

**Report of the Assistant Director (Planning, Transportation & Highways) to the meeting of Regulatory and Appeals Committee to be held on 9 November 2017**

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**Subject:**

**Planning agreements annual monitoring report**

**Summary statement:**

Bi-annual monitoring report to inform Members of progress on Section 106 Agreements for the first six months of financial year 2017/2018.

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**Portfolio:**

**Regeneration, Planning and Transport  
Overview & Scrutiny Area:**

**Regeneration and Economy**

## **1. SUMMARY**

This bi annual monitoring report provides an assessment of the Section 106 Agreements signed for the first six months of financial year 2017/2018 and for the income received since the appointment of the Planning Obligations Monitoring Officer.

## **2. BACKGROUND**

Attached at appendix one is the Officer's Report.

## **3. OTHER CONSIDERATIONS**

None

## **4. OPTIONS**

Members of the Regulatory and Appeals Committee are recommended to note the contents of this report.

## **5. FINANCIAL & RESOURCE APPRAISAL**

There are no financial implications for the Council arising from matters associated with the report.

## **6. RISK MANAGEMENT & GOVERNANCE ISSUES**

None

## **7. LEGAL APPRAISAL**

Planning Obligations are controlled by Section 106 of the Town and Country Planning Act 1990 as amended and Planning Practice Guidance - Planning Obligations (revised 2016).

## **8. OTHER IMPLICATIONS**

### **8.1 EQUALITY & DIVERSITY**

There are no legal rights implications arising from this report.

### **8.2 SUSTAINABILITY IMPLICATIONS**

There are no direct sustainability implications arising from this report.

### **8.3 GREENHOUSE GAS EMISSIONS IMPACTS**

These are considered as part of the planning application process, for example EV charging points. Some Section 106 Agreements include public transport benefits such as bus shelter improvements and travel cards which promote more sustainable forms of transport.

### **8.4 COMMUNITY SAFETY IMPLICATIONS**

There are no direct community safety implications arising from this report.

### **8.5 HUMAN RIGHTS ACT**

There are no direct human rights implications arising from this report.

### **8.6 TRADE UNION**

There are no trade union implications arising from this report.

### **8.7 WARD IMPLICATIONS**

Ward Members are notified upon completion of a Section 106 Agreement for their ward.

**9. NOT FOR PUBLICATION DOCUMENTS**

None

**10. RECOMMENDATIONS**

It is recommended that the contents of this report be noted.

**11. APPENDICES**

Appendix 1 – bi annual monitoring report

Appendix 2 – new Agreements signed by ward, obligation type and obligation value

Appendix 3 – breakdown of Section 106 monies received since January 2009 to present day by ward

**12. BACKGROUND DOCUMENTS**

None

## Appendix 1

### SUMMARY

This bi annual monitoring report provides an assessment of the Section 106 Agreements signed for the first six months of financial year 2017/2018 and for the income received since the appointment of the Planning Obligations Monitoring Officer.

### BACKGROUND

Section 106 Agreements or Planning Obligations are normally entered into in connection with the grant of planning permission. The Council has the power to enter into a legal agreement with a developer under Section 106 of the Town and Country Planning Act 1990, to make acceptable development which might otherwise be unacceptable in planning terms.

Planning Agreements can be used to prescribe, mitigate and compensate for the impact that a development may cause by:

- Restricting the development or use of land referred to in the Agreement in any way
- Requiring specific operations or activities to be carried out on the land referred to in the Agreement
- Requiring the land to be used to be used in a particular way
- Requiring a financial contribution to be made to the Local Planning Authority on a specified date or dates, or periodically

The majority of Agreements relate to major developments and can cover many issues including:

- The provision of an element of affordable housing and phasing the release of properties
- Rules governing the management arrangements for affordable housing and the method of discount to be applied to dwellings to ensure they are genuinely affordable.
- Commuted sums for the provision of off site affordable housing
- Contributions towards off site highway improvement works such as junction improvements or traffic calming
- Details relating to green travel plans to be implemented in order to minimise impacts on the highway network and improve sustainability
- Landscape management plans/payment to secure appropriate long term management of open areas, landscaping or wildlife areas
- The provision of play/recreation facilities or equipment or commuted sums. These could relate to on or off site facilities

Copies of planning Agreements are currently available to view on the Council's website.

### DEFINITIONS

Members are advised that there are a number of definitions used in connection with Section 106 Agreements. For ease of reference the following shall apply in this report:

- A clause: part of an Agreement detailing the obligations which can be a financial commitment or agreement to do works or even the revocation of a previous planning permission.
- Trigger point: within an Agreement, this clearly specifies the point in time when the developer needs to carry out work or make a payment. For example, a payment of £10,000.00 is to be paid upon occupation of the 25<sup>th</sup> dwelling unit.

## AGREEMENTS SIGNED

8 Section 106 Agreements were completed between 1<sup>st</sup> April 2017 and 30<sup>th</sup> September 2017. The majority of these Agreements contained multiple numbers of clauses. In comparison, 22 Agreements were signed during the whole of 2016/2017.

Two of the 8 Agreements were Deed of Variation Agreements to vary an original Section 106 Agreement. One of these variations was to increase the education commuted sum as a result of the number of units to be constructed increasing and the second was to alter the planning application reference number.

Within the 8 Agreements completed, there were 16 clauses in total, of which 10 had a financial obligation. The value of the 10 financial obligations is £636,494.50. Compared to the previous year 2016/2017 where there was a total of 47 financial clauses totalling £2,799,468.75.

