• <b>Earmarked/Committed to projects</b></li> <li>• <b>Allocated to department but not committed to a specific project</b></li> </ul> Including: <ul style="list-style-type: none"> <li>S106 Contingency Fund</li> <li>Pooled Carbon Fund Contributions</li> </ul>	<b>1,616,513.81</b> <b>7,484,868.65</b> 85,244.20 121,560.51
<b>Closing balance as at 30 September 2016</b>	<b>9,101,282.46</b>

3.3 As shown in Table 1 above, on 30 September 2016 the total available balance of S106 monies was £9,101,282.46 taking account of monies drawn down in Q1 and other movements.

3.4 Following closedown of the accounts for financial year 2015-16, an audit was undertaken and further adjustments were made to the year end figure were made. This reduced the figure of £8,089,318.91 (as reported to Planning Committee on 21 July 2016) to £7,868,325.74.

3.5 In the first six months of financial year 2016-17, the Council received £1,529,019.35 in S106 financial contributions from schemes where planning permissions were implemented. 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 Significant amounts received so far this monitoring year include payments of £371,173.08 towards Affordable Housing and Education from 379 Cockfosters Road (P12/01695/PLA); £286,741.42 for Affordable Housing from 35 Camlet Way (14/02622/FUL) and the third and final Affordable Housing instalment of £133,000 from 43 Beech Hill (P12/00707/PLA).
- 3.7 In total, at 30 September 2016 the Council had received £961,439.76 for Affordable Housing during financial year 2016/17. This was consistent with performance over previous monitoring years, given the three year lifespan of a planning permission. However, receipts may reduce in the future following the order of the Court of Appeal dated 13 May 2016, which overturned a High Court decision in 2015 and therefore gave legal effect to the policy set out in the earlier Written Ministerial Statement of 28 November 2014. Officers determining planning applications can no longer seek contributions for Affordable Housing and other tariff-based contributions (such as those for Education) from developments of 10 units or less where the maximum combined gross floorspace is 1000 square metres or less.
- 3.8 Quarterly drawdowns have been introduced for revenue projects in order to more accurately reflect expenditure throughout the financial year, and to provide an up-to-date balance for reporting purposes.

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

- 4.1 Paragraph 3.1 notes that there are 276 active S106 agreements in the programme as of 30 September. Of this total, 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 a residential unit within 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.
- 4.3 Applicants may also seek to vary their original deed via a formal Deed of Variation.
- 4.4 Table 2 below summarises the financial contributions that have been negotiated and included in these S106 agreements. It shows that just over £11m could potentially be received by the Council in the event of all of the relevant planning permissions being implemented. 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 (September 2016)

	Expected to be received once payment is triggered (£)
Education	2,849,963.15
Affordable Housing	6,589,156.48
Highways/ Traffic and Transportation	323,000
Health Care	1,092,976.00
Parks	161,502.00
Sustainability (carbon fund and air quality monitoring)	74,075.00
Employment and Training	0
Community Facilities	33,000.00
Public Art	30,000.00
<b>Grand Total</b>	<b>11,153,672.63</b>

4.5 However, given the Court of Appeal decision on 11 May 2016 (as referred to in Paragraph 3.7) the Council would no longer expect to receive all of the totals for Affordable Housing and Education.

4.6 Following receipt of legal advice on the status of its policy, the Council uploaded a statement to the website in June 2016 setting out that:

- **For planning applications submitted after 11 May 2016 which meet the above criteria:** The Council will no longer pursue S106 contributions for Education or Affordable Housing.
- **For planning applications submitted prior to 11 May 2016 where no decision has yet been reached:** The Council will no longer pursue S106 contributions for Education or Affordable Housing.
- **For schemes where the Council has resolved to grant planning permission subject to a S106 Agreement:** If the agreement has not yet completed, a contribution will no longer be requested.
- **Where the payment of the Education or Affordable Housing contribution is contested after the S106 agreement has been completed, but prior to the trigger for payment:** The Council will ask the applicant to make another planning application.
- **Where the Affordable Housing or Education Contribution is contested, but the S106 has been completed and the trigger for payment of the contribution has passed:** The applicant must make the contribution(s) regardless.

4.7 The position statement above is necessary in order for local planning policy to remain in conformity with the new national policy position. The national position is a material consideration and, as a consequence, officers can no longer apply full legal weighting to the Council's policy DMD1 (for sites of 10 units) or DMD2 for sites of 1-9

units) when considering whether or not Affordable Housing and Education contributions are due.

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

### **Financial Implications**

- 5.1 The financial position as described in the report reflects the position as reported in the S106 monitor at 30 September 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 will be reported as part of the regular monitoring process and drawn down from available S106 funds periodically. Amounts committed to projects including the nature of potential expenditure have been updated following advice from officers leading on individual schemes and every endeavour will be made to maximise the use of these S106 resources and minimise the use of Council resources and/or borrowing.

### **Legal Implications**

- 5.2 By virtue of Section 106 of the Town and Country Planning Act as amended the Council may secure planning obligations which make development acceptable which would not be acceptable in planning terms. These obligations, which may be financial in nature, must be secured in accordance with the Regulations and the Council's Section 106 SPD. The planning obligations may be bi-lateral or unilateral in nature and the terms of the obligation dictate the manner in which any financial obligation held by the Council may be spent.

## **6. Background Papers**

None.

**Annex 1**

S106 Monitoring Spreadsheet (September 2016). A hard copy will be placed in the members' room

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

A hard copy of the spreadsheet will be placed in the members' room.