

HERTSMERE BOROUGH COUNCIL

OVERVIEW AND PERFORMANCE COMMITTEE

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SECTION 106 ACTIVITY AND MONIES RECEIVED BY HERTSMERE BOROUGH COUNCIL (July – December 2013)

PORTFOLIO HOLDER - Cllr Harvey Cohen

1.0 INTRODUCTION

- 1.1. This report provides summary information on Section 106 (s106) planning obligations and contributions received by or on behalf of Hertsmere Borough Council for the period July 2013 - December 2013. It provides the biannual update for Overview and Performance Committee.

2.0 OVERVIEW

- 2.1 Since December 2010 this Council's Planning Obligations Supplementary Planning Document (SPD) has been in use as a formal guide for the securing, monitoring and expenditure of contributions. It also provides templates for the drafting of s106 undertakings and Unilateral Agreements. The council is also in the process of preparing a Community Infrastructure Levy (CIL) which will, in most cases, replace s106 as a means of securing funding from developers to mitigate the impact of development. A CIL charging schedule was approved by the Examiner in December 2013, following the public examination in October. A new 'Developer Contributions Framework' (DCF) is being prepared, which will provide details on the mechanisms which the council will use to secure development contributions towards infrastructure. This will update and replace the current Planning Obligations SPD and Affordable Housing SPD. It is envisaged that the DCF will be a one-stop-shop for all developer contributions sought. This document will be brought to the Executive in due course for permission to undertake consultation and will be reported to full council prior to adoption.
- 2.2 The SPD sets out how the Council applies a standard charge for certain types of local infrastructure including Parks, Sports/Leisure Facilities and Greenways on residential developments of one new unit (net) or more.
- 2.3 Following the introduction of the Community Infrastructure Levy Regulations in April 2010, it is a statutory requirement for pooled contributions to meet the following tests: (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably related in scale and kind to the development.
- 2.4 This means that s106 contributions, including any standard charge, may need to be varied according to the location of the development and the type of infrastructure required there. The Planning Obligations SPD varies the level of

contribution by location, based on local need, and local land process. Calculation of the level of contribution is based on the floor area of the development.

- 2.5 It should be noted that on larger schemes, typically over 15 units, officers will continue to negotiate on a site by site basis, given the potential for some of those developments to generate requirements which may be site-specific. For example, an obligation for the provision of a locally equipped play-area within a site. On smaller developments, typically of up to ten dwellings, the SPD encourages the use of Unilateral Undertakings as a way of providing the required obligations. Unilateral Undertakings are intended to offer a more straightforward and expedient way of negotiating s106 obligations.
- 2.5 In 2011, the Council's constitution was amended to allow for determination, under new delegated powers, of; (1) applications of 1 - 4 dwellings (to be subject to a standard s106 charge); and (2) applications received that are first received for the extension of a time limit for developments of any size. Consequently, contributions are being sought on all residential developments with a net increase in dwellings.
- 2.6 In addition to the Hertsmere Planning Obligations SPD, HCC provides a planning obligations toolkit. The toolkit provides information on the level of contributions, need and justification for seeking planning contributions as well as a number of templates for s106 Agreements and Unilateral undertakings.
- 2.7 Trigger points for s106 agreements are open to negotiation. However, for smaller schemes, commencement of the development will trigger payment. On larger schemes, typically over 15 units, officers negotiate on a site by site basis; recognising the potential for larger developments to generate different site-specific requirements. It is quite normal for trigger points of financial or other s106 obligations to be specific to the development. For example, on larger housing developments a trigger point may be met on occupation of the nth unit rather than on commencement of the development.

3.0 **s106 AGREEMENTS**

Signed Agreements

- 3.1 Between July and December 2013 a total of 18 new s106s were signed amounting to **£775,352.87** (Appendix I). These amounts will be due when the appropriate trigger points have been reached (ref: paragraph 2.7).
- 3.2 A total sum of **£2,607,182.62** was received by this Council from developers between July and December 2013. This amount includes £1,400,000 from International University. However, it does not include **£177,375.00** for Sustainable Transport (Appendix II). Contributions are to be spent on projects to mitigate the impact of development, and meet the tests set out in paragraph 2.2.

s106 Expenditure

- 3.3 Between July and December 2013, **£83,578.15** of s106 money was spent by Hertsmere Borough Council. The money was spent on a number of projects.
- 3.4 The Director of Environment requested that Quarterly s106 meetings were set up in June 2013 with a focus to ensure that all departments (receiving

s106 monies) are managing projects in a way that optimises the timely use of these contributions. Department heads are being encouraged to ensure that all unspent s106 monies have been allocated to projects and that all monies are spent in compliance with relevant agreements. The two quarterly meetings held so far were also attended by the Director of Environment.

- 3.5 A recent BBC article commented that councils in England are holding on to £1.5bn of unspent "community money". It was said that Hertfordshire County Council holds the most "unspent" money (£56m) and has had to return £691,000. Since April 2006 Sustainable Transport contributions (negotiated by Hertsmer) amounting to £12,119.38 have had to be refunded by HCC (because of insufficient funds to implement the particular scheme).

