

MUNICIPAL YEAR 2017/2018 REPORT NO.58

COMMITTEE:

PLANNING COMMITTEE

12.09.2017

REPORT OF:

Director - Regeneration and Environment

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See Annexes 1 & 2

AGENDA – PART 1	ITEM 8
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 31 March 2017. 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.

3. S106 MONITORING OVERVIEW

3.1 Planning obligations (often referred to as S106 agreements) are legal agreements between developers and the Council for the provision of, for example, affordable housing, local training and jobs, and other site-specific mitigation measures to lessen the negative impacts of development. An S106 agreement is intended to make a development 'acceptable' in planning terms which would otherwise be deemed as unacceptable. Obligations under Section 106 can be either financial or non-financial in nature. The Council's Section 106 Supplementary Planning Document (SPD) provides further information on how the obligations system operates.

3.2 At 31 March 2017 there were 88 individual S106 agreements in the active programme where monies had been received, containing approximately 162 heads of terms. Projects are currently being delivered using these funds. 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 (£)
Opening Balance at the start of 2016/17	£7,911,245.54
Total amount of S106 payments received in 2016/17	+ £2,894,065.07
<u>In year movements:</u>	
<ul style="list-style-type: none"> • Sub-total of outward in year movements 	- £235,714.85
<ul style="list-style-type: none"> • Money moved to contingency 	- £0
<ul style="list-style-type: none"> • Total amount drawn down in 2016/17 	- £4,090,950.28
The total amount drawn down is broken down as follows:	
<ul style="list-style-type: none"> • Q1 Drawdown Total £ 22,506.25 • Q2 Drawdown Total £ 0.00 • Q3 Drawdown Total £ 22,688.83 • Q4 Drawdown Total £ 4,045,755.20 	
Total Capital Spend = £ 3,970,465.84	
Total Revenue Spend = £ 120,484.44	
Interest received in 2016/2017	+ £24,071.97
Closing balance at 31 March 2017	£6,502,717.45

3.3 As shown in Table 1 above, during financial year 2016/17 the Council received £2,894,065.07 in S106 financial contributions from schemes where planning permissions were implemented. Of the money received during 2016/17, £1.4m was for Affordable Housing and Education received over £600,000.

3.4 During the year, more money was spent (£4,090,950.28) than was received. Of the £4.1m spent during 2016/17, the largest outlay (totalling £3.3m) was for Affordable Housing. These monies were spent on buybacks at the Alma Estate; with further spend on the New Avenue Project and the completion of Dujardin Mews.

- 3.5 Taking account of monies drawn down and other movements across the year, this reduced the available total balance to £6,502,717.45. The total balance includes funds received in previous years which are still awaiting allocation to a project, or schemes where a project is underway but the contribution has not yet been spent in full.
- 3.6 Many Section 106 agreements contain clauses which require the monies to be spent within a 5 or 10 year window. Following the completion of this period, any unexpended funds - plus the accumulated interest - should be returned to the developer. Due to the length of the timeframes 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.

4. KEY PROJECTS FUNDED USING SECTION 106 CONTRIBUTIONS

Affordable Housing

- 4.1 The London Plan requires developments to make the maximum reasonable provision for Affordable Housing. Affordable Housing should be provided on-site in the first instance, although this can be provided off-site or through an in-lieu payment in exceptional circumstances.
- 4.2 S106 Affordable Housing contributions were used to help fund the 38-home development at Dujardin Mews, which completed and received its first tenants during 2016/17. Dujardin Mews is the first social housing to be directly built by the Council for over 30 years. Affordable Housing contributions have also been spent on the New Avenue scheme.

Local Employment and Training

- 4.3 As part of any Section 106 obligations, any developments which are of sufficient size and scale should make provision to use local labour and recruit apprentices at a rate of 1 apprentice per £1m per contract value. Further information on the number of apprentices recruited and the use of financial contributions received towards Employment and Skills is available from the Business and Economic Development team.

Highways

- 4.4 Various small scale highway works completed during the monitoring year 2016/17. Work on the Ponders End stretch of Cycle Enfield also began. There are several different routes, each of which has been allocated different Section 106 contributions (up to a maximum of 5, to comply with the pooling restrictions set out under Regulation 122 of the CIL Regulations, 2010).

