

PLANNING COMMITTEE

10 MAY 2017

REPORT ON SECTION 106 AGREEMENTS FOR THE PERIOD JANUARY TO MARCH 2017 AND SEEKING AGREEMENT TO A REDUCTION IN THE DEADLINE FOR SECTION 106 EXPENDITURE

Report from: Richard Hicks, Director Regeneration, Culture, Environment & Transformation

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Summary

This report seeks approval from Planning Committee to reduce the deadline for expenditure of Section 106 contributions from 10 years to 5 years (unless there is a special requirement for a longer timescale).

This report informs Members on the amount of Section 106 funding received between January to March 2017 and sets out what the contributions must be spent on according to the Section 106 agreements.

This report is submitted for information to assist the Planning Committee in monitoring the contributions which developers have agreed to as part of new development schemes.

1. Budget and Policy Framework

- 1.1 The Cabinet has adopted the Supplementary Planning Document 'Medway Council Guide to Developer Contributions', which sets out the Council's S106 requirements for developments of 10 dwellings and above. This report and accompanying appendices list the Section 106 agreements which have been signed in the period January to March 2017 and itemises the obligations covered by these agreements.

2. Background

- 2.1 Section 106 of the Town & Country Planning Act 1990 provides that anyone with an interest in land may enter into a planning obligation, which is enforceable by a local planning authority. An obligation may be created by agreement or by the party with an interest in the land making a unilateral undertaking.

- 2.2 Obligations may:
- Restrict the development or use of land
 - Require operations to be carried out in, on, under or over the land
 - Require the land to be used in any specified way; or
 - Require payments to be made to the local planning authority, either in a single sum or periodically.
- 2.3 A planning obligation may only constitute reason for granting planning permission if it is
- Necessary to make the development acceptable in planning terms.
 - Directly related to the development.
 - Fairly and reasonable related in scale and kind to the development.
- 2.4 The Medway Council Guide to Developer Contributions was approved at Cabinet on 5 July 2014 for adoption as a Supplementary Planning Document. This Guide sets out Medway Council's S106 requirements for developments of 10 dwellings and above.
- 2.5 S106 contributions must be spent on the project identified in the wording of the S106 agreement. Failure to evidence appropriate spend can result in the developer requesting a refund of the contribution plus interest.
- 2.6 Prior to 2008, with the exception of a few highway projects, the deadline for contribution expenditure was 5 years.
- 2.7 A decision was made approximately 10 years ago that for all new S106 agreements the deadline for spend would be extended to 10 years. This decision was based on the facts at that time that the Council was chasing payments and also sorting internal procedures to ensure individual services were aware of spend available. As a consequence of both, services were struggling to meet the 5 year deadline and it was appropriate therefore to extend that to 10 years.
- 2.8 As a direct result of action and monitoring by the S106 officer, payments are now made promptly and services are made aware of the available spend immediately. However, notwithstanding this there are a number of contributions which were received 6 or more years ago which remain unspent. Some contributions are not reviewed to spend until possibly the 8th or 9th year after receipt. This means that developments may be complete without the contributions being spent to deliver services and infrastructure necessary which then impacts on the amenity of residents and can result in unacceptable pressure on existing services.

3. Options

- 3.1 To leave the current deadline spend at 10 years which can result in :
- residents of new developments not benefitting from the identified project paid for by S106 funding for many years, or

- the risk that the project identified in the S106 agreement may cost more than the S106 contribution received years before.
- 3.2 To approve the deadline for S106 expenditure reverting to 5 years (unless a specific requirement exists to extend the deadline further than 5 years). This will focus services to programme the required project/works within this timespan and residents will benefit from the obligations in the S106 agreement in an appropriate timescale.

