| *PART 1 – PUBLIC DOCUMENT | AGENDA ITEM No. **13** |
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**TITLE OF REPORT: SECTION 106 AND UNILATERAL UNDERTAKINGS**

REPORT OF THE HEAD OF DEVELOPMENT AND BUILDING CONTROL

## 1. SUMMARY

1.1 This report and appendix provides Members of the Area Committees with the annual update on the details of the current Section 106 agreements and Unilateral Undertakings within the wards/parishes in the area as at the 19th November 2014 for this Council.

1.2 As with previous years, this does not include the Hertfordshire County Council contributions over which this Council does not have any control.

1.3 The report shows the contributions received and where monies have been committed to specific projects i.e. the Council's capital projects and the associated timescales where possible. Comments have also been included, where appropriate, as to the justification for the receipt of certain contributions.

1.4 Where Section 106 obligations are negotiated for a site, contributions tend to be for a specific purpose whereas the unilateral undertakings entered into and agreed use the formula set out in the Supplementary Planning Document: - Planning Obligations adopted in November 2006.

## 2. RECOMMENDATIONS

2.1 That the contents of the report be noted.

2.2 In the event that there should be any further legislative updates concerning the implementation of any changes to Community Infrastructure Levy Regulations from the 6th April 2015, Members to be advised by an information note.

2.3 That a report shall continue to be presented on an annual basis to each of the Area Committees.

2.4 That, other than where a contribution has been negotiated for a specific purpose or project, Ward Members of the area where Section 106 or Unilateral Undertaking funding is generated be consulted prior to allocation of funds to any project.

2.5 That, other than where a contribution has been negotiated for a specific purpose or project, Ward Members of the area where Section 106 or Unilateral Undertaking funding is generated and the Area Committee be consulted prior to funding being allocated away from that area or from a village location to a town.

## 3. REASONS FOR RECOMMENDATIONS

3.1 To ensure that there is a robust system for negotiating and managing Section 106 and Unilateral Undertakings.

3.2 To ensure that this is kept under constant review and that the risk associated with this activity is managed in an appropriate manner.

## 4. ALTERNATIVE OPTIONS CONSIDERED

4.1 It is not considered that an alternative viable option is available for the Council to manage and maintain records of Section 106 and Unilateral Undertakings.

## 5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

5.1 This report is being presented to each Area Committee so that all Ward Members are fully aware of the progress and updated in relation to this matter. No external organisations have been consulted.

## 6. FORWARD PLAN

6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

## 7. BACKGROUND

7.1 The Council introduced a Planning Obligations supplementary planning document (SPD) in 2006 giving a formula for developers to calculate as to what their section 106 costs might be. Its introduction has led to the majority of sites within the District since 2006 contributing towards the cost of infrastructure. Unilateral undertakings are a particular type of obligation under section 106 that are only signed by the developer, instead of bilaterally by both the Council, and the developer.

7.2 The main objective of the SPD continues to be at this time to ensure that the additional demands upon infrastructure, services and facilities from new development are provided for and are put in place at the right time and contribute to the three Council's priorities and capital programme.

7.3 It has been agreed previously that annual reports on the status of the agreements be presented to the Area Committees so that Members are fully aware of the infrastructure projects the contributions are used towards in their particular area.

7.4 A workshop for Members was held on the 3rd November to explain the implications of the proposed changes to the Community Infrastructure Levy Regulations from the 6th April 2015 and how this will affect the future collection of contributions. The changes are summarised in this report.

## 8. ISSUES

8.1 **Current legislation/collection of contributions**

In April 2010 the Community Infrastructure Levy (CIL) regulations came into force. These regulations set out three tests which must be satisfied in order for planning obligations to be required. These tests are also are set out within The National Planning Policy Framework (NPPF) which came into force on 28 March 2012. The three statutory tests are as follows:

- **Necessary to make the proposed development acceptable in planning terms;**
- **Directly related to the proposed development; and**
- **Fair and reasonably related in scale and kind to the proposed development**

8.2 These statutory restrictions have meant that the Council has been less successful over recent years at collecting the full contributions that the 2006 SPD would seek, and some appeal Inspectors have been critical of some contributions that the Council has sought and have often dismissed them as not being in compliance with the tests.

8.3 Members will be aware that the standard charges contained within the SPD are based upon contributions to be paid to this Council towards the following categories:-

- community centre/halls
- leisure facilities
- play space
- pitch sport
- informal open space
- sustainable transport and
- waste collection facilities and recycling.

There is also provision for contributions towards public realm from non-residential development.

