

Subject:	The Use of Section 106 contributions for Education		
Date of Meeting:	19 June 2017		
Report of:	Executive Director Families, Children and Learning		
Contact Officer:	Name:	Richard Barker	Tel: 01273 290732
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The purpose of the report is to inform members of the legislative framework which provides for Section 106 (S106) developer contributions being sought to support housing developments and to inform members of the current amount generated, how it has been recently used and future uses are identified.

2. RECOMMENDATIONS:

- 2.1 That the Committee notes the legislative framework which provides for S106 developer contributions being sought to provide education infrastructure to support housing developments.
- 2.2 That the Committee notes the use of the funding in accordance with the requirements of planning legislation.
- 2.3 That the Committee agrees that in the future spending of S106 funding will be reported to the CYPs committee in March each year and that sometimes this will need to be retrospective.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 To meet planning policy objectives enabling the grant of planning permission it may be necessary for developers to contribute towards infrastructure to support new development. These contributions are commonly known as developer contributions or S106 contributions since they are secured through the planning process as Planning Obligations under Section 106 of the Town and Country Planning Act 1990.
- 3.2 A Planning Obligation may only constitute a reason for granting planning consent for a development where the obligation meets all the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 ("the CIL Regulations")_in being:
- Necessary to make the development acceptable in planning terms
 - Directly related to the development
 - Fairly and reasonably related in scale and kind to the development

- 3.3 Developer contributions are sought in accordance with planning policy objectives as set out in the adopted City Plan Part One and the remaining retained policies in the Brighton & Hove Local Plan 2005.
- 3.4 Further guidance in the Developer Contributions Technical Guidance sets out how and when S106 developer contributions can be sought. This was first approved by Cabinet in February 2011 and updated by Economic Development & Culture Committee in June 2016 and March 2017.
- 3.5 This Technical Guidance includes a section on how and when contributions will be sought in respect of education infrastructure. The latest version of the Technical Guidance is attached as Appendix 1. It covers all types of potential developments from small sites to major development areas.
- 3.6 Since 2007 we have sought education contributions for developments of more than 10 new dwellings in areas where there was a pressure on school places. The calculation of a contribution has always been based on the number of pupils the development is likely to generate and the cost of providing this number of places. We do not seek contributions in areas where there are sufficient school places. This is because the request for contributions has to be in accordance with the points in 3.2 above. Seeking contributions in areas where there are sufficient school places would not meet the statutory tests set out in the bullet points.
- 3.7 Housing development in Brighton & Hove is, for the most part, small developments on brownfield sites and therefore no one development gives rise to a significant sum of money. However, the Technical Guidance allows for the pooling of contributions and in the past we have pooled contributions and used them to offset the cost of school expansion projects.
- 3.8 Since 2007 we have secured approximately £2.4million of contributions from 28 developments (Appendix 2 shows the contributions received as at April 2017).
- 3.9 To date we have spent approximately £0.750m of the funding we have received on projects to provide additional school places which is the reason for securing the contributions. This funding has been used to augment the Basic Need Grant from Central Government where possible. .
- 3.10 The decision on when to make use of S106 contributions was made by officers based on the contributions available at the time and the proximity of the development they arose from to the proposed expansion project.
- 3.11 The use of the funding has been included in the capital reports to committee in the past but this has been sporadic and only when commitments are planned for the forthcoming year.

Community Infrastructure Levy (CIL)

- 3.12 The CIL Regulations came into force in April 2010. The CIL allows Local Authorities to raise funds from developers undertaking new projects in their area.

The funding received through CIL should be used to fund a wide range of infrastructure which would include schools.