4. Advice and analysis

- 4.1 Although an agreement is signed, it is not a guarantee that the obligations will be delivered; on occasions the approved development is not implemented, and therefore no obligations would be delivered.
- 4.2 The S106/CIL Officer has contacted services and the NHS requesting their views on reverting back to a 5 year deadline for spend. All responses have been positive and support this recommendation as services believe it will help them to focus on delivery, although a comment was made that lack of resources can be a major factor in services being unable to delivery projects within deadlines.
- 4.3 When contributions remain unspent for a considerable number of years, it is not uncommon for services to comment that the requirement for that infrastructure is no longer valid. This supports the 5 year deadline approach as residents should benefit from the obligations within the S106 agreement which should still be relevant within the 5 year timescale.
- 4.4 If the infrastructure is no longer relevant then the developer would have to agree to fund a different project. This would result in either the service paying for the developer's solicitor to work on a Deed of Variation to the original S106 agreement, or if the developer declines to support this, then the contribution would have to be refunded plus interest.
- 4.5 Unilateral Undertakings (UU) are similar to S106 agreements but Medway Council is not a signatory on the document. Only the developer/owner signs the agreement and 'gives' the contribution to fund the specific project. There is no deadline for spend.

5. Consultation

- 5.1 Not applicable.

6. Risk assessment

- 6.1 The Section 106/CIL Officer's responsibilities include monitoring developments to ensure that all obligations, including financial contributions, are met. Failure to pay contributions results in benefits to the community being lost. These benefits include meeting the needs of the new residents regarding educational facilities, open space and play equipment, etc.

6.2 Contributions received must also be closely monitored to ensure that contributions are spent within the timescale specified by the agreement. Failure to meet payment deadlines will result in the contribution being returned to the developer/owner with interest at a specified rate (e.g. 4% over base rate).

7. Financial and legal implications

7.1 Many of the obligations are financial contributions to services which will support the new development to provide the infrastructure required, for example education, open space, transport, etc.

7.2 Service planning can be problematic for say education, where a contribution is expected and school expansion plans are produced, but if the development does not go ahead it can have repercussions to provision in an area where several expected developments would, between them, fund a new school.

8. Recommendation

8.1 That the Planning Committee grant approval to a reduction in the timescale for expenditure of S106 contributions from 10 years to 5 years (unless a longer timescale is required for a particular contribution).

8.2 That the Planning Committee consider and note the Section 106 funding received and those Section 106 agreements signed during the period January – March 2017 as set out in Appendices 1 and 2.

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Appendices

Appendix 1 S106 funding received January to March 2017

Appendix 2 Agreements signed between January to March 2017

Background papers

Section 106 agreements signed between January to March 2017

Guide to Developer Contributions 2014

<http://www.medway.gov.uk/planningandbuilding/applyforplanningpermission/developercontributions.aspx>

APPENDIX 1 :

S106 funding received January to March 2017

App no. MC/	Site	Ward	For	Amount
97/0224	Dockside	River	Retail	£8,125.77
05/0671	Liberty Park	Strood Rural	Highway works	£143,555.00
12/1791	St Andrews Park, Halling	Cuxton & Halling	Develop/produce smartcards for bus travel	£101,650.30
15/3793	Upnor Depot	Strood Rural	GLHP : maintenance fo footpaths at Fort Amherst – Belvedere area	£499.80
			Bird disturbance mitigation	£3,577.28
<i>Habitat regulations : contributions received</i>				
16/2843	r/o 48 Cambridge Rd, Strood	Strood North	1 dwelling	£223.58
16/2819	52 Mount Rd, Borstal	Rochester West	1 dwelling	£223.58
16/3523	765 Maidstone Rd	Rainham South	4 dwellings	£894.32
16/2955	65 Broadview Ave, Rainham	Rainham Central	2 dwellings	£447.16
16/3886	395 High St, Chatham	River	6 dwellings	£1,341.48
16/2004	122b & 122d High St, Strood	Strood North	2 dwellings	£447.16

App no. MC/	Site	Ward	For	Amount
16/2031	199 Wigmore Road	Hempstead & Wigmore	3 dwellings	£670.74
16/4882	128 High St Chatham River	River	3 dwellings	£670.74
16/2445	55 Green St, Gillingham	Gillingham South	4 dwellings	£894.32
16/4682	91-93 Bryant Rd, Strood	Strood North	1 dwelling	£223.58
15/4287	Land adj 3 Mariners Rainham	Rainham North	4 dwellings	£894.32
16/3842	r/o Allington, Station Rd, Rainham	Rainham North	1 dwelling	£223.58
16/1620	Darland Farm	Hempstead & Wigmore	3 dwellings	£670.74
16/1927	1 Broad St Cottage, Hoo	Peninsula	1 dwelling	£223.58
16/0654	The Fox PH, Chatham	Chatham Central	13 dwellings	£2,906.54
17/0135	302C Canterbury St	Gillingham South	1 dwelling	£223.58

