

## London Borough of Hammersmith & Fulham

**Report to:** Finance, Commercial Revenue and Contracts Policy and Accountability Committee

**Date:** 29<sup>th</sup> January 2020

**Subject:** Section 106 Agreements – Update report

**Responsible Directors:** Jo Rowlands Strategic Director for the Economy, Hitesh Jolapara Strategic Director Finance and Governance

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### Summary

Following a previous report of 2<sup>nd</sup> July 2019 to this Committee, this report provides an update of the current position regarding Section 106 (S106) balances of funds received and pending, and the proposed expenditure of S106 funds for 2019/20. It also provides a summary of the further work being undertaken, including on the governance arrangements for decision making.

### Recommendation

1. The Committee note the report.
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**Wards Affected:** All

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### H&F Priorities

Our Priorities	Summary of how this report aligns to the H&F Priorities
<ul style="list-style-type: none"><li>• Building shared prosperity</li></ul>	The Council uses planning obligations to ensure the benefits of new development are realised by existing residents and businesses. This is achieved through various means, including but not limited to the provision of new community facilities; enhancements to open space; maximising job opportunities in both construction and post construction phases; and improvements in environmental quality.
<ul style="list-style-type: none"><li>• Creating a compassionate council</li></ul>	The Council uses planning obligations to deliver facilities and services, including but not limited to improvements to existing facilities to ensure these are accessible to

	all in the community.
<ul style="list-style-type: none"> <li>• Doing things with local residents, not to them</li> </ul>	The priorities for securing obligations seek to reflect local residents' views on the impacts a development will have on an area and the improvements necessary to address these. Local residents and businesses are also engaged in the delivery of new facilities and services.
<ul style="list-style-type: none"> <li>• Being ruthlessly financially efficient</li> </ul>	From the negotiation of obligations, to the procurement of facilities, the Council seeks to ensure we maximise the benefits from new development and are robust in getting value for money, including leveraging in further external funding where appropriate.
<ul style="list-style-type: none"> <li>• Taking pride in H&amp;F</li> </ul>	The overarching aim of Council's use of planning obligations is to ensure the impacts of growth are managed and that new development benefits new as well as existing residents and that all residents have equitable access to high quality services, amenities, that met their needs.

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**Background Papers Used in Preparing This Report**

None.

**1. BACKGROUND**

- 1.1. Since 2014 the Council has negotiated over £600 million worth of developer contributions from new developments in the borough through planning agreements and the Community Infrastructure Levy. This includes financial as well as non-financial contributions received through s106 agreements, along with the Community Infrastructure Levy. A summary of the main agreements that contribute to this total and the financial/non-financial funding secured, is provided at Appendix 1.
- 1.2. In respect of non-financial contributions, an estimated cash value has been derived based on the following assumptions:
- On-site affordable housing for rent – cost of the unit including grant
  - On-site discounted market housing – the value of the subsidy
  - Works in kind, such as the provision of public realm, CCTV, highways improvements or community facilities – comparable estimates of the cost to the Council if it were to undertake the works
  - Benefits secured for residents or employees, such as free membership to car clubs or health facilities, contributions to bike purchasing – cash value of the discount or membership for the period offered, with an 80% uptake by scheme occupants
  - Benefits secured for businesses, security or town centre management requirements – comparable cost to the Council, such as street cleaning, event organising and hosting, and community liaison officers
  - Other benefits secured, such as local employment opportunity requirements – comparable costs the Council incurs providing the same services, such as job brokerage, construction training placement, and apprenticeships.
- 1.3. In addition to the above, the Council has secured other forms of obligations that benefit local residents and businesses but for which it is difficult to assign a monetary value. Such benefits include, but are not limited to, securing incubator space for small businesses, local procurement/supply chain requirements, securing new rights of way or better links and connections, the preservation of archaeological remains and heritage features, and the protection and enhancement of biodiversity. These are therefore not included within the sums in Appendix 1.
- 1.4. It should also be noted that the £600m+ excludes the cost of S278 works to the public highway as well as public transport improvements negotiated separately on these developments by Transport for London, which also benefit Hammersmith and Fulham.

## **CURRENT POSITION REGARDING S.106 FUNDS**

- 1.5. There are currently 228 individual S106 agreements in the programme, containing over 1,150 heads of terms. Funds have been received for 165 of these agreements and projects to deliver on the obligations are also underway. The remaining agreements are signed and completed although funds have not yet been received as the trigger points for payments have not

been reached. Trigger points typically relate to a specific stage of development, such as commencement of development works on site or the first occupation of a residential unit and are therefore outside the Council's direct control.

- 1.6. Table 1 below summarises the balances at 1<sup>st</sup> January 2020 in respect of the S106 funds already received, expected future receipts, and the proposed S106 spend on projects and services over the next four years (2019/20 – 2022/23).

