

**14 JANUARY 2020**

**Planning and Section 106 Report**

**Ward(s):** All

**Portfolios:** Councillor A. Andrew – Deputy Leader of the Council and  
Regeneration  
Councillor C. Towe – Education and Skills  
Councillor O. Butler - Clean and Green

**1. Aim**

- 1.1 S106 agreements are legal agreements secured in accordance with the Town & Country Planning Act 1990 and associated legislation to secure contributions from developers to offset the impact that their scheme may have on a local community. These contributions can ensure essential infrastructure is provided by developers at the time that their development is brought forward rather than place a reliance on the Local Authority to fund the improvements or to leave the new occupier without the necessary facilities when they move in.
- 1.2 This report seeks to deliver the following information:
- i) To advise Members of the out turn information relating to completed Planning Obligations (section 106 agreements/unilateral undertakings/ supplemental deeds of variation) that have been negotiated with planning permissions.
  - ii) To show a breakdown of the number of affordable houses negotiated and the level of contributions collected and due to be collected subject to the commencement of developments related to education, open space, health and other requirements.

**2. Recommendations**

That the Committee notes the report.

**3. Report detail – know**

- 3.1 Updates on the completion and processing of S106 agreements are normally provided to the Planning Committee. The latest report was presented to the Committee on the 28<sup>th</sup> November and covered the period from the start of Q4 in 2017/18 to end Q2 2019/20. It provides a summary of all Planning Obligations (Section 106 Agreements/ Unilateral Undertakings/ Supplemental Deeds) that have been secured as part of the determination of planning applications in accordance with adopted policies of the Council. These details are set out in the attached appendices and Members will note that the information has been broken down into the various types of contributions.

- 3.2 Section 106 of the Town & Country Planning Act 1990 enables developers to submit unilateral undertakings, or local authorities to reach agreements with developers, for certain works to be carried out in association with a development. The Community Infrastructure Levy Regulations 2010 (Regulation 122) sets out a statutory requirement that Planning Obligations must be necessary to make the proposed development acceptable in planning terms; relevant to planning; and directly related in scale and kind to the proposed development. They must also be reasonable in all other respects.
- 3.3 The Council is required to comply with the National Planning Policy Framework (NPPF) 2019, Community Infrastructure Levy Regulations 2010 (as amended), policy DEL1 of the Black Country Core Strategy (BCCS) and policy GP3 of the Unitary Development Plan (UDP) when seeking developer contributions. The NPPF encourages Local Planning Authorities to be flexible when seeking Planning Obligations to prevent development being stalled, an approach that Walsall Council's Development Management service has already been taking over the last few years to facilitate development in the Borough and will continue to do so where necessary.
- 3.4 The Government views planning obligations as useful instruments where they are necessary to a proposed development to overcome obstacles that would otherwise result in the refusal of planning permission. They must not be used to effectively buy planning permissions.
- 3.5 Under the Community Infrastructure Regulations the Government introduced restrictions on the number of Section 106 contributions that could be pooled to fund an individual *"infrastructure project or type of infrastructure"* to no more than five contributions.
- 3.6 With effect from 1 September 2019 the following changes have been introduced:
- (i) Removal of 'pooling' restrictions  
 With the removal of this requirement, local planning authorities will again be permitted to collect more than five contributions to fund the same infrastructure, by using s.106 planning agreements.  
 It is important to note that the tests in Regulation 122 will continue to apply, and so the s.106 agreement will still need to be (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.
- (ii) Limits on Monitoring Fees  
 These are now being given a statutory footing and so they will now be subject to a test of 'reasonableness' relevant to the scale and type of development.  
 Further, any fees must not *"exceed the authority's estimate of its costs of monitoring the development over the lifetime of the planning obligations which relate to that development"*.
- (ii) Surcharge for failure to serve a Commencement Notice replaces denial of exemption  
 This change relates to the processing of notices for contributions secured under the community infrastructure regulations. As Walsall currently does not have a

charging schedule in place under the CIL regulations, this change has a nil effect on the Council.

- 3.7 It can be noted that out of nearly £3.0m received in contributions, the majority of these contributions have now been expended. The majority of the remaining balance comprises of a series of contributions for development that has either recently been approved or the target dates for expenditure are yet to be reached.
- 3.8 The recent audit of agreements has though highlighted a small number of applications where a target date has now been reached. These agreements are being reviewed and further details will be provided in a future update.
- 3.9 Summary details of all expenditure is provided below.

Service Area	s106 Contribution	Spent to Date	Committed / Allocated	Balance Remaining
Affordable Housing	£1,152,913.68	£0.00	£254,801.06	£898,112.62
Children's Services	£361,151.00	£97,576.00	£263,575.00	£0.00
Clean & Green	£1,475,629.14	£787,636.71	£479,716.97	£208,275.46
TOTAL	£2,989,693.82	£885,212.71	£998,093.03	£1,106,388.08

- 3.10 The latest expenditure of received open space contributions is provided in the attached table.

#### **4. Financial information**

- 4.1 The briefing of members as to the outcome of individual Planning Obligations together with the total sums collected within the year will help inform and assure members of the accounting probity and monitoring that is being followed by officers.

