

28 September 2023

Section 106 Planning Obligations Update Report

Ward(s): All affected

Portfolios:

Councillor A Andrew – Deputy Leader of the Council, Regeneration

Councillor M Statham – Education & Skills

Councillor G Flint – Wellbeing, Leisure and Public Spaces

1 Aim

- 1.1 Section 106 (S106) planning obligations are legal agreements between the council (as the local planning authority (LPA)) and developers. The purpose of S106 agreements is to make acceptable development which would otherwise be unacceptable in planning terms.
- 1.2 Planning obligations may only constitute a reason for granting planning permission if they are:
 - 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 S106 agreements 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 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.

- iii) To confirm to members how the planning obligations are negotiated, and contributions allocated and members role in this process.
- iv) To advise members of the role and purpose of the S106 Board.

2 Recommendations

- 2.1 That the committee notes the infrastructure funding secured through S106 planning obligations during the financial period from 1 April 2022 to 31 March 2023 including details of committed/spent funding and infrastructure secured.
- 2.2 That the committee notes the approved procedure for securing necessary infrastructure through S106 planning obligations and the role of members in the process.

3 Report detail – know

- 3.1 Planning obligations are primarily negotiated as part of the determination of planning applications in accordance with the National Planning Policy Framework 2023 (NPPF), Community Infrastructure Levy (CIL) Regulations 2010 (Regulation 122) (as amended), policy DEL1 of the Black Country Core Strategy (BCCS), policy GP3 of Walsall Unitary Development Plan (UDP) and adopted supplementary planning documents.
- 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 CIL 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 NPPF, CIL Regulations 2010 (as amended), policy DEL1 of the BCCS and policy GP3 of the UDP when seeking developer contributions.
- 3.4 Under the CIL regulations any authority that receives a contribution from development through the levy or section 106 planning obligations must prepare an infrastructure funding statement at least annually. For the financial year 2019/2020 onwards, any local authority that has received developer contributions (section 106 planning obligations or CIL) must publish online an infrastructure funding statement by 31 December 2020 and by the 31 December each year thereafter. Infrastructure funding statements must cover the previous financial year from 1 April to 31 March.

3.5 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 22 June 2023 and covered the financial year from 1 April 2022 to 31 March 2023. It provided a summary of all planning obligations that have been secured as part of the determination of planning applications during this period in accordance with adopted policies of the council. These details are set and published as the infrastructure funding statement also set out in the attached **Appendix 1**.

3.6 Table 1 below sets out the total contributions received up to June 2023 (£4,186,620). Of these contributions £2,120,578 has been expended or allocated. 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 ensuring records are updated.

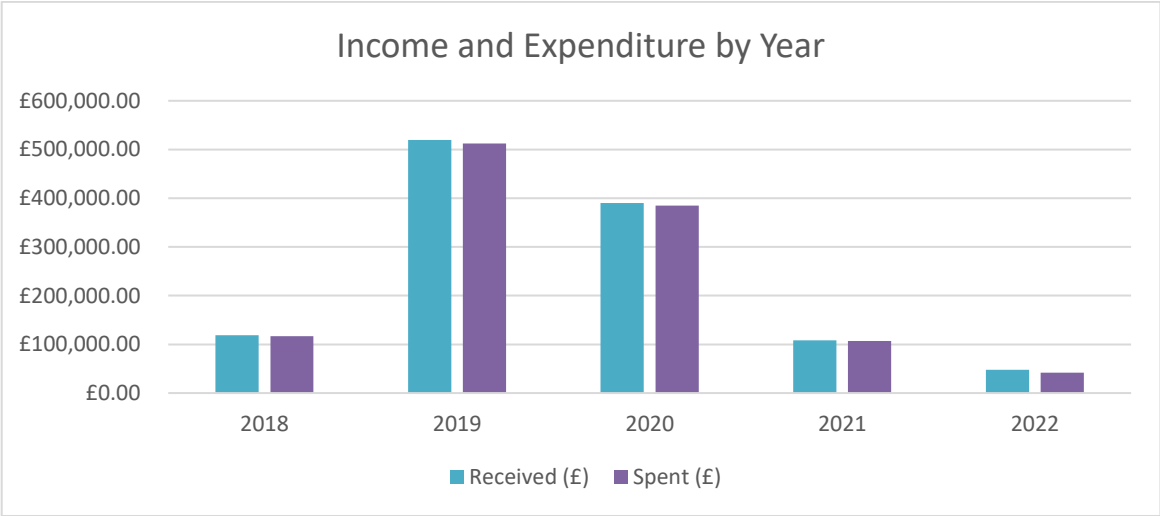
Table 1: Summary of all total S106 income, allocation and expenditure as at June 2023:

Service Area	S106 Contribution received to date	Spent to date	Committed / Allocated	Balance Remaining
Affordable Housing	£1,538,104	£150,245	£124,748	£1,263,110
Children’s Services	£534,931	£534,931	£0.00	£0.00
Clean & Green	£2,113,585	£1,310,653	£0.00	£803,892
TOTAL	£4,186,620	£1,995,829	£124,748	£2,067,003

3.7 The development monitoring officer records and updates S106 planning obligation records. There is an ongoing workstream for this role to review all planning obligations secured, record and receipt them, and ensure all expenditure and obligations are allocated, utilised and complied with in accordance with the planning obligations. This applies to financial and non-financial planning obligations. The role relies on other specific service areas to support the monitoring. The figures provided in this report show a snapshot in time as figures are continuously updated to reflect contributions received, allocated and spent. The current infrastructure funding statement as required to be published annually is shown at **Appendix 1**.

