

*PART 1 – PUBLIC DOCUMENT	AGENDA ITEM No. 7
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TITLE OF REPORT : SECTION 106 AGREEMENT AND UNILATERAL UNDERTAKINGS

REPORT OF THE HEAD OF DEVELOPMENT AND BUILDING CONTROL

1. SUMMARY

1.1 This report provides Members of the Area Committee with an update on the comprehensive details of the current Section 106 agreements and Unilateral Undertakings in their area as at the 15th February 2011 for this Council.

Information relating to contributions and obligations involving the County Council are as at the 31st January 2011.

1.2 I have forwarded to Members by e-mail a complete copy of all the documents relating to the obligations and it is the intention to only produce as appendices reports which are considered would be most pertinent to any discussion.

1. **Report A:-** By obligation for each ward/parish – contributions to North Hertfordshire District Council and the County Council

2. **Report B:-** By unilateral undertaking for each ward/parish – contributions to North Hertfordshire District Council and the County Council

1.3 The composition of the reports has not been changed from previous reports to the Committee and are set out in this manner to clearly show those obligations which have been negotiated for a particular site and that the resultant contributions are for a specific purpose as against those, the majority of which are unilateral undertakings, that have been entered into and agreed using the formula set out in the Section 106 supplementary planning document.

2. FORWARD PLAN

2.1 This report does not contain a recommendation on a key decision and is not included within the Forward Plan.

3. BACKGROUND

- 3.1 As Members are fully aware the Authority adopted in November 2006 a Supplementary Planning Document (SPD) which regulates the preparation of Section 106 Agreements and Unilateral Undertakings in relation to development proposals. It has been agreed that update reports on the status of the agreements be presented to the Area Committees on a regular basis.
- 3.2 In April 2010 the Community Infrastructure Levy (CIL) regulations came into force. Of the five tests that must be satisfied in order for planning obligations to be required, which are set out within Circular 5/05, the three highlighted in bold are now statutory
- Relevant to planning:
 - **Necessary to make the proposed development acceptable in planning terms;**
 - **Directly related to the proposed development**
 - **Fair and reasonably related in scale and kind to the proposed development and**
 - Reasonable in all other aspects.
- 3.3 The standard charges contained within the SPD are based upon contributions to be paid to this Council towards 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. The monies are allocated in accordance with the approved strategies and policies.

4. CONSIDERATIONS

- 4.1 Having regard to the above, the main aim of the Section 106 SPD continues to be to ensure that the additional demands upon infrastructure, services and facilities arising from new development are provided for and are put in place at the right time and contribute towards the three Council's priorities.
- 4.2 Since the last update in November 2009 there are two particular areas which I would wish to draw to Members' attention:-

Future funds and contributions

Officers continue to negotiate to seek contributions in accordance with the legislation and the Council's adopted SPD but I am sure Members will understand in these times of financial difficulties there have been more challenges by applicants and developers citing amongst other matters the viability of a scheme and the specific need for the contributions. As a matter of course the views of the Council's service managers are sought on each application to ensure that any contribution can be fully justified. Without a proven justification a decision will be made to determine applications either without or with a reduced level of contribution. Decisions made by the Planning Inspectorate suggest that Inspectors will similarly not support local authorities who have refused applications on these grounds unless the justification for contributions can be proven.

Use of existing funds

In addition to the requests from service managers for contributions from the funds towards capital projects, meetings have been convened with the Development and Conservation Manager and representatives of the Town and Parish Councils to discuss their infrastructure projects and the opportunity, (providing any project satisfies the tests above), of receiving contributions in the future. As Members will be aware the contributions cannot be used for opportunistic funding bids. These meetings have been attended by the Community Development Manager who provides additional support in relation to funding.

Of particular success has been the regular meetings with representatives of the Hitchin Area Committee to discuss the funding and projects in relation to that specific area. With the support of the Leader of the Council this is being rolled out to representatives of other Area Committees.

- 4.3 The overall income levels associated with Section 106 monies for this Council from 2001/02 are included 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	59,166	13,107
2005/6	76,900	62,119	20,957
2006/7	199,278	13,000	26,921
2007/8	226,016	83,782	42,253
2008/9	313,397	78,824	46,753
2009/10	264,798	103,544	29,839
Total	£1,692,119	£583,776	£184,264

- 4.4 For the first three financial quarters for 2010/11:-

Receipts	338,257
Allocated	7,000
Committed	35,345

Since the 31st December the following allocations have also been agreed

Great Ashby Community centre	£198,595 (the remaining £127,000 of the £325,600 total cost comes from a non- planning unilateral undertaking)
St John's Community Centre	£472
Wilbury recreation ground	£ 68,905

Following the Parish and Town Council conference and Parish Network meeting the Community Development Manager has held discussions with representatives to discuss the use of some of the monies available for capital projects. Subject to further details being submitted and clarified it is estimated that some £37,650 could be committed within the next few months. This is an ongoing situation with other parishes showing interest in pursuing projects which will be assessed against the statutory criteria set out in paragraph 3.2.

5. LEGAL IMPLICATIONS

- 5.1 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.
- 5.2 The Community Infrastructure Levy may replace in part the use of Section 106 Agreements and this may require a review of the Section 106 SPD which in turn will need to be incorporated within the Council's Local Development Scheme.

6. FINANCIAL AND RISK IMPLICATIONS

- 6.1 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 will be need to be incorporated within the programme for the Local Development Framework Team once there is greater certainty about its future and the role of CIL.
- 6.2 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.
- 6.3 The financial implications of a planning permission may be agreed but if the planning permission is not implemented the monies will not be received.
- 6.4 When negotiating monies for capital schemes there may be a delay in implementing those schemes which may result in a change of cost.

7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS

- 7.1 There are no financial resource or equalities implications arising from this report other than those associated with the implementation of Section 106 Agreements associated with developments and in particular, the increasing number of large developments that may be forthcoming as a result of the East of England Plan.

8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 8.1 The Section 106 SPD was subject to external consultation through its preparation and the implementation of this new area of work has been subject to consultation with developers and agents through the Planning and Building Control Customer Panel.

9. RECOMMENDATIONS

- 9.1 It is recommended that the Area Committee
- i) Note the contents of this Report
 - ii) A report is presented on an annual basis in the March round of meetings

10. REASONS FOR RECOMMENDATIONS

- 10.1 To ensure that there is a robust system for negotiating and managing Section 106 / Unilateral Undertakings.
- 10.2 To ensure that this is kept under constant review and that the risk associated with this activity is managed in an appropriate manner.

11. ALTERNATIVE OPTIONS CONSIDERED

- 11.1 No alternative options are considered appropriate at this stage.

12. APPENDICES

- 12.1 Appendices - as set out in paragraph 1.2

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14. BACKGROUND PAPERS

14.1 Section 106 Supplementary Planning Document and monitoring reports

www.north-herts.gov.uk/index/planning/planning_control_and_conservation/planning_obligations.htm