

9 NOVEMBER 2021

## S106 Planning Obligations

**Ward(s):** All affected.

**Portfolios:**

Councillor A. Andrew – Deputy Leader of the Council, Regeneration

Councillor C. Towe – Education & Skills

Councillor O. Butler – Clean & Green

### 1. Aim

- 1.1 S106 Planning Obligations are legal obligations entered into to mitigate the impacts of a development proposal. Planning Obligations are primarily negotiated as part of the determination of planning applications in accordance with the National Planning Policy Framework 2021 (NPPF), Community Infrastructure Levy Regulations 2010 (Regulation 122)(as amended), policy DEL1 of the Black Country Core Strategy, policy GP3 of Walsall Unitary Development Plan and adopted Supplementary Planning Documents.
- 1.2 Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:
  - Necessary to make the development acceptable in planning terms;
  - Directly related to the development; and
  - Fairly and reasonably related in scale and kind to the development
- 1.3 They seek 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 communities without the necessary infrastructure to cater for the need generated by the development.
- 1.4 This report seeks to deliver the following information:
  - i) To advise Members of the completed Planning Obligations (section 106 agreements/unilateral undertakings/ supplemental deeds of variation) that have been negotiated with planning permissions during the period specified.
  - ii) To show 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.

- iii) To set out an update on the expenditure and allocation of received commuted sums for the specified period.
- iv) To set out how ward members are consulted on s106 allocation, justification and value for money.
- v) Update on the £28,000 reported as spent on Wards Keep site in Darlaston.

## **2. Recommendations**

- 2.1 That Committee notes the report on infrastructure secured through S106 Planning Obligations during the financial year 2020/21 (April 2020 to March 2021) including details of committed/spent funding and infrastructure secured.
- 2.2 That Committee endorses the procedure for securing necessary infrastructure through S106 Planning Obligations and the role of Members in the process.

## **3. Report detail – know**

- 3.1 Updates on the completion and processing of S106 agreements are provided to the Planning Committee. The latest report was presented to the Planning Committee on the 4<sup>th</sup> November 2021 and covered the financial year 2020/21 (April 2020 to March 2021). It provided a summary of all Planning Obligations 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 Appendix 2 and Members will note that the information has been broken down into the various types of contributions.
- 3.2 In considering the S106 Planning Obligation Update Report at their meeting on 4<sup>th</sup> February 2021 the Planning Committee resolved that; *a report be presented to a Scrutiny Committee to see how Members are engaged on the spending of monies collected and report to include details of all service area expenditure on specific projects. All elected Members to receive a copy of the report in advance of reporting to a Scrutiny Committee.* As a follow up to the report presented to this Scrutiny Committee on 15<sup>th</sup> April 2021, this current report provides a further update relating to service area spend and commitment towards specific projects in Appendix 3, and includes further details on the process of Member involvement.
- 3.2 In accordance with the Community Infrastructure Levy Regulations any authority that receives a contribution from development through the levy or section 106 planning obligations must prepare an Infrastructure Funding Statement. The Infrastructure Funding Statement is an annual report, published by the Council to provide a summary of all financial and non-financial developer contributions relating to Section 106 agreements within the district. This S106 Planning Obligations update report forms the basis of the infrastructure funding statement and covers the financial period 1 April 2020 to 31 March 2021.
- 3.3 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.

- 3.5 The need for securing infrastructure through a S106 Planning Obligation is triggered by the scale and nature of a proposed development. Planning Obligations provide a means of ensuring that developers contribute towards the infrastructure and services that Walsall Council deem necessary to facilitate proposed developments in accordance with local and national planning policy. They are generally, although not always, triggered by the need to provide for infrastructure to accommodate major developments e.g. residential developments of 10 dwellings or more or new buildings where the floor space created exceeds 1000m<sup>2</sup>.
- 3.6 The Council is required to comply with the National Planning Policy Framework (NPPF) 2021, 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.
- 3.7 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.
- 3.8 *Process and Consultation* - Where it is established that a planning proposal triggers the need for a S106 Planning Obligation to secure provision of infrastructure this is calculated in accordance with the adopted Development Plan policies and Supplementary Planning Documents. At this point during the determination of an application the local planning authority notify the developer of the requirement and carry out consultations with the service areas to determine the level of provision required and where contributions could be utilised. This must consider the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 i.e. they 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 as well as reasonable in all other respects.
- 3.9 Any planning application where it is proposed to require a S106 Planning Obligation is reported to Planning Committee for their determination. The officers' report seeks a delegation from the Committee to negotiate and complete the S106 Planning Obligation and if agreed then engagement with Members follows. Whilst the specifics in regard to the level of provision is fixed by the policy framework there is some flexibility as to where any contributions are spent (bearing in mind the tests in Regulation 122).
- 3.10 As officers cannot predetermine the outcome of a decision by Planning Committee it is usual practice to engage with Ward Members once a decision to secure a S106 Planning Obligation has been resolved by Planning Committee. For consistency planning officers' co-ordinate negotiations between the Ward

Members and service area teams responsible for the expenditure to ensure that any agreement reached in regard to expenditure is allocated in accordance with the policy and legislation and in particular, accordance with Regulation 122. Officer training, procedures and templates have been implemented to ensure members are involved as appropriate and to ensure a consistent delivery of this process.

