

<b>Report for:</b>	Regulatory Committee February 2012	<b>Item number</b>	
<b>Title:</b>	Planning Obligations (Section 106) Agreements		
<b>Report authorised by</b>	Lyn Garner, Director Place and Sustainability		
<b>Lead Officer</b>	Marc Dorfman, Assistant Director, Planning Regeneration and Economy ext 5538		
<b>Ward(s) affected: All</b>	Report for Key/Non Key Decision: <b>Non key decision</b>		

## 1. Purpose of the report

1.1. The purpose of the report is to update the Committee on the Council's Section 106 (s106) policy and guidance, s106 agreements signed and administered between 2005-2011 by the Planning, Regeneration and Economy Service, and the distribution of the s106 funds received by the Council. The report and its appendices provide an update on the management and administration of planning obligations and set out the progress on unspent funds at Appendix 6 and paragraph 5.15. The financial year is defined from the 1<sup>st</sup> April to the 31<sup>st</sup> March. This report provides most up to date spend information as in December 2011.

## 2. Cabinet Member Introduction (TBC)

2.1. Planning Obligation and s106 Agreements support the objectives and delivery of Haringey spatial and regeneration plans, the Sustainable Community Strategy and a number of related Strategies and plans including transport, parks and leisure, education and community facilities. To date, £13million s106 funds were negotiated and received from some 161 cases. £9m has already been spent and £3 m remains to be spent. This report provides the Committee with an update on the management and administration of the planning obligation responsibilities. It also shows that 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 shows that the focus of spend is in the east of the Borough where there are more development opportunities and regeneration areas with corresponding infrastructure needs.

## 3. Recommendations

3.1 Director of Place and Sustainability (and the CEMB) to agree this report to be forwarded to the Regulatory Committee for their information.

## 4. Other Options Considered

4.1 None. This report is an update on s106 collection and spends.

## **5. Background**

- 5.1 From some 161 s106 Agreements signed, the Council has collected over £13 million s106 contributions since 2005. Over £9 million have been spent on relevant environmental and infrastructure projects as showed in Appendix 1. £3million remains to be spent.
- 5.2 Planning Obligations (Section 106 Agreements) are legally binding agreements entered into between a local authority and the owners or developers of schemes granted planning permission. S106 Agreements negotiate both physical and financial obligations of which the Council monitor. Supplementary Planning Guidance 10a 'The Negotiation, Management and Monitoring of Planning Obligations' sets out Haringey's approach and strategy for planning obligations.
- 5.3 The report and its appendices provides an update on the following areas:
- The Budget Breakdown which shows the flow of funds since 2005/2011- 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 breakdown by Infrastructure Type - This shows the contributions received, spent and not allocated by individual topic type accompanied by a summary and graphs.
  - The overall Budget Summary with a further breakdown.
  - Maps showing location of development sites benefiting from s106 funding
  - List showing status of s106 Agreements
  - SPG10a – Negotiation, Management and Monitoring of Planning Obligations
  - Community Infrastructure Levy - An introduction to the likely new legislative changes which are partly in place now.
- 5.4 Regular monitoring of s106 Agreements is important to ensure that developers fulfil the obligations required to deliver the benefits within the Borough.

## **Analysis**

- 5.5 The key information in this report is contained in the Appendices. Appendices 1 and 2 provide the financial profile of those S106 agreements signed each year from 2005-2011 and their subsequent performance to date. As a block, pre 2005 agreements are also included.
- 5.6 From 161 s106 Agreements signed, the Council has collected over £13 million S106 contributions since 2005. Over £9 Million has been spent to date. If the Council has not spent/committed the expected spend before the expiry date, we will have to refund the contribution to the developer with interest. To date, no monies received by the Council in respect of s106 Agreements have had to be refunded to the developer due to money not having been spent within the specified time period or in accordance with the agreement.
- 5.7 Appendix 2 and Appendix 3 provides a breakdown of contributions received, spent and to be allocated by infrastructure type with accompanying graphs. Funds received are presented under 13 different categories of infrastructure.

These include educational premises, open space improvements, health facilities, improvements to signage and street furniture, traffic calming and management schemes, provision of community facilities and employment training schemes. An indicative list of benefits which come under s106 obligations are listed in the Council's adopted Supplementary Planning Guide (10a) the Negotiations, Management and Monitoring of Planning Obligations (Appendix 7).

