



Budget Panel
21st November 2007

Report from the Director of Planning

For Information

Wards Affected:
ALL

S.106 Planning Obligations Update and Review

1.0 Summary

- 1.1 This report gives a background to Section 106 Planning Obligations, setting out how the council has changed its own s106 Planning Obligations guidance to require a Standard Charging approach. This provides opportunities to better align S106 funds with the council's own capital programme in order to bring most benefit to local communities, affected by new development. The new S106 system will require different procedures for determining s106 expenditure. This report also sets out the current position in the existing 106 fund.

2.0 Recommendations

- 2.1 That the Budget Panel welcomes the standard charging S106 method and recommends that S106 expenditure be reported with, and tied closely to Capital Spending reports to Executive.

3.0 Detail

Section 106 agreements (s.106) are legal agreements between local authorities and developers, which are linked to a planning permission. These are also known as planning gain, planning benefits, community benefits or planning obligations. Section 106 legal agreements are associated with a particular development and as they are a legal charge on the land, they transfer automatically with any change in ownership.

Section 106 agreements are drawn up usually between the council and developer or landowner. They are required to make an otherwise unacceptable development acceptable in planning terms dealing with the negative impacts of a development. For example, a new residential development places additional pressure on the existing social, physical and economic infrastructure in the surrounding area. Planning obligations aim to mitigate that impact by ensuring that contributions are made in cash or kind to provide, for example, education, health, community facilities or transport infrastructure..

All planning applications that are submitted are assessed on a case by case basis and not all developments will require obligations. When a planning application is submitted to the council, an assessment is made of the likely level and type of the pressure that a development would generate.

There are two important considerations legally:

1.That funding sought is for a planning purpose that meets Circular Advice (05/05) on Planning Obligations- :they must **relate to the proposed development; be fair and reasonable; relevant to planning and necessary in planning terms**

2.That funds are spent within a reasonable time period on the items set out in the S106 legal agreement on the items set out in the agreement.

Failure to do either opens the council up to the risk of legal challenge firstly in respect of any planning application and secondly how we spend those funds (developers have in the past sought repayment of S106 funds with interest, through court action).

The Old S106 system and the new Standard Charge system

The council's planning service has secured many millions from developers from S106's since their introduction in the early 1980's. Historically the council negotiated S106's to be very specific, so for example, that they referred to specific funds to specified works. This could be to expand a named school or to erect traffic signals on a named road junction. This very inflexible S106 often meant that the funds were not spent because by the time the funds were received, the proposed solution may have become more expensive or there was a better technical solution. In a limited number of cases, the council has had to return monies because it could not spend it on that set out in the legal agreement.

The next stage was to make S106's more flexible-so far example instead of setting out a specific junction improvement we would get funds to improve highways within the vicinity of the development. This allowed the council to spend funds on a wider range of projects that achieved the same planning aim.

Recently the council has gone one-step further in introducing a S106 Standard Charge. We are a pioneer among local authorities in introducing this approach. In the past we have established formula to assess what is a reasonable charge, for example, a housebuilder pays for the capital costs of providing a school place for each extra child that their development generates. However we did not have formula for all types of impacts. We have now completed that work for the new S106 guidance, so now a developer can pay a single charge for each residential unit or amount of commercial floorspace created. It is our contention that this relates reasonably to cover some of the costs of some of the impact, a developer creates on development.

The Council has adopted a Supplementary Planning Document (SPD) on s.106 Planning Obligations, which requires that all new residential development that creates an additional unit and commercial developments over 500sqm are likely to result in a level of impact that will require a payment to be made in mitigation. The SPD explains why the Council is seeking a standard bedroom/sqm charge, providing clarity for the community, developers and the Council as to what to expect.

The **Standard Charge** covers contributions for **Education / Training, Sustainable Transportation, Open Space, Sport and Air Quality** and will be sought on applications which:

A **new residential unit** is created, **£3,000 per additional bedroom** will be sought (i.e. £3000 for a one bed flat, £6,000 for a two bed, £9000 for 3 bed house/flat etc);

An increase of **over 500sqm in commercial floor space** (B1/B2/B8), **£25 per sqm will be sought**

In addition to the obligations outlined above, other potential obligations include:

Affordable housing

Creation of open spaces, public rights of way

Community or Affordable Workshop space.

CCTV

Adoption of new highways, Travel Plans.

Health Care Provision

Remove new residents' rights to parking permits.

Local employment and training strategies

Compliance with the Considerate Contractors Scheme.

Measures to encourage sustainability.

Developer Benefits of Standard Charging

The benefits for the developer is that they will have more certainty over the level of contributions, the authority is seeking as they are clear, consistent and can be calculated in advance. Developers will also spend less time in negotiations and incur less costs on completing complex legal agreements.

