

TITLE OF REPORT : SECTION 106 AGREEMENT AND UNILATERAL UNDERTAKINGS

REPORT OF THE HEAD OF PLANNING AND BUILDING CONTROL

1. SUMMARY

1.1 This report provides Members with an overview of the current situation regarding the implementation and management of Section 106 and unilateral undertakings and in particular, it focuses on the following areas:

- i Implementation of planning obligations Supplementary Planning Document (SPD);
- ii Audit inspection of Section 106 matters;
- iii The county wide approach to the implementation of Section 106 Agreements and the community infrastructure levy;
- iv Monitoring arrangements for Section 106 Agreements and unilateral undertakings.

2. FORWARD PLAN

2.1 This report does not contain a recommendation on a key decision and is not included within the Forward Plan.

3. BACKGROUND

3.1 Members will recall that the Authority adopted in November 2006 a SPD regulating to the preparation of Section 106 Agreement and unilateral undertakings in relation to development proposals. That SPD was the first of its kind within Hertfordshire and followed very closely the principles set-out in pathfinder areas such as Milton Keynes relating to the promotion of Section 106 Agreements. The SPD has now been in operation for approximately 18 months and this has now allowed sufficient time to see how it works in practice and also is an appropriate time to review the situation regarding the monitoring and implementation of Section 106 Agreements and issues surrounding it.

Given the increased number of Section 106 Agreements and with the prospect in the future of significant developments within North Hertfordshire (associated with the East of England Plan). It is again appropriate to look at the arrangements now so that areas of best practice can be reaffirmed and any areas of improvement identified can be actioned.

4. CONSIDERATIONS

- 4.1 The implementation of Section 106 Agreements over the past 18 months under the SPD has provided a far clearer position for developers and has led to far more certainty. When the SPD was being produced there was considerable representation from developers about the practicalities of operating such an arrangement and the financial impact that this would have upon development proposals.
- 4.2 There have been very few challenges to the payment of charges associated with the Section 106 SPD and the overall income levels for 2006/7 and 2007/8 are included in the table below which relate to the years from 2001/02.

Year	Receipts in year £	Allocated in year £	Interest accruing in year to General Fund £
2001/2	17,729	2,000	192
2002/3	224,542	181,341	1,166
2003/4	5,000	0	3,076
2004/5	364,461	59,166	13,107
2005/6	76,900	62,119	20,957
2006/7	199,276	13,000	26,921
2007/8	226,016	83,782	42,253
Total	£1,113,924	£401,408	£107,673

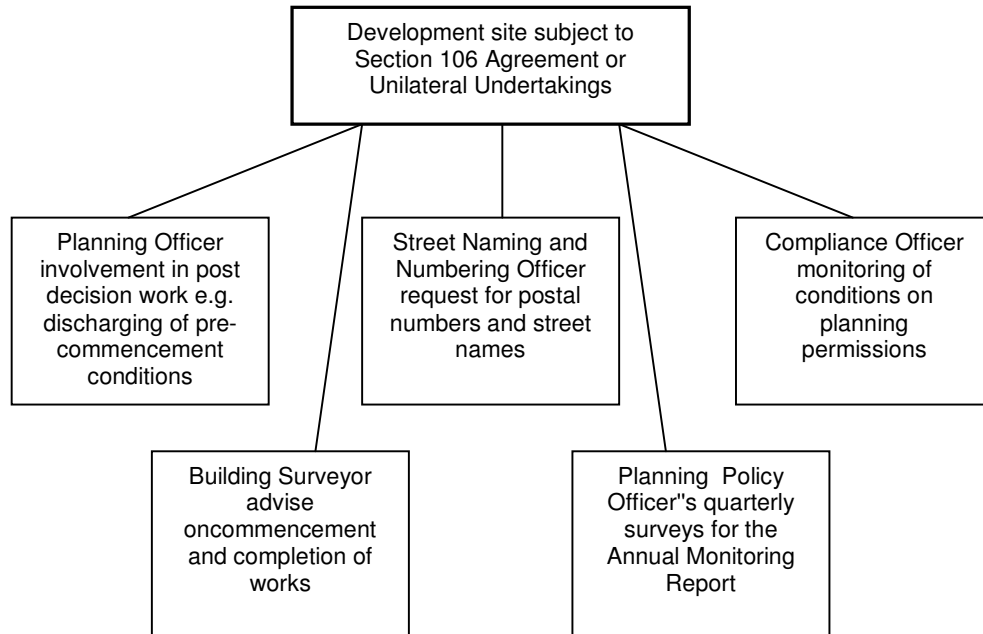
Balance of S106 and unilateral undertakings receipts £712,515

- 4.3 In implementing the Section 106 SPD there was concern that the requirement to obtain multi-lateral undertakings would slow down the process of issuing decisions to planning applications as it would effectively put control on the final decision timing to an Applicant, rather than being within the control of the Authority. Considerable effort has been extended to ensure that this does not happen and that where possible unilateral undertakings are submitted by the Applicant at the time that an application is made. In practice this again seems to be working well and the figures below for 2006/7 and 2007/8 show the performance of the Planning Control function in relation to BVPI 109.

