

**HITCHIN COMMITTEE  
6 MARCH 2018**

**\*PART 1 – PUBLIC DOCUMENT**

**AGENDA ITEM No.**

**9**

**TITLE OF REPORT: SECTION 106 AND UNILATERAL UNDERTAKINGS**

REPORT OF THE DEVELOPMENT AND CONSERVATION MANAGER

**1. RECOMMENDATIONS**

- 1.1 That the contents of the report be noted.
- 1.2 That a report shall continue to be presented on an annual basis to each of the Area Committees.
- 1.3 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.

**2. REASONS FOR RECOMMENDATIONS**

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

**3. SUMMARY**

- 3.1 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 20th February 2018. It also provides an update on the relevant legislation.
- 3.2 As with previous years, this does not include the Hertfordshire County Council contributions over which this Council does not have any control.
- 3.3 The appendix 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.

- 3.4 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.

#### **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 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 and contribute to the Council's priorities and capital programme.
- 7.3 The Community Infrastructure levy (CIL) regulations came into force in April 2010. It is unlikely that the Council will adopt a Community Infrastructure Charging Schedule until after 2018 following the adoption of a Local Plan. A decision whether to adopt a CIL charging schedule will also depend on regulations at that time, bearing in mind that the government has revised CIL regulations every year since their inception in 2010.
- 7.4 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 or other wise it has little or no relevance.
- 7.5 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. ISSUES**

### **8.1 Current legislation**

8.1.1 The Community Infrastructure Levy (CIL) 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 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**

8.1.2 The pooling limit introduced in April 2015 applies 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 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 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.

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. The White Paper however did not specify what these reforms might be or whether the limitations of the 'pooling restrictions' will be reviewed. This reform was not part of the recent Budget and whilst there is indication that some reforms are in the pipeline I have no further updates from my March 2017 Area Committee report on reforms to CIL regulations.

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

8.2.1 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 6<sup>th</sup> April 2015 provided the obligations were before this date and they can be allocated as at present.

8.2.2 I would 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 and needs to have regard to pooling limits 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. Given the direction from some appeal Inspectors, without a proven justification a decision is made to determine applications either without or with a reduced level of contribution.

8.2.5 Over the last few months, 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 the report to the Planning Control Committee.

8.2.6 Members may recall that last year I advised at the Area Committee meeting that the government had updated and modified the Planning Practice Guidance as of the 28<sup>th</sup> November 2014 and it stated that no contributions should be sought from developments of 10 or less units and in certain designated rural areas the Council may apply a lower threshold of 5 units or less where no affordable housing or tariffs should be sought. For 6-10 units the contributions are to be sought in the form of commuted cash payments.

### 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 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. Moreover, most S106 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.

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 recent changes in legislation.

8.3.2 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.

8.3.3 For infrastructure projects in Royston and the rural parishes, 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 Income and Expenditure

8.4.1 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
	£	£	£
2001/02	17,729	2,000	192
2002/03	224,542	181,341	1,166
2003/04	5,000	0	3,076
2004/05	364,461	49,166	13,107
2005/06	76,900	53,919	20,957
2006/07	199,278	13,000	26,921
2007/08	164,884	22,650	42,253
2008/09	313,397	78,824	46,753
2009/10	264,798	103,544	29,839
2010/11	405,478	267,976	23,039
2011/12	477,000	59,936	32,888
2012/13	449,650	108,474	42,303
2013/14	570,022	486,347	33,027
2014/15	1,289,621	228,686	35,017
2015/16	223,166	425,862	39,704
2016/17	137,920	490,475	33,100
2017/18 to date	434,106	346,750	tbc
	<b>5,617,951</b>	<b>2,918,950</b>	<b>423,341</b>

- 8.4.2 The sites that have benefited from the funding during the last financial year include:-

Baldock – Clothall Road Allotment Enhancement and Expansion  
£15,091.36

Various District - Waste & Recycling  
£13,164.04

Knebworth – Lytton Fields Recreation Ground enhancement  
£27,638.62

Transition Town Letchworth Cycle Initiative  
£101,542.12

St Ippolyts - External gym/exercise equipment at Recreation Ground  
£2098.31

- 8.4.3 The spend on the Council's capital projects will not be finalised until year end.

- 8.4.4 I would also confirm that no contributions received have been required to be returned this financial year. As can be seen from the attached appendix this is closely monitored through this working document.

## **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 1<sup>st</sup> October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5<sup>th</sup> 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 Section 106 and Unilateral Undertakings is currently undertaken using existing staff resources.

## **15. APPENDICES**

- 15.1 Appendix 1 - 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.