

TITLE OF REPORT : SECTION 106 AGREEMENT AND UNILATERAL UNDERTAKINGS

REPORT OF THE HEAD OF DEVELOPMENT AND BUILDING CONTROL

1. SUMMARY

- 1.1 This report and attachment provides Members of the Area Committee with an update on the comprehensive details of the current Section 106 agreements and Unilateral Undertakings within the wards/parishes in their area as at the 23RD June 2012 for this Council.(i.e not Hertfordshire County Council)
- 1.2 The composition of the reports has been changed and updated principally following feedback from the last report circulated to Members in February and March in 2011 and subsequent meetings with Members from the Committees. The reports on the contributions clearly show where monies have been committed to specific projects i.e. the Council's priorities and the associated timescales where possible. These include the outcomes of the greenspace strategy, leisure strategy and the project for Hitchin Town Hall.
- 1.3 As Members will be aware that where Section 106 obligations are negotiated for a particular site the resultant contributions tend to be for a specific purpose whereas the unilateral undertakings, that have been entered into and agreed use the formula set out in the Section 106 supplementary planning document.

2.0 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. These regulations set out three tests which must be satisfied in order for planning obligations to be required. These tests are also set out within The National Planning Policy Framework (NPPF) which came into force on 28 March 2012. The NPPF also supersedes previous government guidance on the implementation of S106 Obligations (Circular 05/2005). The three statutory tests are as follows:
- **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**
- 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.
- 3.4 From April 2014 the Council will seek to adopt a CIL tariff. The CIL tariff will almost completely replace the collection of financial contributions through S106 Obligations and Unilateral Undertakings from any planning permissions that are granted after the tariff is adopted. The tariff will be District wide and non negotiable for each developer. It will apply to all new residential development in the District (except affordable housing) and retail development. The tariff will be set on a per-square metre charge. The Council's LDF team are currently working on the adoption of a CIL tariff as part of the Local Development Scheme (LDF). The tariff needs to be based on what is viable not on what contributions are required to offset the impacts of any development. Whilst the associated Infrastructure Delivery Plan (IDP) will set out in broad terms the infrastructure requirements of growth across the District throughout the 20 year plan period (2011-2031) and broadly identify how CIL will fund the infrastructure needs, there are currently no statutory restrictions on how the money will be spent by the District. However, the CIL regulations do require a meaningful proportion (as yet unspecified) to go to Parish Councils and early indications suggest that the County Council as education authority will also be seeking to extract a very high proportion of the remaining CIL receipts from the District to fund the educational needs associated with the increased demand of new residential development. The Council can also use up to 5% of all CIL receipts to cover the costs of administration and distribution of the funds.
- 3.5 In terms of the transition between S106 and CIL it is worth bearing in mind the S106 pooling limits that apply to any S106 Obligation or unilateral undertaking entered into since April 2010 (when the CIL regulations were introduced). For any agreements entered into since this date if the funds are not collected and spent by April 2014 then a pooling limit of five contributions towards one piece of infrastructure will apply thereafter. This may have implications for any un spent funds collected from agreements entered into between April 2010 and April 2014, particularly small contributions, which can thereafter only be pooled to five agreements for each project.

Officers will be monitoring the implementation of this, advising Members accordingly and keeping up to date with any further changes to CIL regulations. For example, one current option being considered by the government is whether or not to allow CIL funds to be spent on subsidising affordable housing which is currently not permissible under the 2010 CIL regulations.

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 As with the last report there are two particular areas which remain pertinent and 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 continuing 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 continuing success has been the 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 and meetings have been arranged with individual Members representing their Area Committee.

- 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	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	411,544	115,291	32,888
Total	£2,447,250	£887,711	£240,191

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 is likely to replace in part the use of Section 106 Agreements and this will 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 impact 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 to each of the Area Committees.

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 Appendix 1 - 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