

WELWYN HATFIELD BOROUGH COUNCIL
DEVELOPMENT MANAGEMENT COMMITTEE – 8 OCTOBER 2020
REPORT OF THE CORPORATE DIRECTOR (PUBLIC PROTECTION, PLANNING
AND GOVERNANCE)

SECTION 106 PLANNING OBLIGATIONS REPORT 2019-20

1 Executive Summary

- 1.1 Planning obligations are an effective tool to secure the necessary infrastructure and services required as a result of development. They also ensure that the negative impacts of a development can be adequately mitigated, for example increasing/improving public transport provision, increasing school capacity, enhancing open spaces, requiring that a given portion of housing is affordable, etc. It is important to note that they cannot be used to mitigate the impact of any shortfall in existing infrastructure.
- 1.2 Both Welwyn Hatfield Borough Council and Hertfordshire County Council have produced guidance fully detailing the planning obligations which can be sought. This is also useful in assisting applicants and developers to calculate their potential Section 106 costs prior to making a planning application. These documents titled *WHBC Planning Obligations Supplementary Planning Document (SPD) 2012* and *Herts CC Planning Obligations Guidance - Toolkit for Hertfordshire* can be viewed at: <http://www.welhat.gov.uk/planningguidance>. (County are currently reviewing their toolkit)
- 1.3 The purpose of planning obligations are to make development acceptable that would otherwise be unacceptable in planning terms. The National Planning Policy Framework (NPPF) sets out in paragraph 56 that planning obligations can only be sought where they meet the following tests:
- 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.

2 Recommendations

- 2.1 That Members note the contents of this annual report which relates to a) how the Borough Council collects and spends s106 monies, and b) details monies still to be spent.
- 2.2 To advise Ward Members that s106 contributions can be sought from future developments above 10 residential units and for Members to consider this in identifying potentially related infrastructure requirements. Contributions can also be sought from developments including employment or retail uses.
- 2.3 Furthermore, for Members to consider how they would like the Council to secure and spend Section 106 and Community Infrastructure Levy (CIL) contributions in

the future.

3 Explanation

- 3.1 The Borough Council collects contributions towards community facilities, public art, green spaces, indoor and outdoor sports facilities, local GP surgeries, community and mental health provision, play areas and equipment, parking and on-site waste and recycling provision. These funds are detailed by Ward in Appendix 1, which shows a breakdown of secured s106 monies (£5,084,881), sums collected (£4,062,781), spent (£1,595,202) and the remaining funds yet to be spent (£2,467,580). Hertfordshire County Council as the local highway and education authority collects and spends contributions towards education, youth facilities, libraries, highways, transport and rights of way. Details of these monies currently held and recently spent are detailed in Appendices 2 and 3.
- 3.2 The Borough Council has, within the last financial year, completed twelve s106's and Variation/Supplemental Agreements and, accepted five Unilateral Undertakings. All these agreements total a potential value of £16,932,083 (this includes contributions due to the County Council). Of these Agreements a total of 139 affordable housing units were secured and £345,002 were secured in lieu of affordable housing provision.
- 3.3 In the last financial year the Council received a total of £629,901 in s106 contributions and £273,546 was spent (further details provided at 3.10).
- 3.4 The Council prepared and consulted on its CIL Preliminary Draft Charging Schedule in 2017. CIL has been delayed by the Local Plan Examination. However, a view was taken that CIL would continue to progress and no longer wait for the Local Plan and the CIL viability evidence was reviewed and refreshed. On the 30 July the updated Draft Charging Schedule (DCS) was presented to CPPP and subsequently Cabinet on 5 August where the recommendation to take the DCS to public consultation was approved. All being well this is planned for September/October 2020. It is then hoped the Council will be in a position to take CIL through Examination early 2021 with adoption following in the summer/autumn.
- 3.5 One of the emerging Local Plan policies proposed, in accordance with the NPPF is to lower the threshold triggering the requirement for affordable housing to 10 units. The emerging Local Plan also proposes targets of 25% for Hatfield, 30% for Welwyn Garden City and 35% for village and rural locations.
- 3.6 The Committee may recall the Housing White Paper published in February 2017 which set out the Government's intention to improve the current approach to planning obligations. It also included an independent CIL review. A consultation on a preferred approach was then carried out and ended in May 2018. The results and proposed changes to the CIL Regs were then formally accepted by Parliament and came into force on 1 September 2019, one of the changes was to remove pooling restrictions.
- 3.7 Viability
- 3.7.1 Financial viability is often a consideration in the assessment of planning applications. Paragraph 57 of the National Planning policy Framework (NPPF) states the following:

“Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.”

- 3.7.2 This Council continues to receive requests from applicants for the viability of their schemes to be considered as part of the planning process. In these cases the Council has had to consider the appropriate amount of planning obligations and/or affordable housing being sought, based on the evidence that has been provided and following independent examination. Consideration of viability is an approach which is advocated by national and local planning policy and guidance.
- 3.7.3 In scenarios where a developer does identify a viability challenge for a proposal, the Council will normally request the submission of a viability assessment in order to test the evidence submitted. This assessment will then be considered by the Council, or consultants acting on the Council’s behalf, with the costs of this work being covered by the developer. This process is set out in detail in the Council’s Planning Obligations Supplementary Planning Document (SPD).
- 3.7.4 The outcomes of a viability appraisal can be varied and may include a negotiated agreement on the level of financial contributions or affordable housing, it may also result in including a review mechanism in the agreement to reassess the viability once a number of units of the development have been sold. Ultimately if the Council and developer cannot agree the Council may refuse planning permission. In such cases the viability arguments may be tested further at an appeal.

3.8 Reasons why planning obligations may not be sought

- 3.8.1 There are circumstances where planning obligations may not be sought, even though it would appear that some impact on existing infrastructure provision would be likely to occur. There can be a number of different reasons for this, for example, office to residential developments (applied for under Prior Approval) are exempt from planning obligations, or a lack of evidence to demonstrate need. It is important to understand that if the Council, as Local Planning Authority, is not able to demonstrate a robust case for seeking planning obligations/contributions, then it should not do so. In this regard, the Council is reliant on the quality of information and justification that emerges from the various service providers.

3.9 The role of Town and Parish Councils

- 3.9.1 Town and Parish Councils have an important role to play in this process, in particular by being able to identify local deliverable schemes. It is important that the Borough Council works with the Town and Parish Councils to help them to provide robust information about projects in their localities. Information is required on the nature of the project, what the estimated overall cost will be, whether any other funding streams will also be used and the timeframe for the delivery of that project. Information such as this then forms the justification for seeking contributions to those schemes. It is anticipated that this will predominantly relate to projects dealing with play space, green space, sports and recreation facilities. The Development Management Team continues to engage with Town and Parish Councils on planning applications with potential s106 agreements.
- 3.9.2 Town and Parish Councils should also recognise that providing this information is important even in circumstances where they do not support a particular application which is being considered by the Local Planning Authority. Whilst an application may not be supported at the local level, it may still be granted by the Borough Council or on appeal. In these circumstances, it is important that the local community is still able to realise some benefit from a development, even if it was not initially supported. It should also be noted that funding for projects would only come forward if and when development is implemented, and it may be some years before some payments are triggered depending on the size of the development.
- 3.9.3 Officers continue to be available to engage with Town and Parish Councils to improve awareness of the development management and s106 process.

