


<p style="text-align: center;"><b>London Borough of Hammersmith &amp; Fulham</b></p> <p style="text-align: center;"><b>CABINET</b></p> <p style="text-align: center;"><b>16 APRIL 2018</b></p>	
<p><b>PLANNING OBLIGATIONS DRAW DOWN REPORT</b></p>	
<p><b>Report of the Cabinet Member for Finance, Councillor Max Schmid, and the Cabinet Member for Economic Development and Regeneration, Councillor Andrew Jones</b></p>	
<p><b>Open Report</b></p>	
<p><b>Classification - For Decision</b></p> <p><b>Key Decision: Yes</b></p>	
<p><b>Consultation</b> Procurement, Legal, Corporate Finance</p>	
<p><b>Wards Affected: All</b></p>	
<p><b>Accountable Director: Jo Rowlands, Strategic Director Growth &amp; Place</b></p>	
<p><b>Report Author:</b> Peter Kemp, Planning Change Manager</p>	<p><b>Contact Details:</b> Tel: 020 8753 6970 E-mail: peter.kemp@lbhf.gov.uk</p>

## **1. EXECUTIVE SUMMARY**

- 1.1. The Council is required to use funds received from planning obligations to address the impact of developments carried out.
- 1.2. The report sets out the recommended use of funds received through Section 106 agreements and received as a result of the CIL schedules in force in the borough and seeks authority for the spend.
- 1.3. The spending program has been developed after consideration of the results of resident-led Commissions and discussions with resident groups and members to ensure that it delivers residents' priorities. Final sums drawn down at the financial year end may vary due to slippage in expenditure plans or other adjustments. Such variances will be reported in the next section 106 update to Cabinet.

## **2. RECOMMENDATIONS**

- 2.1. That officers be authorised to drawdown Section 106 and CIL monies as set out in section 4 of this report, to fund expenditure of up to **£33,014,421** plus up to **£600,000** monitoring and administration costs.
- 2.2. That the final decision on the amount to be used for the purposes set out in paragraph 4.24 be delegated to the Strategic Director Growth & Place and the Strategic Director Finance & Governance in consultation with the Cabinet Member for Finance and the Cabinet Member for Economic Development and Regeneration.

## **3. REASONS FOR DECISION**

- 3.1 The Council enters into agreements with developers and land owners under Section 106 of the Town and Country Planning Act 1990 to enable mitigation of impacts of development and to enable delivery of necessary social and physical infrastructure.
- 3.2 For a Council to enter into an agreement under S106 of the Town and Country Planning Act, the obligations need to comply with the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010. All obligations must be:
  - i. Necessary to make the development acceptable in planning terms;
  - ii. Relevant to the development being permitted; and
  - iii. Reasonably in all other respects.
- 3.3 Funds received pursuant to S106 agreements must be used for the purposes specified in those agreements or, where there is flexibility within the terms of the agreement, for purposes that comply with the tests set out above.
- 3.4 In addition to S106, the Council has a Community Infrastructure Levy (CIL) charging schedule in force, and has been collecting monies as a charging authority as well as on behalf of the Mayor. The Council is required to use 15% of the borough CIL on projects in agreement with the Community, and then the remainder towards Infrastructure needed to support development in the Borough together with its operation, maintenance and repair.
- 3.4 This report seeks authority for the 2017/18 spend of monies received from S106 obligations and CIL for the purposes set out in this report.

## **4. THE DRAWDOWN**

- 4.1 The following projects are funded from S106 monies to address needs generated by the developments taking place.
- 4.2 **Schools Projects**

Up to **£9,380,000** towards schools projects across the borough being: -

£80k towards Science laboratories at the Hurlingham Academy

£6.2M towards the Queens Manor Resource Centre

£3.1M towards the Bridge Academy Trust

With the exception of £400k for the Queens Manor Resource Centre, the principle of this funding has previously been agreed.

