

**Select Committee on Regeneration, Culture and Adult Education –
3rd March 2010**

Report of the Director of the Urban Environment

**Planning Obligations Update Report - April to September 2009
S106 and Unilateral Undertaking Legal Agreements signed between 1st April 2009
and 30th September 2009, and planning obligation monies received and approved
within the same period.**

Purpose of Report

1. To provide information on contributions that were received and approved under the Town and Country Planning Act 1990 (as amended) during the first six months of the 2009/10 financial year together with information on the S106 and Unilateral Undertaking Legal Agreements that were signed during the same six month period.

Background

2. For several years now this Committee has received reports on planning obligations received for each financial year from 2001/02. At the Council Meeting held on 23rd February 2009 it was agreed that regular reports on Planning Obligations be submitted to this Committee. As such this report provides a summary of all the financial planning obligations received during the first six months of the 2009/10 financial year, along with information on the S106 Agreements and Unilateral undertakings that were signed during this period. It is not possible at this stage to report planning obligation expenditure for the first six months of the 2009/10 financial year as it is common practice for monies to often be not drawn until the end of the financial year. As such a full account of all Planning Obligation Expenditure for the 2009/10 financial year will be reported to this Committee early in the next municipal year once all the financial transactions have been completed.

3. It may be helpful to set out the national background for seeking developer contributions. Circular 05/2005 (Planning Obligations) defines such undertakings as follows:

“Planning obligations (or S106 Agreements) are private agreements negotiated usually in the context of planning applications, between local planning authorities and persons with an interest in a piece of land (or “developers”), and intended to make acceptable development which would otherwise be unacceptable in planning terms. Obligations can also be secured through unilateral undertakings.....”

4. The Circular goes on to set out the background of development contributions; i.e. what can and cannot be sought during the processing of a planning application.

Such obligations can prescribe the nature of the development (e.g. private affordable housing), compensate for loss arising (e.g. provide public open space) and mitigate against the impact of a development (e.g. enhanced off-site public open space). There are 5 tests to be applied in seeking contributions as follows:

- Relevant to the development
 - Relate in scale and kind to the development
 - Reasonable
 - Necessary to enable the development to take place
 - Directly related to the development
5. The planning obligations secured relate to the policies in the Council's adopted Unitary Development Plan 2005. The Planning Obligations Supplementary Planning Document (SPD) was originally adopted in December 2007 and expands upon the Unitary Development Plan 2005, aiming to reduce uncertainty and ensure a consistent approach to planning obligations across the Borough. It introduced a range of new planning obligations for future developments within the Borough.
In line with good practice following its first year of implementation, a revised SPD was adopted in March 2009 in order to ensure that required planning obligations continue to be reasonable and realistic.
6. As set out in the SPD, planning obligations in the form of financial contributions are not held together in a central fund; rather they are kept within specific budgetary codes dependant upon the purpose of the contribution. These contributions must be spent within any timescales defined by the legal agreement, and any unspent monies are liable to be paid back to the developer with accrued interest.

S106 Agreements and Unilateral Undertakings signed April to Sept. 2009

7. During the first 6 months of the 2009/10 financial year a total of thirteen S106 Agreements and twelve Unilateral Undertakings were signed, giving a total of 25 Legal Agreements; these are detailed in **Appendix 1**. It is important to note that the signing of the legal agreement does not necessarily mean that contributions have simultaneously been received. There are two main reasons for this:
- In the majority of cases the payment of monies is not required until development commences.
 - The S106 is signed on the Outline Application but until the follow on Reserved Matters application has been approved no monies are required.

For these reasons there is often a time lag from when the legal agreement is signed to the receipt by the Council of the financial contributions.

