

WELWYN HATFIELD BOROUGH COUNCIL
DEVELOPMENT MANAGEMENT COMMITTEE – 21 OCTOBER 2021
REPORT OF THE CORPORATE DIRECTOR (PUBLIC PROTECTION, PLANNING
AND GOVERNANCE)

SECTION 106 PLANNING OBLIGATIONS REPORT 2020-21

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. The Borough Council's *Planning Obligations Supplementary Planning Document (SPD) Feb 2012* is available at <https://www.welhat.gov.uk/planning/search/obligations106>. The County adopted a new guide in July called *Guide to Developer Infrastructure Contributions* (this replaces their previous *Planning Obligations Guidance - Toolkit for Hertfordshire*).
- 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 57 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 an up to date breakdown of secured s106 monies (£5,555,084), sums collected (£4,387,248), spent (£2,011,722) and the remaining funds yet to be spent (£2,656,037). 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 held and spent as of 31 May 2021 are detailed in Appendices 2 and 3.
- 3.2 The Borough Council has, within the last financial year, completed ten s106's and Variation/Supplemental Agreements and, accepted one Unilateral Undertakings. All these agreements totalled a potential value of £2,138,080 (this includes contributions due to the County Council). Of these Agreements a total of 174 affordable housing units were secured as well as the additional sum of £411,950 in lieu of affordable housing provision.
- 3.3 In the last financial year the Council received a total of £609,540 in s106 contributions and £729,447 was spent (further details provided at 3.10).
- 3.4 In 2017 the Council prepared and consulted on its CIL Preliminary Draft Charging Schedule, however the progression of CIL was then delayed by the Local Plan Examination. Towards the end of 2018 a view was taken to no longer wait and the CIL viability evidence has since been reviewed and refreshed. In 2020 a further public consultation was carried out on an updated Draft Charging Schedule. It is hoped the Council will be in a position to take CIL through Examination early 2022 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 (currently 25). The emerging Local Plan also proposes targets of 25% for Hatfield, 30% for Welwyn Garden City and 35% for village and rural locations. Nationally, a Ministerial Statement was made on the 24 May 2021 to ensure that at least 25% of affordable housing units secured through an s106 should be First Homes (discounted by a minimum of 30% against market value and the discounted sale price to be no higher than £250,000). This came into effect from 28 June 2021 however is being implemented on a transitional basis and will apply to applications granted after 28 December 2021 unless, prior to that date a developer wishes to introduce it to their tenure mix.

3.7 Viability

- 3.7.1 Financial viability is often a consideration in the assessment of planning applications. Paragraph 58 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 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 as the development progresses. 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 **£609,539** was received in 2020-21. This sum totals the contributions received from five implemented developments:

- The largest sum received was £265,002 towards off site affordable housing (from the development of 24 apartments at 37 Broadwater Road) and £74,157 also towards affordable housing (from the conversion of the Former Roche Building also on Broadwater Road).
- £47,460 was received towards community facilities and £46,006 towards indoor sports (both from the erection of the 90 over 55's residential units at Minster House in Hatfield).
- Varying smaller sums were received towards healthcare, local green spaces, play facilities, parking surveys and a total of £19,718 was received towards waste and recycling provision at specific developments.

3.10.2 **£729,447** was spent in the last financial year, some of the projects funded were:

- £483,075 towards refurbishing the Welwyn Garden City train station footbridge
- £37,495 towards replacing the skate park at the WGC King George V Playing Fields
- £24,102 towards replacing the old sports hall changing rooms at Gosling Sports Park
- £9,233 towards replacing play equipment and safer surface at the New Wood Play Area in WGC

- £13,861 for providing waste and recycling bins to five new residential developments.

3.10.3 The waste and recycling contribution of £12,096 plus interest was returned to the developer of the Comet Hatfield student accommodation as they sourced their own provision and £2,588 with interest was returned to two developers. These were surplus sums held due to indexation applied at the time of collecting the sums i.e. commencement of development. However the costs of bins had not increased in the time the sums were collected and the bins being provided to the new residents

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.

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 and Commitments including providing a variety of green spaces for all our communities to enjoy, deliver more affordable homes to meet local need housing, provide high quality housing, thriving neighbourhoods and sustainable communities.

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 was been carried out for the Council's Planning Obligations SPD.
 - Equalities and Diversity matters will have been considered for all S106 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 31 August 2021

Appendix 2 – Herts County Council Growth Traffic Light Report as at 31 May 2021

Appendix 3 – Herts County Council Highways Traffic Light Report as at 31 May 2021