

<p align="center">London Borough of Hammersmith & Fulham</p> <p align="center">FINANCE, COMMERCIAL REVENUE AND CONTRACTSPOLICY AND ACCOUNTABILITY COMMITTEE</p> <p align="center">2nd July 2019</p>	
<p>SECTION 106 AGREEMENTS – UPDATE REPORT</p>	
<p>Report of Cabinet Member for the Economy: Councillor Andrew Jones</p>	
<p>Report Status: Open</p>	
<p>Classification: For review and comment.</p>	
<p>Key Decision: No</p>	
<p>Wards Affected: All</p>	
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1. EXECUTIVE SUMMARY

- 1.1 Since 2014 the Council has negotiated over £600 million worth of funding through developer contributions as part of new developments in the borough. This includes financial as well as non-financial contributions received through s106 agreements, along with the Community Infrastructure Levy.
- 1.2 This report summarises the role of section 106 (s.106) agreements, the use of s.106 funds and how decisions are made regarding expenditure of s.106 funds. It provides an overview of s.106 receipts and the current position regarding s106 balances and current and future expenditure by category. It reports on the notable s106 agreements that have been signed this year and provides an overview of the community benefits that have been achieved from s106 funding.
- 1.3 Appendix 1 summarises the s.106 agreements where funds have been received and projects are underway. It also provides information on

completed s. 106 agreements and funds agreed, but not yet received as the trigger points for payments have not been reached.

2. RECOMMENDATION

- 2.1 That the Policy and Accountability Committee note the report.

3. BACKGROUND TO PLANNING OBLIGATIONS

- 3.1 Planning obligations under s.106 of the Town and Country Planning Act 1990 (as amended), known as s.106 agreements, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focused on site specific mitigation of the impact of development.
- 3.2 Planning obligations are used to secure affordable housing, and to secure financial contributions to provide infrastructure. Legal tests govern the use of s106 agreements to ensure they are necessary to make the development acceptable in planning terms, directly related to the development, and are fair and reasonably related in scale and kind to the development.
- 3.3 Payments can be made in the form of a lump sum or an endowment or as phased payments, related to defined dates, events and triggers as the particular development progresses.
- 3.4 The obligation becomes a land charge. If the s. 106 is not complied with, it is enforceable against the person that entered into the obligation and any subsequent land owner. The s.106 can be enforced by injunction. In case of a breach of the obligation the Council can take direct action and recover expenses.
- 3.5 Further background information on the use of s106 agreements is set out in Appendix 2.

4. HOW S.106 FUNDS ARE MANAGED IN LBHF

- 4.1 The Council employs an Obligations Monitoring Officer to log and monitor all planning applications and receipts from the Community Infrastructure Levy. In recent months, the restructure of the Planning Service together with greater joint working with Finance officers have increased the capacity and effectiveness of the monitoring and management of the s106 programme. Staff resources engaged in managing and monitoring agreements are funded by contributions made by developers when they enter into planning obligations.
- 4.2 All legal agreements and obligations contained in them are entered onto a dedicated Council database which incorporates the trigger points for payments of obligations to ensure compliance. All contributions held are now recorded in a shared corporate system to ensure regular financial reconciliation.

5. PROCESS FOR ALLOCATING S.106 FUNDS

5.1 Local planning authorities are required to use the funding in accordance with the terms of the individual planning obligation legal agreement. In LBHF there are three broad categories of s. 106 contributions received:

- for a specific purpose defined and described in the s106 agreement
- for a general functional purpose defined and described in the s. 106 agreement but with geographical constraints
- for a general purpose defined and described in the s. 106 agreement but with no borough geographical constraints.

The Council has agreed procedures for determining the allocation and spend of s106 contributions, depending on the purpose of the funds received.

5.2 In the case of contributions received for a specified purpose, such as an identified junction improvement, the Council service responsible for delivering the project seeks formal approval from the appropriate Cabinet Member for the proposed project, or Cabinet in line with the Council's Financial Regulations.

5.3 For more generic contributions, council services are required to follow an agreed s. 106 Protocol. This requires all proposed projects be supported by a business case, conform to the terms of the legal agreement, and demonstrate how the proposal delivers the Council's Business Plan and its Local Plan priorities. Bids are assessed and prioritised by a monthly s.106 and CIL Board of senior officers.

5.4 This s106 Officer Board makes recommendations on schemes suitable for funding to the Cabinet Members for the Economy, and Finance and Commercial Services as part of a s106 Member Board meeting monthly. Following agreement of this Board, formal approval of the bid is sought either through the relevant Cabinet member or Cabinet in accordance with the Council's Financial Regulations.

5.5 In addition to considering individual bids, both Boards also play a wider role in overseeing the management and monitoring of the programme and its balances.

5.6 An annual report to the Cabinet summarises all of the drawdowns from individual s106 agreements which have taken place in the financial year and the purposes of those funds.

5.7 Councillors can make representations to the relevant department and discuss the need for a particular project to be submitted for funding through the process outlined above.

