

WELWYN HATFIELD BOROUGH COUNCIL  
DEVELOPMENT MANAGEMENT COMMITTEE – 19 JULY 2017  
REPORT OF THE EXECUTIVE DIRECTOR (PUBLIC PROTECTION, PLANNING AND  
GOVERNANCE)

**SECTION 106 PLANNING OBLIGATIONS REPORT**

**1 Executive Summary**

- 1.1 Planning obligations are an effective tool to secure the necessary infrastructure and services required as a result of development and to 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 however.
- 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 *Planning Obligations Supplementary Planning Document (SPD) 2012* and *HCC Planning Obligations Guidance - Toolkit for Hertfordshire* can be viewed at: <http://www.welhat.gov.uk/planningguidance>.
- 1.3 As mentioned above the purpose of Planning Obligations is to make development acceptable that would otherwise be unacceptable in planning terms. The National Planning Policy Framework (NPPF) sets out in paragraph 204 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 report which endeavours to keep them abreast of how the Borough Council collects and spends s106 monies, as well as keep them aware of 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 related potential infrastructure requirements in their wards. Contributions can also be sought from developments including employment or retail uses.
- 2.3 Furthermore, for Members to offer comments on how they would like the Council to secure and spend Section 106 and Community Infrastructure Levy

contributions in the future.

### **3 Explanation**

- 3.1 The Borough Council collects and spends contributions towards community facilities, public art, green spaces, indoor and outdoor sports facilities, play areas and equipment, parking and on-site waste and recycling storage. These funds are detailed by Ward in Appendix 1 (which shows a breakdown of potential s106 monies, the sums collected so far, spent so far and remaining funds yet to be spent). Hertfordshire County Council as the local highway and education authority spends contributions towards education, highways, transport, and rights of way. 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 14 s106 Agreements and Unilateral Undertakings and; 6 Variation/Supplemental Agreements all totalling a potential value of £2,002,419.
- 3.3 In the last financial year the Council has received a total of £1,462,377 in s106 contributions and £407,294 was spent (further details provided at 3.11).
- 3.4 The Council has prepared its CIL Preliminary Draft Charging Schedule which recently went through consultation (ended 26 June 2017). Once all representations have been analysed, a Draft Charging Schedule will be prepared, again with a consultation period. Following this it will be submitted for examination later this year with a view to adopting CIL in the summer of 2018 after the Local Plan has been adopted.
- 3.5 The Housing White Paper published in February set out the Government's intention to improve the current approach to planning obligations. It also included an independent CIL review which proposed;
- Replace CIL with a hybrid system;
    - S106 for larger developments; and
    - a Local Infrastructure Tariff (LIT) for smaller schemes (which simplifies the procedure and administration including removing some of the exemptions, nor does it require an examination)
  - Abolish the Regulation 123 List
  - Remove s106 pooling restrictions
- 3.6 The Government is not intending to formally respond to the review or announce its preferred approach until the Autumn Statement therefore the Borough Council has considered it pragmatic to continue progressing CIL as originally intended. The preferred approach will be introduced on a transitional basis and full implementation expected by 2020.
- 3.7 Last September the Council awarded framework contracts to three legal firms and has been commissioning the primary firm for all s106 matters. This is working well and has improved the speed at which s106s are being completed.

### 3.8 Viability

3.8.1 Paragraph 173 of the National Planning policy Framework (NPPF) states the following with regard to competitive return to developers and land owners:

*“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable”.*

3.8.2 This Council has within the last year received a number of 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 whether it is appropriate to reduce the amount of planning obligations and/or affordable housing being sought. Consideration of viability is an approach which is advocated by National and Local planning policy and guidance.

3.8.3 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).

3.8.4 The outcomes of a viability appraisal can be varied and may include a negotiated reduction in planning obligations contributions or affordable housing, or the Council and developer may not agree, in which case applications can still be refused and viability arguments tested further at an appeal.

### 3.9 Reasons why planning obligations may not be sought

3.9.1 There are circumstances where planning obligations may not be sought, even though it would initially appear that some impact on existing infrastructure provision would be likely to occur. There can be a number of different reasons for this such as a lack of evidence to demonstrate need or indeed the pooling restrictions which for local planning authorities without an adopted CIL Charging Schedule, CIL Regulation 123 (3) limits the pooling of a maximum of five obligations towards a specific infrastructure project or type including education and transport. This affects all s106s entered into since 6 April 2010. 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 payments, 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.