- 3.13 CIL does not have to be introduced by a Local Authority and whilst there is intention to progress a CIL for the city currently there is no timetable for its introduction. However there are impacts of the CIL Regulations on the collection and use of S106 contributions. As a result of the CIL Regulations (as amended) and since April 2015 it has not been possible to pool more than five S106 contributions to any one project whereas previously it was possible to pool as many S106 contributions as the Council wished.
- 3.14 Also as a result of the introduction of the CIL Regulations we now have to nominate schools where the funding will be used at the time of making the request for funding which will then be identified within each S106 Agreement with spending restricted to these schools. The consequence of which is that we are now less able to make strategic use of the S106 funding to increase the number of school places as we have done in the past.
- 3.15 We can however make use of the funding to fund enhancements at the individual school rather than create additional school places. The intention is that we will use the funding to address suitability issues at schools wherever possible.
- 3.16 Of the £1.65million currently available approximately £0.600m is earmarked for contributing toward the cost of purchasing the site for the new secondary free school for the city. Owing to the restrictions on the number of contributions that can be pooled the intention is to use five contributions from developments in the area that will be served by the new secondary free school. The current proposed contributions are shown in Appendix 2.
- 3.17 The remainder of the funding will be used in accordance with the Technical Guidance to fund works that will enhance schools in the areas as direct mitigation of the proposed developments.
- 3.18 It is important that any monies accrued are used in accordance with planning legislation and policy objectives as further defined in the Developer Contributions Technical Guidance.
- 3.19 The recommendations on how to use the funding going forward will continue to be made by officers and be based on their knowledge of the school estate in terms of its capacity and condition. The use of S106 funding will be reported to the Children Young People and Skills committee as part of the Capital Investment Programme report which is considered in March each year and will be approved at Policy Resources & Growth Committee.
- 3.20 Recommendations will be informed by data gathered via the condition surveys and the yearly updating of the plans for the SCAP return. The intention will be to address suitability issues in schools named in the S106 Agreement to ensure that the schools will be able to admit to their Published Admission Number.
- 3.21 The contributions are activity led, i.e. they will become payable at different points of the development such as the start of building or when a certain number of housing units are completed and consequently it is not always clear when

contributions will be available. Owing to this the reporting of the information will sometimes have to be retrospective.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 It is important to ensure compliance with the legislation and Developer Contributions Technical Guidance when seeking contributions and when spending any resultant sums.
- 4.2 Not adhering to this could result in requests for sums being challenged and not being secured in the first place or having to be returned to the developer if not properly used.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 The request for and use of developer contributions has to be in accordance with planning policy and priorities in the City Plan Part One adopted March 2016. The City Plan was subject to extensive consultation over a number of years.

6. CONCLUSION

- 6.1 The information within this report informs members of the route to securing developer contributions in respect of education infrastructure and the determination of the use of these funds.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 Any S106 contributions will be used in accordance with the Technical Guidance to fund works that will enhance schools in the areas as direct mitigation of any new developments. S106 contributions toward education capital schemes will be detailed within the annual Education Capital Resources and Investment Programme report and will reported to both this committee as well as Policy, Resources and Growth Committee for approval each financial year. A balance of approximately £1.6m is currently held by the council and further reports will be presented recommending the use of these balances.

Finance Officer Consulted: Rob Allen

Date: 08/05/17

Legal Implications:

- 7.2 The statutory background to securing developer contributions is set out in the body of the report.
It is not considered that the recommendations in the report raise any adverse human rights implications.

Lawyer Consulted: Hilary Woodward

Date: 4/5/17

Equalities Implications:

- 7.3 Developer contributions where secured as part of the planning process can provide wide community benefits for education facilities

Sustainability Implications:

- 7.4 The objective to securing developer contribution is to mitigate negative impacts of development and to assist enabling new development contributing towards establishing sustainable communities. Continuing to seek developer contributions helps ensure appropriate measures are secured towards physical, environmental and community infrastructure to help ensure long term sustainable development across the city

Any Other Significant Implications:

- 7.5 None

SUPPORTING DOCUMENTATION

Appendices:

1. Developer Contributions technical Guidance
2. Education Developer Contributions

Documents in Members' Rooms

1. None

Background Documents

1. Brighton & Hove City Plan Part One (Adopted 24 March 2016)
2. Brighton Hove Local Plan 2005

