BALDOCK AND DISTRICT COMMITTEE 4 OCTOBER 2021

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: ANNUAL UPDATE ON S106 OBLIGATIONS FOR BALDOCK AND DISTRICT COMMITTEE

REPORT OF THE DEVELOPMENT AND CONSERVATION MANAGER

EXECUTIVE MEMBER: PLANNING AND TRANSPORT

COUNCIL PRIORITY: SERVING OUR COMMUNITIES

1. EXECUTIVE SUMMARY

1.1 This report provides Members of the Baldock and District Committee with the annual update on the details of progress made on all Section 106 Obligations within the Baldock and District Committee area during the financial year 2020/21.

1.2 The format of the information presented reflects the diminishing role of discretionary Section 106 funds, that unilateral undertakings are very rarely received and changing restrictions around the collection and distribution of funds. The information provided in the appendices reflects this. For the financial year 2020/21 there were no new agreements entered into between applicants and the Council. The tables set out **appendices 1 and 2** document all payments received in respect of existing S106 agreements. **Appendices 3 and 4** set out all current funds allocated during the last financial year. And finally **appendices 5 and 6** show current outstanding unallocated funds for Baldock Rural and Baldock.

1.3 The report also sets out the current position with respect to changing legislation, how future planning policy may reflect this and outlines progress of a revised strategy to seek wider community and ward Member involvement in identifying relevant projects at the earliest possible stage in the planning process.

2. RECOMMENDATIONS

2.1 That Members note the content of this report.

2.2 That Members agree that a report or note shall continue to be presented on an annual basis to the Area Committee, which sets out full records of all Section 106 activity for the preceding financial year and which reflects changes in legislation and practice.

2.3 That, other than where a contribution has been negotiated for a specific purpose or project, Ward Members of the area where the Section 106 Obligation or Unilateral Undertaking funding is generated and the Area Committee be consulted prior to funding being allocated away from that area. Members must note that the discretionary funds are rapidly diminishing and will not be replaced under current legislation and practice, for reasons that are set out in this report.

3. REASONS FOR RECOMMENDATIONS

3.1 To ensure that there is a robust system for negotiating and managing Section 106 Obligations and Unilateral Undertakings, that records activity for each financial year and is placed in the public domain.

3.2 To ensure that the process is kept under constant review and Member scrutiny 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 at this time for the Council to manage and maintain records of Section 106 agreements and Unilateral Undertakings.

4.2 As from December 2020 the Ministry for Housing Communities and Local Government has required each local authority in England to provide annual Infrastructure Funding Statements (IFS). Such statements provide a full annual audit of all S106 activity throughout the District and the information provided is very similar to that which is presented to each Area Committee but of course covers the whole District and cannot be differentiated into Area Committee records. The first IFS for NHDC was published in December 2020. Despite the annual publication of S106 activity across the District, Executive Members have advised that Area Committees still need to be updated on an annual basis of activity specific to their localities and this report is a continuation of that. A copy of the December 2020 IFS can be found on the following link: https://www.north-herts.gov.uk/home/planning/apply-planning-permission/planning-obligations/developer-contributions

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

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 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 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 was 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 to contribute to the Council's priorities and capital programme.

7.3 The Community Infrastructure levy (CIL) regulations came into force in April 2010 and from this time the District has had the option of adopting a locally set CIL tariff to replace the use of S106 Obligations to secure developer contributions. However, through

successive administrations the Council has up to now decided not to adopt a CIL tariff so on that basis the District continues to rely upon site-specific Section 106 legal agreements to secure developer contributions towards infrastructure provision.

7.4 In March 2021, Cabinet resolved not to pursue a Community Infrastructure Levy (CIL) for the time being. This decision recognised that the key risk in pursuing CIL at that point was that any proposals may be overtaken by a national levy approach as mooted in the Planning White Paper rendering any preparatory works and costs abortive. Moreover, implementing CIL requires an up-to-date and adopted Local Plan. A decision on adoption of the Plan is expected before the end of this year.