3.8 The table attached at **Appendix 2** shows all contributions received where there is a balance remaining as at September 2023, sorted by ward. It identifies the application the obligations were secured under and highlights the terms of the obligation i.e. how the funding is to be utilised.

3.9 The following chart indicates income/expenditure over the last five years and demonstrates how income received is almost equal to that expended.



3.10 Current policy seeks a 25% affordable housing contribution to be provided on site on developments of 15 units or over. Alternatively, a commuted sum contribution is sought where it is not feasible or practical to provide the affordable housing on site. These commuted sums are secured through S106 agreements. These S106 agreement conditions usually allow for the affordable housing contributions to be spent anywhere in Walsall. This reflects the nature of development, and/or long-term empty property purchase, that this is based on availability, which is unable to be constrained to a single area. Due to the flexibility of these S106 conditions we are able to pool the affordable housing commuted sums, which makes it more practical and efficient to use them. The funds must be spent on increasing affordable housing stock, which can be through purchase and or refurbishment of existing homes, or development of new homes.

3.11 In 2018/19, S106 affordable housing funds were used to purchase two former long term empty properties secured by compulsory purchase order (CPO), to be used as affordable temporary accommodation for homeless households. Following this successful pilot, in December 2021 cabinet approved “the use of current and future affordable housing commuted sums to purchase and refurbish dwellings, or renovate existing surplus residential council assets, for the purpose of providing temporary accommodation to homeless households”.

3.12 Table 2 below shows that total affordable housing S106 contributions received are £1,538,103. Of these, £274,993 has been spent (or ringfenced in a specific account) on 2 temporary accommodation properties, and a further £1,054,160 has been committed to 12 temporary accommodation properties (which are match funded from local authority housing fund grant), leaving an uncommitted balance of £208,950 which it is anticipated will be committed by 31 March 2024.

Table 2: Affordable Housing S106 contributions*

Total Affordable Housing contributions	Spent	Number homeless temporary accommodation properties in use	Committed	Number homeless temporary accommodation properties committed	Balance remaining
£1,538,103	£274,993	2	£1,054,160	12	£208,950

**Note figures differ from table 1 as this is current to September 2023*

3.13 The process of negotiating planning obligations and consultation with members was highlighted in the report to this committee in April 2021 available [here](#). This identifies that once planning committee has agreed an obligation is necessary engagement with members follows. Constitution amendments approved in November 2022 allow for policy compliant applications that require a S106 planning obligation for infrastructure provision to be delegated to the Head of Planning & Building Control but the process for negotiations with members remains the same. A training session for all members on S106 obligations is planned for 12 October 2023.

3.14 The Interim Executive Director of Economy, Environment and Communities continues to chair S106 board meetings. The purpose of the board is to provide strategic direction and leadership to ensure the fair, inclusive efficient and effective collection, administration and disbursement of S106 monies. The relevant portfolio holders and officers from various service areas attend these meetings. The board gives further scrutiny to the process of monitoring planning obligations including assurance and spending that will help support members understanding and give greater transparency of the process. The board receives reports on new contributions received, process and general monitoring issues.

Financial information

3.15 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.

Reducing Inequalities

3.16 Through the careful use of S106 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.

4 Decide

4.1 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.

- 4.2 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. It is considered that consultation with ward members once it has been determined that a contribution is necessary, will enable consistency of approach to ensure that policy and legislation is followed, and the needs of the affected community are addressed.
- 4.3 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. This approach has now been adopted to all schemes where a viability review has been carried out at the time of application to ensure consistency and more certainty for developers and secure infrastructure if a scheme becomes viable.

5 Respond

- 5.1 On a case-by-case basis, officers will continue to engage with ward members about new developments where there is a requirement to secure a S106 planning obligation to determine where any contributions will be utilised to ensure greater transparency.
- 5.2 Service areas responsible for the spend of funding secured through S106 planning obligations will continue to provide evidence to include when reporting on such matters to S106 Board and planning committee.

6 Review

- 6.1 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.
- 6.2 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 Planning Obligations Update Report to Planning Committee of 22 June 2023 available [here](#).

Appendices

Appendix 1: Infrastructure funding statement

Appendix 2: S106 Contributions by ward

Author

Alison Ives
Head of Planning & Building Control

☎ 652604

✉ alison.ives@walsall.gov.uk