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28/10/10

Report Title: Planning Obligations (Section106 Agreements):

The Purpose of S106 Agreements, Haringey Policy, the Flow of S106 Benefits/Funding 2005-2010 and the Development of a new Community Infrastructure Levy by 2014

Report of: Director of Urban Environment

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Wards(s) affected: ALL

Report for: Non-Key Decision

**1. Purpose of the report (That is, the decision required)**

1.1. The purpose of the report is to update the Planning Committee on Haringey's Section106 (S106) policy and guidance, the S106 agreements signed and administered between 2005-2010 by the Planning and Regeneration Service, and the distribution of the S106 funds have been received by the Council.

**2. Introduction by Cabinet Member Planning and Regeneration**

2.1 N/A

**3. State link(s) with Council Plan Priorities and actions and /or other Strategies:**

3.1. Planning Obligation and S106 Agreements support all elements of the Haringey Unitary Development Plan, the Haringey Sustainable Community Strategy and a number of related Strategies and plans including transport, parks and leisure, education and community facilities.

**4. Recommendations**

4.1. Planning Committee notes the report

## 5. Reason for recommendation(s)

5.1. To review the progress of S106 Agreement work and learn about new national policy on the community Infrastructure levy.

## 6. Other options considered

6.1. None

## 7. Summary

7.1. Since records and S106 agreements were regularly recorded (1990/2000) 132 planning obligation agreements (S106 agreements) have been signed for developments granted planning permission. The total potential value of these agreements is over £25m. Received to date funds are £10.3m. £7.7m has been spent and £2.5 m remains to be spent of which £0.5m is Planning Management funds.

7.2. This report provides the Committee with an update on the management and administration of the planning obligation responsibilities. It also shows:

- the flow of funds since 1990/2000 : There was a high influx of funds in 2007/08 and a significant slow down since then because of the impact of the economic downturn on development in the borough.
- the geographic spread of S106 development sites and spend locations by ward since 2005: This shows that the focus of spend is in the east of the Borough where there are more development opportunities and regeneration areas and the.
- range of service/benefit headings benefiting from planning obligation funds.

7.3. At Appendix 4 the report sets out Haringey policy on S106 agreements and at Appendix 5 it provides an introduction to the likely new legislative changes which are partly in place now.

## 8. Financial Comments

8.1. Section 106 monies represent an important source of funding to the Council. A significant proportion of the Capital programme is funded from S106 and this has become a more important source of funding as the recession severely impacts on the level of capital receipts available. The Council's regeneration aspirations also to some extent depend on the continued availability of S106 monies.

8.2. The recession also impacts on the amount of Section 106 money available, both in terms of the amount of new agreements coming forward and the timing of receipts from existing agreements where development trigger points have not

been reached. This illustrates that whilst the Council should include expected S106 receipts in its forward planning, the lack of certainty with respect to timing of receipts mean that this money cannot be relied upon and financial planning must be sufficiently flexible to allow for this.

8.3. It is also important that the Council maintains sufficient resource to ensure that S106 monies are actively monitored, not just to check that all due funds are received but also to ensure that all received funds are utilised within appropriate timescales.

8.4. Legislation change means it is important for the Council to assess the opportunities around the creation of a Community Infrastructure Levy to ensure available funding is maximised both through the existing S106 process for affordable housing and via new plans and systems for other service areas. At this stage it is too early to determine whether the introduction of a CIL will increase the total level of funding available.

## **9. Head of Legal Services Comments**

9.1. Section 106A of the Town and Country Planning Act 1990 makes provision for a developer to apply for an obligation contained in an s106 agreement to be modified or discharged. Such an application cannot be made until 5 years after the agreement has been signed. Where the Council is of the opinion that the obligation serves no useful purpose, or it could serve the purpose equally well if it had effect subject to the modification, then the Council must discharge or modify the obligation. It should be noted that the developer has a right of appeal to the Secretary of State against the Council's decision. Where s106 contributions remain unspent beyond 5 years it may be possible for the developer to argue that an obligation serves no useful purpose, and therefore the Council should avoid holding unspent contributions for lengthy periods of time.

