



# **Walsall Council**

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*Planning Committee*

06<sup>th</sup> August 2015

## **REPORT OF THE HEAD OF PLANNING AND BUILDING CONTROL**

### **Section 106 Report – Quarter 1 of 2015/16**

#### **1. PURPOSE OF REPORT**

- 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 that were granted between 1<sup>st</sup> April 2015 to 30<sup>th</sup> June 2015.
- ii) To show a break down 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**

- i) That the Committee notes the report.

#### **3. FINANCIAL IMPLICATIONS**

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.

#### **4. POLICY IMPLICATIONS**

Within Council policy. All planning applications relate to local and national planning policy.

#### **5. LEGAL IMPLICATIONS**

Planning Obligations are primarily negotiated as part of the determination of planning applications in accordance with the National Planning Policy Framework 2012 (NPPF), Community Infrastructure Levy Regulations 2010 (Regulation 122),

policy DEL1 of the Black Country Core Strategy, policy GP3 of Walsall Unitary Development Plan and adopted Supplementary Planning Documents.

6. **EQUALITY**

No issues arising from the report. The Development Management services have completed Equality Impact Assessments and are accredited to be in compliance.

7. **ENVIRONMENTAL IMPACT**

The impacts of planning decisions on the environment are considered as part of the consideration of the planning applications in accordance with local and national planning policies.

8. **WARD(S) AFFECTED**

All.

9. **CONSULTEES**

Legal Services

10. **CONTACT OFFICER**

David Elsworthy - Extension: 4722  
Michael Brereton – Extension 8021

11. **BACKGROUND PAPERS**

All published.

David Elsworthy, Head of Planning and Building Control

1. This is the first in a series of quarterly reports covering financial year 2015/16. The report will subsequently be made available to all members for information. 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 policy 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.
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. The Council is required to comply with the National Planning Policy Framework (NPPF), 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.
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.
5. The Designing Walsall and Natural Environment SPD's were revised and adopted by the Council on 24<sup>th</sup> July 2013. The previous requirement for Section 106 contributions towards Public Art on the basis of specified thresholds has been revised in the latest Designing Walsall SPD. Contributions are now only required towards Public Art and Public Realm improvements within specified locations in the borough 'where appropriate'. The draft revised Affordable Housing SPD was published for public consultation between 16<sup>th</sup> September and 28<sup>th</sup> October 2013 and is currently being reviewed and the Urban Open Space SPD is yet to be reviewed. Until the Affordable Housing and Urban Open Space SPDs have been adopted in their revised state, they will continue to be applied in their current form as Council policy.
6. The Education and Healthcare SPDs have been revoked by the Secretary of State (SOS) in February 2012 because they are out-of-date and can no longer be applied in their current form. Despite the revocation of the Education and Healthcare SPD's, contributions can still be sought for these service areas providing the Planning Obligations being sought:
  - a) Are consistent with "saved" Unitary Development Plan policy and/ or Black Country Core Strategy policy;

- b) Meet the three legal “tests” set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010;
  - c) Meet the “viability” test, which means that all or part of an obligation may be waived by the Council if it would impact on the viability of a development which is on balance, beneficial and consistent with policy objectives even without the obligation.
7. Furthermore, it has been agreed with Walsall Children’s Services that planning applications will only be considered for planning obligations towards education in developments of 30 dwellings or more (previously the threshold was more than 10 dwellings).
  8. Planning officers negotiate with applicants (and their agents) of planning applications submitted for 15 or more dwellings the provision of affordable housing in consultation with Housing Services, and for developments over 10 dwellings for the provision of open space in consultation with Leisure Services. All other requirements are considered on a case-by-case basis in consultation with the necessary service areas.
  9. The planning application is reported to the Planning Committee and the details of the proposed agreement are included in the report. At this stage this normally includes the heads of terms of what is required together with details of any reasons such as abnormal costs that the developer claims should be taken into account in reducing the requirements. Assuming the Committee resolves to approve the application Legal Services complete the Planning Obligation prior to planning permission being issued. Therefore the collection of the contribution depends on whether the planning permission is granted and then on whether the applicant actually implements the planning permission.
  10. The details of the amount to be paid (and when) or the action required is set out in the Planning Obligation. The developer pays the councils costs for solicitor and planning officer time together with a payment to help pay towards the cost of monitoring the development / agreement. As the call on monitoring developments is largely proportionate to the size of developments a monitoring payment for each obligation of a minimum of £950 or 9% of the planning application fee (whichever is the higher) is levied from the applicant. Also, given the corporate nature of the Monitoring Officer role and its linkage to the development and adoption of council-wide policies and Supplementary Planning Documents, 1.5% is also deducted from all received S106 contributions to help fund the Monitoring Officer post. Once received all funds are coded to the relevant financial code and all contributions are paid into (held on) the balance sheet code of the Regeneration directorate. The Senior Accountant then liaises with the relevant service areas and the funding is transferred to each service area concerned and expenditure is monitored by that service’s accountant.
  11. From 1<sup>st</sup> April 2015 the Government has introduced restrictions under the Community Infrastructure Regulations on the number of Section 106 contributions that can be pooled to fund an individual *“infrastructure project or type of infrastructure”*. From 1<sup>st</sup> April no more than 5 Section 106 contributions (including from agreements completed since April 2010) can be pooled to fund each individual infrastructure project or type of infrastructure. Service areas receiving contributions will need to be mindful of this when planning their expenditure whilst ensuring they are still expended in accordance with the requirements set out in each legally