The funding of this project would be from: -

Amount (£)	Site	AKA
13,601	725-761A Harrow Road, NW10 5NY	635
1,190	Stowe Road Depot	693
3,863,933	Chelsea Creek, Imperial Road	722
2,076	Empress State	828
60,713	282 – 292 Goldhawk Road	784
146,839	Imperial Wharf	795
291,648	Woodlands	691
500,000	Westfield	832
2,000,000	51 Townmead	721
500,000	Britannia House	506
1,500,000	26 Sullivan	723
500,000	Chelsea Creek, Lots Road	732

#### 4.3 Weed Control

Up to **£247,000** towards weed control measures necessary to support increasing population in the borough. To be funded from: -

Amount (£)	Site	AKA
75,000	Townmead Estate	721
75,000	Westfield	832
75,000	58 Shepherds Bush Green	687

22,000	27 St Anns Road	744
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#### 4.4 Parks Projects

Up to **£1,325,106** to fund parks projects necessary to improve parks in the borough and/or increase their capacity necessary to support increasing and changing population. To be funded from: -

Amount (£)	Site	AKA
92,000	Empress State	804
90,000	Goldhawk Industrial estate	684
45,000	176 – 182 Goldhawk	828
90,000	West 12	823
128,838	725 – 761 Harrow Road	635
10,000	G Gate	657
135,000	58 Shepherds Bush Green	687
125,000	Fulham Reach	716
14,445	Janet Adegoke Leisure Centre	712
555	Chelsea Creek	721
176,000	271 – 281 King Street	830
190,000	Goldhawk Industrial Estate	684
75,000	Ashlar Court	725
96,000	282 – 292 Goldhawk Road	784
57,268	Westfield	296

#### 4.5 Housing Projects

Up to **£1,181,911** towards improving current housing estates and stock to improve their quality and capacity as housing provision to be funded from: -

Amount (£)	Site	AKA
78,064	Townmead Estate	721

110,000	Woodlands	691
230,177	51 Townmead	721
82,000	6 – 12 Gorleston Street	755
235,333	Chelsea Creek	722
200,000	Westfield	832
246,337	Britannia House	506

Up to **£2,141,452** towards the delivery of affordable housing projects in the borough, to be funded from : -

Amount (£)	Site	AKA
2,100,624	M&S White City	867
40,828	100 New Kings Road	794

Up to **£97,331** towards Strategic Regeneration projects that contribute towards the delivery of affordable housing projects in the borough, to be funded from : -

Amount (£)	Site	AKA
65,333	264 Goldhawk Road	722
31,998	100 New Kings Road	794

#### 4.6 Economic Development Projects

Up to **£715,957** towards economic development and training and skills projects in the borough. This is to be funded from: -

Amount (£)	Site	AKA
24,950	Guardian House	804
61,118	271 – 281 King Street	830
41,088	Thaxton Road/North End Road	823
233,812	Westfield	296

1,226	282 Goldhawk Road	784
2,838	51 Townmead Road	721
200	BBC Television Centre	827
23,509	Earls Court	795
2,859	Sovereign Court	776
2,859	Parsons Green Club	799
56,544	Woodlands	832
31,009	Hammersmith Pallais	605
79,264	Riverside Studios	801
72,120	Quayside Lodge	161
50,000	LAMDA	776
17,432	258 - 264 Goldhawk Road	805
15,129	BBC Television Centre development	844

#### 4.7 Parking Services Improvements

Up to **£1,966,000** towards replacing pay and display payment machines in the borough to increase the capacity of the highway necessary for increasing population in the borough. To be funded from: -

Amount (£)	Site	AKA
500,000	Westfield	832
500,000	Sovereign Court	776
500,000	51 Townmead	721
200,000	Britannia House	506
266,000	Chelsea Creek	722

#### 4.8 Highway Works

Up to **£2,652,018** towards highway projects in the borough directly required as a result of developments taking place. To be funded from: -