- 5.8 Appendix 3 shows that over £4 million was spent on educational projects, and over £2 million on site specific and borough-wide environmental projects. S106 funds were spent on street scene/highway projects to date amounts to £621,000, and over £ 70,000 were spent on employment related projects. Full breakdown is shown in the table below.
- 5.9 Appendix 4 and 5 provide information on locations of development sites benefiting from s106 funds since 2005 and the details of related planning applications negotiated for s106. Site specific s106 agreements correlate with the growth areas and major development sites in the central and east/south east part of the borough.
- 5.10 Pooled s106 funds were utilised across the borough in line with service infrastructure needs. For instance, the maps show that Broadwater Farm and Mulberry Primary schools and Haringey Heartlands Secondary school received funds from developments across the borough.
- 5.11 Appendix 6 shows progress on funds collected but not yet spent, and the departments responsible for implementing the agreed s106 actions. It shows a further breakdown indicating how much s106 contributions are unspent, how many agreements make up the total amount not allocated, whether the contribution can be pooled, whether project plans have been identified, and when the contribution has to be spent. It also informs who the lead officer for spend is within each Service. More information on unspent funds is provided in section 5.15.
- 5.12 Haringey's Supplementary Planning Guidance SPG 10a on Planning Obligations is attached as Appendix 7. 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.
- 5.13 Finally, Appendix 8 provides an update on the introduction of the Community Infrastructure Levy and the setting of the Mayoral CIL in London which relates to Crossrail.

**S106 funds received and spent by infrastructure type**

	<b>Value Negotiated</b>	<b>Received</b>	<b>Not Received (PP not implemented)</b>	<b>Spent</b>	<b>Not Allocated</b>
Education Pool	7,597,699.22	5,341,467.22	2,256,232.00	4,202,971.87	1,138,495.35
Education (Site Specific)	1,404,000.00	154,000.00	1,250,000.00	154,000.00	0.00
Environment Pool	940,166.12	935,002.00	5,164.12	935,002.00	0.00
Environment (Site Specific)	9,155,544.86	3,142,258.32	6,013,286.54	2,020,258.32	1,122,000.00
Street Scene (Highways/Transport)	3,474,999.80	1,180,650.08	2,294,349.72	621,000.00	559,650.08
Employment	365,000.00	70,000.00	295,000.00	70,000.00	0.00
Recreation	63,500.00	63,500.00	0.00	20,000.00	43,500.00
Traffic Management Orders (Car-Free)	81,050.00	9,150.00	71,900.00	3,400.00	5,750.00
Affordable Housing	2,880,000.00	1,147,741.77	1,732,258.23	925,000.00	222,741.77
Campsbourne Playscheme	7,500.00	7,500.00	0.00	7,500.00	0.00
Public Art – Wards Cnr.	100,000.00	0.00	100,000.00	0.00	0.00
Traders Sum – Wards Cnr.	96,650.00	0.00	96,650.00	0.00	0.00
Admin & Monitoring	1,147,886.83	988,778.24	159,108.59	315,483.81	673,294.43
			0.00		
<b>Total</b>	<b>27,313,996.83</b>	<b>13,040,047.63</b>	<b>14,273,949.20</b>	<b>9,274,616.00</b>	<b>3,765,431.63</b>
				minus Admin	673,294.43
					<b>3,092,137.20</b>

## **5.14 Update on S106 Agreements for Major Sites**

- 5.14.1 New River Village - The Council holds £1m from the New River Village Agreement which is to be spent within the Haringey Heartlands Development Framework area. This work was held up until the planning decisions on Coronation Sidings and Clarendon Square were completed (2011) so a more holistic approach could be taken on spend options within an agreed planning context. This contribution has now received approval in December 2011 to spend in accordance with the requirements of the agreement. Spending of all 3 sums is likely to run until 2014/15.
- 5.14.2 Hale Village - Planning permission was granted for the development at Hale Village in 2007/8 with total s106 contributions of £7.8m. This amount is still to be recovered as the development is implemented. The process of renegotiating the phasing of this payment is currently underway. Re-phasing the development at Hale Village and increasing the proportion of affordable housing units on the site will impact on the timing of payments and triggers for payment. Revised agreement is expected to be completed in March 2012.
- 5.14.3 Wards Corner - The s106 Agreement for Wards Corner (negotiated contributions of £406,650) was signed in 2008-2009 but the planning permission was quashed by a Judicial Review. Another application was submitted but refused at Planning Committee on the 20<sup>th</sup> July 2011. The S106 amount for Wards Corner will continue to be included in Appendix 1 in case the applicant appeals against the planning decision (normally within 6 months).
- 5.14.4 Tottenham Hotspurs Stadium - An application was received for the demolition and comprehensive redevelopment of a stadium with hotel, retail, museum, offices and housing, together with associated facilities including the construction of new and altered roads, footways, public and private open spaces, landscaping and related works. The planning application was granted at Committee on the 30<sup>th</sup> September 2010. The s106 Agreement was signed at the end of Sept 2011, (£16m). If the scheme is triggered the s106 is phased over the lifetime of the development which will be some 5-7 years. This amount does not yet show in the Appendices. Cabinet Report is due for February 2012 and new planning applications to vary the 2010 consent are to be considered by the Planning Committee in February 2012.