App no. MC/	Site	Ward	For	Amount
16/4587	11 Albany Terrace	Chatham Central	1 dwelling	£223.58
17/0153	42A King St	Gillingham North	1 dwelling	223.58
16/4409	Coach House, Livingstone Arms	Gillingham South	3 dwellings	670.74
16/4235	54C First floor Green Street	Gillingham	1 dwelling	223.58
15/0891	77 St Margaret's Street	Rochester West	1 dwelling	223.58

APPENDIX 2 :

agreements signed between January to March 2017

Plan app MC/	Location	Ward	Proposal	Towards	Amount
16/2837	Land south of Stoke Road, Hoo	Peninsula	Up to 127 units	Bird disturbance mitigation	Up to £28,394.66
				Improvements to A228 Peninsula Way/Main Rd Hoo junction	£75,000.00
				Improvements of healthcare facilities at Hoo St Werburgh practice	Up to £59,429.65
				Great Lines Heritage Park	Up to £7,934.33
				Waste : canine/litter bins; towards new compactor at Cuxton waste site; information/education provision or new residents; towards purchase of new 'graffiti machinery'	
				Improvements to footpath along Main Road to improve pedestrian access to the Hundred of Hoo Academy	Up to £7,934.33
				Improving off site open space (any reduction of this allocation to be re-allocated to footpaths)	£334,723.80
				Nursery education (at one or more of Chattenden Primary, Hundred of Hoo Primary phase Academy and Hoo St Werburgh Primary)	Up to £116,230.40
				Primary education (at one or more of Chattenden Primary, Hundred of Hoo Primary phase Academy and Hoo St Werburgh Primary)	Up to £285,292.80
				Secondary education at Hundred of Hoo Academy	Up to £364,540.80
16/2051	Land at Otterham Quay Lane	Rainham North	Up to 300 units	Bird disturbance mitigation	£223.58 per unit
				Highway improvements to junction on Mierscourt Rd	
				Waste/recycling : improvements of A2 bring site on Mierscourt Rd and Hoath Rd household waste site	£155.54 per unit
				Rainham Town Centre improvement project	£245 per unit
				Improvements at 1 or more of Ryetop Park, Cozenton Park and Rainham Recreation Ground	£365.05 per unit
				Improvements at Bloors Lane allotments	£39.20 per unit

Plan app MC/	Location	Ward	Proposal	Towards	Amount
16/2051	Land at Otterham Quay Lane (continued)			Provision of community facilities at Rainham Oast House community facility	£136.71 per unit
				Health : improvements at 1 or more of Rainham Healthy Living centre, Thames Ave surgery or Maidstone Rd surgery	£467.95 per unit
				Education : (no contributions from 1 bed units) Nursery – Riverside or new free school Primary – Riverside or new free school Secondary – Howard School or new free school Sixth form – Rainham Mark or new free school	£915.20 per unit £2,246.40 per unit £598 per unit £2,272.04 per unit
16/1443	Chandler Forest Timber Merchant, 82 Jeffrey St Gillingham	Gillingham North	Demolition/2 bungalows + 10 flats	Great Lines Heritage Park : repair of light fittings at Chatham Naval Memorial	£1,499.40
				Improvements to open space facilities at 1 or more of Balmoral Gardens or Mill Road	£16,713.27
				Bird disturbance mitigation	£2,682.96
16/0712	177 Berengrave Lane	Rainham North	13 units	Bird disturbance mitigation	£2,906.54
				GLHP : towards repairs to light fittings at the Royal Naval War Memorial	£1,624.35
				Nursery education : early years provision at either Riverside Primary school or a new primary education facility	£10,982.40
				Primary education : key stage 1 provision at either Riverside Primary school or a new primary education facility	£26,956.80
				Secondary education : towards increasing dining facilities at the Howard School or towards provision of a new secondary education facility"	£34,444.80
				Open space : 50% to be spent on improvement works at Beechings Way playing field + 50% to be spent on improvement works to a recreation ground in the Rainham area with the exact location to be agreed with the Head of Planning in consultation with ward councillors	£36,262.59

