

Committee(s): Audit & Scrutiny Committee	Date: 7 th March 2023
Subject: S106 Financial Obligations	Wards Affected: All
Report of: Steve Summers, Strategic Director	Public
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Summary

This report provides a summary and detail of the current financial contributions the Council has secured through section 106 agreements from new developments for affordable housing and public open space works. In addition, the report sets out the proposed future plans for s106 Agreement processes and procedures.

Recommendation(s)

Members are asked to:

- R1. To note the current s106 financial contributions as attached at Appendices A and B and proposed future plans for processes and procedures as set out in the report.**

Main Report

Introduction and Background

1. At the Audit & Scrutiny Committee on the 24th January 2023 the Chair agreed that a report on the current Financial Contributions from s106 Agreements will be made to this committee. (Min 324 refers.)

Section 106 Obligations

2. Under section 106 (s106) of the Town and Country Planning Act 1990 a Local Planning Authority (LPA) can seek obligations when it is considered that a development will have negative impacts that cannot be dealt with through conditions in the planning permission.

3. Set out below is the relevant regulation in respect of S106 obligations and what they can be used for from the CIL regulations 2010 - Regulation 122.

(1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.

(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development.

(3) In this regulation

“planning obligation” means a planning obligation under section 106 of TCPA 1990 and includes a proposed planning obligation; and

“relevant determination” means a determination made on or after 6th April 2010.

(a) under section 70, 76A or 77 of TCPA 1990(1) of an application for planning permission which is not an application to which section 73 of TCPA 1990 applies; or

(b) under section 79 of TCPA 1990(2) of an appeal where the application which gives rise to the appeal is not one to which section 73 of TCPA 1990 applies.

Internal Audit Report

4. At the Audit & Scrutiny Committee on the 25th July 2022 the committee received an Internal audit progress report 2021-22 which included an audit report on the Council’s process and financial contributions on s106 Agreements (covering Affordable Housing and other areas). (Min 106 refers).
5. The audit identified two main areas where the control framework needed to be strengthened which led to the following recommendations:
 - a) The Council should identify an appropriate function to take central ownership of s106 agreements. This team should then lead on all aspects of s106 arrangements, including negotiating the agreements with developers and monitoring them from planning consent through to delivery.
 - b) The function should ensure that there are sufficient mechanisms in place to liaise with developers, to monitor progress of developments. Progress meetings with the developers should be implemented, taking account of the size of developments and anticipated speed of progress.

- c) The function should also liaise with Finance to ensure invoices are issued accurately and in a timely manner.
 - d) A central s106 agreement register/tracker should be put into place where all aspects of the s106 agreements can be recorded and monitored, including progress against trigger points and the status of any payments. This tracker should be owned by the responsible function recommended above and should be reported to each of the teams involved in the management of s106 agreements (Planning, Housing, Finance and Legal) on a regular basis (quarterly as a minimum) with each of the teams being required to provide updates as required.
6. Management responses were provided by the then Strategic Director, Housing and Regeneration, who advised that for recommendations a), b) and c) a new structure for strategic housing is at design stage and the structure includes a new post of Policy and Enabling Officer which will have multifunctional responsibility for Policy, Registered Provider and major application relations and related forums.
 7. In terms of recommendation d) it was advised that a new tracker will be developed and held and co-ordinated within the strategic housing function. The implementation date for all the above recommendations was set at January 2023.
 8. Members at the meeting asked for the then Strategic Director, Housing and Regeneration to attend the next meeting on the 26th September 2022 to provide further clarification on matters arising from the report including the recruitment of the Policy & Enabling Officer post. Unfortunately, due to tragic and unforeseen circumstances this was not possible.
 9. In terms of actions moving forwards the Council's then Corporate Director (Finance & Resources) and Section 151 Officer as an interim measure arranged a S106 Officer Panel of all the appropriate services which met on the 30th September 2022.
 10. Following that Officer leaving the Council further interim arrangements have been put into place with the Strategic Director taking the lead with appropriate Officers from housing, open spaces and finance being responsible for monitoring contributions subject to a further review. A further meeting of appropriate Officers was held on the 30th January 2023.
 11. Subsequent to this interim measure discussions have been held with Senior Officers about the best approach for moving forwards to a more permanent solution and have concluded that a review of all S106 processes and procedures

will be undertaken. Such a review to be completed within the first quarter of the municipal year.