## **5.15 Update on S106 Spend by Category**

### Administration & Monitoring

- 5.15.1 The Council employs 3 full time equivalent officers for monitoring, negotiating and managing planning contributions and devising related policy including Community Infrastructure Levy. Developers are required to contribute a cost of "up to" 5% of all monies agreed for the cost of management. The Council currently **holds £673,000** Planning Cost Recovery/Development contributions. The Council expects to spend between £150,000-200,000 per annum on s106 and CIL Management.

Street Scene (e.g highways, transport and traffic calming schemes, improvements to cycling and pedestrian routes, maintenance of on-street parking)

- 5.15.2 The Council currently holds **£559,000** contributions for Highway works. Project plans are in place to spend the funds in 2011-14.

Affordable Housing

- 5.15.3 The negotiation of monies for the provision of off site affordable housing is an exception. However, for the development at New River Village a sum of **£925,000** was commuted for off-site affordable housing purposes (agreement signed in 2004). The total sum has been distributed to the Council's Housing Supply team for the purchase and repair of properties within the borough for affordable housing purposes. The properties are to be brought up to Decent Homes Standards with the Council retaining 100% nominations. The Council currently hold **£222,000** to provide affordable housing in the western part of the borough. Housing project plan expects the funds to be spent 2012-14.

Recreation (e.g Open Space, wildlife areas, improvements to access to existing open spaces)

- 5.15.4 There is **£43,500** specified for open space improvements in the Wood Green area. Recreation is aware of this contribution and is currently in the process of preparing project details for Wood Green Common for spending in 2012-13.

Car-free Developments (Traffic Management Orders)

- 5.15.5 The Council currently holds **£5,750** for amending the Traffic Management Orders with action plan for spend expected in 2012-13.

Environment/Other (Site Specific)

- 5.15.6 The Council currently holds **£1m** for community and housing improvements within the Haringey Heartlands Regeneration area that needed to be committed by April 2012. This work has been held up until the planning decisions on Coronation Sidings and Clarendon Square were completed (2011) so a more holistic approach could be taken on spend options within an agreed planning context. Spending of all 3 sums is likely to run until 2014/15. Cabinet approved the spend for agreed projects in December 2011.

**£122,000** of small environmental improvement pots also remains unspent. These funds have to be spent within the vicinity of the development in accordance with the agreements. Action plans for these sums are in place and this sum is likely to be spent by 2012/13.

Education Pool (Borough-wide)

- 5.15.7 There is currently **£1.1m** held for education. These funds are specified for capital works on providing educational facilities and equipment for schools throughout the Borough. This sum is expected to be spent by 2015/16.

## **5.16 Update on S106 Agreements not yet received**

- 5.16.1 The Appendix 1 Table 2 provides information about the s106 agreements that have been signed but not collected. The reasons why funds have not been collected as set out in the relevant appendix.
- 5.16.2 The most common reason is the expiry of planning permission. Planning permissions normally expire within three years of being granted. If a development does not commence within three years, s106 fund will not be received. Therefore it is unlikely we will receive any s106 contributions from developments which were not implemented within the required period. Over £1,7million worth s106 agreements signed on or before 2008 come under this category.
- 5.16.3 When s106 funds are triggered, the service starts the process of requesting the relevant payment for the delivery of agreed schemes. At the moment, the service is monitoring seven agreements with a total value of £429,000 and developers are formally reminded of their obligations.
- 5.16.4 Against £13 million s106 contributions collected to date, there are two agreements where developers failed to comply with payment procedures. Value of these negotiations adds up to £138,000 which relate to developments at Winns Mews, and the development at Markfield Road. The first one has already been referred to the Legal service for action; the second case is being processed by the Planning service for referral to the Legal service for action.

## **Conclusions**

- 5.17 In conclusion, the Council is performing well with 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.
- 5.18 From some 161 s106 Agreements signed, the Council has collected over £13 million s106 contributions since 2005. £3million s106 funds remains to be spent, £1million of which needs to be spent within the Haringey Heartlands Development Framework area. The spend profile for this specific fund is approved by Cabinet in December 2011.
- 5.19 The Council monitors the collection and spend of s106 funds in line with regulations and procedures governing the s106 process. Where there is non-compliance from developers, the council has a procedure for legal action. Currently here is one case pursued for legal action for non-compliance with the other one to follow shortly.
- 5.20 The PRE Service does 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. Project plans that Council services have in place are set out in Appendix 6 and the section 5.15 of this report.