7.5 Given the progress and presently anticipated outcomes of the Local Plan examination, in concert with the Government's stated timetable for progressing the White Paper proposals, it was considered most appropriate to focus resources towards ensuring the Council has the right tools to appropriately guide the most significant development schemes in the District.

7.6 However this matter will be revisited once the programme of work to support the new Local Plan is substantially progressed – thereby freeing up officer resource – and / or there is greater clarity on the Government's proposals and timetable for planning reform.

7.7 Following this decision, Cabinet resolved in July 2021 that the draft Developer Contributions SPD continue to be used as a material consideration in relevant planning decisions pending adoption of the new Local Plan. Officers will determine whether any areas of the Developer Contributions SPD require additional work prior to adoption and present any revised draft or final version(s) to Cabinet for their approval.

7.8 The implementation of the changes to the Community Infrastructure Levy Regulations introduced in April 2015 with regard to the pooling limits has meant that the 'tariff' system used to calculate contributions as set out in the SPD is now principally used only as a negotiating tool associated with a specific infrastructure project, otherwise it has little or no relevance. The pooling restriction was however lifted on 1 September 2019.

7.9 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.

8. RELEVANT CONSIDERATIONS

8.1 Current legislation

8.1.1 The Community Infrastructure Levy (CIL) regulations set out three statutory 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 and repeated in the latest version of the NPPF at paragraph 57 (July 2021). The three statutory which all S106 Obligations must comply with 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**

8.1.2 The pooling limit introduced in April 2015 applied to any obligation which was completed after 6 April 2010. From 6 April 2015, in the determination of a planning application after this date the local planning authority was 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 the Council's SPD and is as follows:-

- 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.

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8.1.3 The Housing White Paper (February 2017) indicated that CIL was to be reviewed in Autumn 2017 in preparation for the Budget which was to include reform of S106 Obligations. This review was completed in September 2018 and one of its key recommendations was to abolish the 'pooling' restriction as it has the effect of preventing local planning authorities from considering the cumulative effect of developments on key services and infrastructure. The government had indicated that it would introduce legislation to remove the pooling restrictions which would represent a positive reform by providing more scope for Section 106 Obligations but also less incentive to adopt a CIL tariff as a result. The limitation was finally lifted by revisions to relevant regulations on 1 September 2019. The implication for this loosening of restrictions are being considered by officers and will be reflected in the forthcoming new Supplementary Planning Document relating to Planning Obligations. The draft document was presented to Cabinet in January 2020 and following a consultation exercise the final version was presented to Cabinet in July 2020. Cabinet endorsed the new Planning Obligations SPD but due to the postponement of the 2011-2031 Local Plan, the new SPD cannot be adopted until the new Local Plan is adopted, so any resolution to adopt the SPD will need to await the completion of the new Local Plan.

8.1.4 The recent publication of the White Paper 'Planning for the Future' may have implications for the future of S106 Obligations and locally applied CILs. The White Paper suggests that the government intends to abolish S106 Obligations insofar as they relate to financial contributions towards services and remove locally based CIL tariffs to be replaced by centrally set CIL rates that would apply across England, removing any local weighting or discretion over CIL levies.

8.2. **Implications for the collecting of infrastructure contributions**

8.2.1 The pooling restrictions related to the determination of planning applications after 6 April 2015 but it did 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.

8.2.2 I can confirm that 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 have been agreed using the 'tariff system' within the SPD.

8.2.3 As the agreement to contributions now relate to specific infrastructure projects it is necessary for the Local Planning Authority to be a party to any agreement so the present and future use of Unilateral Undertakings will be limited and only used in exceptional circumstances.

8.2.4 Negotiations to seek contributions in accordance with the legislation and in particular the tests 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.

8.2.5 Over the last few years, since the changes to the regulations Officers have progressed a limited number of agreements for major developments with the emphasis being the justification in order that the authority are not open to challenge. The agreed heads of terms for any application are set out in reports to the Planning Control Committee or delegated file notes associated with each planning application.