12. When this review is complete a report will be made to a future Audit and Scrutiny Committee with its findings and recommendations.

Detail of S106 contributions

13. To assist members attached as appendices A and B are the details of the current s106 financial contributions as at the 20th February 2023.

Affordable Housing

14. The Housing s106 contributions, as at 20th February 2023 are set out within Appendix A. There are two things to note firstly that the current contributions will be committed to the Council's Strategic Housing Development Programme (SHDP), the details of which are set out below and update reports are made to the Housing Committee.
15. There is one s106 Housing contribution as set in Appendix A, The Surgery and Landings, Outings Lane, Doddinghurst that shows the repayment date of 26th February 2023. This sum has been committed to the SHDP.

Strategic Housing Development Programme

16. Brentwood Borough Council (BBC) is committed to growing its managed portfolio of homes and new home supply through its Strategic Housing Development Plan. The Council's Housing Strategy 2021-2026 approved by Environment, Enforcement and Housing Committee on 16th March 2021 commits the Council to "use the resources of the Housing Revenue Account (HRA) land and business plan to deliver new affordable housing, as well as using General Fund land to support the provision of market housing and affordable housing."
17. When directly developing new homes, the aim remains to provide a range of high-quality and energy efficient buildings to meet the needs and circumstances of BBC residents both now and in the future. This strategy addresses growth through new homes directly developed by the Council over a 7-year programme, commencing 2021, and sets out what the Council expects to build, for whom and how it will ensure delivery of high-quality affordable homes in a cost-effective way. This strategy will evolve as new sites emerge and site investigation is delivered. Viability assumptions will be formally reviewed on an annual basis when budgets are set.

18. The Council's primary development focus under this strategy will be the provision of new homes for letting at affordable rent or for low-cost home ownership. Where possible these will be subsidised through Government Grant and Right to Buy receipts and where appropriate new homes will also be delivered through S106 Planning Agreements. Homes England Grant funding, s106 contributions and other subsidies available from time to time, are essential to maintaining increased capacity in future programmes.

19. The current pipeline for those sites in delivery is set out in the table below.

Strategic Housing Delivery Plan – Mastersheet New Homes Pipeline				
Technical Delivery Tracker				
Programme	Site Address	Total	Stage & Note	Planning Status
SHDP – Regeneration Sites	Brookfield Close/Courage Court 20/01912/FUL	62	Post Planning Technical	Approved
	Harewood Regeneration 20/01336/FUL	40	Post Planning Technical	Approved
	St Francis Way 22/00572/BBC	4	Planning due March 2023	Pending
	Willingale Close 21/02117/FUL	3	Post Planning Stage	Approved
	17 Crescent Road (Conversion)	2	Completed	Completed
Pipeline Total		111		

Public Open Spaces

20. The Public Open Space s106 contributions as at 20th February 2023 are set out within Appendix B. These contributions tend to be split between site specific works and maintenance contributions for sites. There is one Public Open Spaces s106 contribution, 114-122 Kings Road, Brentwood that has a repayment date of 19th March 2023. This sum has been committed to the King Georges Playing Field project.

Reasons for Recommendation

21. To note the s106 Agreements current financial contributions and future plans for improving processes and procedures.

Consultation

22. None.

References to Corporate Plan

23. Good financial management, risk management and internal control underpin all priorities within the Corporate Plan.

Implications

Financial Implications

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24. The report is for noting current contributions and future plans and there are no financial implications arising from these. The Council will wish to ensure that all contributions are used for the purposes in the agreements with developers whilst contributing to corporate priorities and spent within any deadlines set within the agreements.

Legal Implications

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25. Legal references to S106 Financial Obligations are set out in the report. There are no legal implications arising from this report.

Economic Implications

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26. There are no economic implications arising from this report.

Background Papers

27. None

Appendices to this report

- Appendix A: Affordable Housing s106 contributions.
- Appendix B: Public Open Space s196 contributions.