#### **5. Reducing Inequalities**

- 5.1 Through the careful use of Section 106 monies and the policies which lead to contributions being made, the Council can seek to ensure that new development can support individuals, families and communities and reduce health inequalities primarily through the delivery of affordable housing, new education provision and new open space facilities for children and adults. These outcomes accord with the aims of the Marmot Review.

#### **6. Decide**

- 6.1 As development viability is sometimes constrained, it is not always possible for a scheme to meet all of the obligation expectations as set out in policy. If the developer can evidence the impact the obligations may have on the scheme through an open book viability review, reduced contributions may be deemed acceptable. This approach of securing partial contribution to obligations is one that has been endorsed through a series of planning appeal decisions over the past ten years.

- 6.2 At present, officers will seek to prioritise contributions that make a scheme safe e.g. the provision of off-site highway improvements like pedestrian crossings or flood alleviation schemes. Thereafter, a balance is drawn between affordable housing provision, monies for open space or education provision. The decision on which obligation takes priority is made on a case by case basis with reference to the character of the surrounding area for example if the site is located in the town centre, emphasis will be placed on trying to secure new play provision or enhance existing facilities to address existing shortfalls.
- 6.3 Moving forward, Committee may wish to examine how contributions are allocated to each policy area and make a decision on whether to set out clear guidelines on how each obligation is prioritised. If undertaken, this work will be of assistance to developers when they are seeking to work up their proposals so they can try to they meet the Councils expectations as effectively as possible for example invest more in providing more affordable housing or education provision to meet known needs in the locality of the site.

## **7. Respond**

- 7.1 On a case by case basis, officers currently engage with ward members about new developments to update on whether there is the potential for obligations to be secured and if so, liaise on how such money should be used. This prioritisation process is based on a combination of established policies and also the local knowledge and needs of the surrounding community which members in particular will be familiar with.

## **8. Review**

- 8.1 It is intended that quarterly reports continue to be provided to Planning Committee to update members on what monies have been secured, how that has been invested to date and what monies, if any, remain outstanding.
- 8.2 Through this process, officers, members, the public and developers should be able to understand the value of the S106 process and how any contributions have been used to offset the impact of new developments.