Amount (£)	Site	AKA
6,926	100 New Kings Road	794
5,357	271 – 281 King Street	830
116,356	28 – 36 Glenthorne Road	729
2,000	405 King Street	718
128,901	51 Townmead	721
38,000	70 – 72 Hammersmith Bridge Road	701
21,000	72 Farm Lane	740
19,709	7-9 Wyfold Road	802
33,514	84-90b Fulham High Street	743
150,000	Fulham Reach	716
350,000	26 Sullivan	716
350,000	Chelsea Creek	722
450,000	Britannia House	506
150,000	Parsons Green Club	799
650,000	Westfield	832
50,000	Stewarts Garages	740
130,255	Woodlands	691

#### 4.9 Updated Highway Lighting

Up to **£2,044,000** towards improving the highway lighting across the borough to be funded from: -

Amount (£)	Site	AKA
500,000	Chelsea Creek	722
1,000,000	Westfield	832
300,000	Britannia House	506
100,000	Chelsea Creek, Lots road	730

144,000	BBC Television Centre	827
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#### 4.10 Enhanced Policing Across the Borough

Up to **£1,627,001** towards additional policing provision to address the increased crime/fear of crime resulting from new developments and additional population in the borough to be funded from: -

Amount (£)	Site	AKA
250,000	Chelsea Creek	722
27,000	282 – 292 Goldhawk Road	784
250,000	Sovereign Court	776
100,000	Parsons Green Club	799
250,000	BBC Television Centre	827
381,523	Westfield	832
250,000	26 Sullivan	723
118,478	Britannia Club	506

#### 4.11 Arts Development

Up to **£50,000** towards Arts Development in the borough to be funded from: -

Amount (£)	Site	AKA
50,000	Britannia House	506

#### 4.12 Additional Environment Services Costs

Up to **£448,289** towards additional services provided by Environmental Services and waste as a result of development taking place in the borough to be funded from: -

Amount (£)	Site	AKA
100,000	Britannia House	506
100,000	Chelsea Creek	722



100,000	Westfield	832
100,000	BBC Television	827
48,289	Sovereign Court	776

#### 4.13 Social Inclusion Projects

Up to **£102,000** towards social inclusion projects to address the increased needs generated by population growth and change in the borough to be funded from: -

Amount (£)	Site	AKA
38,000	Westfield	832
40,000	51 Townmead Road	721
24,000	Kings Mall Carpark Site	776

#### 4.14 Street Czar Projects

Up to **£334,585** towards the delivery of the Street Czar projects to be funded from: -

Amount (£)	Site	AKA
50,000	Chelsea Creek	722
50,000	26 Sullivan Road	723
50,000	Chelsea Creek	722
34,585	Sovereign Court	776
50,000	BBC Television Centre	827
50,000	Westfield	296
50,000	Stewarts Garages	740

#### 4.15 Sands End Community Centre

Up to **£2,000,000** towards the Sands End Community Centre to address the community needs generated in the vicinity being funded from: -

Amount (£)	Site	AKA
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2,000,000	Chelsea Football Club	867
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#### 4.16 Cultural Projects

Up to **£106,000** to towards cultural projects in the borough to address the increased pressure on Cultural assets generated by the new development in the borough to be funded from: -

Amount (£)	Site	AKA
20,000	BBC White City	827
40,000	26 Sullivan Road	723
40,000	Chelsea Creek	722
6,000	Sovereign Court	776

#### 4.17 CCTV

Up to **£874,741** towards increasing and operating CCTV in the borough required as a result of increased population and development taking place. To be funded from: -

Amount (£)	Site	AKA
153,385	Chelsea Creek	722
20,000	233 – 245 Dawes Road	700
8,484	Chelsea Village	722
22,690	West 12	823
1,645	Pillar Development	403
100,000	Parsons Green Club	799
300,000	Westfield	832
96,383	51 Townmead	721
3,617	313 – 321 North End Road	741
100,000	26 Sullivan Road	723
68,537	51 Townmead	721

#### 4.18 Environmental Protection

Up to **£52,461** towards work carried out by Environmental Protection as a result of new developments taking place in the borough

Amount (£)	Site	AKA
52,461	Westfield	832

#### 4.19 Small Business Licensing

Up to **£5,886** towards supporting small business survive following changes in licensing legislation and interpretation.

