

MUNICIPAL YEAR 2018/2019 REPORT NO. 68

COMMITTEE:

PLANNING COMMITTEE

28.08.2018.

REPORT OF:

Director -

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See Annexes 1 & 2

AGENDA – PART 1	ITEM 9
SUBJECT - S106 AGREEMENTS – MONITORING INFORMATION, 2017/18 END OF 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 31 March 2018. 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. A 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 2018 there were 93 individual S106 agreements in the active programme where monies had been received, containing approximately 261 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 2017/18	£6,436,031.09
Total amount of S106 payments received in 2017/18	+ £1,370,510.43
<u>In year movements:</u>	
<ul style="list-style-type: none"> • Sub-total of outward in year movements 	- £156,377.35
<ul style="list-style-type: none"> • Money moved to contingency 	- £0
<ul style="list-style-type: none"> • Total amount drawn down in 2017/18 	- £1,362,878.57
The total amount drawn down is broken down as follows:	
<ul style="list-style-type: none"> • Q1 Drawdown Total £ 62,132.16 • Q2 Drawdown Total £37,942.54 • Q3 Drawdown Total £38,718.00 • Q4 Drawdown Total £1,224,085.87 	
Total Capital Spend = £ 834,264.92	
Total Revenue Spend = £ 528,613.65	
Interest received in 2017/2018	+ £17,099.01
Closing balance at 31 March 2018	£6,304,384.61

3.3 As shown in Table 1 above, during financial year 2017/18 the Council received £1,370,510.43 in S106 financial contributions from schemes where planning permissions were implemented. Of the money received during 2017/18, £752,409 was for Affordable Housing, Education received just over £484,676 with remaining receipts received for Health, Traffic and Transport and Parks related infrastructure.

3.4 From May 2016, the Council's affordable housing policy was revised which exempted small scale development of 10 units or less with a gross combined floorspace of less than 1,000 square metres from providing affordable housing and other 'tariff based' contributions under Section 106. This clearly has had an impact particularly on the amount of affordable housing commuted sums and education receipts received under S106 as demonstrated in table 1 below. Officers are looking to revisit this

policy with the aim of reintroducing affordable housing contributions for small housing schemes as part of the Local Plan Review.

Table 1: S106 receipts and expenditure for the last three financial years.			
Year	Total S106 Receipts	In year S106 expenditure	Balance
2015/16	£5,545,853	£3,293,180	
2016/17	£2,894,065	£4,090,950	
2017/18	£1,370,510	£1,362,879	£6,304, 384.61

- 3.5 During the year, £1,362,878 was drawn down in S106 funds. The majority of these funds were used to towards meeting the borough's increased demand for extra primary school places by constructing new buildings, classrooms, specialist facilities and play spaces such as the specialist educational facility for children with autism at Minchenden and the expansion of Worcester's Primary School.
- 3.6 A further £1.6 million was expected to be drawn down last year, which would have increased the Council's S106 expenditure profile for 2017/18, however has been carried forward towards funding a number of housing projects in 2018-19.
- 3.7 Taking account of monies drawn down and other movements across the year, the available total balance has reconciled to £6,304,384. 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.
- 3.8 Many Section 106 agreements contain clauses which require the monies to be spent within a 5 or 10-year window. 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.
- 3.9 Following the Government's success in the Court of Appeal in May 2016 which reinstated the November 2014 Written Ministerial Statement exempting small developments from affordable housing and tariff style planning obligations. The Council's affordable housing policy was subsequently revised; this now exempts small scale development of 10 units or less with a gross combined floor space of less than 1,000 square metres from providing affordable housing and other 'tariff based' contributions under Section 106. This has had an impact particularly on the amount of affordable housing commuted sums and education receipts received under S106 in comparison to previous years, but it is too soon to confirm if this is a "blip" or the trend. Officers are looking to revisit this policy with the aim of reintroducing affordable housing contributions for small housing schemes as part of the Local Plan Review.

4. KEY PROJECTS FUNDED USING SECTION 106 CONTRIBUTIONS

Highways

4.1 Approximately £422,000 was used to finance various highways works including work on the A105 and Ponders End stretch of Cycle Enfield, which was completed in the last financial year. Work on the A1010 section of Cycle Enfield is underway and the south stretch is expected to be completed by the end of this financial year. There are several different Cycle Enfield 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

4.2 Significant amounts which were spent during the financial year 2017/18 for the provision of educational facilities included:

- £ 308,708 at Minchenden school for special needs pupil place provision
- £ 201,336 at Brimsdown Primary School for a new kitchen and dining hall facilities
- £ 122,742 at Orchardside Pupil Referral unit

Parks

4.3 Approximately £110,000 was used to fund public realm and park improvements within the Borough such as;

- Remedial works at netball courts at Broomfield Park
- Accessible playground provision at Albany Park (this project received match funding by London Marathon Charitable Trust)
- Replacement of outdoor play equipment at Trent Park
- Match funding for the new 3G football pitch at Enfield Playing Fields
- Replacement playground equipment for non-compliant kit at St Michaels Open Space

Table 2: Spend by Council Department 2017/18

Department	Amount Spent in £
Education	829,797.24
Traffic & Transportation	422,439.45
Parks	110,641.88
TOTAL	1,362,878.57

Affordable Housing

- 4.4 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.
- 4.5 Following on from the Grenfell fire incident, significant work needed to be done to re-prioritise housing schemes and so the whole of the S106 contributions for this year were rolled forward to fund works in the 2018-19 year. Major works which contributions will fund in 2018-19 include the Council's Housing Renewal Schemes at Ordnance Road, Newstead House and Upton and Raynham.