binding completed S106 Agreement. Affordable Housing is not currently defined as infrastructure for the purposes of the Community Infrastructure Levy and contributions for off-site affordable housing do not therefore fall under the pooling restrictions, so they can continue to be secured through S106.

12. A Preliminary Draft CIL Charging Schedule has been prepared for Walsall and will go out to public consultation at the beginning of September following Cabinet approval on 22<sup>nd</sup> July. If adopted (anticipated for 2016) CIL, likely to be a charge on new residential and larger retail developments, will largely replace the use of Section 106 to help fund the boroughs infrastructure providing greater flexibility on how developer contributions are spent in order to best support development.
13. 1 Planning Obligation was completed in Quarter 1 of 2015/16 totalling £53,070.00 in contributions sought towards open space from the development at Pelsall Labour Club, due prior to occupation of 12<sup>th</sup> dwelling. Full details are provided in Appendix A. No affordable housing units were secured during this period.
14. No Supplemental Deeds were completed during this period.
15. In comparison, 2 Planning Obligations were completed in Quarter 1 of 2013/14 totalling £162,779.79 to be sought of which £29,938.08 has been collected to date and transferred to the appropriate services to spend. 15 affordable housing units were also secured during this period.
16. Details of contributions that are due to expire between April 2015 and April 2016 are set out in Appendix B.
17. No Section 106 contributions from the Morrison's development in Willenhall were expended during this period.
18. No change from the details of expenditure for Section 106 Education contributions provided to Planning Committee on 30/04/2015.
19. Updated details for the expenditure of received Section 106 Open Space contributions is provided in Appendix C.



## Appendix A - Overall S106 Contributions Sought and Received for period 01/04/2015 - 30/06/2015

| <u>Application No</u> | <u>Proposal</u>  | <u>Decision Date</u> | <u>Site Address</u>                                | <u>Service Area</u>           | <u>Contribution Req'd</u> | <u>S106 Details</u>  | <u>Contribution Recieved</u> | <u>Indexatio<br/>n Rx Recd</u> | <u>Date Cont</u> | <u>Cont<br/>Expiry<br/>Date</u> |
|-----------------------|--|----------------------|--|-------------------------------|---------------------------|--|------------------------------|--------------------------------|------------------|---------------------------------|
| 14/1554/FL            | Proposed demolition of Labour Club. Residential and commercial development of a new Labour club, 24 dwellings total (23 for private sale and 1 flat above club for manager only). New access road, ancillary garages/car parking, external store and smoking shelter. Affecting the setting of a public rights of way (no. Ald15). | 06/05/2015           | PELSALL LABOUR CLUB, CHURCH ROAD, WALSALL, WS3 4QW | Urban Open Space Contribution | £53,070.00                | Towards the provision, upgrading and or maintenance of Urban Open Space in the vicinity of the development. Due prior to first occupation of the 12th dwelling within the development. | £0.00                        | £0.00                          |                  |                                 |