Council Benefits of Standard Charging

The Housing targets set by the London Plan require the council to secure an increase in housing numbers in the next years-over 12000 homes. This will increase the housing stock and the population by 10% (2007-2017) in a borough that has no spare capacity in terms of transport and social infrastructure. Standard charging will assist the council in helping to put together a more coherent infrastructure plan and tie council capital expenditure with S106 and other government and agencies funding sources. Standard Charging also offers a greater element of flexibility between spending heads (within broad terms we could spend more S106 money on education rather than transport from those S106's where the developer gives us that flexibility).

Why Don't We Charge More ?

Government guidance (Circular 05/05) has always been relatively tight in defining what we can seek in terms of S106 planning obligations. We can always be challenged at appeal if developers think our demands breach Circular advice. The circular has always talked about 'contributions' rather than the full costs of provision of infrastructure, recognising that government, the council and other agencies also play a role in the overall cost of infrastructure provision. Moreover the issue of viability is an important one. If we set too high a charge then we may be seen as frustrating development. We are likely to lose at Planning appeal if our Standard Charge makes schemes unviable or appears unreasonable in any other way. Note in this case the government's intention of substantially increasing housing supply which is likely to override council's push to improve S106 terms in its favour.

What happened to Government Proposals to Replace S106 ?

The government has recognised that individual landowners and developers are likely to benefit disproportionately in bringing forward land for development, land that is given increased value by the actions of the local community. In order to maximise community benefit to better fund infrastructure, the government proposed a Planning Gain Supplement (PGS) that taxed the uplift in value created by the grant of planning permission. It is fair to say that this was unpopular with the development industry and the government are not going ahead with it.

They intend to look at an enhanced standard charging system broadly along the lines proposed by Brent Council.

The New s106 System and Pooling

A significant benefit of the new system is the ability to pool s106 resources to meet the key priority areas of expenditure required by the council to meet the requirements of new developments. The allocation of the standard contributions could follow the historical levels, with roughly **half being for Education, Transportation gaining one-third, Landscaping, Sport, Open Space and Public Art measures all sharing the remaining.** Alternatively the SPD justifies, in Planning Policy terms, higher allocations of up to **Education (up to 96% of the total allocation), Sustainable Transport (up to 45%), Open Space (up to 30%) and Sport (up to 15%),** which would be acceptable in planning and therefore legal terms. The key to this flexibility is the council's argument that it is only meeting a small part of the total costs of provision and it would be legitimate to spend a higher percentage than the proportions set out above on any one element.

The wording of the obligation will be such to allow contributions from a variety of developments to be pooled together within a service area, to pay for large infrastructure schemes which relate to the development. The legitimacy of seeking the obligations in the first instance is that the **obligation/contribution must relate to the development.** Officers will ensure that the allocation of a particular contribution is made to appropriate schemes that relate to the development, to ensure legitimacy.

For example, a new development of flats in Alperton may require a contribution of £300,000 towards Education, Transportation, Open Space and Sports improvements. The wording of the legal agreement would allow it to be used towards any education, transportation, open space or sport improvements in the local area that may be affected by the development. This is subject to expenditure on any improvement relating to the pressure of the new development. For example, this may be improvements to any secondary school in the borough, principal access routes to and from the development, local sports grounds or parks. It would not be appropriate for it to be spent on refurbishing a pocket park or crossing near the Welsh Harp, which has no relationship to the development. Large scale infrastructure improvements particularly transportation, sports and schools have larger catchments and spending can be justified on a borough wide basis. So the council could be justified in spending between 50% and 96% of the total S106 on school provision.

In pooling contributions the Council will be able to plan for an expanded level of infrastructure improvements, using the knowledge of expected development and the required contributions. The formulae based

approach allows the Council to predict the level and nature of the monetary contribution and allows for the more efficient long-term planning of key infrastructure requirements. It enables the s106 contributions to not only be maximised in terms of the reach of the benefits, but also act a catalyst of regeneration around the funding development, further reducing the negative impacts of a new development.