Education

- 4.5 Significant amounts which were spent during the financial year 2016/17 included:
- £ 403,150 at Minchenden school for special needs pupil place provision
 - £ 100,000 at Orchardside Pupil Referral unit

Table 2: Spend by Council Department 2016/17

Department	Amount Spent in £
Highways	101,925.36
Parks	2,559.08
Meridian Water	0
Conservation	16,000
Affordable Housing	3,332,799.44
Education	637,666.40
TOTAL	4,090,950.28

5 S106 FUNDS AGREED BUT NOT YET RECEIVED

- 5.1 In addition to the 88 agreements where monies have been received, there are a further set of agreements where contributions have been agreed but funds have not yet been received. Full details of the agreements signed during financial year 2016/17 where payments have not yet been received are shown in Annex 2.
- 5.2 In these cases, 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.
- 5.3 Attention should, however, also be drawn to the fact that not all financial contributions secured via signed S106 agreements will ultimately be received by the Council. While Section 106 of the Town and Country Planning Act 1990 allows the Local Planning Authority to require and enforce the payment and infrastructure obligations, it also contains a provision which entitles the other parties to apply to the Council to vary or delete any section 106 obligations contained in their agreement. Potential variation of the S106 can happen at any point in the process between the signing of the initial S106 agreement and completion of the development. Variation may reduce the value of, or strike out any previously agreed contributions.
- 5.4 Additionally, monies in a completed S106 agreement would not become due if the landowner/developer simply decides not to progress development after permission has been granted. In cases where a planning permission expires after its 3 year lifespan, new planning application(s) and S106 agreement(s) may supersede an earlier agreement. National policy changes can also impact on receipts, as was the case following the Court of Appeal ruling on small sites (May 2016), which resulted in contributions no longer being charged for residential proposals providing 10 or fewer units where the gross floorspace of the site does not exceed 1000 sq m.
- 5.5 Table 3 provides a summary of the agreements signed during 2016/17 and their total financial value by the types of agreed obligation.

Table 3: Monies agreed during 2016/17 where payments are awaited

Heads of Terms Agreed	Amount (£)
Travel Plan	21,342.00
Highways	171,871.76
Affordable Housing	1,568,122.83
Education	122,454.25
Business and Employment Initiatives contribution	32,000.31
On street waiting restriction	2,500.00
Childcare	7,688.38
Cycle Enfield /Cycle Infrastructure	49,333.24
CPZ Consultation/Implementation	25,000.00
Parking	12,500.00
Carbon Shortfall	7,425.00
Pedestrian Environment	30,000.00
Other Infrastructure	35,659.75
Management Fees	113,522.36
TOTAL	2,199,419.88

6. KEY NATIONAL POLICY CHANGES DURING 2016/17

- 6.1 The Government published a Housing White Paper in February 2017, along with a consultation paper on growing the UK's fledgling "Build to Rent" sector. The Council submitted responses to both documents, and copies of the responses can be supplied upon request to any Members who have not previously viewed them.
- 6.2 The Housing White Paper was accompanied by an independent report on the Community Infrastructure Levy (CIL), which contains proposals for major reform of CIL and a move back to using Section 106 Agreements to secure infrastructure contributions from large development schemes. The report effectively recommends replacement of CIL with a simpler low-level Local Infrastructure Tariff (LIT) covering all developments, and Section 106 obligations for larger / strategic developments, for residential as well as for commercial development. The new LIT regime would work on a mandatory basis for all local authorities, except where LIT levels would be too low to be worth collecting.

- 6.3 The independent report suggests that the LIT system should be implemented by 2020, while the White Paper noted that the Government is considering the report's recommendations and will make an announcement at the Autumn budget 2017. The fact that the review was published alongside the White Paper signals an intention to carry out the CIL review soon. The review group leaves much of the detail of the CIL review to the Government to work up and further clarity will not be provided until the Autumn statement.
- 6.4 The Government's response to their consultation on changes to the National Planning Policy Framework (December 2015) was also published at the same time as the Housing White Paper. Finalisation of an updated version of the NPPF was originally scheduled for Summer 2017, however work on this was delayed following the announcement in April 2017 of a snap General Election for the summer. At the time of writing, the new administration has not provided a revised timetable for this work.
- 6.5 Following 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 which have already been granted consent not coming to fruition, resulting in a reduction in overall S106 receipts.
- 6.6 While the eventual outcome of the 'Brexit' process will not be known for some time, the relationship between planning activity and the wider economy should not be overlooked. Should the process of de-coupling from the EU eventually cause some form of severe economic shock and a lower GDP, then it may take some time for the economy to completely recover.

7. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

Financial Implications

- 7.1 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 2017. 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 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

- 7.2 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.

Background Papers

7.3 None.

Annex 1: Total Monies Received

Hard copies will be placed in the Members library. If these are not legible, electronic copies of the spreadsheet are available from Governance Services.

Annex 2: Agreements signed during 2016/17 where payments have not yet been received

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