**Total Completed  
Planning  
Obligations**

1

**Total Sought**

**£53,070.00**

**Total Received**

**£0.00**

**Total Not Yet  
Due**

**£53,070.00**

## Appendix B - Expiry Dates for spend of received S106 Contributions over next 12 months from 01/07/2015

| <u>Application No</u> | <u>Proposal</u>   | <u>Decision Date</u> | <u>Site</u>  | <u>Service Area</u>                           | <u>Contribution Req'd</u> | <u>S106 Details</u>  | <u>Contribution Received</u> | <u>Date Cont Recd</u> | <u>Indexation Rx</u> | <u>Cont Expiry Date</u> |
|-----------------------|---|----------------------|--|---|---------------------------|--|------------------------------|-----------------------|----------------------|-------------------------|
| 04/0306/FL/W1         | Proposed Erection of 205 Dwellings, together with associated car parking, roadworks, public open space and retention of Frank Baines Building for existing commercial uses.   | 20/12/2004           | Land between Hospital Street, Northcote Street and Gladstone Street, Walsall | POS Commuted Sum                              | £34,350.00                | Due prior to commencement of 1st dwelling. To be used towards the provision enhancement and/or maintenance of public open space in the vicinity of the Site. £17,175 on receipt ref 27002 and £17,175 on receipt ref 27003.  | £34,350.00                   | 12/07/2005            | £0.00                | 12/07/2015              |
| 06/0367/OL/W7         | OUTLINE: Demolition of existing buildings and erection of replacement college facilities (planning class use D1), on land north of Littleton Street West, retail (planning class use A1), including a food store, residential (planning class use C3), office ( | 15/12/2006           | LAND AT WALSALL COLLEGE OF ARTS AND TECHNOLOGY                               | Public Art Contribution/Provision of Facility | £49,250.00                | Towards procuring and installation of public art within the vicinity of the site (within 800m distance of the site). Due prior to commencement of new store. At least £40,000.00 to be used toward the public art itself which should be installed within 12 months of date of store opening. Council to agree location and form of public art with Tesco. | £49,250.00                   | 04/10/2010            | £0.00                | 04/10/2015              |
| 07/2340/FL/E9         | PROPOSED CONSTRUCTION OF 18 no. 2 AND 6 BEDROOM DWELLINGS AND   | 28/03/2008           | LAND OFF, THAMES ROAD, 32, GOSCOTE, WALSALL.                                 | Late Payment Interest Charge (LPI)            | £845.48                   | Open Space   | £845.48                      | 29/10/2010            | £0.00                | 29/10/2015              |

|                       |  |            |  |  |            |   |            |            |       |                   |
|-----------------------|--|------------|--|--|------------|---|------------|------------|-------|-------------------|
|                       | ASSOCIATED<br>PARKING  |            |  |  |            |   |            |            |       |                   |
| <b>07/2340/FL/E9</b>  | PROPOSED<br>CONSTRUCTION OF<br>18 no. 2 AND 6<br>BEDROOM<br>DWELLINGS AND<br>ASSOCIATED<br>PARKING | 28/03/2008 | LAND<br>OFF,THAMES<br>ROAD,32,<br>GOSCOTE,WALSA<br>LL.     | <b>Secondary<br/>School<br/>Education<br/>Contribution</b> | £19,685.32 | Towards provision of<br>secondary education<br>facilities within 3 miles<br>of the site. Due on<br>service of<br>implementation notice. | £19,685.32 | 29/10/2010 | £0.00 | <b>29/10/2015</b> |
| <b>07/2340/FL/E9</b>  | PROPOSED<br>CONSTRUCTION OF<br>18 no. 2 AND 6<br>BEDROOM<br>DWELLINGS AND<br>ASSOCIATED<br>PARKING | 28/03/2008 | LAND<br>OFF,THAMES<br>ROAD,32,<br>GOSCOTE,WALSA<br>LL.     | <b>UOS<br/>Commuted<br/>Sum</b>                            | £20,028.45 | Towards provision of<br>open space within wider<br>area of site. Due on<br>service of<br>implementation notice.                         | £20,028.45 | 29/10/2010 | £0.00 | <b>29/10/2015</b> |
| <b>07/2323/FL/E12</b> | Proposed Construction<br>of 10 Two Bedroom<br>Dwellings with<br>Associated Parking                 | 27/03/2008 | LAND ON THE<br>CORNER OF<br>GOSCOTE LANE<br>AND WELL LANE, | <b>UOS<br/>Commuted<br/>Sum</b>                            | £9,103.74  | Towards provision of<br>open space within wider<br>area of site. Due on<br>service of<br>implementation notice.                         | £9,103.74  | 29/10/2010 | £0.00 | <b>29/10/2015</b> |
| <b>07/2323/FL/E12</b> | Proposed Construction<br>of 10 Two Bedroom<br>Dwellings with<br>Associated Parking                 | 27/03/2008 | LAND ON THE<br>CORNER OF<br>GOSCOTE LANE<br>AND WELL LANE, | <b>Healthcare<br/>Contribution</b>                         | £5,108.83  | Towards provision of<br>Healthcare facilities in<br>accordance with SPD.<br>Due on service of<br>implementation notice.                 | £5,108.83  | 29/10/2010 | £0.00 | <b>29/10/2015</b> |
| <b>07/2323/FL/E12</b> | Proposed Construction<br>of 10 Two Bedroom<br>Dwellings with<br>Associated Parking                 | 27/03/2008 | LAND ON THE<br>CORNER OF<br>GOSCOTE LANE<br>AND WELL LANE, | <b>Education<br/>commuted<br/>sum</b>                      | £7,345.25  | Towards provision of<br>secondary education<br>facilities within 3 miles<br>of the site. Due on<br>service of<br>implementation notice. | £7,345.25  | 29/10/2010 | £0.00 | <b>29/10/2015</b> |
| <b>07/2340/FL/E9</b>  | PROPOSED<br>CONSTRUCTION OF<br>18 no. 2 AND 6<br>BEDROOM<br>DWELLINGS AND<br>ASSOCIATED<br>PARKING | 28/03/2008 | LAND<br>OFF,THAMES<br>ROAD,32,<br>GOSCOTE,WALSA<br>LL.     | <b>Late Payment<br/>Interest<br/>Charge (LPI)</b>          | £830.99    | Education   | £830.99    | 29/10/2010 | £0.00 | <b>29/10/2015</b> |
| <b>08/1086/FL</b>     | Demolition of extension<br>and some outbuildings.<br>Conversion and                                | 09/03/2009 | 13-14,BRADFORD<br>STREET,WALSALL<br>,WS1 1PB               | <b>Urban Open<br/>Space<br/>Contribution</b>               | £8,976.31  | Due on or before<br>occupation of any flat or<br>dwelling in the  | £8,976.31  | 31/03/2011 | £0.00 | <b>31/03/2016</b> |