## **6. Financial Comments**

- 6.1 Section 106 monies represent an important source of funding to the Council, especially when capital receipts received are falling. It is important that officers review s106 monies available at regular intervals in order to ensure the Council maximises the benefits available from applying the funding to key projects.
- 6.2 Section 106 payments will be largely replaced by Community Infrastructure Levy in years to come and hence the Council will need to ensure it devotes enough resources to implementing a robust scheme that balances the need to maximise funding with the desire to keep developments viable.

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

- 7.1 In April 2010 a new regime was introduced which empowered (but did not require) local authorities to levy on most types of new development as a charge to cover infrastructure costs. In parallel with the introduction of CIL the ability to require contributions by way of s. 106 agreements has been curtailed. It is now more of a restrictive regime and requires the following tests to be met-
- (a) Is the obligation necessary to make the development acceptable in planning terms?
  - (b) directly related to the development?
  - (c) fairly and reasonably related in scale and kind to the development?
- 7.2 Previously there was some flexibility allowing a local authority to look beyond site-specific measures in order to secure wider benefits.
- 7.3 The basis for CIL is an adopted Core Strategy and Infrastructure Plan which are essential for the preparation of a charging schedule and a list of projects envisaged to be funded by the CIL. The expectation is that CIL will provide funding for infrastructure requirements across the Borough and will complement the anticipated s.106 contributions for on site mitigation measures.
- 7.4 After April 2014 or until the Core Strategy has been adopted the limit on pooling contributions will be five consents and contributions will only be able to be used for projects that would not normally be funded by CIL. S106 agreements will however continue to be the main vehicle for securing affordable housing.



## **8. Equalities & Community Cohesion Comments**

8.1 The spends correspond with geographic areas of deprivation in the borough and to a large extent with the Corporate Equalities Objectives of the Council, which identifies a number of service areas for targeted actions to address known inequalities and disadvantage. These include among others:

- *Education* – where over £4million s106 funds was spent; In addition, pooled s106 funds were spent on service infrastructure needs including education infrastructure in some of the most deprived parts of the borough; A further £1.1million is currently held for spending by 2015/16 on specified capital works on educational facilities and equipments across the borough.
- *Employment* - £70,000 spent on employment related projects
- *Housing* - Affordable housing also benefits from S106 funds, including £925,000 that has been distributed to the Council's Housing Supply Team for the purchase and repair of properties for affordable housing purposes and bringing the properties up to Decent Homes Standards.

8.2 The s106 spends set out in this report are therefore consistent with actions to tackle inequalities and disadvantage in the borough.

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

91. None required

## **10. Policy implications**

10.1 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.

10.2 Haringey's Supplementary Planning Guidance SPG 10a on Planning Obligations is attached as Appendix 8. 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.

10.3 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, (sometimes 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 develop 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.

10.4 Appendix 8 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.

### **11. Use of Appendices/Tables and Photographs**

Appendix 1 - Budget Breakdown which shows the flow of funds since 2005/2011

Appendix 2 - The breakdown by Infrastructure Type

Appendix 3 - The overall Budget Summary with a further breakdown

Appendix 4 - Map with location of development sites benefiting from s106 funding

Appendix 5 - List showing status of s106 Agreements

Appendix 6- Progress on Unspent s106 Funds

Appendix 7 – Planning guidance - SPG10a – Negotiations, Management and Monitoring of Planning Obligations

Appendix 8– Introduction to the new Community Infrastructure Levy

### **12. Local Government (Access to Information) Act 1985**

No exemptions

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### **Appendix 8 – 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 Coalition Government has now agreed to continue with proposals to introduce a new Community Infrastructure Levy – and the Localism Act will require a “meaningful proportion” to be spent local to the permission site. The regulations for this part of the Act are not yet in force (likely to be April 2012) and the Government has not yet decided on what a “meaningful proportion” means – 2-5% is being considered. It is likely the Council will work to take advantage of the new powers because they represent good town planning and corporate planning processes. The 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 £3,000-18,000 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 2012/13.

**London Mayor CIL** - The Planning Act 2008 also allowed for the Mayor to charge a CIL for key infrastructure and this is progressing towards a potential start in April 2012 when the Mayor is proposing to charge most additional schemes for “net additional floorspace” at a rate of £50 /m<sup>2</sup> (inner London); £35/m<sup>2</sup> (mid London including Haringey) and £20/m<sup>2</sup> (outer London). Householder applications; education; health and affordable housing will be excluded. Haringey as made representations to the Mayor and to the Inquiry into the CIL level that £35/ m<sup>2</sup> is too high.