- 3.11 Provision of infrastructure is also subject to development viability. As part of the consideration of planning applications developers often submit a Financial Appraisal which is reviewed on behalf of the local planning authority to determine whether the full policy compliant level of infrastructure/contributions can be secured. Often this results in lower levels of provision able to be secured but again, this will be determined by Planning Committee who ultimately resolve whether to accept the level of contributions offered before negotiations with ward members.
- 3.12 Appendix 1 sets out the latest position on the receipt, allocation and expenditure of Planning Obligations to date. It can be noted that out of nearly £4.5million received in contributions, approximately £1.8million has been expended and / or allocated to date. The majority of the remaining balance comprises of a series of contributions for development that has either recently been approved, the target dates for expenditure are yet to be reached, or formal allocations of monies are yet to be confirmed. This also reflects the on-going collaborative work stream with service areas to update the Council's S106 records, and a trawl of paper records will be carried out in due course to identify any further necessary updates.
- 3.13 Appendix 3 also sets out where received affordable housing commuted sums have been expended, or are proposed to be ring-fenced into a borough wide pot to purchase temporary accommodation for homeless households. A separate report is being presented to Cabinet on 15<sup>th</sup> December on this matter and this approach follows the Council's successful pilot of utilising affordable housing commuted sums to purchase two long-term empty homes purchased by the Council under a Compulsory Purchase Order (CPO) process, and subsequently used to house homeless households.
- 3.14 A summary of all expenditure is provided below.

<b>Service Area</b>	<b>S106 Contribution received to date</b>	<b>Spent to date</b>	<b>Committed / Allocated</b>	<b>Balance Remaining</b>
Affordable Housing	£1,556,888.17	£0.00	£274,993.56	£1,281,894.61
Children's Services	£538,815.08	£259,027.48	£108,350.00	£171,437.60
Clean & Green	£1,822,909.53	£884,819.30	£139,439.85	£798,650.38
<b>TOTAL</b>	<b>£3,918,612.78</b>	<b>£1,143,846.78</b>	<b>£522,783.41</b>	<b>£2,251,982.59</b>

- 3.15 In terms of an update on the allocation and expenditure of contributions in relation to the Wards Keep site in Darlaston (18/0072 – Land at Heathfield Lane West), it is confirmed that £128,910.85 has been allocated to date; £28,910.85 towards future maintenance of the scheme and £100k towards the ERDF Blue Network II Project. This is set out in detail within the enclosed appendices.

- 3.16 The latest expenditure of received contributions is provided in the attached table Appendix 1.
- 3.17 Details of new Planning Obligations completed in 2020/21 is provided in Appendix 2.
- 3.18 The update of specific projects is set out in Appendix 3.

#### **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 Whilst the level of infrastructure provision/contributions collected is determined in accordance with national and local policy there is an important role for members in helping to determine where such resources should be prioritised.
- 6.2 At present, officers from the various service areas advise the local planning authority on where provision is required and where contributions ought to be spent in line with existing Council priorities. Consultation with ward members also takes place once it has been resolved by Planning Committee that a contribution is necessary to enable consistency of approach, to ensure that policy and legislation is followed and the needs of the affected community are addressed.
- 6.3 Planning Committee has more recently resolved to accept partial contributions on the basis of development viability but to require a review mechanism within the S106 Planning Obligation in the event that viability improves over the course of the build. Committee may wish to consider adopting this approach to all schemes where a viability review has been carried out at the time of application to ensure consistency and more certainty for developers.

#### **7. *Respond***

- 7.1 On a case by case basis, officers will continue engage with Ward Members about new developments where the Planning Committee has resolved to secure a S106 Planning Obligation to determine where any contributions will be utilised to ensure greater transparency.

#### **8. *Review***

- 8.1 It is intended that twice yearly reports continue to be provided to Planning Committee to update members on what monies have been secured through S106 Planning Obligations, 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**

Planning Performance and Section 106 Planning Obligations Update Report to Planning Committee of 4<sup>th</sup> November 2021.

### **Author**

Mike Brereton

Group Manager, Planning

☎ 01922 654753

✉ michael.brereton@walsall.gov.uk