8.4 Negotiations to seek contributions in accordance with the legislation and the adopted SPD continue but, as reported in previous years, there have been more challenges by developers citing amongst other matters the viability of a scheme and the specific need for the contributions. Service Managers and Community Development Officers are involved at the time of some of the applications. They are advised that any infrastructure projects and proposals put forward to be considered necessary to mitigate the effect of the development must be able to satisfy the statutory tests and details and background documentation are requested to support the response. Given the direction from some appeal Inspectors, without proven justification a decision is made to determine applications either without or with a reduced level of contribution. This is reflected in the notes contained in the appendix.

8.5 **Community Infrastructure Levy**

At the July meeting of Cabinet in 2013 it was agreed that the introduction of the Community Infrastructure Levy for this authority be not pursued for the time being having regard to the lack of an adopted Local Plan and at that time the potential of reduced contributions when compared to the receipts under the SPD. As mentioned in previous reports the CIL regulations seek to curtail the ability of local authorities to continue to use section 106 obligations in the same way after April 2015 through the pooling of contributions.

8.6 **Pooling Limits**

The pooling limit applies to any obligation which was completed after 6 April 2010. From 6 April 2015 or from the date of introducing a CIL charging schedule whichever is the sooner, in the determination of a planning application after this date the LPA is not allowed to request S106 funding for an 'infrastructure project' or 'types of infrastructure' if more than **5** obligations since 6 April 2010 have already been committed to that project. A type of infrastructure relates to the categories set out in paragraph 8.3.

8.7 Following legal advice this has been interpreted, that the restriction relates to the determination of planning applications after 6 April 2015 but it does not prevent:-

i) the pooling of the contributions from more than 5 obligations which have been completed since 6 April 2010. This means that already collected S106 money from obligations after 6 April 2010 can still be pooled more than 5 times and spent after 6 April 2015. I would also confirm that this does not affect any funds that remain from prior to 2010 which to date have either not been allocated to a specific project or the implementation and spend is beyond 2015.

ii) payments being collected after 6th April 2015 provided the obligations were before this date and they can be allocated as at present.

8.8 **Implications of Pooling limits**

As mentioned since 6 April 2010 more than 5 obligations have already been agreed breaching the pooling limit on each of the categories in the SPD and from April 2015 no further obligations will be able to be agreed using the 'tariff system' within the SPD. This will have serious implications on the collection of additional funds for capital projects within the district with only the existing funds or contributions collected after that time from existing obligations being available until there is any further change in Central Government policy (a review of CIL is being undertaken in the Spring) or the Council adopts a Community Infrastructure Charging schedule which is not likely until 2017.

8.9 **Use of existing funds**

The three tests set out in paragraph 8.1 equally apply when allocating the monies received for the defined purpose. The applicant who has entered into a section 106 agreement or a unilateral undertaking has a right to seek a refund if these monies are not used for the appropriate purposes identified in either the specific agreement or the adopted SPD.

The important issue in this respect is that the spending of the contributions must be to **mitigate the effect of the development** i.e. that is the only reason for seeking contributions in the first instance.

An example of this would be an increased use and pressure on any play space within the vicinity of the site which may require additional equipment. There is no restriction for drawing down contributions from both Section 106 and UUs for a specific project subject to the changes in legislation to be implemented from April 2105 as above.

8.10 To summarise the overall strategy for the spend of this money is principally by way of the Council's adopted capital projects and strategies e.g. Greenspace Management Strategy which provides the background and justification for projects. In Royston and the rural parishes where a commitment is shown and there is a need to improve the infrastructure and a project plan has been produced together with an order or receipt contributions may be payable. Finally other projects have been identified and come forward through local Councillors or the Community Development Officers.

8.11 **Income**

The financial position for the Section 106 monies for this Council from 2001/02 are set out in the Table below:

| Year | Receipts in year £ | Allocated in year £ | Total interest received on all S106 balances in year to General Fund £ |
|---|---|---|---|
| 2001/2 | 17,729 | 2,000 | 192 |
| 2002/3 | 224,542 | 181,341 | 1,166 |
| 2003/4 | 5,000 | 0 | 3,076 |
| 2004/5 | 364,461 | 49,166 | 13,107 |
| 2005/6 | 76,900 | 53,919 | 20,957 |
| 2006/7 | 199,278 | 13,000 | 26,921 |
| 2007/8 | 164,884 | 22,650 | 42,253 |
| 2008/9 | 313,397 | 78,824 | 46,753 |
| 2009/10 | 264,798 | 103,544 | 29,839 |
| 2010/11 | 404,717 | 267,976 | 23,039 |
| 2011/12 | 477,000 | 59.936 | 32,888 |
| 2012/13 | 449,650 | 108,474 | 42,303 |
| 2013/14 | 570,217 | 486,347 | 33,027 |
| 2014/15 | 269,611 | 106,111 | |
| **Total** | **£3,802,184** | **£1,533,288** | **£315,521** |