Amount (£)	Site	AKA
£5,886	Westfield	832

#### 4.20 Poverty and Worklessness Projects

Up to **£60,000** towards social inclusion projects resulting from the poverty and workless commission recommendations to address the impact of the increasing and changing population of the borough generated by development taking place.

Amount (£)	Site	AKA
30,000	Sovereign Court	776
30,000	51 Townmead Road	722

#### 4.21 Environmental Monitoring

Up to **£201,943** towards environmental monitoring and air quality monitoring projects across the borough

Amount (£)	Site	AKA
40,000	Earls Court	733
60,000	Townmead Estate	721
955	Goldolphin and Latymer	543
8,988	Goldolphin and Latymer	833
92,000	Westfield	832

#### 4.22 MacBeth Centre

Up to **£260, 000** towards match funding projects to improve the MacBeth Centre as a centre for adult Training and Skills projects

Amount (£)	Site	AKA
260,000	Bechtel House	862

#### 4.24 Services of the Council

A number of new developments have resulted in additional pressures and costs to the Council of operating services that it would otherwise not have needed to operate. Authority is sought for up to £5.2M to be recovered from S106 being made up of the following: -

Up to **£2,356,250** towards Waste Disposal and management in the Opportunity Areas:

Amount (£)	Site	AKA
500,000	Chelsea Creek	722
500,000	51 Townmead	721
482,812	Chelsea Creek Lots Road	732
500,000	Westfield	832
373,438	26 Sullivan	716

Up to **£791,008** towards Library Services relating to population growth in the Opportunity Areas

Amount (£)	Site	AKA
200,000	Westfield	832
200,000	51 Townmead	721
200,000	Chelsea Creek	722
157,885	Woodlands	691
33,123	Pillar Development	403

Up to **£1,230,226** towards Social Care work in the Opportunity Areas: -

Amount (£)	Site	AKA
300,000	Westfield	832
300,000	Chelsea Creek	722
300,000	Imperial Wharf	722
330,226	51 Townmead	721

Up to **£763,256** towards Highways Maintenance and Management in the White City Opportunity Area

Amount (£)	Site	AKA
300,000	51 Townmead	721
300,000	Westfield	832
163,256	26 Sullivan	832

- 4.24 **Monitoring and Management Costs** - The Cost to planning of monitoring and managing S106 and CIL contributions. Authority is sought to draw down the costs of monitoring and managing obligations from S106 funds specifically for this purpose and interest. Authority is also sought to draw down the operation costs of CIL from the 4% administrative expenses.

## 5. CONSULTATION

- 5.1. The projects funded form part of the service plans for each of the services of the Council.

## 6. EQUALITY IMPLICATIONS

- 6.1. The equality implications for this report have been considered in developing the services, programmes and projects covered by the report and the associated decision making. We have checked for each service covered that equality impact assessment has been made in order to meet our equality duties.
- 6.2. *Implications verified/completed by: Joanna McCormick, Policy and Performance Manager, tel. 0208 753 2486.*

## **7. LEGAL IMPLICATIONS**

- 7.1 Section 106 agreements containing planning obligations are entered into between developers and the Council as the Local Planning Authority.
- 7.2 The use of such obligations is controlled by legislation, including regulation 122 of the CIL Regulations and Paragraph 204 of the National Planning Policy Framework (“NPPF”) which requires planning obligations to be:
- (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.
- 7.3 Paragraph 206 of the NPPF also states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
- 7.4 In accordance with section 216 (2) of the Planning Act 2008 and regulation 59 of the CIL Regulations (as amended by the 2012 and 2013 Regulations), the levy can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, open spaces, sporting and recreational facilities and other health and social care facilities. This definition allows the levy to be used to fund a very broad range of facilities covered in paragraphs 4.2 – 4.23 of the report. Charging authorities may not use the levy to fund affordable housing.
- 7.5 The Cabinet Members attention is drawn to the Public-Sector Equality Duty under section 149 of the Equality Act 2010, and when making decisions to have regard to the need to eliminate discrimination, harassment, victimisation, or other prohibited conduct; advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and those who do not share it. The relevant characteristics are age, disability, gender assignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The duty also applies to marriage and civil partnership but only in relation to the elimination of discrimination. It is noted that the relevant equality impact assessments have been undertaken to ensure residents who may suffer with one of the protected characteristics are not adversely affected by the spending programme to ensure that it meets resident’s priorities as part of the Council’s decision-making process.
- 7.6 Section 1 of the Localism Act 2011 grants Councils a General Power of Competence whereby a Local Authority has power to do anything that individuals generally may do, including the use of funds received from planning obligations to address the impact of developments carried out in the borough. This power can be used even if legislation already exists that allows a Local Authority to do something. However, the General Power of Competence does not enable a Local Authority to do anything which it is unable to do by virtue of a pre-commencement limitation. The Director of Law (shared services) has not been made aware of any limitation or restriction in

