

**Report of the Assistant Director (Planning,
Transportation & Highways) to the meeting of
Regulatory and Appeals Committee to be held on 14
May 2018**

AY

Subject:

Planning Agreements annual monitoring report

Summary statement:

Bi-annual monitoring report to inform Members of progress on Section 106 Agreements for the 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 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, Section 46 of the Planning and Compulsory Purchase Act 2004 and ODPM Circular 05/05 Planning Obligations.

8. OTHER IMPLICATIONS

None

8.1 EQUALITY & DIVERSITY

Section 149 of the Equality Act 2010 states that the Council must, in the exercise of its functions "have due regard to the need to eliminate conduct that is prohibited by the Act, advancing equality of opportunity between people who share a protected characteristic and people who do not share it, and fostering good relations between people who share a protected characteristic and people who do not share it. For this purpose section 149 defines "relevant protected characteristics" as including a range of characteristics including disability, race and religion. In this particular case due regard has been paid to the section 149 duty but it is not considered there are any issues in this regard relevant to the matters raised in this report or in the recommendations to committee.

8.2 SUSTAINABILITY IMPLICATIONS

There are no direct sustainability implications arising from this report.

8.3 GREENHOUSE GAS EMISSIONS IMPACTS

There are no direct greenhouse gas emissions impacts arising from this report.

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 and Area.

12. BACKGROUND DOCUMENTS

None

SUMMARY

This bi annual monitoring report provides an assessment of the Section 106 Agreements signed for the 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 25th dwelling unit.

AGREEMENTS SIGNED

14 Section 106 Agreements were completed between 1st April 2017 and 31st March 2018. The majority of these Agreements contained multiple numbers of clauses. In comparison, 22 Agreements were signed during the whole of 2016/2017.

One of the 14 Agreements was a Deed of Variation Agreement to increase the education contribution to be paid following an application to increase the number of approved dwellings.

Within the 14 Agreements completed, there were 25 clauses in total, of which 14 had a financial obligation. The value of the 14 financial obligations is £819,494.50. Compared to the previous year 2016/2017 where there was a total of 47 financial clauses totalling £2,799,468.75.

Of the 11 non financial clauses, 9 were for the transfer of dwellings to a Registered Provider (RP) or to deliver on site Starter home units.

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	5	£276,000.00
WYCA (Metro) commuted sums	2	£70,000.00
Drainage	1	£13,792.50
Tree planting	1	£8,200.00
Total	14	£819,494.50

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

Table 2: Number of non financial obligations by clause type

Obligation type	No of clauses
Affordable housing – transfer of dwellings to RP	9
Open space schemes, woodland works and tree planting	1
Other	1
Total	11

Highway obligations accounted for the highest value of obligations, whilst education obligations were the most in number.

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 3 of the 14 permissions granted subject to a Section 106 Agreement have commenced.

Of the 3 developments which have commenced, two have financial contributions to pay. To date trigger points have been met by both and a total of £70,700.00 has been paid.

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 1st January 2009 to the present day the total amount of Section 106 monies received is £15,753,385.60.

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

Table 3: Money received per area by obligation type

	Bradford East	Bradford West	Bradford South	Shipley	Keighley	Total
Recreation open space	£224,760.00	£255,086.67	£791,565.58	£278,677.72	£377,386.01	£
Affordable housing	£315,000.00	£610,550.00	£406,716.87	£2,033,142.98	£935,275.00	£
Education	£135,064.00	£418,425.95	£1,264,169.59	£1,031,275.14	£840,672.27	£
Highways	£1,952,311.00	£65,240.00	£1,053,677.16	£178,349.00	£350,462.00	£
Metro		£120,313.00	£113,023.80	£119,991.97	£901,293.77	£
Trees and Landscaping		£5,528.00	£65,250.00	£149,142.00		£
Footpaths				£618.00	£5,490.00	£
Woodlands			£15,300.00		£42,000.00	£
Community facilities				£314,271.16		£
Habitat mitigation				£33,776.17	£72,312.75	£
Drainage/ culvert works	£273,524.74				£3,743.25	£
Total	£2,900,659.74	£1,475,143.62	£3,709,703.00	£4,139,244.14	£3,528,635.05	£15,753,385.60

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 7th 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 25th 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.