## **Background papers**

Section 106 Report to Planning Committee of 28<sup>th</sup> November 2019

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Application No.	Site Address	Service Area	Description	Expiry Date	s'106 Contribution	Spent to Date	Committed / Allocated	Balance Remaining
05/1566/OL/W/3	The Junction, Willenhall	Affordable Housing	Within Walsall. Within the locality	No expiry date	£65,000	£0		£65,000
07/0151/FL/W/3	Silver Street, Brownhills	Affordable Housing	Within Walsall. Within the locality	30/04/2019	£58,294	£0	£58,294	£0
11/0516/FL & 13/0564/FL	Victoria Avenue, Bloxwich	Affordable Housing	Within Walsall. Within the locality	No expiry date	£246,250	£0		£246,250
12/1486/FL	Former St Margaret's Hospital	Affordable Housing	Within Walsall. Within the locality	No expiry date	£196,508	£0	£196,508	£0
15/1268	41 Leighswood Road	Affordable Housing	Within Walsall. Within the locality	30/01/2025	£146,075	£0		£146,075
16/1669	Rushall Mews	Affordable Housing	Within Walsall. Within the locality	No expiry date	£224,088	£0		£224,088
17/0195	Adj 16 and car park R/O 16-22 High Street Aldridge	Affordable Housing	Within Walsall. Within the locality	21/06/2022	£216,700			£216,700
05/2039/FL/E4	Binary House, Boatmans Lane, Walsall	Children's Services	Allocated towards the cost to relocate the Pupil Referral Service Rushall to Pinfold, Bloxwich.	None.	£45,046	£0	£45,046	£0
06/0344/FL/E3	2 Copple Road, Walsall, WS9 9BL	Children's Services	Allocated towards the cost to relocate the Pupil Referral Service Rushall to Pinfold, Bloxwich.	None.	£29,021	£0	£29,021	£0
06/0641/FL/E9	The Stag, Field Road	Children's Services	Allocated towards the cost to relocate the Pupil Referral Service Rushall to Pinfold, Bloxwich.	None.	£36,257	£0	£36,257	£0
06/2209/OL/E9	Shire Oak Reservoir, Chester Road, Walsall	Children's Services	Allocated towards the cost of the school expansion planned for Oakwood Special School	None.	£108,350	£0	£108,350	£0
07/2731/FL/E11	Land to the rear of 201-217 Lichfield road Rushall	Children's Services	Allocated towards the cost to relocate the Pupil Referral Service Rushall to Pinfold, Bloxwich.	17/12/2025	£44,901	£0	£44,901	£0
10/1593/FL	Watermead Grange, Walsall	Children's Services	£32,525 given to Brownhills School to be used as a contribution towards planned capital maintenance works for the final phase of a rewire at the school.	28/12/2018	£97,576	£97,576	£0	£0
02/1494/FL/E2	Field Road(Industrial Est) Bloxwich	Clean & Green	£32,526 given to Elmwood School to fund improvements identified within the school.	2014/15	£5,516	£827		£4,689
02/1983/FL/W/3	Providence Close/Leamore Lane	Clean & Green	See attached last Open Space Update Table (2013) provided to me.	2016/17	£20,874	£19,631		£1,243
03/1308/FL/E4	Stackhouse Drive	Clean & Green	Towards provision of open space.	2013/14	£2,758	£899		£2,059
03/1853/FL/E6	Hawbush Rd former Walcome Stranger	Clean & Green	Towards provision of off site recreational facilities.	2013/14	£3,549	£2,550		£999
04/0845/OL/W/3	Former Derby Arms, Raleigh Street	Clean & Green	Towards improvement of open space facilities in the wider area.	2012/13	£2,000	£1,160		£840
06/2209/OL/E9	Shire Oak Reservoir	Clean & Green	If so it should be used towards provision of urban open space.	2018/19	£61,070	£39,761	£21,309	£0
07/2731/FL/E11	Lichfield Road Rushall	Clean & Green	open space provision and mnce in the wider area of the site	2020/21	£56,559	£30,730	£25,829	£0
09/0215/FL	Leve Lane Willenhall	Clean & Green	Provision of Open space within the wider area of the site	27/06/2024	£16,383	£9,321	£7,061	£0
10/1993/FL	Watermead Grange	Clean & Green	Towards open space.	29/11/2018	£103,119	£100,801		£2,318
10/1706/FL	Redhouse School	Clean & Green	Towards compensatory sports pitch provision	13/11/2020	£78,800	£11,854		£66,946
11/1364/FL	Victoria Avenue	Clean & Green	If so it should be used towards open space within wider area of the site.	16/04/2018	£82,316	£77,444		£4,873
12/0736/FL	Former St Johns School	Clean & Green	Towards open space provision within vicinity of wider area of site.	03/09/2017	£185,753	£176,661		£9,092
13/1056/FL	Former Jebrohn works	Clean & Green	Towards providing, servicing and maintaining public open space within vicinity of development.	10/06/2021	£29,745	£7,068		£22,677
13/1529/FL	Park Tavern	Clean & Green	Towards urban open space. in particular Kings Hill Park	2019/20	£49,250	£47,513	£1,737	£0
14/1345/FL	Former Coalpool Clinic	Clean & Green	open space contribution	2022/23	£8,097	£26,097		£3,399
15/0236/FL	Clothier Street School (Harry Perks Street)	Clean & Green	open space provision and mnce in the wider area of the site	2020/21	£4,515	£4,515		£0
15/1268	Leighswood Road	Clean & Green	open space willenhall area	31/01/2025	£72,356	£45,535	£26,821	£0
15/1606	Bulls Head Bloxwich	Clean & Green	Leighswood and the croft open spaces	22/03/2023	£58,138	£18,619	£39,519	£0
15/1683	Land at Wilkes Avenue Bentley	Clean & Green	KGV maintenance		£3,446	£1,417	£3,029	£0
15/1744	Park Lane/Wood Street	Clean & Green	Provision of Open space improvements and works within the Poplar Avenue, Old Hall pool and Wilkes avenue open spaces	2021/22	£53,243	£19,986	£33,257	£0
16/1233	Daw End School Rushall	Clean & Green	Provision of Open space improvements and works within the Park Lane/Cook Street open space	2021/22	£60,752	£21,113	£39,639	£0
		Clean & Green	open space provision and mnce in the wider area of the site	2022/23	£106,262	£51,121		£55,141
16/1241	Teddesley Street	Clean & Green	Urban Open Space contribution towards the maintenance or enhancement of habitats and provision of public access, public information boards and measures to combat anti-social behaviour at the urban open spaces at Mill Lane Nature Reserve and the area of land to the east of Mill Lane and north of Borneo Street Walsall and for no other purpose whatsoever.	25/09/2022	£55,239	£8,286	£46,953	£0
16/1669	Rushall Mews - Open space	Clean & Green	improvements at Carbridge Lane allotments, Radleys Play area and Park Lime Pits	2023/24	£72,841	£26,782	£46,059	£0
16/1689	Rushall Mews - free planting	Clean & Green	Tree planting at the skate park	2023/24	£11,820	£2,108	£9,712	£0
17/0443	100 and 101 Union Street WV13 1PA	Clean & Green	for use at Fibbersley LNR and Willenhall Park	2024/25	£7,509	£1,126	£3,382	£0
18/0032	Land at Heathfield Lane West, Darlaston	Clean & Green	Various works at Darlaston recreation centre, George Rose Park, Kings Hill Park, Victoria Park and Walsall Canal	31/01/2024	£192,739	£28,911	£163,828	£0
BO64477P	Windrush Close (was Brewers Drive)	Clean & Green	Maintenance of open space.	2017/18	£40,000	£6,000		£34,000
					<b>£2,989,694</b>	<b>£885,213</b>	<b>£998,093</b>	<b>£1,106,388</b>