**Table 1 – Overview of S106 balances at 1<sup>st</sup> January 2020**

	£m
Available balance (cash in hand) at 1 January 2020	55.0
Expected future receipts	124.1
<b>Total current and expected future funds</b>	<b>179.1</b>
Proposed expenditure	63.5

- 1.7. The balance of available funds, where cash has been received by developers, is currently £55m. The majority of these funds are limited to certain purposes or types of infrastructure through individual legal agreements or certain locations within the Borough. Appendix 2 (attached) summarises the funds already received against the purposes for which the funding was secured.
- 1.8. Future receipts negotiated but not yet received are in the region of £124m. These are highly dependent on wider economic factors and whether development comes forward or not. Appendix 2 indicates the expected future funds that could be received over the next 10 to 15 years. As with the available balances, the future funds must be spent in accordance with the purpose for which the funding has been secured. It should be noted that the future funds exclude the S106 funds agreed for schemes where currently there is little prospect of the proposed developments coming forward, such as Earl's Court, Stamford Bridge, and Albert & Swedish wharves.
- 1.9. 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.

**Table 2 – Notable agreements signed over last 12 months**

S106 agreement	Value (Excluding non-financial obligations)
Olympia Exhibition Centre	£33.8m
Watermeadow Court	£6.38m

**PROPOSED EXPENDITURE OF S106 FUNDS FOR 2019/20**

- 1.10. The report of 2<sup>nd</sup> July 2019 to this Committee provided a list of the major projects that had received S106 funding over the last two financial years. In total, since April 2012, the Council has spent circa £72.6m of S106 monies on the provision of a range of facilities and services, and affordable housing.
- 1.11. As indicated in Table 1 above, there is currently £63.5m of planned/proposed expenditure on projects over the next four years (2019/20 - 2022/23). Table 3 below summarises proposed spend areas for the future.

**Table 3 – Proposed expenditure**

Themes for Spend	Estimated expenditure 2019/20 (£'000)	Estimated expenditure 2020/21-2022/23 (£000)
Affordable Housing	3,416	22,518
Arts and Cultural projects	143	30
Community Facilities	2,474	1,124
Community Safety and Security	2,587	3,543
Community Wellbeing and Social Inclusion	1,113	1,737
Economic Development	1,615	6,494
Environmental Improvements	868	1,233
Heritage and Conservation	40	50
Increase in Council Service Requirements	3,300	-
Parks, Leisure and Sports Facilities	1,263	1,372
Schools and Higher Education	2,250	-
Transport and Public Realm	4,067	168
<b>Total</b>	<b>23,161</b>	<b>40,327</b>

- 1.12. The Planning and Finance teams have been working closely with the various service areas of the Council to ensure the proposed expenditure aligns with the purpose for which the funds have been received, that there is available funding to cover the cost of the project, alternative sources of funding are utilised where appropriate, and that the projects represent value for money to the Council and residents.
- 1.13. In regard to the above, this includes projects such as the North End Road Project and Borough of Culture, where the current S106 spend is limited to developing the bids for various external funding pots, such as the Mayor's Good Growth Funds and Liveable Neighbourhoods initiatives. Indicative levels of S106 match funding are included as earmarked but will be dependent on the approval of bids and the level of funding secured.
- 1.14. An exercise is currently underway to review expenditure incurred on all of these projects up to the third quarter of 2019/20.

## **GOVERNANCE ARRANGEMENTS & PRACTICES**

- 1.15. For most planning obligations the terms of the legal agreement limit the consideration of where and on what the S106 funding can be spent on. For example, funding secured to deliver specified works (e.g. '*public realm improvements to the land shown hatched on the map*') or services (e.g. '*for the Council to review and agree the sustainable travel plan*'). In such instances, governance is focused on ensuring the relevant Council service undertakes the works or service in a timely manner and this is recorded so that the S106 funds can be transferred, the obligation discharged, and the completion reported in annual reporting.
- 1.16. However, there are instances where there is a degree of discretion within the headline obligation. For instance, where funds have been secured towards the provision of community facilities with or without geographic restrictions and without constraint on what type of community facility the funding could support.
- 1.17. Currently, the Council has an agreed S106 protocol that services are required to follow. 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 S106 Board of senior officers and the Strategic Leadership Team (SLT). SLT makes recommendations on spend to the S106 Member Board. 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.
- 1.18. This process is under review to facilitate a more strategic and longer term approach to prioritising spend. Until recently, individual bids tended to be considered on an ad-hoc basis, with eligible S106 agreements then identified to fund the proposed project, and approved on a 'first come first served' basis. Following the completion of the detailed review of all agreements and their respective obligations, there is a more detailed understanding of the funds available and themes under which these need to be spent. This will allow a more strategic approach to its allocation and use by departments and services with plans being developed to spend those funds on a thematic basis. In addition, a more strategic approach to assessment of bids received is under development that can balance the funding of one project ahead of another and can better respond to changes in services priorities or alternative funding opportunities.
- 1.19. Alongside the above review, further improvements in management and monitoring processes are under consideration including:
  - the process of informing services what S106 funding is available and for what purposes – so they can build these into their future work programmes;
  - more focused tracking of developments to improve the certainty about the timing of future S106 receipts;

- understanding service programme planning where these are reliant on S106 funding, to overcome service continuity issues arising from the intermittent nature of receipts of S106 funds from development;
- the method of recording and reporting on the progress of delivering upon planning obligations to improve transparency;

**List of Appendices:**

Appendix 1 – Planning obligation benefits secured by the Council since 2014

Appendix 2 – S106 funding available and future funds