

**14 March, 2024**

**Section 106 Monitoring Update Report**

**Ward(s):** All

**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 S106 planning obligations are legal obligations entered into for mitigation of 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 2023 (NPPF), Community Infrastructure Levy (CIL) Regulations 2010 (Regulation 122)(as amended), policy DEL1 of the Black Country Core Strategy (BCCS), saved policy GP3 of Walsall Unitary Development Plan (UDP) 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 Planning obligations 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 advises 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. It also provides 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**

- 2.1 That committee notes the current balance of infrastructure funding secured through S106 planning obligations including details of committed/spent funding and infrastructure secured.
- 2.2 That committee notes the affordable housing provision secured through utilisation of S106 funds.

## **3. Report detail – know**

- 3.1 The matter was last reported to this committee on 28 September 2023 with following resolutions:
  - i. The infrastructure funding secured through S106 planning obligations during the financial period 1 April 2022 to 31 March 2023 including details of committed/spent funding and infrastructure secured be noted.
  - ii. The approved procedure for securing necessary infrastructure through S106 planning obligations and the role of members in the process be noted.
  - iii. That Councillor Nawaz be provided with information on delays to funds allocated by Section 106 being received and spent, and whether urban open spaces are included in Section 106 arrangements.
  - iv. Officers arrange a meeting with Councillor Bott to discuss his concerns regarding the spending of Section 106 funds.
- 3.2 Points i and ii of the resolution were to note only. To clarify on point iii, S106 agreements specify where funds are to be spent on urban open spaces. Any funds for this purpose are transferred to the service area responsible for maintaining the urban open spaces (healthy spaces team) and spent in accordance and within the time frame specified in the S106 planning obligation. In regard to point iv, officers in healthy spaces team and Councillor Andrew met with Councillor Bott to discuss his concerns and no further action is required.
- 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 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.
- 3.4 The Council is required to comply with the NPPF 2023, CIL 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.
- 3.5 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 Community Infrastructure Levy) 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.

- 3.6 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 15 January 2024 and covered quarters 1 and 2 of 2023/24 (April to September 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. Details of the full annual position for the financial year 2022/23 is set out and published as the infrastructure funding statement. As we approach the end of the financial year for 2023/24 all details will be published in the infrastructure funding statement by the end of the year.
- 3.7 Table 1 below sets out that £4,562,916 contributions have been transferred to service areas as at February 2024 and that £3,592,939 has been expended and / or allocated to date, leaving a comparatively small balance of £709,469 remaining to spend/allocate. Since the matter was last reported to this committee the balance of unspent funds has reduced from £2,067,003 to £709,469 showing progress on delivering the infrastructure which the obligations were collected for. The majority of the remaining balance comprises of contributions for development where 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 February 2024:

<b>Service Area</b>	<b>S106 Contribution transferred to service</b>	<b>Spent to date</b>	<b>Committed / Allocated</b>	<b>Balance Remaining</b>
Affordable Housing	£1,540,566	£1,084,647	£455,919	£nil
Children’s Services	£631,194	£631,194	£nil	£nil
Clean & Green	£2,391,156	£1,421,179	£nil	£709,469
<b>TOTAL</b>	<b>£4,562,916</b>	<b>£3,137,020</b>	<b>£455,919</b>	<b>£709,469</b>

- 3.8 Figures shown in table 1 as transferred to service will exclude a 1.5% reduction for monitoring the obligations and supporting policy development and creation to secure future infrastructure for the last 10 years.
- 3.9 Further review of all s106 Agreements is continuing to ensure that monitoring is consistent, and all data is captured but this task has been delayed due to the scale of the task. Following a request by members at a previous scrutiny

overview committee the allocation of funding split by ward is shown in Table 2 as follows.

Table 2: Summary of all S106 income by ward as at February 2024:

Ward	(£) Contribution
Aldridge Central & South	£667,115
Aldridge North & Walsall Wood	£309,482
Bentley & Darlaston North	£455,811
Birchills Leamore	£206,404
Blakenall	£225,592
Bloxwich East	£21,418
Bloxwich West	£738,566
Brownhills	£209,478
Darlaston South	£342,329
Paddock	£64,789
Pelsall	£147,800
Pheasey Park Farm	£242,048
Pleck	£56,521
Rushall-Shelfield	£566,095
Short Heath	£19,404
St Matthews	£290,798
Streetly	£0.00
Willenhall South	£207,463

- 3.10 Details of contributions received so far this financial year are set out in the following table 3 which will form the Infrastructure Funding Statement:

Table 3: Contributions received since 1 April 2023

Planning Ref	Site Address	Contribution Type	Amount Transferred to Service Area
20/0746	Former AB Waste Management site, Cemetery Road, Darlaston	Canal contribution	£10,000.00
20/0490	348, Wolverhampton Road West, Willenhall, WV13 2RN	Urban Open Space	£22,869.00
21/1781	Land between Canalside Close and canal, Canalside Close, Walsall	Urban Open Space	£47,265.00
21/1781	Land between Canalside Close and canal, Canalside Close, Walsall	Towpath Improvements	£2500.00

<b>Planning Ref</b>	<b>Site Address</b>	<b>Contribution Type</b>	<b>Amount Transferred to Service Area</b>
21/1781	Land between Canalside Close and canal, Canalside Close, Walsall	Affordable Housing	£2500.00
20/0374	Land & garages at Rudge Close, Willenhall, WV12 4DW	Urban Open Space	£19,404

- 3.11 All affordable housing funding secured through S106 obligations are fully committed. Seven properties have been completed to be used as temporary accommodation for homeless households. This includes refurbishment of 2 long term empty cemetery lodges and bringing back into use 5 long term empty homes secured through Compulsory Purchase Order (CPO). A further 7 units have S106 funding committed, match funded with Local Authority Housing Fund.
- 3.12 The Director of Regeneration & Economy continues to hold 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, including cross party members, 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.
- 3.13 A member training session on S106 planning obligations legal background, policy, process, consultation and monitoring was held on 12 October 2023 and was well attended.

#### **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 and deliverability of projects. Consultation with ward members once it has been determined that a contribution is necessary, will continue 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 have 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.

## **7. Respond**

- 7.1 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.
- 7.2 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.

## **8. Review**

- 8.1 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.
- 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 report to planning committee on 15 January 2024 available [here](#).

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