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(Hatfield South West)

WELWYN HATFIELD BOROUGH COUNCIL  
DEVELOPMENT MANAGEMENT COMMITTEE – 4 DECEMBER 2023  
REPORT OF THE ASSISTANT DIRECTOR (PLANNING)

## SECTION 106 PLANNING OBLIGATIONS REPORT 2022-23

### 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 2021 called *Guide to Developer Infrastructure Contributions* (this replaces their previous *Planning Obligations Guidance - Toolkit for Hertfordshire*) and can be found at: <https://www.hertfordshire.gov.uk/about-the-council/freedom-of-information-and-council-data/open-data-statistics-about-hertfordshire/who-we-are-and-what-we-do/property/planning-obligations-guidance.aspx>
- 1.3 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 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, as of 30 September 2023, a breakdown of the following:

- secured monies (total of £6,509,948);
- sums collected (total of £7,674,590);
- spent (total of £2,055,504); and
- the remaining funds yet to be spent (total of £5,619,086).

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 2023 are detailed in Appendices 2 and 3.

- 3.2 The Borough Council has, within the last financial year completed eight s106's, accepted three Unilateral Undertakings and completed three Variation/ Supplemental Agreements. These deeds totalled a potential value of £1,449,118 (included in secured monies stated above at 3.1) towards Welwyn Hatfield Borough Council projects. Of these deeds a total of 95 affordable housing units were secured. In addition a viability review mechanism was secured to deem if further value or additional affordable housing units could be obtained from one of these developments as it originally only secured 10% affordable housing provision.
- 3.3 In the last financial year the Council received a total of £2,315,169 in s106 contributions and £145,277 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. The Council has recently gone through a light touch viability review and it is anticipated that Cabinet will approve a consultation taking place in early 2024. It is hoped the Council will be in a position to take CIL through Examination early/mid 2024 with adoption following the same year.
- 3.5 The Local Plan 2016-2036 was adopted in October and in accordance with the NPPF it lowers the threshold triggering the requirement for affordable housing to 10 units (was 25). This Local Plan states targets of 25% affordable housing for Hatfield, 30% for Welwyn Garden City and 35% for village and rural locations. In June 2021 the Government introduced a new affordable housing product called First Homes. This requires at least 25% of affordable housing units secured through an s106 to be discounted by a minimum of 30% against market value and the discounted sale price to be capped at £250,000. Now that the Council

has adopted its Local Plan offering First Homes is being considered on an application specific basis.

### 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 following independent examination. This process is set out in the Council’s Planning Obligations Supplementary Planning Document (SPD) and consideration of viability is an approach which is advocated by national and local planning policy and guidance.

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 **£2,315,169** was received in 2022-23. This sum totals the contributions received from nine implemented developments:
- The largest sum received was £873,557 from the Shredded Wheat site mostly towards GP surgeries, community and mental health care in Welwyn Garden City and also on site waste and recycling provision.
  - £413,522 was received from Accord House, Broadwater Road development towards off site affordable housing.
  - £370,025 was received from the Former VW site on Comet Way towards healthcare, sports, open space, play facilities and on site waste and recycling provision.
  - £302,642 was received from 26 Stonehills (formerly Debenhams) towards off site affordable housing (the s106 secured a viability review to be carried out prior to the 20<sup>th</sup> occupation of the development however the developer decided to not carry out the review but instead offered the capped sum as above).
  - £215,892 was received from the former Ratcliff site towards healthcare, sports, open space and play facilities and a further £50,761 later in the year towards healthcare.

- £75,002 was received from the Onslow St Audreys School towards controlled parking zones, open space, play facilities and on site waste and recycling provision.
- Varying smaller sums were received towards open spaces, play facilities and more on site waste and recycling provision at specific developments.

3.10.2 **£145,277** was spent in the last financial year, some of the projects funded were:

- £39,732 towards refurbishing the Hatfield Swim Centre changing rooms
- £27,849 towards installing outdoor gym equipment at the St Albans Road East, Hatfield play area
- £18,138 towards refurbishing the diving area at the Hatfield Swim Centre
- £13,829 towards replacing worn pool side flooring at the Hatfield Swim Centre
- £10,148 towards refurbishing the external changing area and disabled toilet at Stanborough Park
- £7,280 from the Hatfield Community Sports Fund towards installing a table tennis and basketball area surface at Welham Green Recreation Ground
- £7,179 towards refurbishing the sports hall squash courts at Gosling Park
- £3,940 towards refurbishing the wall and fencing of the 3G artificial grass pitches at the Hatfield Leisure Centre
- £2,050 towards installing a table tennis and surfacing at the Gobions Open Space, Hatfield
- £15,130 towards providing on site waste and recycling bins to four 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.

## **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. 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 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 equality implications.

Appendices:

Appendix 1 – Borough Council Funds by Ward as at 30 September 2023

Appendix 2 – Herts County Council Growth Traffic Light Report as at 31 May 2023

Appendix 3 – Herts County Council Highways Traffic Light Report as at 31 May 2023