	2006/7	2007/8
BV109(a)	72.73%	72.97%
BV109(b)	70.82%	72.35%
BV109(c)	83.19%	82.68%

- 4.4 In 2008 as part of the annual Audit Plan the Council's Audit Team undertook a review of the Section 106 processes. There were a number of recommendations included within the Audit Report and this Audit revealed a "partial" level of assurance. The key recommendations are set out in Appendix A to the report together with the action plan. It should be noted that a considerable number of the actions had already been commence prior to the planned Audit and the actions identified in Appendix A are being undertaken within currently identified resources.
- 4.5 With regard to the monitoring of the Section 106 agreements and Unilateral Undertakings the 'trigger' points for the submission of the contributions or implementation of the terms of the agreement are set up within the Acolaid system and the Planning Obligations module as referred to in Appendix A. 'On the ground' monitoring is undertaken and cross referenced as shown in the diagram below and

completions are reported back to the Monitoring Officer and the appropriate invoice and letter are sent.



- 4.6 The main aim of the Section 106 SPD is to ensure that additional demands upon infrastructure, services and facilities arising from new development are provided for and are put in place at the right time and contribute towards the Council's mission and strategic objectives set out in the Corporate Plan. The planning process in respect of obligations provides a mechanism by which some of the priorities can be addressed. The strategies and priorities of the Council form the basis for the allocation of funds. Monies are allocated to capital schemes which are agreed by Members through the corporate business planning process and the quarterly budget monitoring reported to Cabinet.

5. LEGAL IMPLICATIONS

- 5.1 The Council requires Section 106 Agreements and Unilateral Undertakings where appropriate under the Town and Country Planning Acts where development involves matters which cannot be controlled by planning conditions. There are strict rules which govern the negotiation and implementation of matters covered by Section 106 Agreements and in essence, these need to relate to the development proposed both in scale and kind. The Section 106 SPD has been formulated with those principles in mind and the implementation of the SPD is being undertaken in a satisfactory manner.
- 5.2 The current Planning Bill introduces the concept of a Community Infrastructure Levy which may replace in part the use of Section 106 Agreements. The Planning Bill is currently before the House and when there is greater certainty about the future of that aspect of the Bill, it will be appropriate to review the Section 106 SPD. The review of the Section 106 SPD will need to be incorporated within the Council's Local Development Scheme.

6. FINANCIAL AND RISK IMPLICATIONS

- 6.1 The work associated with the implementation of the Section 106 SPD is currently contained within existing work plans and resources. A review of that document will need to be incorporated within the programme for the Local Development Framework Team once there is greater certainty about its future.
- 6.2 The recent Audit of the Section 106 process has identified a "partial" level of assurance for this service. The recommendations contained within the Audit Report are being implemented as set-out in Appendix A to this report to PARC.

7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS

- 7.1 There are no financial resource or equalities implications arising from this report other than those associated with the implementation of Section 106 Agreements associated with developments and in particular, the increasing number of large developments that maybe forthcoming as a result of the East of England Plan.

8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 8.1 The Section 106 SPD was subject to external consultation through its preparation and the implementation of this new area of work has been subject to consultation with developers and agents through the Planning and Building Control Customer Panel.

9. RECOMMENDATIONS

- 9.1 It is recommended that PARC
- a) Note the contents of this Report and the update on the implementation of Section 106 / Unilateral Undertakings
 - b) That PARC endorse the Action Plan as set out in Appendix A to this Report
 - c) That PARC note the monitoring arrangements for Section 106 Agreements and recommend that a comprehensive list of Section 106 Agreements is prepared with Hertfordshire County Council and evaluated on a 6 monthly basis.

10. REASONS FOR RECOMMENDATIONS

- 10.1 To ensure that there is a robust system for negotiating and managing Section 106 / Unilateral Undertakings.
- 10.2 To ensure that this is kept under constant review and that the risk associated with this activity is managed in an appropriate manner.

11. ALTERNATIVE OPTIONS CONSIDERED

- 11.1 No alternative options are considered appropriate at this stage.