3.10 Income and Expenditure

- 3.10.1 **£629,901** was received in 2019-20. This sum totals the contributions received from eight implemented developments. The largest sum received was £483,075 from the Metropolitan Housing Trust implementing the south side of the former Shredded Wheat site, this sum goes towards the refurbishment of the Welwyn Garden City train station footbridge. £27,020 was received towards enhancing and improving informal leisure opportunities in the vicinity of the now called Luna student accommodation behind the Comet Hotel and £16,415 was received towards the cost of enhancing play facilities at the Bushey Ley play area in Howlands. Varying smaller sums were received for allotments, local green spaces, play facilities, parking surveys and a total of £34,884 was received towards waste and recycling provision at specific developments.
- 3.10.2 In addition £111,910 was collected from and on behalf of Hertfordshire County Council for one of their owned sites; Land at Waterbeach, Bericot Way and Shackleton Way, this contribution is for education, library and transport.
- 3.10.3 **£273,546** was spent in the last financial year, some of the projects funded were;

- £49,868 towards numerous sports club projects (funded from the Hatfield Community Sports Fund secured by the Angerland Common Park & Ride development)
- £27,020 towards the basketball court, outdoor gym equipment, the cable run, new picnic benches and plain benches at the Ellenbrook Recreation Ground (contribution received from the student accommodation development at the Comet Hotel)
- £48,205 towards the Gosling Sports Park gymnastics hall
- £32,137 towards the removal and replanting of new trees along Lyles Lane in WGC
- and £14,140 towards the St Audrey's Green allotment in WGC (all three contributions received from the former Rank Xerox development)
- £13,128 towards replacing some of the play equipment at The Reeds play area located of Coral Mead, WGC
- £14,258 for providing waste and recycling bins to five new residential developments.

4 Legal Implications

- 4.1 There are no legal implications associated with this report other than those that fall under the Town and Country Planning Act 1990 and the CIL Regulations 2010 (as amended).

5 Financial Implications

- 5.1 This report is financial in nature and the implications are discussed in the main body of the report at Section 3. Looking to the current financial year s106 income may be impacted by the Covid-19 pandemic as the majority of s106 contributions are due prior to commencement of development, many of which were undoubtedly delayed by the lockdown.

6 Risk Management Implications

- 6.1 The risks related to this report are that the monies held by the Council need to be spent within certain deadlines stipulated by each agreement (most commonly 5 or 10 years). The Council should be aware of how much unspent Section 106 funds it holds. This Council should work closely with Herts County Council to identify and progress highway, education and other projects for which they are responsible. Any unspent funds would need to be returned to the developers.

7 Security and Terrorism Implications

- 7.1 There are no specific security/terrorism implications associated with this report.

8 Procurement Implications

- 8.1 There are no specific procurement implications associated with this report.

9 Climate Change Implications

- 9.1 There are no specific climate change implications associated with this report.

10 Human Resources Implications

10.1 Assistance from Finance and IT colleagues will be required to help set up processes required to administer CIL. Additional resources in the Planning Department may be required to prepare for the implementation and adoption of CIL. Once adopted, and up and running additional resources will be required as the receipt of CIL liable applications increase.

11 Health and Wellbeing Implications

11.1 The delivery of mitigation measures associated with new development plays an important role in the process of creating successful new communities as well as helping to assist in the integration of new residents. The S106 process helps to deliver these benefits and its effective operation adds value in this regard.

12 Communication and Engagement Implications

12.1 The planning service will continue to engage with Town and Parish Councils to help identify potential community and infrastructure projects which may be funded through S106 agreements.

13 Link to Corporate Priorities

13.1 The subject of this report is linked to the Council's Corporate Priorities of community, environment, housing and economy, and specifically to the achievement of public health, sport and leisure art and culture, high quality green space, affordable homes and sustainable growth.

14 Equalities and Diversity

14.1 An Equality Impact Assessment (EIA) was not completed in connection with the recommendations in this report, as there are no impacts on protected characteristics nor does the report propose changes to the existing service related policies. Notwithstanding these the following matters should be noted:

- An equalities impact assessment has been carried out for the Council's Planning Obligations SPD.
- Equalities and Diversity matters will have been considered for all 106 planning applications. Many of the areas where S106 funding has been identified will have benefits for the community and have a positive impact on equalities implications.

Appendices:

Appendix 1 – Borough Council Funds by Ward as at 7 August 2020

Appendix 2 – Herts County Council Traffic Light Report (Property) as at 31 March 2020

Appendix 3 – Herts County Council Traffic Light Report (Environment) as at 31 March 2020