6. CURRENT POSITION REGARDING S.106 FUNDS

- 6.1 There are currently 213 individual s.106 agreements in the programme, containing over 900 heads of terms. Funds have been received for around 160 of these agreements (incorporating approximately 700 heads of terms) and projects are underway. The remaining agreements are signed and completed although funds have not yet been received as the trigger points for payments are not reached. Trigger points typically relate to the stages of development, such as commencement of development works on site or the first occupation of a residential unit.
- 6.2 A detailed summary of the receipts received, expenditure and commitments relating to each individual s.106 agreement is shown at Appendix 1. Table 1 below summarises the balances at April 2012 and the receipts and payments history from April 2012 to March 2019. In addition to the current available balances, the table also sets out expected future receipts and committed spend.

Table 1 – Overview of s106 balances at 31st March 2019

Opening balance April 2012	Cash received	Drawdowns	Available balances as at 31st March 2019	Future receipts	Total Current and Future Funds	Approved Commitments	Earmarked Commitments
£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s
(15,573)	(99,021)	72,567	(42,028)	(180,523)	(222,551)	44,989	9,030

- 6.3 The current available balance is £42m with a further £180.5m negotiated as potential future receipts. This includes all potential receipts – including those obligations agreed, but not yet received. It is important to note that receipts are dependent on a number of factors, including the risk relating to implementation and completion of planning applications as approved. For example, the landowner/developer may choose not to progress development or in the event a planning permission expires, a new application and s. 106 agreement may supersede an earlier agreement.
- 6.4 A number of notable s106 agreements were completed over the last year which continue to add to the programme. These are summarised in table 2 below. In addition there are currently over ten other agreements being negotiated by the Council but not yet signed, including the agreement associated with the redevelopment of Olympia.

Table 2 – Notable agreements signed over last 12 months

Notable S106 Agreements signed over last 12 months	Approx value (excluding non financial obligations)
Land known as Gateway Site, White City Place, 201 Wood Lane, London	£4.4m
Fulham Football Club, Stevenage Road, London SW6 6HH	£2.1m
Fulham Gasworks, Imperial Road London	£7m
Land Bounded by Fulham Gasworks and Railway Line (Chelsea Creek), Imperial Road London SW6	£3.4m

7. SUMMARY OF S106 EXPENDITURE 2018/19

- 7.1. At its meeting on the 1st July, the Council's Cabinet is scheduled to consider a report on the recommended use of s106 funds for the year 2018/19 and the approval to spend £14m for specified projects. This annual drawdown reconciliation from the programme is summarised in table 3 below. (Note - the current balance figure in Table 1 above is the current balance after this drawdown figure of £14m has been taken into account).
- 7.2 The Cabinet report can be viewed in full at <http://democracy.lbhf.gov.uk/ieListDocuments.aspx?CId=116&MId=6582&Ver=4>

Table 3 - Summary of projects funded from s106 funds 2018/19

Theme/s106 drawdown amount	Relevant projects
Community Safety Initiatives £3.047m	Towards Community safety initiatives such as CCTV installation and enhanced policing projects to address increased crime/fear of crime arising from new developments and population growth.
Parks Projects £861k	To fund parks projects necessary to improve parks in the borough and/or increase their capacity necessary to support increasing and changing population. Projects include the Ravenscourt Park masterplan,

	Wormholt Park refurbishment, St Paul's Park Improvements and the ecology garden at South Park.
Housing Projects £619k	Towards the delivery of affordable housing projects in the borough, including initiatives at various sites including, Fulham North Housing office, Ed City, Flora Gardens, Edith Summerskill House and 50 Commonwealth Avenue.
Economic Development Projects £742k	Towards economic development and training and skills projects in the borough including North End Road market and Place-Making Activities and the establishment of a Growth and Innovation partnership with Imperial College.
Highway Works £4.33m	Towards highway projects in the borough directly required because of developments taking place, including Harbour Avenue highway improvement works, Ariel Way/ Wood Lane Highway Works and various Street Czar projects.
Arts and Culture £69k	Towards arts and culture development in the borough, including Bush Theatre improvements and Arts Strategy projects
Social Inclusion Projects £33k	Towards social inclusion projects to address the increased needs generated by population growth and change in the borough, including the expansion of the Social Inclusion Unit and funding for a Crisis Navigator - to support residents affected by the rollout of the Universal Credit scheme in Hammersmith & Fulham.
Libraries and Community Centres £362k	Towards libraries and community centres/ improved facilities to increase capacity and extend provision, including projects at the Macbeth centre and Sands End Community centre.
Schools/education £251k	towards Schools / Education projects, including the TBAP Bridge project to enhance the curriculum offer to Hammersmith & Fulham students at the Bridge Academy.
Environmental monitoring £270k	towards waste disposal / environmental protection and on-site monitoring for air quality, land contamination and environmental health

Services of the Council £3.3m	Recovery of additional pressures and costs to the Council of operating services as a result of new developments.
Monitoring and management costs £289k	Drawn from s106 funds collected specifically for this purpose.