Figure 1: new flood lit 3G pitch at Welwyn Garden City Football club

### 3.10 The Role of Town and Parish Councils

3.10.1 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.

3.10.2 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 is also worth noting that funding for projects would only come forward if and when development is implemented, it could also be years before this occurs for example if they are developments which have been identified in the Local Plan.

3.10.3 Officers continue to be available to engage with Town and Parish Councils to improve awareness of the development management and s106 process.



Figure 2: redevelopment of netball courts at Stanborough School

### 3.11 Income and Expenditure

3.11.1 £1,462,377 was received in the last financial year. £1,400,000 of this was received from the University of Hertfordshire as the Hatfield Community Sports Fund. This was further to the permission for the construction of the park and ride at Land at Angerland Common. Hatfield based sport clubs and organisations can apply for this funding to help get local people more active. The sum is split into 3 categories;

- £800,000 to develop football
- £200,000 to develop rugby; and
- £400,000 to improve a range of sports and activities including encouraging more underrepresented groups within the town.

3.11.2 £407,294 was spent in the last financial year, some of the projects funded were;

- £220,000 towards the creation of a new flood lit 3G training pitch at Welwyn Garden City Football Club (shown in figure 1 above)
- £50,000 towards redevelopment of the outdoor netball courts at Stanborough School (shown in figure 2 above)
- £33,608 on providing waste and recycling bins to numerous new developments
- £13,690 on installing a Rota Bounce and Board Rider at the Ottway Walk Play Area in Welwyn Village (shown in figure 3 below); and
- £1,572 on the Spring Glen Allotment Garden in Hatfield and the Parish Council allotments in Welwyn Village.

3.11.3 £30,000 with interest was returned to the developers of the Clock Hotel development as it was determined from the parking surveys that parking mitigation was not required.



Figure 3: Ottway Walk Play Area in Welwyn Village

## **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.

## **5 Financial Implications**

- 5.1 There are no financial implications associated with this report other than those that fall under the Town and Country Planning Act 1990 and the CIL Regulations 2010.

## **6 Risk Management Implications**

- 6.1 The Council should be aware of how much unspent Section 106 funds it holds, as Hertfordshire County Council was recently criticised in the national press for holding £56 million. This Council should work closely with the County Council to identify and progress highway, education and other projects for which they are responsible. Funds also need to be spent within certain deadlines stipulated by each agreement (most commonly 10 years). Any unspent funds would need to be returned to the Developers. The Council also needs to closely monitor proposed financial obligations in adherence with the Pooling Restriction (as detailed in para 3.9.1 above).

## **7 Security and Terrorism Implications**

- 7.1 There are no security/terrorism implications associated with this report other than those that fall under the Town and Country Planning Act 1990 and the CIL Regulations 2010.

## **8 Procurement Implications**

- 8.1 There are no procurement implications associated with this report other than those that fall under the Town and Country Planning Act 1990 and the CIL Regulations 2010.

## **9 Climate Change Implications**



9.1 There are no climate change implications associated with this report other than those that fall under the Town and Country Planning Act 1990 and the CIL Regulations 2010.

## **10 Policy Implications**

10.1 There are policy implications in that the Council's planning and housing policies may need to be amended to reflect any future Starter Homes regulations, these will become apparent as we progress through this process.

## **11 Link to Corporate Priorities**

The subject of this report is linked to all the Council's Business Plan 2015-2018; Priority 1 (to maintain a safe and health community), Priority 2 (to protect and enhance the environment), Priority 3 (to meet the borough's housing needs), Priority 4 (to help build a strong local economy) and Priority 5 (to engage with our communities and provide value for money)

## **12 Equalities and Diversity**

12.1 An Equality Impact Assessment (EIA) has not been carried out in connection with the recommendations in this report, as there are no impacts on protected characteristics.

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Appendices:

Appendix 1 – S106 Funds by Ward

Appendix 2 – Herts County Council Traffic Light Report (Property) as at 27 Feb 17

Appendix 3 – Herts County Council Traffic Light Report (Environment) as at 27 Feb 17