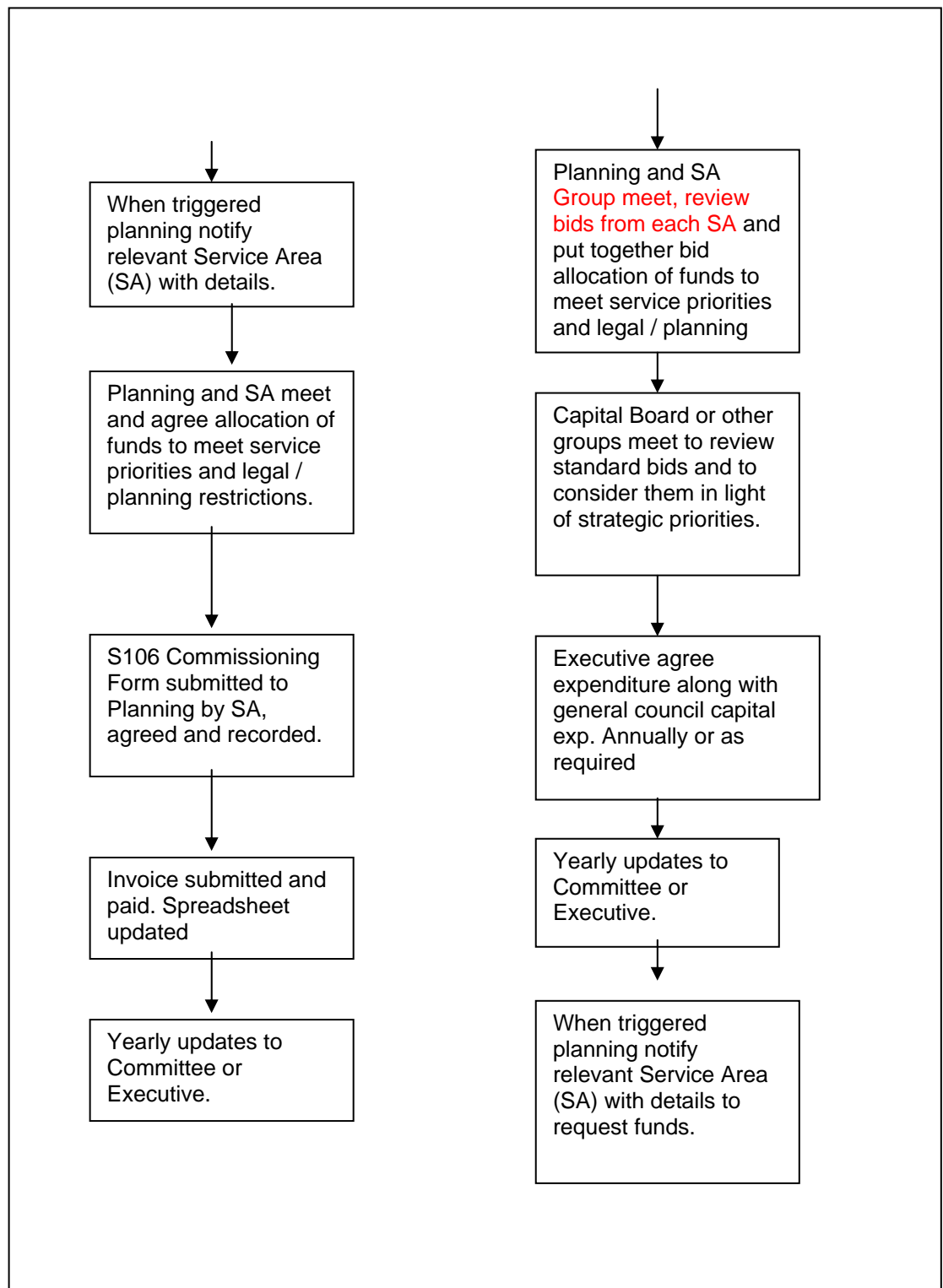
Expenditure procedure

Under the old system individual units within the council put the individual sums to discrete projects and there may or may not have been a relationship with capital spend. This will need to be continued until the new style S106's take over. The new system needs input from individual units such as Transportation and Education, but it also needs a wider strategic overview to establish whether S106 funds are going to be spent in relation to the notional proportions or whether they are pooled. This would mean that one service may not get the funding it was expecting and others would S106 funds. For example Education could receive 50% of the total S106 budget. However in some years it should be possible to vary this so for example in year 1 they get more to fund a key school expansion and in year 2, less because the council's priority is a new sports centre. This will clearly need a different procedure than the one that has worked to date.

Below is one possible procedure that could be followed, but is not the only way funds could be allocated. This is very much up for debate as the S106 standard charge system is very new. The main change is that as well as Service Areas seeking allocation of funds, there needs to be a more strategic view that allows the council to prioritise key areas of expenditure related to capital spend priorities. An officer group such as the Capital Board will give consideration to Council and Service Areas priorities and respect the legal and planning requirements of the S106 contribution. It will then make recommendations to Executive on how accrued S106 funding should be prioritised and spent, considering the latitude for pooling. The Executive could either set broad areas of spend or set out expenditure on key projects. The various service areas of the council would then spend and claim from the S106 budget on that basis.

The current procedure

Revised procedure



Update on Current S106 Position

Appendix 1 sets out funds received and spent during the last financial year. These were s106's entered into without the benefit of Standard charging. Because most S106's are triggered on development it will be some time - typically a year to 18 months - before the new type of S106 agreements accumulate within the S106 fund. There is still a very important job for units within the council to do to spend the monies accumulated so far so that we do not get challenged by developers for not spending accrued receipts.

Appendix 2 sets out more details of those new S106 agreements for the past financial year and Appendix 3 contains details of all current S106's. Some have been entered into and not triggered by development and some triggered by development and sit within the council's S106 account.

Background Papers

S106 Planning Obligations SPD

Contact Officer

Any person wishing to inspect the above papers should contact Zayd Al-Jawad, The Planning Service, Brent House, 349 High Road, Wembley, London HA9 6BZ, Tel: 020 8937 5018

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