extension of nos. 13 & 14 to form 2 shops with new shopfronts and 4 flats with external staircase to the rear. Conversion of Tannery building to 6 flats, construction of one bedroom dwelling. Conversion of outbuilding to dwelling.

development. Phased payments from October 2010 to March 2011. Full amount settled as at 31/03/2011.

08/0059/FL

Proposed demolition of existing buildings and erection of 96 dwellings with associated development, landscaping and infrastructure.

26/10/2009

LAND AT  
CARTBRIDGE  
LANE  
SOUTH,WALSALL

**Secondary  
School  
Education  
Contribution**

£78,068.14

Towards provision of secondary education facilities within a 3 mile radius of the site. 50% due prior to occupation of 50% of dwellings.

£78,068.14 27/02/2013

£0.00 27/02/2016

**APPENDIX C - OPEN SPACE EXPENDITURE**

| Scheme No          | Year    | Name of Scheme                   | Misc. Information/ Restricted Spend |  | Amount Expected £ | Income Received £ | Expenditure £  | Year of Expenditure                                 | Complete n n          | Company   | Total Remaining £ |
|--------------------|---------|----------------------------------|-------------------------------------|--|-------------------|-------------------|--|---|-----------------------|---|-------------------|
| 144                | 2009/10 | Willenhall Tube & Forging        | Use by 22/12/2012                   |  | 80,000.00         | 80,000.00         | 80,000.00  | 2012/13   | n                     |   |                   |
| 161                | 2012/13 | Norfolk Place                    | USE BY 03/09/2017                   | Towards provision of open space within wider area of the site. | 70,000.00         | 70,000.00         | 9,480.67<br>7,604.85<br>-2,554.34<br>-209.97<br>2,764.79 | 2012/13<br>2013/14<br>2013/14<br>2013/14<br>2013/14 | n<br>n<br>n<br>n<br>n | total 2012/13 spend<br>total 2012/13 spend<br>total 2013/14 spend<br>total 2013/14 spend<br>total 2013/14 spend<br>Transfer back to revenue |                   |
| 161                | 2015/16 |                                  |                                     |  | 150,000.00        | 150,000.00        | 97,086.00  |   | n                     |   | 52,914.00         |
| 144                | 2009/10 | Willenhall Tube & Forging        | Use by 22/12/2012                   |  | 20,810.81         | 20,810.81         | 20,810.81  | 2012/13   | n                     |   |                   |
| 158                | 2012/13 | Bell Lane                        | USE BY 16/08/2017                   | Towards provision of open space within wider area of the site. | 12,243.94         | 12,243.94         | 12,243.94  | 2012/13   | n                     |   |                   |
| 159                | 2012/13 | Bentley Moor Club                | USE BY 27/06/2017                   | Towards provision of open space                                | 1,479.67          | 1,479.67          | 174.10   | 2012/13   | n                     |   |                   |
| 161                | 2012/13 | Norfolk Place                    | USE BY 03/09/2017                   | Towards provision of open space within wider area of the site. | 8,465.58          | 8,465.58          | 0.00<br>9,771.00<br>0.15                                 | 2012/13<br>2013/14<br>2013/14                       | n<br>n<br>n           | total 2012/13 spend<br>Total 2013/14 spend<br>Transfer back to revenue  |                   |
| 161                | 2014/15 |                                  |                                     |  | 43,000.00         | 43,000.00         | 43,000.00  |   | n                     |   | 0.00              |
| 150                | 2010/11 | Goscote Lane& Well Lane, Walsall | USE BY 29/10/2015                   | Towards provision of open space within wider area of the site. | 952.00            | 952.00            | 0.00   | 2013/14   | n                     |   |                   |
| 151                | 2010/11 | Thames Road, Goscote, Walsall    | No expiry date known at this time   | Towards provision of open space within wider area of the site. | 2,087.00          | 2,087.00          | 0.00   | 2013/14   | n                     |   |                   |
| 153                | 2011/12 | Broad Lane                       | USE BY 27/02/2017                   | Towards provision of open space within wider area of the site. | 2,014.00          | 2,014.00          | 0.00   | 2013/14   | n                     |   |                   |