Local Employment and Training

- 4.6 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. The Council offers advice to developers on how to engage/target residents and offer jobs, apprenticeships and work experience opportunities. Council frontline services and employment and skills providers in the borough also support residents facing barriers to work to become job-ready. However, there are gaps in this provision and specific industry skills requirements that could be funded that would further support employers and residents.
- 4.7 Officers are proposing to use the existing S106 monies collected for employment and skills this 2018/19 financial year to;
- support developers deliver their employment skills strategies which are part of their S106 agreements, and support target residents to have the knowledge, confidence and skills to access these opportunities.
- 4.8 Further information on this and the number of apprentices recruited and the use of financial contributions received towards Employment and Skills is available from the Neighbourhood Regeneration team.
- 4.9 Additional key projects that will be funded from S106 this financial year are;
- Warm Homes Fund
 - Landscaping and public realm improvements to Pymmes Park, Hillyfields Park and Broomfield Park
 - Various highways, traffic and transportation related schemes including; widening works at Gilbert Street; junction improvement works at Parsonage Lane, new pedestrian crossing at Cat Hill and highways safety improvement scheme at Hadley Road.

5 S106 FUNDS AGREED BUT NOT YET RECEIVED

- 5.9 In addition to the 93 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 2017/18 where payments have not yet been received are shown in Annex 2.
- 5.10 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.
- 5.11 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.
- 5.12 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.
- 5.13 Table 3 provides a summary of the agreements signed during 2017/18 and their total financial value by the types of agreed obligation.

Table 3: Monies agreed during 2017/18 where payments are awaited

Heads of Terms Agreed	Amount (£)
Education	787,451.45
Health	403,067.00
Employment Skills & Training /Job Loss Contributions	322,000.00
Sports	278,000.00
Affordable Housing	128,453.70
Community	83,185.00

CPZ Consultation/Implementation	75,000.00
Wildlife	35,000.00
Cycle Enfield /Cycle Infrastructure	29,434.00
Highways & Pedestrian Environment	28,000.00
Traffic Signage	20,000.00
Childcare	13,224.54
Landscaping	3,600.00
Management Fees	137,002.00
TOTAL	2,372,995.69

6. KEY NATIONAL POLICY CHANGES DURING 2017/18

6.1 The Government announced a package of reforms at the Autumn Budget in 2017 in response to the independent CIL Review that was undertaken in November 2015 and published in February 2017. These reforms coincide with the proposed changes to viability in the National Planning Policy Framework (NPPF) and Planning Practice Guidance and aim to make the system of developer contributions more transparent and accountable by:

- Reducing complexity and increasing certainty for local authorities, developers and communities;
- Supporting swifter development;
- Improving market responsiveness of CIL;
- Increasing transparency over where developer contributions are spent; and
- Introducing a new tariff to support the development of strategic infrastructure.

6.2 The Government indicates that this is the first of a series of reforms, that the current proposals will provide certainty in the short term and that in the long term one option maybe to set contributions for affordable housing and infrastructure nationally and that these contributions are non-negotiable. the Government proposes to remove the s106 pooling restrictions which will allow the Council to pool more than five S106 agreements towards an item of infrastructure. This is welcomed and will aid the delivery of infrastructure. An officer level response to the consultation was provided by the Council; the consultation closed in May 2018 and has recently been published.

6.3 The Mayor of London's Affordable Housing and Viability Supplementary Planning Guidance 2017 was adopted in August 2017. The focus of the guidance is to increase the number of affordable homes delivered through the planning system by embedding the affordable housing requirement into land values and making the viability process more consistent and transparent. The Mayor's SPG is a material consideration in the assessment of planning applications.

- 6.5 The SPG introduces ‘threshold approach’ whereby schemes meeting or exceeding 35 per cent affordable housing without public subsidy can follow a ‘Fast Track Route’. This means applicants are not required to submit viability information at the planning application stage, and applications are subject to an Early Stage Viability Review if an agreed level of progress on implementation has not been achieved within two years of consent being granted or as agreed with the local planning authority.
- 6.6 Schemes that do not meet this threshold are required to follow a ‘Viability Tested Route’, under which applicants must submit a viability assessment at planning application stage with supporting evidence to substantiate the inputs and assumptions used. A Late Stage Review will be required at the point at which 75 per cent of units are sold or let, which will result in a financial contribution for additional affordable housing provision if viability has improved since the application stage. Officers are working on the Council’s subsequent approach to applying this guidance to standardise trigger points and review mechanisms incorporated in S106 agreements.

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 reflects the position as reported in the S106 monitor as at 31 March 2018. 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 quarterly. Amounts committed to projects including the nature of potential expenditure have been updated following advice from officers leading on individual schemes.

In summary, the below table captures total receipts and expenditure for S106 in 2017-18

S106 2017-18 Total Receipts	S106 2017-18 Total Expenditure
£1,370,510.44	£1,362,878.57

Legal Implications

- 7.2 By virtue of Section 106 of the Town and Country Planning Act 1990 (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 contributions received by the Council may be spent, and a deadline by which that must take place. Any funds remaining unspent by the applicable deadline would need to be returned to the 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 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.