Planning Contributions received during 1st April to 30th September 2009

8. The areas of infrastructure and services that received financial planning contributions during the first six months of the 2009/10 financial year were Open Space, Sport and Recreation, Libraries, Public Realm, Nature Conservation, Environmental Protection and Transport Infrastructure Improvements. The total value of the financial contributions received was £176,486.15. Each of the

relevant services have procedures in place for the allocation and spending of monies received, including a procedure for consultation and engagement with Ward Members which was recommended by this Committee in March 2009. All of the monies received as set out in this report were received after this new procedure was put in place so Ward Members will have been or will be consulted on the allocation and spend of these monies in due course. As explained in paragraph 2 above a full report on planning obligation expenditure for the whole of the 2009/10 financial year will be reported to this Committee in the next municipal year.

Open Space, Sport and Recreation

9. Between April and September 2009 contributions totalling £34,627.02 were received for Open Space, Sport and Recreation. A detailed account of this income is set out in **Appendix 2**.

Nature Conservation

10. A contribution of £71.63 was received for Nature Conservation Enhancements between April and September 2009, details can be found in **Appendix 3**. It may be useful to note that Nature Conservation Contributions were only introduced as a standard contribution on planning applications in March 2009 with the adoption of the revised Planning Obligations SPD.

Environmental Protection

A contribution of £67,225.61 was received in relation to the planning permission for the Tesco redevelopment at Castle Gate, Dudley. The purpose of the monies is for the purchase, installation and monitoring of Air Quality Monitoring Equipment.

Libraries

12. Contributions totalling £1,246.57 were received during the first six months of the 2009/10 financial year for library facilities, details can be found in **Appendix 3**.

Public Realm

13. Contributions totalling £8,001.39 were received between April and September 2009 for Public Realm improvements, again details can be found in **Appendix 3**.

Transportation

14. Between April and September 2009 contributions received for Transport Infrastructure Improvements equated to £65,313.93. Details of exact income can be found in **Appendix 4**.

15. **Financial Planning Obligations Approved April to September 2009**

Between April and September 2009 financial planning obligations totalling £833,146.49 were approved. These monies were approved from a total of 62 planning applications for the following areas of infrastructure:

- Transport Infrastructure Improvements - £111,378.30
- Public Realm Improvements - £114,405.49
- Open Space, Sport and Recreation - £319,371.78
- Nature Conservation - £158,770.63
- Libraries - £21,994.68
- Other:
 - Bus Shelter Contribution - £25,000
 - Transport Regulation Orders - £15,000
 - Air Quality Equipment £67,225.61

In the vast majority of cases, the contributions are required to be paid to the Council on commencement of development, therefore there will be a time lag between when the obligations were approved and when the monies are received by the Council. This information on approved obligations is being reported to this Committee as background information only, once monies are received they will be reported to this Committee using the existing reporting mechanism and monies will be allocated and spent in consultation with Ward Members.

Finance

16. This report is financial in nature and relevant information is contained within the body of the report and the attached Appendices.

Law

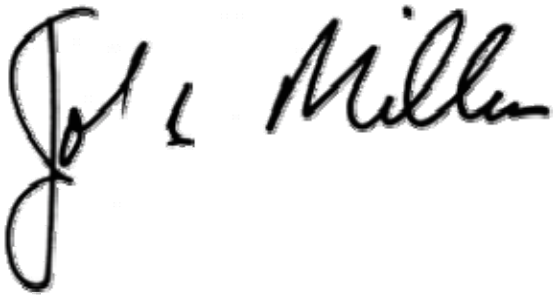
17. The relevant law is:
- S106 of the Town and Country Planning Act 1990 (as amended)
 - Planning and Compulsory Purchase Act 2004
 - Circular 05/2005 – Planning Obligations

Equality Impact

18. The proposals take into account the Council's Equal Opportunities Policy and seek to enable all sections of the community (including young children and young people) within the Borough to gain from the effective implementation and planning obligations and the associated benefits envisaged.

Recommendation

19. It is recommended that the Select Committee notes the report.



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J. B. MILLAR
DIRECTOR OF THE URBAN ENVIRONMENT

Contact Officer:

Jo Bozdoganli Telephone: 01384 816816 Email: jo.bozdoganli@dudley.gov.uk

List of Background Papers

Circular 05/2005 – Planning Obligations
Planning Obligations Supplementary Planning Document
Dudley Unitary Development Plan