



Cabinet
19 June 2017

**Report from the Strategic Director
of Regeneration & Environment**

Wards affected: All

Development Funds Programme for 2017-18

1.0 Summary

- 1.1 The purpose of this report is to set out the proposed allocation of Section 106 (S106) funds for expenditure in 2017-18 and, where known, details of specific projects.

2.0 Recommendations

- 2.1 Cabinet approves the allocation of funds to specific prioritised S106 projects as set out in Appendix 2
- 2.2 Cabinet delegates to the Head of Planning, Transport and Licensing implementation of the Council's S106 obligations where there is no discretion on spend of funds received, subject to all other necessary sign-offs/consultations
- 2.3 Cabinet agrees that where there is discretion on the Council's spend of S106 obligations funds received that wherever possible these will be allocated to projects in a manner consistent with the methodology to be adopted for Strategic Community Infrastructure Levy funds.

3.0 Background

- 3.1 Section 106 planning obligations which are linked to a planning permission are secured either by agreement between the local authorities and developers or provided by a unilateral undertaking by the developer to the Council. Where the developer cannot directly mitigate the impact of their development the Council can instead seek a financial contribution to undertake works.
- 3.2 This report is concerned with the allocation of those funds which have been paid by developers held by the Council (hereafter "Development Funds"). Development Funds secured via S106 planning obligations can only fund those projects which meet the terms secured. If not the developer can request their

return or if the monies are not spent within any reasonable period specified in the agreement or unilateral undertaking (usually 5 or 10 years). The criteria for the selection and shortlisting of projects are split into “Essential” criteria and “Desirable” criteria. (See Appendix 1):

- 3.3 The **essential criteria** mean any project proposed herein is subject to final verification that the funding is available from suitable sources, which will be ascertained following feedback on this paper from CMT. In principle, providing funding for relevant infrastructure is an important means by which development can help to mitigate the impact an increased population can have on a local area and its amenities and social infrastructure; therefore new or expanded social or physical infrastructure in areas of greater development pressure will be prioritised over maintenance or minor improvements to existing infrastructure in areas of low development pressure. The majority of funds are in any case tied by the S106 obligation to improvements in the vicinity, thus leading to greater spend in those areas that generate the most S106 funds.
- 3.4 The **desirable criteria** allow for a prioritisation where there are competing demands for money. This year this has primarily been in wards where funds are limited due to lower levels of development activity and the theme to which the S106 funds are ring-fenced cover those which a variety of service areas across the Council have a responsibility for, e.g. open space contributions.
- 3.5 The S106 and CIL process was recently subject to audit by PWC. The final report concludes that the processes and procedures overall are reasonable, with some medium and low risks together with advisory points relating to suggested remediation actions around monitoring of S106 expenditure, Community Infrastructure Levy (CIL) income collection, S106 monitoring and non-financial obligations, S106 income monitoring and segregation of duties for CIL relief and exemptions. Implementation of the agreed restructure of Planning will provide the opportunity to introduce greater robustness and address the issues raised by providing sufficient capacity within the teams which in the recent past have been short of the necessary resources.

4.0 Community Infrastructure Levy

- 4.1 Since July 2013 the CIL has been in force in Brent and the Council will no longer seek financial contributions for strategic infrastructure via S106 planning obligations. This means that in time the sums attained from S106 financial obligations will reduce once older extant planning applications are completed.
- 4.2 This report focuses on the expenditure of S106 monies as the recent priority has been spending the larger amount of S106 reserves (as these can be subject to expiry).
- 4.3 CIL provides a lot more flexibility on how it can be spent, as long as spend is consistent with projects listed on a CIL Regulation 123 list. It must be understood that S106 spend is much more restrictive. Not only it is often specific on the type of infrastructure, it often has restrictions on the location in which the funds can be spent. In addition it is also severely limited in how many S106 obligation funds can be pooled together to spend on an infrastructure project.