Plan app MC/	Location	Ward	Proposal	Towards	Amount
16/0712	177 Berengrave Lane (continued)	Rainham North	13 units	Public realm : towards improvements including lighting infrastructure, street furniture and signage at the start of Rainham High Street”	£3,185.00
16/2776	Brickfields, Darland Farm	Hempstead & Wigmore	Up to 44 dwellings	Transport study of vehicle speeds on Pear Tree Road + (if supported by study) the adoption of Traffic Regulation Order	£5,000.00
				Bird disturbance mitigation	£9,837.52
				Highway works including priority junctions, amendments to existing traffic islands on Capstone Rd, new footway linking to Darland Banks, reduction of speed limit etc.	
				Off site affordable housing contribution	£1,875,000.00
				Nature conservation : £28,000 capital element towards mitigation measures at Darland Banks; £21,600 maintenance element (to be paid in 10 instalments)	£49,600.00
				Establish open space management company for communal open space areas	
				Open space : towards improvements at one or more of Capstone Country Park or Luton recreation ground	£122,734.90
				Nursery education : at one or more of Riverside Primary School or St Mary’s Island Primary School	£40,268.80
				Primary education : at one or more of Riverside Primary School or St Mary’s Island Primary School	£98,841.60
				Secondary education : at one or of The Howard School, Rainham Girls School or a new free school	£99,985.60
				Sixth form education : at one or of The Howard School, Rainham Girls School or a new free school	£26,312.00
				Health : towards improvements to Hempstead Medical Centre	£20,589.80
16/4121	Land at 11 – 17 High St Strood	Strood South	10 units	Open space : improvements at one or both of Darnley Road open space or Northcote Road recreation ground	£8,442.898
				Bird disturbance mitigation	£2,235.80

Plan app MC/	Location	Ward	Proposal	Towards	Amount
16/4121	Land at 11 – 17 High St Strood (continued)	Strood South		Health : towards improvements at one or both of Darnley Road open space or Northcote Road recreation ground	£4,679.50
				Heritage : towards the provision of information for the public at Temple Manor	£8,453.76
				Implementation of refuse management strategy	
16/2335	249 – 261 High St Rochester	River	21 flats	Bird disturbance mitigation	£4695.18
				GLHP : repair of light fittings at Chatham Naval Memorial	£1,321.97
				Repair of the Corn Exchange clock	£1,321.97
				Improvements to the facilities at Eastgate House Gardens	£20,024.64
				Towards improvements to the facilities at Eastgate House	£8,595.37
15/2954	Land at Broadway Gillingham	Twydall	90 bed care home	Health : towards improvements at one or more of Woodlands Family Practice, East Court Lane Surgery, the Medical Centre, Waltham Road and Malvern Road Surgery	£17,190.00
				Reptile receptor site to be available in accordance with the reptile mitigation strategy to be agreed pursuant to condition 8 of the planning permission	
Habitat regulations agreements					
16/4568	r/o 330 High St, Chatham	River	7 dwellings		£1,565.06
16/2955	65 Broadview Ave, Rainham	Rainham Central	2 dwellings		£447.16

Plan app MC/	Location	Ward	Proposal	Towards	Amount
16/2004	122b and 122d High Street, Strood	Strood North	2 dwellings		£447.16
17/0138	r/o 20 Mount Rd Borstal	Rochester West	1 dwelling		£223.58
16/4882	128 High St Chatham	River	3 dwellings		£670.74
17/0135	302C Canterbury St	Gillingham South	1 dwelling		£223.58
16/4587	11 Albany Terrace	Chatham Central	1 dwelling		£223.58
16/2445	55 Green St Gillingham	Gillingham South	4 dwellings		£894.32
16/4760	Cunningham House St Margarets Street	Rochester West	1 dwelling		£223.58
16/4418	56-58 Balmoral Rd Gillingham	Gillingham South	6 dwellings		£1,341.48
16/4188	r/o 2 Star Hill	Rochester West	4 dwellings		£894.32
16/5043	6 Bells Lane	Peninsula	1 dwelling		£223.58