8.12 The projects that have benefited from the funding during the last financial year include:-

- **Electric charging points** **5,655.60**
  Part payment of charging points within the main car parks
- **Hitchin Town Hall** **53,185.21**
  Refurbishment and extension
- **Hitchin Swimming Centre Changing village** **76,750.75**
  Provision of new facilities
- **Avenue Park Baldock** **10,791.52**
  On going and upgrade
- **Baldock Road Letchworth** **5,865.90**
  Improvements to facilities
- **Walsworth Common Play Area Hitchin** **7,911.00**
  Renovation and new equipment
  **Ransoms Recreation Ground Hitchin** **7,716.00**
  Renovation and new equipment
- **Baldock Town Hall** **1,160.00**
  Improvements to access
- **Dark Lane Sandon** **304,000.00**
  Affordable housing
- **Ashwell Museum** **7,111.89**
  DDA access
- **Recreation Ground Whitwell** **1,709.91**
  Improving and extending pitches
- **Royston BMX track** **4,489.32**
  Final instalment for improvement and extension of track

8.13 It will be noted that for this current financial year £269,611 of contributions have been received up until the end of October. The expenditure of £106,111.44 has included:-

| | |
|---|---|
| • Barkway Pavilion | 33,794.81 |
| • Pirton Recreation Ground –extension to facilities | 1,322.77 |
| • Pirton – provision of community cinema | 2,492.04 |
| • Pirton – floodlights at recreation ground | 1,111.83 |
| • Preston – improvements to footpath no.4 | 1,815.79 |
| • Preston – improvements to play area | 956.78 |
| • Preston – village hall- disabled toilet | 2,450.00 |
| • Baldock – footpath link Sale Drive | 6,220.00 |
| • Wymondley – bus shelter | 1,268.72 |
| • Royston – highway improvements Baldock Road Royston | 54,678.67 |

8.14 At the time of writing this report it is anticipated expenditure (approximate) of contributions for this financial year towards capital projects will include the following:-

| | |
|---|---|
| • Affordable Housing -Dark Lane Sandon (balance) | 22,000 |
| • Walsworth Common Play Area | 29,100 |
| • Ransoms Recreation Ground Play Area | 29,100 |
| • Baker Close Pavilion refurbishment Baldock | 25,000 |
| • Bush Spring Play Area Baldock | 50,000 |
| • Contribution to waste and recycling* | 10,000 |
| **Total** | **£165,200.00** |

* Minimum contribution-calculated at the end of financial year dependent on commencement of developments.

This summary does not include any projects which will come through from the Town Council and Parishes which would be able to drawn down available funding if considered appropriate.

8.15 **Member involvement**
The recommendations in paragraphs 2.4 and 2.5 continue to be implemented across the District with regard to the distribution of contributions.

## 9. LEGAL IMPLICATIONS

9.1 The Council requires Section 106 Agreements and Unilateral Undertakings where appropriate under the Town and Country Planning Acts where development involves matters which cannot be controlled by planning conditions. There are strict rules which govern the negotiation and implementation of matters covered by Section 106 Agreements and in essence, these need to relate to the development proposed both in scale and kind. The Section 106 SPD has been formulated with those principles in mind and the implementation of the SPD is being undertaken in a satisfactory manner.

## 10. FINANCIAL IMPLICATIONS

10.1 Interest accruing on S106 receipts is pooled corporately and included in the total income arising from investments. This is the case with all of the Council's 'reserves' and investment interest is then used to contribute towards General Fund revenue expenditure. Risk arising from interest rate fluctuations is considered in the Corporate

Business Planning process and is a consideration when setting the level of balances. There may be occasions where the S106 agreement requires a refund with interest in the event that prescribed works are not acted upon.

10.2 The financial implications of a planning permission may be agreed but if the planning permission is not implemented the monies will not be received.

10.3 When negotiating monies for capital schemes there may be a delay in implementing those schemes which may result in a change of cost.

## 11. RISK IMPLICATIONS

11.1 The work associated with the implementation of the Section 106 SPD is currently contained within the existing work plans and resources. A review of the document has been incorporated within the work programme for the Local Plan following the resolution of Cabinet in July 2103 not to pursue a Community Infrastructure Levy for this Council for the time being.

## 12 EQUALITIES IMPLICATIONS

12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.3 There are not considered to be any direct equality issues arising from this report.

## 13. SOCIAL VALUE IMPLICATIONS

13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraphs 12.

## 14 HUMAN RESOURCE IMPLICATIONS

14.1 There are no new human resource implications arising from the contents of this report as the monitoring of Section106 and Unilateral Undertakings is currently undertaken using existing staff resources.

## 15. APPENDIX

15.1 Appendix A - Monitoring report on Section 106 and Unilateral Undertakings

## 16. CONTACT OFFICERS

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## 17. BACKGROUND PAPERS

17.1 Section 106 Supplementary Planning Document adopted November 2006 and monitoring reports