9.2. The Council can currently enter into legal agreements or 'planning obligations' with developers under section 106 of the Town and Country Planning Act 1990. The Community Infrastructure Levy (CIL) Regulations introduced in April 2010 sets out how local authorities can move from the current planning obligation system (collected via S106 agreements) to the new tariff style charge.

9.3. Charging schedules will be a new type of document within the folder of documents making up the local authority's Local Development Framework but do not form part of the statutory development plan.

9.4. The Council as charging authority to:

- prepare and publish a "charging schedule" which will set out the rates of CIL which will apply in the authority's area
- apply the CIL revenue it receives to funding infrastructure to support the

development of its area, and;

- Report to the local community on the amount of CIL revenue collected, spent and retained each year.

9.5 Section 106 planning obligations may still be used when CIL is introduced, and they *must* continue to be used to secure affordable housing. However, a planning obligation which goes beyond the statutory justification tests set out in the paragraph below must not be a reason to grant planning permission.

9.6 The statutory justification tests for a planning obligation as set out in the Community Infrastructure Levy Regulations 2010 are as follows:

- (a) the obligation must be necessary to make the development acceptable in planning terms;
- (b) the obligation must be directly related to the development; and
- (c) The development must be fairly and reasonably related in scale and kind to the development.

9.7 In addition, from 6 April 2014 or on the date that a charging authority's first charging schedule takes effect, whichever is earlier, local planning authorities may not pool more than five individual planning obligation contributions towards infrastructure that is capable of being funded by CIL.

9.8 It should also be noted that where a charging schedule is in effect, no planning obligation can constitute a reason for permission if it provides or funds "relevant infrastructure". If an authority wishes to fund some infrastructure by s106 agreements (other than affordable housing), there must be a list of "relevant infrastructure" and that particular infrastructure must not be on it.

## 10. Head of Procurement Comments – [Required for Procurement Committee]

10.1. None required

## 11. Equalities & Community Cohesion Comments

11.1 S106 Agreements are based on planning policy which was adopted in 2006 following Haringey's Unitary Development Plan (UDP) public Inquiry. The UDP was subject to extensive community consultation and complied with all regulations at the time and was supported by the Planning Inspectorate at the public inquiry.

11.2 As can be seen from the location analysis in Appendix 2, most S106 funds are spent where there are major development opportunities and where the borough has its greatest regeneration needs.

## 12. Consultation

- 12.1 None, as this is an update and monitoring report

## 13 Use of appendices /Tables and photographs

### Appendices

- 1a- Pre 2005 and 2005-10 year by year profile of agreements negotiated
- 1b- Profile of S106 monies spent by obligation type
- 2- 2005-10 Geographical and Financial Analysis
- 3- 2005-10 Status of implemented and un-implemented S106 agreements
- 4 - LB Haringey adopted Supplementary Planning Guidance on Planning Obligations
- 5 – Introduction to the new Community Infrastructure Levy

## 14 Local Government (Access to Information) Act 1985

- 14.1 No exemptions

## 15. Details of the Report

- 15.1 The key information in this report is contained in the Appendices. There are three appendices which relate to the utilisation and distribution of S106 agreements in the borough.
- 15.2 Appendix 1 mainly provides the financial profile of those S106 agreements signed each year from 2005-2010 and their subsequent performance to date – and as a block Pre 2005 is also included.
- 15.3 Appendix 2 shows the actual in-year spend profile for S106 monies. The tables and diagrams show the breakdown of the projects supported by the S106 funds and the agreements from which these projects are /will be funded. The diagrams show the location of the developments with S106 agreements attached against the locations of the projects and schemes benefiting from these agreements. In most cases, the S106 benefits are on or near the development site from which they were triggered. However, there are cases where benefits are distributed in a wider area, such as contribution for schools. The maps and tables in Appendix 2 show the geographical distribution of expenditure by obligation type in relation to the development site.
- 15.4 Appendix 3 provides tables and maps focusing on S106 monies which are received but not yet spent.