8.2.6 Since 2014 and reflected in the latest version of the National Planning Practice Guidance (NPPG) when implementing S106 Obligations no financial contributions can be sought for developments of 10 dwellings or less but in certain designated rural areas the Council may apply a lower threshold of 5 dwellings below which no affordable housing or financial contributions should be sought.

8.3 **Use of existing funds**

8.3.1 The three tests set out in paragraph 8.1.1 equally apply when allocating the monies received for the defined purpose. The applicant who has entered into a Section 106 Obligation 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. Moreover, most Section 106 Obligations contain a 10 year pay back clause which the Council must meet if it has been unable to spend / allocate the funds to the identified project.

8.3.2 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.

8.3.3 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 recent changes in legislation.

8.3.4 To summarise the overall strategy for the spending of this money is principally by way of the Council's adopted capital projects and strategies e.g. the Greenspace Management Strategy which provides the background and justification for projects.

8.3.5 For infrastructure projects in outside of the control of this Council, where a commitment is shown and there is a justifiable need to improve the infrastructure, a project plan is required together with an order or receipt, before the contributions would be payable. Finally, other projects have been identified and come forward through local Councillors or the Community Development Officers.

8.4 SECTION 106 ACTIVITY FOR BALDOCK AND DISTRICT 2020/21

8.4.1 For this year I have set out relevant information in the appendices. As there were no new agreements for the Baldock and District Area there is no table for this category. The remaining tables set out Payments received for Ashwell and Baldock, funds allocated for Ashwell and Baldock and then remaining funds for Baldock Rural Parishes and Baldock.

8.4.2 As can be seen from these tables, as a result of CIL regulation restrictions, the number of new S106 Obligations entered into in the last financial year is very low. Also the discretionary pot and available funds where some discretion is allowed as to which projects can be funded is diminishing and will not be replaced. As a result of these realities and without an adopted CIL tariff the Council must look at other strategies to maximise the return of S106 funding for the benefit of our communities.

8.4.7 NEXT STEPS

8.4.8 To maximise future returns from S106 Obligations focus must turn to identifying relevant projects before the grant of planning permission and it is this area where work is on-going to improve the level of Member and community involvement

8.4.9 Officers have established with relevant Executive Members a more effective ward councillor consultation process for each qualifying planning application in their areas (i.e any scheme of over 10 dwellings). The consultation process enables Councillors to remain neutral on the outcome of the planning application (importantly not fettering their discretion if they sit on the Planning Control Committee) whilst at the same time using their local knowledge to assist officers in identifying local projects which may benefit from S106 funds.

8.4.10 For Parished areas and areas with Town Council representation the process involves greater involvement with the Parish and Town Councils, again striking a balance between allowing Parish and Town Council's to express their opinion on the merits of an planning application proposal but also seeking their input both as identifiers of potential projects and the deliverers of those projects in many instances.

8.4.11 For the remaining but ever diminishing discretionary funds Community Development Officers will continue to work with the Development and Conservation Manager and S106 Monitoring and Compliance Officer to distribute these funds to relevant organisations who are able to deliver key infrastructure for the benefit of the wider community.

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 requirements of the Community Infrastructure Levy Regulations and 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. ENVIRONMENTAL IMPLICATIONS

14.1 There are no known Environmental Implications associated with this report.

15 HUMAN RESOURCE IMPLICATIONS

15.1 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.

16. APPENDICES

16.1 **Appendix 1** – Ashwell Parish – payments received 2020/21
Appendix 2 – Baldock – payments received 2020/21
Appendix 3 – Ashwell – allocations 2020/21
Appendix 4 – Baldock – allocations 2020/21
Appendix 5 – Baldock Rural – remaining funds
Appendix 6 – Baldock – remaining funds

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18. BACKGROUND PAPERS

18.1 Section 106 Supplementary Planning Document adopted November 2006 and monitoring report.