12. APPENDICES

- 12.1 Appendix A - Action Plan

13. CONTACT OFFICERS

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14. BACKGROUND PAPERS

- 14.1 Section 106 Supplementary Planning Document and monitoring spreadsheets

Management Action Plan - Section 106 Agreements

Ref.	Recommendations	Agreed Action and Responsible Officer	Target Date for Completion
1.	<p>New Section 106 agreements should be logged on Acolaid and reporting tools developed for these and Unilateral Undertakings.</p> <p>Priority: High</p> <p>A comprehensive review of existing Section 106 agreements and Unilateral Undertakings should be completed to identify any agreements that are not being managed effectively.</p> <p>Priority: High</p>	<p>A part-time Monitoring Officer was appointed in January 2008 and new Section 106 agreements are now being logged on Acolaid.</p> <p>Reporting tools are currently under development</p> <p>Responsible Officer: Planning Control & Conservation Manager</p> <p>An exercise will be undertaken to back-capture existing Section 106 agreements onto Acolaid and to review them for delivery of the obligations.</p> <p>The review of Unilateral Undertakings is already in progress.</p> <p>Responsible Officer: Planning Control & Conservation Manager</p>	<p>Implemented</p> <p>31/05/2008</p> <p>30/06/2008</p> <p>Ongoing</p>
2.	<p>An annual update of the standard figures in the SPD should be applied in order to reduce the administration required on index linking each payment made.</p> <p>Priority: Medium</p> <p>Until an annual amendment is made to the SPD, the process for index linking should be made more robust and the wording of the standard documentation reviewed to place greater onus on the developer to seek</p>	<p>We will devise a process for updating index linking on an annual basis. County Council will be consulted during this process.</p> <p>Responsible Officer: Planning Control & Conservation Manager</p> <p>Internal processes for applying index linking to contributions have been enhanced since the audit.</p>	<p>30/06/2008</p> <p>Implemented</p>

APPENDIX A

Ref.	Recommendations	Agreed Action and Responsible Officer	Target Date for Completion
	<p>the revised figures prior to making payment.</p> <p>Priority: High</p>	<p>We will revise the figures on the Council's website to make the latest charges more visible.</p> <p>Responsible Officer: Planning Control & Conservation Manager</p>	30/06/2008
3.	<p>An independent check of the calculations should be introduced in order to identify computational errors at an early stage.</p> <p>Priority: High</p>	<p>Checks will be carried out to ensure that the heads of terms for section 106 agreements accord with the Supplementary Planning Document, or where differences exist, that reasons are documented.</p> <p>Responsible Officers: Planning Control & Conservation Manager; Principal / Area Planning Officers; Senior Lawyer</p>	Implemented
4.	<p>A comprehensive review of all Unilateral Undertakings should be completed to ensure that the £822 monitoring costs have been collected or invoiced.</p> <p>Priority: Medium</p>	<p>Completed.</p> <p>Responsible Officer: Planning Control & Conservation Manager</p>	31/03/2008
5.	<p>Monitoring processes should be reviewed and a joined-up approach developed to ensure best use is made of all available monitoring information from across the Council.</p> <p>Priority: High</p>	<p>Business process mapping across the services has highlighted better communications as a high priority. In response to this and the audit findings, a review is in place to streamline processes.</p> <p>Responsible Officers: Planning Control & Conservation Manager; Local Development Framework</p>	31/07/2008

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Ref.	Recommendations	Agreed Action and Responsible Officer	Target Date for Completion
	<p>The status of development work on all Section 106 and Unilateral Undertakings with outstanding planning obligations should be reviewed and where the trigger point has been met and obligations not delivered, the developer should be contacted with a view to discharging their obligations. This should include where appropriate, the application of a penalty interest charge for late payment and index linking as stated in the formal agreement.</p> <p>Priority: High</p>	<p>Manager</p> <p>Section 106 agreements are being updated when added to the Acolaid module and payment requests issued where relevant.</p> <p>Responsible Officer: Planning Control & Conservation Manager</p>	<p>30/06/2008</p>
<p>6.</p>	<p>The planning obligations module on Acolaid should be developed and relevant, timely and accurate management information produced to improve overall control of Section 106 agreements including the receipt of contributions and sums spent.</p> <p>Priority: High</p>	<p>Further discussions are scheduled with Plantech to refine the module to meet the needs and requirements of North Herts, including the provision of key reports as necessary.</p> <p>Responsible Officers: Planning Control & Conservation Manager; Technical Support Team Leader</p>	<p>30/06/2008</p>
<p>7.</p>	<p>The standard format Unilateral Undertaking and S106 agreements should be reviewed to clarify the process for receipt of contributions due to the parties concerned.</p> <p>Priority: Medium</p>	<p>To discuss with County Council following adoption of their "Toolkit" the appropriate method of index linking and payment.</p> <p>Responsible Officers:</p>	<p>30/06/2008</p>

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Ref.	Recommendations	Agreed Action and Responsible Officer	Target Date for Completion
	<p>For active agreements, guidelines should be agreed with County over how and when communication should take place.</p> <p>Priority: Medium</p>	<p>Planning Control & Conservation Manager; Senior Lawyer</p> <p>As above</p> <p>Responsible Officers: Planning Control & Conservation Manager; Group Accountant; Senior Lawyer</p>	<p>As above</p>
<p>8.</p>	<p>Monitoring reports should be produced and issued to relevant services in accordance with the Supplementary Planning Document.</p> <p>Priority: High</p>	<p>Revised reports when available from Acolaid will be issued to other service providers within the Council and to appropriate council committees.</p> <p>Responsible Officer: Planning Control & Conservation Manager</p>	<p>31/08/2008</p>