- 4.4 Legislation to support CIL identified that since April 2015 local authorities can no longer pool more than five s106 obligations together (dating back to March 2010) to pay for a single infrastructure project or type of infrastructure. In Brent's case this is a significant limitation; a tariff based approach to S106 for residential dwellings meant contributions were attained from a significant number of minor developments. This therefore places a restriction on the size of projects that can be supported; steering spend towards smaller projects than might for instance be able to be funded through CIL.

5.0 Moving forward with S106 allocation in the future

- 5.1 A process for administering spend of Strategic CIL still needs to be agreed. The Neighbourhood CIL spend process was approved by Cabinet on 13th February 2017. A process which creates a closer relationship between the Council's capital programme and CIL is likely to be taken forward. An Infrastructure Delivery Plan will be the main mechanism for prioritising capital and revenue expenditure, subject to other Council decision making identifying projects prioritised for delivery. Funds available to the Council from various sources including CIL will then be used to fund the projects.
- 5.2 In the future, rather than continue the current process for S106 which has been followed for the last few years, it is proposed that S106 should follow for the most part the same route as that which will be pursued for Strategic CIL spend. This will be for S106 funds where there is an element of discretion within broad headings about the infrastructure project that the Council can spend the S106 funds collected on, e.g. transport, open space and education. The Council would decide the infrastructure projects to fund and then finance would request funding from S106 as one of a number of sources potentially available to fund such projects. Officers in planning will still monitor the funds and ensure that such funds are only released if they are spent in accordance with the provisions of the S106. An audit trail needs to be available for all financial obligations attained to ensure that the Council can show the developer on request on what and where spend occurred.
- 5.3 As such it is proposed that projects identified in Appendix 2, which have followed the S106 project identification process for the last few years are taken forward in advance of this process being confirmed. As can be seen from Appendix 2, the majority of the projects require S106 as top up funds, are non-discretionary S106 requirements or will expire shortly and for the sake of work programming/revenue budgets the delivery teams need certainty about what they can take forward.
- 5.4 As indicated, on some matters the S106 planning obligation is very specific about what the funds given to the Council should be spent on, e.g. provide TfL with a contribution towards improving local bus services, a car club, or a Traffic Regulation Order to introduce waiting restrictions, residents' bays, etc. In these cases the Council has no discretion on what to spend the funds on. (There are examples of these in Appendix 2) The Council through Planning Committee and internal officer consultation would have been made aware of and agreed these specific requirements to make the development acceptable. As such from now on it is proposed that in situations where the obligation is very specific, that officers implement the provisions, subject to all other necessary sign-offs/consultations, e.g. traffic regulation orders, without seeking further Cabinet approval for the principle of spending funds on these types of projects.

5.5 Spending the remaining small contributions attained might still be an issue, as explained in relation to the pooling restrictions. However, many of these contributions do not have expiry dates and so could be used for CIL infrastructure based projects. As the S106 pot diminishes there may be a need for a one off decision on projects on which to spend the available funds, but this is some years away if for whatever reason it is required.

5.6 In summary, it is recommended that in future S106 funds where there is some discretion on spend in accordance with broader headings of the planning obligation e.g. transportation, are released for the delivery of capital projects prioritised within an Infrastructure Delivery Plan within its associated decision making parameters (subject to the projects being in accordance with the obligation requirement). For future specific items not identified in this report where there is no discretion on the part of the Council, S106 obligations will be spent in accordance with the agreement through delegation to the Head of Planning, Transport and Licensing without the need for further approval from Cabinet.

6.0 Draft budget 2017/18

6.1 Available funds

6.1.1 As at 1 July 2016 a total of £10.1 million was available to commission, subject to the terms of planning obligations. The table below shows the distribution of reserves across the main themes, demonstrating the uneven amounts of funding available for projects.

Theme	Available to commission
Affordable Housing	£384,274
Amenity	£3,320,738
Education	£1,787,395
Employment	£41,545
Environment	£46,700
Social	£135,663
Transfer to external	£1,173,400
Transport	£3,255,851
TOTAL	£10,145,851

Table 1: An overview of available money¹ by Theme as of 1 July 2016

6.2 Methodology

6.2.1 Managers responsible for delivering projects which are eligible for S106 funding were invited in July to propose projects for the draft budget for 2017-18, having regard to the project selection criteria (see Appendix 1). Roundtable workshops were arranged to discuss proposed projects. This allowed greater opportunity for challenge on the validity of projects, joined up thinking on projects, consolidation of schemes where possible and looking for cross-cutting benefits rather than focussing on their own outputs, e.g. transportation safety or capacity projects have the ability to improve the public realm improving the quality of town centres.