this case that would prevent using section 106 and CIL monies in the circumstances as set out above

7.7 The Council has entered into a significant number of Section 106 agreements. Section 106 Funds can only lawfully be applied in accordance with the terms of each specific agreement, as approved by the Planning Applications Committee. Officers will need to ensure that the funding proposals as set out in this Report are permitted under the terms of each individual Section 106 agreement to include any subsequent variation/s to those agreements agreed between the parties.

7.8 *Implications verified/completed by: Horatio Chance, Senior Solicitor and Deputy Team Leader, tel. 020 8753 1863.*

## **8. FINANCIAL IMPLICATIONS**

8.1. The report requests of up to £33.014m of S106 money to cover relevant expenditure incurred to date plus the projected spend to the end of the financial year 2017/18.

8.2. The forecast monitoring costs of up to £600,000 will be funded from available Section 106 and CIL balances. The total forecast drawdown including monitoring costs will be taken as up to £80,000 from specific Section 106 agreements and up to £520,000 from Community Infrastructure Levy funds.

8.3. Final sums drawn down at the financial year end may vary due to delays in the compilation of claims, slippage in expenditure plans or other adjustments. Therefore, full details of the final drawdown will not be available until the end of the financial year. This means there is a risk that some of these amounts may not be claimable against Section 106 funds which could result in additional unexpected overspends against revenue or capital budgets. Finance officers will need to see the final drawdown claim in detail, with appropriate supporting evidence provided by each service, prior to the final year end accounting entries being made.

8.5. *Implications completed by: Danny Rochford, Head of Finance, RPHS, tel. 020 8753 4023.*

## **9. IMPLICATIONS FOR BUSINESS**

9.1. Initiatives supported via the economic development and related strands contain support for local SMEs, including local procurement opportunities and access to wider business support. Hence, the investment of s106 funds into economic development initiatives is deemed to provide positive impact for local businesses.

9.2. Planning colleagues are working closely with the Economic Development Team to secure s106 funding for local employment and business initiatives and support their implementation.

9.3. *Implications verified/completed by: Alben Karameros, Economic Development Team, tel. 020 7938 8385.*

## **10. RISK MANAGEMENT**

10.1. There are no new risks identified in this report that haven't previously been considered by members.

10.2. *Implications verified/completed by: Michael Sloniowski, Principal Risk Consultant, tel. 0208 753 2587.*

## **11. COMMERCIAL IMPLICATIONS**

11.1 Monies which are received from a developer which arise from the terms of an Agreement under section 106 can only be expended by the Council strictly in accordance with the terms of the Agreement.

11.2 The proposed expenditure outlined in the report must be in accordance with the relevant Agreements.

11.3 All expenditure shall follow the rules and regulations set out in CSOs and PCR2015.

11.4 *Implications verified/completed by: Andra Ulianov, Procurement Consultant, tel. 0208 753 2284.*

## **12. IT IMPLICATIONS**

12.1. There are no ICT implications relevant to this report.

12.2. *Implications verified/completed by: Quentin Brooks, Service Director, tel. 0208 753 6214.*

## **13. BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

None