15.5 Haringey's Supplementary Planning Guidance SPG 10a on Planning Obligations is attached as Appendix 4. The SPG sets out the framework for negotiating planning obligation (S106 contribution) from developments. The Planning Committee decides on how S106 funds will be spent according to national and local Planning Policy.

15.6 Implementation of spending is decided as follows:

- The planning application process will often identify specific impact needs that the S106 must pay for (e.g yellow lines; specified footway improvements). These funds will then be given to the relevant council services to deliver.
- The planning application process will some times identify general improvements (e.g increase in public open space/improvement in public open space; education improvement; affordable housing contribution). These will also be given to the relevant council service to deliver either through a one off project or as part of an existing programme
- As each planning application is processed, (sometime through the pre application process) internal consultation with Council Services, consultation with statutory consultees and neighbourhood consultation will throw up ideas and proposals for S106 headings covered in SPG 10a. Over time this process has led to some services developing improvement and project programmes that can be supported by S106, (e.g the education pool). Particularly in respect of unspent general improvement funds – the Planning Service will contact the relevant council services and ask them to development a project
- Key Planning S106 tests are : “Relevant to Planning; Related to the proposed development and Fairly and reasonably related in scale and kind to the proposed development”
- Lead responsibility for negotiation on all S106 lies with the Planning Service. This service understands the importance of primarily bringing forward good development and ensuring that S106 requests do not make the proposal economically unviable and that they are only negotiated on schemes that are in principle policy compliant. Since the recession began in 2007/08 and the S106 Regulation change in April 2010, the Planning Service has been careful to only focus on negotiations on key impacts/site compliance and community infrastructure and less on general improvement categories such as “environmental improvements” since scheme viability is now critical and meeting the statutory obligation tests are now much more focused.
- Assistant Director (AD) of Planning and Regeneration has delegated power to allocate S106 funds. The AD and his staff ensure the spend meets government guidance, Haringey SPG guidance and the terms of the specific legal agreement. Planning staff do not release funds until

an appropriate project and cost details are presented by the council services allocated the funding.

- Responsibility for developing projects, carrying out any necessary public consultation and securing authorisation to spend rests with the Council Services who spend the S106 funds.

15.7 Appendix 5 provides an introduction to the new Community Infrastructure Levy (CIL) published in April 2010. The Council will be assessing how it will move to a CIL system in the future to comply with the Government guidelines.

## 16. Conclusions

16.1 In conclusion, the Council is performing well the managing of the S106 Programme. At present, there is some uncertainty on the implementation of a number of planning permissions due to the economic downturn. Planning service do not release funds until an appropriate project and cost details are presented by the Council Services allocated the funding. There may be delays in spending the S106 funds where the funds are pooled and the projects rely on external funding for development and completion in addition to S106 funds.

**Appendix 1,2,3,4- See attached separately**

### **Appendix 5 – Introduction to the new Community Infrastructure Levy**

The last Government changed the planning regulations to deal with development impact and planning for community infrastructure in April 2010. The regulations are in place but there is no clear response from the Coalition Government if it will continue with the recent changes. It is likely the Council will continue with work to take advantage of the new powers because they represent good town planning and corporate planning processes. The recent new changes propose:

**S106** - Reduction in S106 agreements and their use to be narrowed to be used only for “site compliance” and affordable housing

**Community Infrastructure Levy (CIL)** - Creation of a mandatory development levy system that would be charged on all new net floorspace, (both residential and non residential) above a threshold to contribute towards necessary supporting physical community infrastructure as set out and agreed in the LDF Community Infrastructure Plan. This levy would be a standard charge, (typically £3-18k per new home) and it would be a criminal offence not to pay it. Its level would be tested at a public inquiry and it should be “reasonable” and not prevent from coming forward. It is supposed to only “contribute” to new essential infrastructure – therefore other funding by providers need to be accurately identified and assessed. The levy may be able to be “borrowed against” and there is a viability exemption – but this is discretionary, in the hands of the LPA and there is no appeal, (just the prospect of the scheme not

going ahead). The Local Planning Authority can set a varying levy (areas and development to which it is applicable). To benefit from such a Levy it must be in place by 2014. The Council will consider setting up a Levy in 2010.