¹

6.2.2 The following officers were consulted on the basis that their units had money available to budget (see Table 2):

Directorate	Strategic Director	Service Department	Operational Director	Service Unit/Theme	Head of Service (or equivalent)	Project manager(s)
Regeneration & Environment	Amar Dave	Environmental Services	Chris Whyte	Environment, Amenity, Open Space	Robert Anderton	Amanda Haines
Community Wellbeing	Phil Porter	Community Services	Jon Lloyd-Owen	Culture (Recreation, Sports, Social, Public Art, Community Facilities)	Rashmi Agarwal	Rez Cameron (Recreation)
Regeneration & Environment	Amar Dave	Environmental Services	Chris Whyte	Transportation (Transport, Amenity, Public Realm)	Tony Kennedy	Sandy Fazekas, Rachel Best
Regeneration & Environment	Amar Dave	Planning & Regeneration	Aktar Choudhury	Regeneration Investments (Growth Areas)	Dale Thomson	Maire Grogan
Regeneration & Environment	Amar Dave	Planning & Regeneration	Aktar Choudhury	Landscape (Amenity)	Paul Lewin	Martin Page
Regeneration & Environment	Amar Dave	Environmental Services	Chris Whyte	Community Services (Environment)	Karina Wane	Jennifer Barrett
Regeneration & Environment	Amar Dave	Planning & Regeneration	Aktar Choudhury	Schools Capital Programme (Education)	Dale Thomson	Cheryl Andani
Regeneration & Environment	Amar Dave	Planning & Regeneration	Aktar Choudhury	South Kilburn Programme (Growth Area)	Richard Barratt	Marie Frederick
Regeneration & Environment	Amar Dave	Planning & Regeneration	Aktar Choudhury	Employment & Skills (Employment)	Matt Dibben	Kaya Chatterji
Community Wellbeing	Phil Porter	Community Services	Jon Lloyd-Owen	Housing (Affordable Housing)	Jon Lloyd Owen	Maire Grogan
Resources	Althea Loderick	Strategic Property	Sarah Chaudhry	Council/Community Assets	Sarah Chaudhry	Tony Nixon

Table 2: Directorates consulted

6.2.3 The following analysis of the proposed projects has been undertaken by the Planning Policy & Projects Manager:

- Assessment of proposal against the selection criteria
- Availability of funds within relevant distance of proposal
- Suitability of available funds for the proposal

6.3 Suggested S106 monies made available to projects 17/18

6.3.1 A total of 60 projects with a combined budget of £6,188,541.66 are identified for suggested funding in 2017-18. Details of these are identified in Appendix 2. The Strategic Director Regeneration and Environment challenged the list presented. In particular the extent to which projects align with other strategic priorities, rather than being officer 'pet projects' which might not be subject to wider financial scrutiny and thus ordinarily might not gain funding for a variety of reasons (e.g. create additional revenue costs in the longer term which the Council might not be able to cover). Following this further confirmation was sought from the Operational Directors for the service areas responsible for delivering the projects to ascertain that they considered the projects appropriate.

