

## MUNICIPAL YEAR 2017/2018 REPORT NO.

### COMMITTEE:

PLANNING COMMITTEE

23.01.2018.

### REPORT OF:

Director - Regeneration and Environment

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See Annexes 1 & 2

AGENDA – PART 1	ITEM
SUBJECT - S106 AGREEMENTS – MONITORING INFORMATION, MID YEAR REPORT  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 2017 to 30 September 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 2017

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 30 September 2017 there were 84 individual S106 agreements in the active programme where monies had been received, containing approximately 156 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**

<b>Status</b>	<b>Total Amount (£)</b>
<b>Opening Balance at the start of 2017/18</b>	<b>£6,435,015.15</b>
<b>Total amount of S106 payments received</b>	<b>+ £373,012.29</b>
<u>In year movements:</u>	
<ul style="list-style-type: none"> <li>• Sub-total of outward in year movements</li> <li>• Money moved to contingency</li> <li>• Total amount drawn down in 2017/18</li> </ul>	<ul style="list-style-type: none"> <li>- £156,377.35</li> <li>- £7,071.10</li> <li>- £62,132.16</li> </ul>
The total amount drawn down is broken down as follows:	
<ul style="list-style-type: none"> <li>• Q1 Drawdown Total      £62,132,16</li> <li>• Q2 Drawdown Total      £0.00</li> </ul>	
<b>Interest received to 30 September 2017</b>	<b>+ £19,814.16</b>
<b>Closing balance at 30 September 2017</b>	<b>£6,609,332.09</b>

- 3.3 Of the £373k received during the first half of 2017/18, the vast majority of the money (almost £319k) was for Affordable Housing. This figure is lower than the first half of the previous year. By itself this is not necessarily indicative of any particular trend, although several factors may be combining to affect the fall. Of the affordable housing contributions received during the first half of the year, the largest individual payment was received from 106 Camlet Way (£211,563.59).
- 3.4 In May 2016, a change in national policy reduced the circumstances where by contributions can be sought from smaller developments of 10 or fewer units. Although the Council can still seek contributions towards affordable housing where the floorspace of the site is at least 1,000 sq m or greater, there has been a much reported slow-down in sales and drop in prices at the higher-end of the residential market. As such, fewer applications of 1,000 sq m + have been submitted in comparison with previous years and the relationship between planning and the wider economy cannot be ignored.
- 3.5 Many Section 106 agreements contain clauses which require the monies to be spent within either 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**

##### **Spend during Q1 and Q2**

- 4.1 Spend during Q1 and Q2 funded various small scale highways projects, including the Wilmer Way Zebra Crossing and a pelican crossing at Bramley Road.

##### **Affordable Housing**

- 4.2 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. Affordable Housing development is covered by capital spending. The contributions are used to replenish such budgets. Section 106 funds are drawn down and the various contributions are allocated to projects as part of the draw down process at the end of each financial year.
- 4.3 S106 Affordable Housing contributions were used to help fund the 38-home development at Dujardin Mews, which completed and received its first tenants during the previous financial year. Dujardin Mews was 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**

- 4.4 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**

- 4.5 Work on the Ponders End stretch of Cycle Enfield began during 2017/18. There are several different routes in the programme, 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**

- 4.6 Education is covered by capital spending. Section 106 funds are drawn down and contributions are only allocated to projects at the end of each financial year.

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

- 5.1 In addition to the agreements where monies have been received, there are a further set of 123 agreements where contributions have been agreed and planning consents granted - but funds have not yet been received. These agreements are shown in Annex 2. Should each of these planning permissions be activated, the Council could potentially receive a further £10,829,654.46
- 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 agreed 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 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 sought for residential proposals providing 10 or fewer units where the gross floorspace of the site does not exceed 1000 sq m.
- 5.5 In addition to the 123 agreements listed in Annex 2, an additional four agreements were completed during the first half of 2017/18. These are:
- Alma Estate (Section 106 signed 18.08.2017)
  - Monmouth Road, Edmonton Green (planning permission granted by the Inspector following an appeal hearing on 19 July 2017, Section 106 signed 25.08.2017)
  - Trent Park (Section 106 signed 29.09.2017)
  - 6, 8 and 10 Crescent Road (Section 106 signed 30.06.2017)
- 5.6 As the signed copies of these agreements had not been received from Legal Services by 30 September, information relating to those schemes does not appear in Annex 2. These will be reflected in the end-of-year 2017/18 Section 106 Monitoring Report.
- 5.7 The Monmouth Road scheme may be of particular interest to members with an interest in Housing issues. Once the development is operational, it will be the first purpose-built "Build to Rent" (BTR) scheme in Enfield. This tenure has been promoted by Government and has featured in the national newspapers over recent months. The new draft London Plan, published in November 2017, also contains bespoke policies with the aim of growing the BTR sector.

## **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 30 September 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**

- 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.

### **Background Papers**

- 6.3 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 where payments have not yet been 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.