

LONDON BOROUGH OF BRENT

MEETING OF THE EXECUTIVE - 9TH FEBRUARY 2004

REPORT FROM THE DIRECTOR OF FINANCE

SECTION 106 UPDATE REPORT

FP REF:BFS-03/04-68

1. SUMMARY

- 1.1 Following consideration of a Planning Service (PS) S106 update report the Capital Board instructed Brent Financial Services (BFS) to undertake a review of S106 Funds to determine whether the money was being utilised. The review is now complete and Members have requested an update on the findings. This report sets out the findings from the review.

2. RECOMMENDATIONS

- 2.1 Members note the findings from the original review.
- 2.2 Members note that a follow-up review is currently in progress and upon completion an update report will be presented to Members.
- 2.3 Members note that the £278k Streetcare Monies have been claimed and agree that the funds should now be returned to balances within the capital programme.

3. FINANCIAL IMPLICATIONS

- 3.1 The balance of funds held that were investigated totalled £8.445m.
- 3.2 The legal covenants of each S106 Agreement define what the money can be spent on. Application of these funds to works outside of these covenants could result in the developer recovering the contribution.
- 3.3 It is the responsibility of each Service Area to comply with and deliver the projects in accordance with the legal covenants of the agreement.

4. STAFFING IMPLICATIONS

- 4.1 There are no staffing implications from this report.

5. DETAIL

5.1 The Approach to the Review

The review was originally split into two elements. A review of the funds held and a review of the administration procedures for controlling and managing the funds.

- 5.2 The funding analysis identified and then looked at every individual S106 agreement to determine:
- What the funds could be used for
 - Whether there were any interest liabilities arising.
 - Whether adequate and deliverable plans existed within the Service Areas to ensure that the S106 monies held would be utilised.

All S106 agreements detailed in the schedules attached to the report to Executive on 10th March 2003 were located and looked at. The provisions of each agreement were documented as these define what the money can be spent on. They relate either to specific works to be undertaken, service enhancements or replacements and also as a contribution to larger projects.

Particular note was made of agreements where the provisions required the Council to repay any unspent amounts with interest.

It is not the Planning Service's responsibility to spend the money received. Service Areas take direct responsibility for fulfilling the provisions of each agreement. A responsible officer was identified for each agreement and a meeting took place in order to establish whether or not the "works/enhancements/projects" were deliverable based upon the availability of adequate financial resources, effective planning and clear identification of objectives.

5.3 An Outline of the Stages of the Review

- 24.01.03 The Planning Service and the Capital Board discuss how S106 amounts are determined and amounts calculated. The Board commented that:
- Social Services didn't seem to get much money.
 - More flexibility could be built into the Education elements to allow for wider use.
 - Open space featured heavily but was in fact a low priority in the context of what the Council is trying to achieve.
 - Generally the agreements could be more flexible to allow for wider use.
- 26.02.03 The review commences.
- 25.04.03 The review is completed and reported to the Capital Board. The Board allocate each agreement into a category which reflects the current status with regard to the use of the funds. The Board also agrees to a follow up review to be progressed at the end of 6 months. The review findings and the recommendations of the Capital Board are sent to the Planning Service for consultation

- 27.06.03 The Planning Service attend the Capital Board and request time to undertake a review to:
- Review and reconcile the S106 cash amounts in light of the need to correct current deficits in some S106 accounts.
 - Review individual S106 agreement legal provisions and concur whether they could be used for the purpose recommended by the Board.
- The Capital Board agreed that the Planning Service be allowed time to address the issues raised at the meeting.
- 26.09.03 The Capital Board received comments from the Planning Service and:
- Agreed a final position on the categorisation of agreements.
 - Agreed to a further review of the Streetcare monies.
 - Noted that the planning service had reconciled all cash balances.
- 20.11.03 The Capital Board agreed to a review of the original recommendations, noted that the review of Streetcare monies was complete and agreed that the balance should be claimed and transferred into capital programme balances.

5.4 Findings

- 5.4.1 Each agreement was allocated into a category which best reflected the current status with regard to the use of funds. This categorisation was agreed with the planning service at the September Capital Board meeting. Detailed below are the amounts which fall into each category, a description of the category and any subsequent recommendations made by the Board. The attached appendix sets out in detail the individual agreements within each category and provides detail on the amount, description, what project the funds are allocated to and the status/findings. The remaining columns merely provide a series of comments.

Spent (£1.726m)	These monies have been spent by Service Areas but have either not yet been claimed or are in the process of being claimed. The Board agreed that service areas be reminded to claim the monies.
Project Deliverable (£2.817m)	The works/enhancements/projects are in the process of being or are capable of being delivered. The Board agreed that progress on these should be reviewed after 6 months.
Project Identified (£532k)	It was not possible at this stage to test the deliverability as these sums had only recently been received. The Board agreed that progress on these should be reviewed after 6 months.
At Risk (£2.125m)	These projects are deliverable but they have to be done

within a given time period or the contribution has to be returned to the developer. The Board agreed that progress on these should be reviewed after 6 months and services should be reminded of the need to progress these projects.

To be Allocated (£548k)	Comprises of projects for which the funds have not yet been found a use for. It was agreed that discussion between the Planning Service and service areas regarding their use would be progressed. The Board agreed to review progress on this group after 6 months
Legal Challenge (£419k)	These agreements were subject to legal challenge from the original developer.
Streetcare Monies (£278k)	Further analysis required to establish that the works were completed. These are old deposits and it is very likely that the works are complete and the money needs to be claimed. The Board agreed a further review be undertaken to establish and the works were completed.

5.4.2 At the November meeting of the Capital Board the analysis of Streetcare monies was reported. It was noted that all the works had been completed. The Board agreed that these monies should be claimed from the Planning Service and repaid to balances to compensate for the original expenditure. The Board also agreed that a follow-up review on the status of S106 agreements could be progressed.

5.4.3 A S106 corporate working party now exists which aims to:

- Ensure more efficient and effective S106 spend.
- Ensure spend is consistent with the Councils legal obligations and Planning Acts.
- Within legal constraints ensure spend meets Corporate priorities.
- Set up robust, transparent and accountable systems.
- Provide regular reporting and Member training.
- To examine any corporate concerns over the wider operation of the S106 system.

5.4.4 The findings from the administration review were also considered by the Capital Board. The recommendation made fell loosely into four categories:

- communication;
- record keeping;
- project monitoring; and
- establishment of new processes and procedures.

These recommendations were considered by the Planning Service and a number of actions were agreed for progression by their quality support officer. These recommendations have now been actioned by the planning service.

The recommendations of the Capital Board included:

- (i) Communication between the Service Areas and the Planning Service should be improved.
- (ii) The accuracy of the information provided by the Service Area should be improved.
- (iii) Financial and Data records held by Planning Service should be improved and compared more frequently.
- (iv) The original purpose for which monies were negotiated, responsible officer and completion date records should be kept.
- (v) Planning Service should proactively monitor the progress of projects.
- (vi) An escalation procedure should be established where sums are not being utilised so that alternative use can be found.
- (vii) Co-ordination of changes to S106 should be properly managed.

6. BACKGROUND INFORMATION

Report entitled "S106 Update" from the Director of Environment to the 10th March meeting of the Executive.

Any person wishing to inspect these documents should contact Committee and Member Services, Room 106, Brent Town Hall, Forty Lane, Wembley, Middlesex HA9 9HD. Tel. 020 8937 1353.

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