Of the 6 non-financial clauses, 4 were for the transfer of dwellings to a Registered Provider (RP) or for the provision of on site Starter Homes.

Appendix 2 details all the new Agreements signed by ward, obligation type and obligation value.

Table 1 below shows the number and value of clauses requiring financial contributions by type.

**Table 1: Number and value of obligations by clause type**

Obligation type	No of clauses	Total value of clauses
Recreation Open Space	2	£66,261.00
Education	3	£385,241.00
Highways, physical infrastructure and travel	2	£133,000.00
WYCA commuted sums	1	£30,000.00
Drainage	1	£13,792.50
Tree planting	1	£8,200.00
<b>Total</b>	<b>10</b>	<b>£636,494.50</b>

Table 2 below shows the number of non-financial contribution clauses by type.

**Table 2: Number of non-financial obligations by clause type**

<b>Obligation type</b>	<b>No of clauses</b>
Affordable housing – transfer of dwellings to RP or provision of Starter Homes	4
On site public open space and communal areas	1
Other	1
<b>Total</b>	<b>6</b>

Education contributions accounted for the greatest number of obligations negotiated and the greatest financial value of obligations negotiated.

It should be noted that the benefits associated with an Agreement cannot be secured until the planning permission is implemented. Given that permissions are normally valid for three years this creates uncertainty about when and if contributions will be received. Once the permission has lapsed the ability to receive such benefits is lost.

To date only 1 of the 8 permissions granted subject to a Section 106 Agreement has commenced.

This development has not reached its trigger point for the payment of any of its Section 106 contributions.

## **PAYMENTS RECEIVED**

Financial contributions will normally be received when a particular trigger point has been reached. This is normally prior to the commencement of development and/or for large scale developments at another pre agreed stage in the construction work.

Since 1<sup>st</sup> January 2009 to the present day the total amount of Section 106 monies received is £14,156,905.00.

Table 3 shows the area breakdown of money received by obligation type.

**Table 3: Money received per area by obligation type**

	<b>Bradford East</b>	<b>Bradford West</b>	<b>Bradford South</b>	<b>Shipley</b>	<b>Keighley</b>	<b>Total</b>
Recreation open space	£224,760.00	£255,086.67	£779,935.48	£278,677.72	£369,345.91	£1,907,805.78
Affordable housing	£315,000.00	£610,550.00	£406,716.87	£2,033,142.98	£935,275.00	£4,300,684.85
Education	£135,064.00	£418,425.95	£1,215,774.00	£972,229.11	£691,279.70	£3,432,772.76
Highways	£1,225,835.74	£65,240.00	£1,053,677.16	£178,349.00	£334,757.00	£2,857,858.90
Metro		£120,313.00	£113,023.80	£119,991.97	£901,293.77	£1,254,622.54
Trees and Landscaping		£5,528.00	£65,250.00	£149,142.00		£219,920.00
Footpaths					£5,490.00	£5,490.00
Woodlands			£15,300.00		£42,000.00	£57,300.00
Community Facilities				£10,000.00		£10,000.00
Habitat mitigation				£33,776.17	£72,312.75	£106,088.92
Public realm				£618.00		£618.00
Drainage					£3,743.25	£3,743.25
<b>Total</b>	<b>£1,900,659.74</b>	<b>£1,475,143.62</b>	<b>£3,649,677.31</b>	<b>£3,775,926.95</b>	<b>£3,355,497.38</b>	<b>£14,156,905.00</b>

Appendix 3 provides a breakdown of the monies received by Ward and obligation type.

### **BANKRUPT DEVELOPERS**

Given the unstable financial climate some Developers are no longer trading and have been, or are in the process of being declared bankrupt. Where these developers owe the Council monies as a result of a Section 106 Agreement, the Council's Debt Recovery team have been engaged to resolve the matter and hopefully secure some of the outstanding monies.

### **DEED OF VARIATION AGREEMENTS**

Members will be aware that the Assistant Director (Planning, Transportation and Highways) presented a report to the Regulatory and Appeals Committee on 7<sup>th</sup> December 2009. This report concerned the provisions to be implemented in the case of Developers who were not in a financial position to pay monies owed or to agree to full contributions.

In the case of new proposals where Developers demonstrate that they cannot agree to full contributions the Planning Service will ask for a full Financial Viability Statement to be submitted. This document is then assessed and the findings considered. If the Council believe that it is important to promote a development proposal despite the developer contributions not being met in full, one of four routes will be adhered to. There routes are:

- An agreement to accept reduced payments or contributions
- Deferred payments whereby the obligations will be met but payment will be phased

- An overage agreement will be drawn up where Developers agree to pay contributions if profits from the development exceed a minimum level
- A hybrid agreement to require specified key contributions (for example highway works) are met early by the Developer and then the remainder of the contributions being met through an overage agreement or through deferred payments. This route is normally only used if the Development would not be acceptable in principle without the key contributions being met initially

Where Developers have an extant planning permission and have met their trigger point for payment of Section 106 monies, Assistant Director (Planning, Transportation and Highways) may agree on revised trigger points and a new payment schedule. For example, on a large housing scheme monies could be paid on a staged payment basis of occupation of every 25<sup>th</sup> dwelling as opposed to the whole sum being paid on commencement of development. This results in a Deed of Variation being completed. Members are advised that in such circumstances the original sums of money are achieved by the end of the development.

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