- 7.2 Section 106 funds have been used to help support a number of significant council projects. Table 4 below indicates the projects that have received over £1million funding from the s106 programme in the last two financial years:

Table 4 – Projects receiving £1m+ over last two years

Projects receiving £1m+	Total spend 2017-19
Affordable Housing	£1.5m
CCTV	£2m
Children’s services	£8m
LED lighting	£1.2m
Pay & Display upgrade	£1.2m
Policing	£3.2m

8. COMMITTED AND EARMARKED s106 FUNDS

- 8.1 As indicated in Table 1 above, there is currently just under £45m of planned/committed expenditure within the programme, and a further £9m earmarked to projects currently under development. This reflects proposed expenditure on projects over the period 2019-24 and is closely monitored to ensure appropriate funds have been received and are available. Table 5 below summarises some of the main proposed spend areas for the future.

Table 5 – Examples of future planned expenditure

Examples of planned projects 2019-2014	Estimated expenditure
Supporting affordable housing provision, including the redevelopment of Edith Summerskill House	£24.5m
Parks and leisure projects, including improvements to Hammersmith Park playground, Japanese Garden, bowling green, outdoor gym and tennis courts.	£750k
Transport and highways projects , including works to Shepherd’s Bush overground station	£1.8m

Schools and education improvements, including funding for primary school breakfast clubs to tackle food poverty in the borough.	£2.2m
Early intervention link worker support project to support 'at risk' children and young people , helping with school attendance, wellbeing, parental engagement and stronger joint working between public and voluntary organisations	£559k
Economic development projects, including a work matters scheme to support apprenticeships for local residents.	£1.7m

9. COMMUNITY INFRASTRUCTURE LEVY (CIL)

- 9.1 The Government viewed s.106 as providing only partial and variable response to capturing funding contributions for infrastructure. As such, provision for CIL is in place in the Planning Act (2008).
- 9.2 CIL has not replaced s.106 agreements although the introduction of CIL resulted in a tightening up of the use of s106 funds. S.106 agreements, in terms of developer contributions, should be focused on addressing the specific mitigation required by a new development, whilst CIL addresses the broader impacts of development. There should be no circumstances where a developer is paying CIL and s.106 for the same infrastructure in relation to the same development. It is expected that receipts received through s. 106 agreements will decrease over time as receipts from CIL increase.
- 9.3 CIL is intended to provide infrastructure to support the development of an area. When councils introduce the levy, s. 106 requirements should be scaled back to matters that are directly related to a specific site, and are not set out in a regulation 123 list. Where the regulation 123 list includes a generic type of infrastructure (such as 'education' or 'transport'), s.106 contributions should not be sought on any specific projects in that category. Where a regulation 123 list includes project-specific infrastructure, the charging authority should not seek any planning obligations in relation to that infrastructure.
- 9.4 The Council's CIL took effect on the 1 September 2015 and charging rates vary across the borough, ranging from £400 per sqm for new residential development in the south of the borough to nil rate for new residential development in parts of the growth areas. The Council currently has £4.3m in borough CIL receipts (excluding Mayoral CIL) which is allocated in principle to the West King Street regeneration project.

- 9.5 Further details of the Council's CIL can be found at <https://www.lbhf.gov.uk/planning/planning-policy/community-infrastructure-levy-cil>
- 9.5 Government regulations require that 15% of the Levy collected is allocated to local community projects, known as 'local CIL'. The Council currently uses a crowd funding system called Spacehive to allocate this local CIL spending which ensures that funds contribute to wider projects. To date Spacehive has received £70k funding from the Local CIL Levy and is due to receive a further £100k in phased payments. With that investment, Spacehive has raised funds for a number of community projects in the borough through crowd funding, including:
- Ravenscourt Park Community Glasshouses, **HCGA** – fundraising target £115,432, potential CIL pledge of £20k
 - Rose Garden Rejuvenation, Bishops Park – **Friends of Bishops Park**, fundraising target £4,010, potential CIL pledge of £1-1.5k
 - 1960s Reminiscence Room, Shepherds Bush, **Nubian Glu**, fundraising target £8,071, potential CIL pledge £3k
 - The Invisible Café (for people with MS and other conditions), **Invisible Café CIC**, fundraising target £33,719, potential CIL pledge £10k
 - Hub for the Homeless, **The Upper Room**, fundraising target £7,738, potential CIL pledge £2.5-3k
- 9.6 Planning officers are currently reviewing these existing arrangements to ensure wider engagement with local residents over priorities for the local CIL. Options will be considered by the s106 Officer and Member Boards before being taken forward.

10 FINANCIAL IMPLICATIONS

- 10.1 Finance officers work closely with the Obligations Monitoring Officer in ensuring the effective and accurate financial stewardship of all s. 106 agreements funding and expenditure. This includes maintaining and reconciling balances, receipts and payments records as well as monitoring committed and approved expenditure plans and future funds and drawing down funding for eligible expenditure. Finance officers also validate funding requests for the s. 106 Officer Board and Cabinet Member/ Cabinet approval.
- 10.2 Table 1 and Appendix 1, which set out the balances, spend, future funds and commitments relating to s.106 agreements, have been validated by Finance officers.

APPENDIX 1 – Section 106: Balances, spend, commitments and future funds
(April 2012 – March 2019 and projected)

APPENDIX 2