Commuted Payments for Affordable Housing

- 3.6 The Overview and Performance Committee has requested an update on the commuted payments received for affordable housing. The Affordable Housing SPD states that commuted payments are considered to be an inefficient and uneconomic way of providing Affordable Housing and are only appropriate in a limited number of cases where a justification can be provided. Since the adoption of the SPD in October 2008 there has been a total of seven (7) commuted payments agreed by the council: these are set out in table 1.

Table 1: Affordable Housing Commuted Payments since 2008

Application	Address	Commuted Payment Required by the Affordable Housing SPD	Signed s106	Payments received to date
11/0148	Haydon Dell Farm, Merry Hill Road, Bushey,	£646,800	Potential £533,607 (via clawback)	£114,807.06
11/1349	Franshams, Hartsbourne Road, Bushey Heath	£404,000	£202,000(via clawback)	Sales have not exceeded Gross Development Value
12/2419	75-79 Loom Lane, Radlett	£215,600	£215,600	£224,325.13
12/2651	Kendal Hall Farm, Watling Street, Radlett,	£215,600	£215,600	Not Triggered
12/2436	7 Newlands Avenue, Radlett	£490,000	£490,000	Not Triggered
11/1332	Horizon One, Studio Way, Borehamwood, WD6 5WH	21 Affordable Units	50% of any increase in the Gross Development Value above the Gross Development Value Baseline	Not Triggered
98/0620	International University, Bushey	£1,437,500.00		Received (05/11/2013)

s106 bonds and cross-guarantees & Council's credit control policy review

- 3.7 Following the completion of the s106 contributions internal audit review (11 June 2012) a specific issue was raised regarding the Council's use of company searches, surety bonds and parent company guarantees. The Council has undertaken further investigation into the legality of refusing a planning application on the basis of an individual or company failing a company search,

and the scenarios in which holding or parent company cross-guarantees would be applied. A review of legislation and case law has determined that the financial standing of a company (or individual) cannot be a material consideration in planning decisions.

3.8 As a result new guidance will be incorporated into the planned revisions to the Planning Obligations Supplementary Document (SPD). This includes the following:

- a) For s106 agreements below £10k, financial assessments of the company will not normally be undertaken.
- b) For s106 agreements whose value is between £10k and £100k, a parent company guarantee (PCG) will be required. A financial assessment of the company will be carried out by the Council prior to entering into any legal agreement.
- c) For s106 agreements with a value which exceeds £100k, a PCG or a bond will be required. A financial assessment of the company will be carried out by the Council prior to entering into any legal agreement.

3.9 As also recommended as part of the audit, outstanding s106 payments which are not paid on request will be collected in line with the Council's Credit Control Policy and Debt Recovery process, and Officers are to seek up front/on commencement payments for all small developments.

Summary of s106 Agreements

3.10 Table 2 and 3 provide an overall summary of s106 monies in Hertsmere (not including details of s106 payments to HCC, which are monitored separately).

Table 2: Summary of all current s106 agreements (As at January 2014)

Total number of live s106	Total Value of s106 (excludes HCC Contributions)	Total Amount Outstanding on s106	Total s106 Held
203	£9,529,704.97	£5,314,573.58	£4,135,643.84.

Table 3: s106 monies received and due for particular purposes

	s106 Received	s106 Due
Allotments	£75,746.33	£170,423.99
Amenity Space	£50,399.21	£60,992.59
Greenways	£541,433.13	£113,406.01
Cemeteries	£26,356.15	£11,678.94
Museums and Cultural Facilities	£63,227.00	£61,826.10
Open Space and Parks	£675,568.54	£566,064.44
Leisure Facilities	£13,565.16	£8,668.61

Note: Held figures are periodically reviewed and reconciled between planning and finance. This table provides a snap shot of some of the council's key held s106 monies, other amounts are held for specific projects and Affordable Housing separately (see Table 1).

- 3.11 Depending on the trigger, the payment of the s106 may not be immediate at the date of permission. Planning permissions are normally valid for a 3 year period and for numerous reasons, some developments (large and small) do not always start straight away. Some developments have started several years after the initial planning permission. In other cases payments might have to be phased with the stages of construction (i.e on larger sites).
- 3.12 The 2010 SPD also added indexation of payments so where there is a delay in start or completion of developments the Council will use the Consumers Price Index (to account for the real value of money).
- 3.13 Since the adoption of the Planning Obligations SPD (2010) the number of s106 agreements, and amount of money collected and held by the Council has increased steadily. After 2014 or after the adoption of a CIL charging schedule, the use of the current s106 system to collect funding for infrastructure will be largely replaced. Following this change, s106 arrangements can still legitimately be used for site specific mitigation measures, such as contamination, but the number of pooled contributions will be limited to five s106 agreements. The council has recently produced a Community Infrastructure Levy (CIL), which has been to examination and is expected to be adopted sometime in 2014.

4.0 CONCLUSION

- 4.1 This report provides an overview of s106 agreements for July – December 2013 for the Overview and Performance Committee. The Committee is asked to note the findings of this report.
- 4.2 An update on s106 agreements January to June 2014 will be provided to the Overview and Performance Committee in mid July 2014.

5.0 AUTHOR

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