| 154                | 2011/12 | Sandstone Road                   | USE BY 29/02/2017                   | Towards provision of open space within wider area of the site. | 4,453.00          | 4,453.00          | 0.00   | 2013/14   | n                     |   |                   |
| 155                | 2012/13 | 13-14 Bradford Street            | USE BY 31/03/2016                   | Open Space Contribution  | 898.00            | 898.00            | 0.00   | 2013/14   | n                     |   |                   |
| 163                | 2013/14 | Shire Oak Reservoir              | No expiry date known at this time   | Towards provision of urban open space                          | 6,107.00          | 6,107.00          | 0.00   | 2013/14   | n                     |   |                   |
| 164                | 2013/14 | Victoria Avenue                  | USE BY 16/04/2018                   | Towards provision of open space within wider area of the site. | 8,232.00          | 8,232.00          | 0.00   | 2013/14   | n                     |   |                   |
| 165                | 2013/14 | The Limes Linley Road            | USE BY 01/08/2018                   | Towards provision of urban open space                          | 4,119.00          | 4,119.00          | 0.00   | 2013/14   | n                     |   |                   |
|                    |         |                                  |                                     |  | 28,862.00         | 28,862.00         | 0.00   |   | n                     |   | 28,862.00         |
| 154                | 2013/14 | Sandstone Road                   |                                     |  | 40,078.85         | 40,078.85         |  |   | n                     |   |                   |
| 164                | 2013/14 |                                  |                                     |  | 30,000.00         | 30,000.00         |  |   | n                     |   |                   |
| 158                | 2013/14 |                                  |                                     |  | 110,195.46        | 110,195.46        |  |   | n                     |   |                   |
| 153                | 2013/14 |                                  |                                     |  | 18,125.01         | 18,125.01         |  |   | n                     |   |                   |
|                    | 2013/14 |                                  |                                     |  |                   |                   | 198,399.32   | 2013/14   | n                     | total 2013/14 spend   |                   |
|                    | 2013/14 |                                  |                                     |  |                   |                   | -160,441.47  | 2013/14   | n                     | total 2013/14 spend   |                   |
|                    | 2014/15 |                                  |                                     |  |                   |                   | 137,716.49   | 2014/15   | n                     | total 2014/15 spend   |                   |
| 164                | 2015/16 |                                  |                                     |  |                   |                   | 9,918.98   | 2015/16   | n                     | Transfer back to revenue  |                   |
|                    |         |                                  |                                     |  | 198,399.32        | 198,399.32        | 185,593.32   |   | n                     |   | 12,806.00         |
| 167                | 2014/15 | Former St Johns School           |                                     |  | 288.36            | 288.36            |  |   | n                     |   |                   |
|                    | 2014/15 |                                  |                                     |  |                   |                   | 288.36   |   | n                     | total 2014/15 spend   |                   |
|                    |         |                                  |                                     |  | 288.36            | 288.36            | 288.36   |   | n                     |   | 0.00              |
| <b>GRAND TOTAL</b> |         |                                  |                                     |  | <b>322,606.48</b> | <b>322,606.48</b> | <b>322,606.48</b>  |   | <b>n</b>              |   | <b>94,582.00</b>  |