



AUDIT & SCRUTINY COMMITTEE

14TH November 2023

REPORT TITLE:	S106 Financial Obligations
REPORT OF:	Steve Summers – Strategic Director
REPORT IS FOR:	Decision

REPORT 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.

RECOMMENDATIONS

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.**

SUPPORT ING INFORMATION

1.0 BACKGROUND INFORMATION

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 the 7th March 2023 committee. (Min 324 refers.)

A subsequent detailed report was made to the 7th March 2023 A&S Committee where members noted the report and agreed a regular report would be made to future committees. (Min 374 refers.). The first report was made to the committee on the 11th July 2023. (Min 70 refers.).

Section 106 Obligations

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.

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.

Currently interim arrangements are in 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.

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. It was agreed that this review will take place in September 2023. However due to other priorities this review has not been able to be undertaken.

Senior Officers have discussed this matter and due to the recent independent Planning Service Review, this will be dealt with through the Planning Improvement Plan. This will also be assisted by the recent approval by the Council of the Community Infrastructure Levy (CIL) which will include software to monitor both CIL and S106 obligations and therefore there is a necessity for any review to be aligned aligned to this implementation. When this review is complete a report will be made to a future Audit and Scrutiny Committee with its findings and recommendations.

Until the review is completed the current interim arrangements will continue.

Detail of S106 contributions

To assist members attached as appendices A and B are the details of the current s106 financial contributions.

Affordable Housing

The Housing s106 contributions, as of 2023 are set out within Appendix A. The current contributions will be committed to the Council's Strategic Housing Development Programme (SHDP) and update reports are made to the Housing Committee.

Public Open Spaces

The Public Open Space s106 contributions are set out within Appendix B. These contributions tend to be split between site specific works and maintenance contributions for sites.

References to the Corporate Plan

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

5.0 FINANCIAL IMPLICATIONS

Name & Title: Tim Willis, Director – Resources & Section 151 Officer
Tel & Email: 01277 312500 / tim.willis@brentwood.rochford.gov.uk

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.

6.0 LEGAL IMPLICATIONS

Name & Title: Claire Mayhew – Joint Acting Director of People and Governance & Monitoring Officer

Tel & Email 01277 312741 / claire.mayhew@brentwood.gov.uk

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

7.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

None at this stage.

8.0 RELEVANT RISKS

S106 monies not being spent in agreed timeframes and not delivering Corporate Priorities.

9.0 ENGAGEMENT/CONSULTATION

None at this stage.

10.0 ECONOMIC IMPLICATIONS

Name & Title: Phil Drane, Corporate Director of Place

Tel/Email: 01277 312500/ philip.drane@brentwood.gov.uk

There are no economic implications arising from this report.

11.0 EQUALITY AND DIVERSITY IMPLICATIONS

Name & Title: Kim Anderson, Corporate Manager – Communities, Leisure & Health

Tel & Email: 01277 312500/kim.anderson@brentwood.gov.uk

The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- c) Foster good relations between people who share a protected characteristic and those who do not, including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

The proposals in this report will not have a disproportionate adverse impact on anybody with a protected characteristic.

REPORT AUTHOR: **Name:** Steve Summers
 Title: Strategic Director
 Phone: 01277312500
 Email: steve.summers@brentwood.rochford.gov.uk

APPENDICES

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

BACKGROUND PAPERS

None

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Audit & Scrutiny Committee	7 th March 2023
Audit & Scrutiny Committee	11 th July 2023