- 6.3.2 The Essential and Desirable selection criteria set out in Appendix 1 were introduced around 3 years ago as a mechanism to provide more robustness of decision making on S106 funds spend and whether schemes should be recommended to be taken forward. It sought to weed out spurious bids and 'pet projects' and has been successful in generating better quality projects put forward by service areas that meet the Council's strategic objectives.
- 6.3.3 Taking account of the Strategic Director Regeneration and Environment's challenge the projects have been split into categories. These are projects which:
- a) Are necessary / specifically identified to be compliant with the S106 – no other flexibility on spending
 - b) S106 plays part of/match funding in other strategies/delivery programmes usually agreed by Cabinet
 - c) S106 spend deadline now short so a priority
 - d) Might have potential image / revenue implications if not pursued
 - e) Other projects that are considered appropriate to fund.
- 6.3.4 Within all categories projects which have S106 sums have less than 2 years left to be spent from the start of next financial year are highlighted. These funds need to be spent otherwise there is the risk that they will have to be sent back to the other S106 party with interest. It is recommended that all projects with such funds whatever their category are approved by Cabinet, as are all in categories a-d.
- 6.3.5 For category e) the Planning Policy and Projects Manager who vetted projects recommends that they should be supported. As identified, Operational Directors responsible for their delivery have confirmed that they support the projects proposed by their officers. Whilst some projects might seem small-scale this is in part reflective of the restrictions associated with S106 funds as set out above around pooling and spend required within the vicinity of the development. For some wards the funds available are small due to lack of development, in these areas contributions are also sporadic in terms of timing.

Conclusion

- 6.3.6 The S106 allocation process this year has followed a similar process to previous years. It has sought to identify projects that meet requirements in terms of supporting projects to meet the corporate objectives, which it seeks approval of for allocation of funding for delivery in 17/18. It is proposed that this will be the last time that the process of allocating funds in this manner is pursued. In future it is proposed that the Council's projects are identified from an updated Infrastructure Delivery Plan which prioritises all capital projects across the Council and which should be funded. Where it is consistent with the requirements of the S106 obligation and the CIL regulations on pooling restrictions, requests for funds will be allocated to these schemes. S106 will most likely be part of a mixture of a wider variety of funding streams available to the Council.
- 6.3.7 Where the Council has no discretion in relation to its S106 obligation on how it spends funds received, it is recommended that the Head of Planning, transport and Licensing who is responsible for the team that administer collection and spend of S106 funds has delegated authority to implement the requirements of

the obligation, subject to any necessary statutory/associated decision making processes being followed.

7.0 Financial Implications

- 7.1 As at 1st July 2016 a total of £10.1 million was available to commission, subject to the terms of the legal agreements. Of these monies, this report proposes the allocation of £6.1 million to the Service Units for investment in fundable schemes. Therefore, there will still be £4 million (plus other funds collected subsequently) to use to finance spend for other infrastructure where the terms allow this to occur. The terms may be highly restrictive so this is likely to be limited to capital projects in most instances. Of this £4 million total there will be no funds which will expire in less than two years.

8.0 Legal Implications

- 8.1 Planning Obligations pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) ("The Act") are legal documents under seal either entered into between the Council and developers or provided unilaterally by a developer. The intention of the obligation is to mitigate and offset any harmful impacts of a development. Monies paid to the Council in accordance with the s106 obligation can only be applied for the purposes set out in the relevant agreement. It is noted however, that the Council has received certain sums relating to those contributions which are due to be allocated for specific projects within the Borough, subject to employing the essential and desirable criteria as set out in Section 3 of the report.
- 8.2 The Council has the power to modify S106 planning obligations in accordance with s106A of the Act by agreement between the Council and the parties against whom the obligation are enforceable.

9.0 Diversity Implications

- 9.1 The Equality Act 2010 introduced a new public sector equality duty under section 149. It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Council must, in exercising its functions, have "due regard" to the need to:
1. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 2. Advance equality of opportunity between people who share a protected characteristic and those who do not.
 3. Foster good relations between people who share a protected characteristic and those who do not.
- 9.2 S106 contributions can have a positive impact on equality and diversity, as they allow the Council to make improvements to the local community which benefit disadvantaged groups the provision of affordable housing, additional community spaces, employment, education and training opportunities.

10.0 Staffing/Accommodation Implications (if appropriate)

- 10.1 The projects above will be managed either directly or at arm's length within existing Service Unit staffing structures.
- 10.2 Some of the funding identified above can be used to meet reasonable professional fees in designing and managing the project. What is considered reasonable is assessed on a case-by-case basis but usually not more than 20% of the S106 funding should be put towards fees.
- 10.3 No accommodation implications are anticipated.

Background Papers

None

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